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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 603, 651, 652, 653, 654, 658, 675, 679, 680, 681, 682, 683, 684, 685, 686, 687, and 688

Docket No. ETA-2015-0001

RIN: 1205-AB73

Workforce Innovation and Opportunity Act; Final Rule

AGENCY: Employment and Training Administration (ETA), Labor

ACTION: Final Rule.

SUMMARY: The Department of Labor (DOL or the Department) issues this Final Rule to implement titles I and III of the Workforce Innovation and Opportunity Act (WIOA). Through these regulations, the Department reforms and modernizes our nation's workforce development system. This rule provides the framework for changes for statewide and local workforce development systems to increase the employment, retention, earnings, and occupational skill attainment of U.S. workers, particularly those individuals with barriers to employment, so they can move into good jobs and careers and provide businesses with the skilled workforce needed to make the United States more competitive in the 21st Century global economy.

DATES: This Final Rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Executive Summary

A. Purpose of the Regulatory Action

On July 22, 2014, President Obama signed the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113-128), comprehensive legislation that reforms and modernizes the public workforce system. WIOA reaffirms the role of the public workforce system, and brings together and enhances several key employment, education, and training programs. This new law provides resources, services, and leadership tools for the public workforce system to help individuals find good jobs and stay employed and improves employer prospects for success in the global marketplace. It ensures that the public workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity for those it serves and continuously improves the quality and performance of its services.

The Department is publishing this Final Rule to implement those provisions of WIOA that affect the core programs under title I, the Wagner-Peyser Act Employment Service (ES) program, as amended by WIOA title III (ES program), and the Job Corps and national programs authorized under title I which will be administered by the Department. In addition to this DOL WIOA Final Rule, the Departments of Education (ED) and Labor jointly are publishing a Final Rule to implement those provisions of WIOA that affect all of the WIOA core programs (titles I through IV) and which will have to be overseen and administered jointly by both Departments. Readers should note that in this DOL WIOA Final Rule there are a number of cross-references to the Joint WIOA Final Rule published by ED and DOL, including those provisions in the Joint WIOA Final Rule regarding performance reporting. In addition to the Joint WIOA Final Rule, ED and DOL are issuing separate final rules to implement program-specific requirements of WIOA that fall under each Department's purview. DOL is issuing this Final Rule governing program-specific requirements under WIOA title I and for the ES program, as amended by WIOA title III. ED is issuing three final rules: one implementing program-specific requirements of the Adult Education and Family Literacy Act (AEFLA), as reauthorized by title II of WIOA; and two final rules implementing all program-specific requirements for programs authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA. The Joint WIOA Final Rule and other Department-specific final rules are published elsewhere in this issue of the Federal Register.

WIOA seeks to deliver a broad array of integrated services to customers of the public workforce system, which include both individuals seeking jobs and skills training and employers seeking skilled workers. The law improves the public workforce system by more closely aligning it with regional economies and strengthening the network of about 2,500 one-stop

centers. Customers must have access to a seamless system of high-quality services through coordination of programs, services, and governance structures. The Act builds closer ties among key workforce partners—business leaders, State and Local Workforce Development Boards (WDBs), labor unions, community colleges, non-profit organizations, youth-serving organizations, and State and local officials—in striving for a more job-driven approach to training and skills development.

WIOA will help job seekers and workers access employment, education, training, and support services to succeed in the labor market and match employers with the skilled workers they need to compete in the global economy. The purposes of WIOA described in the statute include:

- Increasing access to and opportunities for the employment, education, training, and support services that individuals need, particularly those with barriers to employment.
- Supporting the alignment of workforce investment, education, and economic development systems, in support of a comprehensive, accessible, and high-quality workforce development system.
- Improving the quality and labor market relevance of workforce investment, education, and economic development efforts.
- Promoting improvement in the structure and delivery of services.
- Increasing the prosperity of workers and employers.
- Providing workforce development activities that increase employment, retention, and earnings of participants and that increase postsecondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-

sufficiency, meet skill requirements of employers, and enhance productivity, and the competitiveness of our nation.

WIOA's passage and implementation builds upon the groundwork already laid by an Administration-wide review of employment, education, and training programs to ensure Federal agencies do everything possible to prepare ready-to-work-Americans with ready-to-be-filled jobs. That review identified several priorities for Federally supported training programs, including employer engagement; promoting work-based learning strategies, such as on-the job training and registered apprenticeships, career pathways, and regional collaboration; increasing access to training by breaking down barriers; and data-driven program management and evaluation.

As WIOA implementation progresses, success in accomplishing the purposes of WIOA at the State, local, and regional levels, will be determined by whether:

- One-stop centers are recognized as a valuable community resource and are known for high quality, comprehensive services for customers.
- The core programs and one-stop partners provide seamless, integrated customer service.
- Program performance, labor market, and related data drive policy and strategic decisions and inform customer choice.
- Youth programs reconnect out-of-school youth (OSY) to education and jobs.
- Job seekers access quality career services either online or in a one-stop center through a "common front door" that connects them to the right services.
- One-stop centers facilitate access to high quality, innovative education and training.
- Services to businesses are robust and effective, meeting businesses' workforce needs across the business lifecycle.

As noted throughout this Final Rule, the Department will be issuing guidance to help our regulated communities understand their rights and responsibilities under WIOA and these regulations. Consistent with the Administrative Procedure Act's exemption from its notice and comment requirement for general statements of policy, interpretations, and procedural instructions, this guidance will provide interpretations of many of the terms and provisions of these regulations and more detailed procedural instructions that would not be appropriate to set out in regulations. The Department also will be issuing guidance to provide information on current priorities and initiatives, suggested best practices, and in response to stakeholder questions.

B. Summary of Major Provisions

To implement WIOA title I, the Department has added several new CFR parts to title 20, chapter V (ETA's regulations). In particular, because the WIA regulations will continue to be referenced in existing and historic documents for some time after the WIOA transition, the Department is creating entirely new programmatic regulations to reflect the requirements of WIOA, rather than amending the WIA title I regulations found at 20 CFR parts 660 through 672. Table 1 below presents a crosswalk for these new CFR parts to illustrate how they relate to the existing WIA regulations.

In addition, the Department is revising in this DOL WIOA Final Rule certain other CFR parts in accordance with WIOA, rather than creating entirely new parts, where it was not necessary to retain the WIA version of the regulation. For example, the Department retains the Wagner-Peyser Act implementing regulations in 20 CFR parts 651 through 658 and is revising in this Final Rule only those parts that are affected by WIOA, i.e., parts 651 through 654 and 658. Further, the Department is amending portions of part 603 (Federal-State Unemployment

Compensation (UC) Program; Confidentiality and Disclosure of State UC Information) in accordance with WIOA. These CFR parts that are amended but not new in this DOL WIOA Final Rule are indicated in Table 1 by showing that they do not change location in the CFR from WIA to WIOA. The remainder of this section I.B briefly summarizes each CFR part in this Final Rule and any significant differences between the notice of proposed rulemaking (NPRM) and Final Rule.

Table 1. Crosswalk of WIA and WIOA Regulations

Subject Matter	WIA CFR Part	WIOA CFR Part
Federal-State UC Program	20 CFR part 603	20 CFR part 603
Definitions/Introduction to Regulations	20 CFR part 660	20 CFR part 675
State and Local WDBs, Local and Regional Plans, Waivers	20 CFR part 661	20 CFR part 679
Adult and Dislocated Workers	20 CFR part 663	20 CFR part 680
Youth Activities	20 CFR part 664	20 CFR part 681
Statewide Activities	20 CFR part 665	20 CFR part 682
Administrative Provisions	20 CFR part 667	20 CFR part 683
Indian and Native American Programs	20 CFR part 668	20 CFR part 684
National Farmworker Jobs Program	20 CFR part 669	20 CFR part 685
Job Corps	20 CFR part 670	20 CFR part 686
National Dislocated Worker Grants	20 CFR part 671	20 CFR part 687
YouthBuild	20 CFR part 662	20 CFR part 688
Wagner-Peyser Act Employment Service – Definitions	20 CFR part 651	20 CFR part 651
Wagner-Peyser Act Employment Service – Establishment and Functioning	20 CFR part 652	20 CFR part 652
Wagner-Peyser Act Employment Service – Services	20 CFR part 653	20 CFR part 653
Wagner-Peyser Act Employment Service – Special Responsibilities	20 CFR part 654	20 CFR part 654

Subject Matter	WIA CFR Part	WIOA CFR Part
Wagner-Peyser Act Employment Service – Administrative Provisions	20 CFR part 658	20 CFR part 658

1. Part 603 – Federal-State Unemployment Compensation Program

The Department is amending its regulations at 20 CFR part 603 to help States comply with WIOA. WIOA requires that States use "quarterly wage records" in assessing the performance of certain Federally funded employment and training programs. In particular, this Final Rule amends part 603 to clarify and expand, in a limited fashion, those public officials with whom the State may share certain confidential information to carry out requirements under WIOA, including the use of wage records to meet performance reporting requirements and cooperation with certain DOL and ED evaluations. The Department is amending part 603 as proposed in the NPRM.

2. Part 675 – Introduction to the Regulations for the Workforce Development System Under Title I of the Workforce Innovation and Opportunity Act

Part 675 discusses the purpose of title I of the WIOA, explains the format of the regulations governing title I, and provides additional definitions for terms used in the law.

The most notable changes to this part from the regulatory text proposed in the NPRM include the addition of a definition of "family" and strengthening the definition of "consultation." The DOL WIOA Final Rule defines "family" in the same way as the WIA definition of "family," except that instead of using the gender-specific "husband" and "wife" terms that were in WIA, it substitutes "a married couple." This is intended to bring the definition into conformance with the recent Supreme Court decisions about marriage equality.

Regarding the revised definition of "consultation," in response to public comments expressing concern that the proposed definition was not specific enough, the Final Rule definition better focuses on the public workforce system and is necessary to clarify that consultation constitutes a coming together of stakeholders, robust conversation, and opportunity for all parties to express thoughts and opinions.

The Department also changed the terms "workforce innovation and opportunity system," and "workforce investment system" to "workforce development system" throughout this rule. This was done to enhance consistency across parts and avoid confusion, and to be emphasize the role of workforce development boards in this system.

3. Part 679 – Statewide and Local Governance of the Workforce Development System Under Title I of the Workforce Innovation and Opportunity Act

Part 679 addresses the statewide and local governance provisions of the workforce development system under WIOA title I. This part includes provisions that govern the conditions under which the Governor must establish the State WDB (subpart A); the requirements for designation of regions and local areas under WIOA (subpart B); the role of Local WDBs, Local WDB membership, and the role of chief elected officials (CEOs) (subpart C); the requirements relating to regional and local plans (subpart D); the statutory and regulatory waiver authority provided by WIOA sec. 189(i), including the requirements for submitting a workforce flexibility plan under WIOA sec. 190 (subpart E).

As for notable changes to this part from the NPRM regulatory text, to address concerns about representation of core programs on the State WDB was raised by many commenters, the Department has revised the final regulations to clarify that, for the WIOA title I and ES programs, a single lead State official with primary responsibility for those programs may

represent more than one of those programs. However, WIOA title II programs must have a single, unique representative, and the Vocational Rehabilitation (VR) program administered by ED and authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program), must have a single, unique representative. See § 679.110(b)(3)(iii)(A)(1)(i) through (iii).

Further, the Department clarified the regulatory text by providing details on the duration of initial local area designation and the timing of the first available opportunity for local area subsequent designation to occur. The Department revised the proposed requirement to clarify that initial designation is applicable only to Program Year (PY) 2016 and PY 2017. Noting the commenters' concerns regarding availability of WIOA performance data, which is required for the determination of designation, the Department added § 679.250(c) to clarify that no determination of subsequent designation may be made before the conclusion of PY 2017. The section-by-section discussion of part 679 below details other changes to the part 679 regulatory text, as well as Department responses to all substantive public comments.

4. Part 680 – Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

In this part of the Final Rule, the Department describes requirements relating to the services that are available for adults and dislocated workers under WIOA title I. Under WIOA, adults and dislocated workers may access career services and training services. Training is provided through a robust eligible training provider and program list (ETPL), comprised of entities with a demonstrated capability of training individuals to enter quality employment. WIOA also provides enhanced access and flexibility for work-based training options, such as on-the-job training (OJT), customized training, and incumbent worker training. In this part, the

Department also discusses supportive services and needs-related payments that can be provided, based on customer needs, to enable them to participate in WIOA career and training services.

Some of the notable changes to this part from the NPRM regulatory text include that the Final Rule clarifies that the priority of service in the adult program for individuals who are public assistance recipients, other low-income individuals and for individuals who are basic skills deficient exists at all times, not just when funds are limited.

Regarding the role of registered apprenticeship programs, the Final Rule emphasizes the key role WIOA envisions for registered apprenticeship programs by highlighting these programs as a training service for both Individual Training Accounts (ITAs) and as OJT. The Final Rule allows apprenticeship programs that are not registered to go through the eligible training provider (ETP) process if they want to be on the ETP list; the rule does not provide apprenticeship programs that are not registered special access to the ETPL. The Department also clarifies in this Final Rule that registered apprenticeship programs are automatically eligible for the ETPL and the State is required to notify them of their automatic eligibility and allow the registered apprenticeship program an opportunity to consent to be on the State ETPL (see § 680.470). This mechanism must be minimal burden to registered apprenticeship programs and must comply with Federal guidance. The Department further clarifies in this Final Rule that local areas, which have the authority to set more stringent standards than the State for eligibility of training providers, may not do so for registered apprenticeship programs that are on the State ETPL. Finally, the Department clarifies in this Final Rule that registered apprenticeship programs may be removed from the State ETPL for enforcement reasons other than performance, such as a clear violation of WIOA (see § 680.470). Although registered apprenticeship programs

are not required to report in the same way as other ETPs, they are required to be a part of the State annual ETP performance report under WIOA sec. 116(d)(2).

5. Part 681 – Youth Activities Under Title I of the Workforce Innovation and Opportunity Act

Part 681 describes requirements relating to the services that are available to youth under WIOA title I, subtitle B, as part 664 did for youth activities funded under WIA. The most significant change to the youth formula program under WIOA is the shift to focus resources primarily on OSY. WIOA increases the minimum percentage of program funds required to be spent on OSY from 30 to 75 percent. The Department plans to release subsequent guidance and technical assistance on how States and local areas can incorporate strategies for recruiting and serving more OSY.

In addition, WIOA includes a major focus on providing youth with work experience opportunities with a requirement that local areas must spend a minimum of 20 percent of local area funds on work experience. And although work experience becomes the most important of the program elements, WIOA also introduces 5 new program elements: financial literacy; entrepreneurial skills training; services that provide labor market and employment information about in-demand industry sectors or occupations available in the local areas; activities that help youth prepare for and transition to postsecondary education and training; and education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.

The most significant change between the NPRM and the Final Rule occurs in § 681.400. This section clarifies that youth activities may be conducted by the local grant recipient and that when the Local WDB chooses to award grants or contracts to youth service providers, such

awards must be made using a competitive procurement process in accordance with WIOA sec. 123. The section-by-section discussion of part 681 below details other changes to the part 681 regulatory text, as well as Department responses to all substantive public comments.

6. Part 682 – Statewide Activities Under Title I of the Workforce Innovation and Opportunity Act

WIOA provides a reservation of funds for statewide employment and training activities. These activities are undertaken by the States, rather than by Local WDBs; both the required and allowable activities are addressed by part 682. WIOA designates the percentage of funds that may be devoted to these activities from annual allotments to the States—up to 15 percent must be reserved from youth, adult, and dislocated worker funding streams, and up to an additional 25 percent of dislocated worker funds must be reserved for statewide rapid response activities.

Some of the notable changes to this part from the NPRM regulatory text include the specification that layoff aversion is a required rapid response activity, as applicable. Layoff aversion activities may include employer-focused activities such as providing assistance to employers in managing reductions in force, funding feasibility studies to determine if the employer's operation may be sustained through a buy-out, etc. Further, the DOL WIOA Final Rule specifies that a successful rapid response system includes comprehensive business engagement. Finally, the DOL WIOA Final Rule specifies that rapid response funds may be used to pay for incumbent worker training as long as it is part of a broader layoff aversion strategy. Incumbent worker training is also a valuable layoff aversion tool and, under WIA, many States requested a waiver to allow such training with rapid response funds. This Final Rule change recognizes the value of incumbent worker training for this purpose and includes it as allowable under rapid response within the context of layoff aversion activities.

7. Part 683 – Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act

Part 683 establishes the administrative provisions for the programs authorized under title I of WIOA. Some of the provisions are also applicable to grants provided under the Wagner-Peyser Act, as indicated in specific sections of the part. The remaining Wagner-Peyser Act administrative regulations are located in part 658. Additionally, please note that administrative provisions for Job Corps (subtitle C of title I of WIOA) contracts are addressed separately in part 686.

This DOL WIOA Final Rule adds a requirement that the Governor establish criteria or factors for approving Local WDB transfers of funds between the adult and dislocated worker programs and that these criteria must be in a written policy, such as the State Plan or other written policy.

Regarding Pay-for-Performance contract strategies, the final regulations made a change from the NPRM in that the Department has added a new section that maintained the requirement for a feasibility study prior to implementing a Pay-for-Performance contract strategy but removed it from the 10 percent limitation of funds.

8. Part 684 – Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act

Part 684 governs the Indian and Native American (INA) program authorized under WIOA sec. 166. WIOA and part 684 streamline the competitive process for awarding the INA program grants. Section 166 of WIOA requires both that grants be awarded through a competitive process and that grantees submit a 4-year plan (WIOA secs. 166(c) and 166(e)). These WIOA regulations streamline the grant award process to ease the administrative burdens.

The Department will no longer designate grantees or require a notice of intent. Moreover, the part 684 WIOA regulations have incorporated the 4-year plan into the competitive grant award process. Because these changes will help streamline the process for awarding grants, these WIOA regulations should result in less of an administrative burden on both applicants and the Department.

Other than a few technical, non-substantive edits, the Department has made no changes to the regulatory text in part 684.

9. Part 685 – National Farmworker Jobs Program Under Title I of the Workforce Innovation and Opportunity Act

The purpose of part 685 is to implement WIOA sec. 167, which authorizes migrant and seasonal farmworker (MSFW) programs. In drafting these regulations, the Department consulted with States and MSFW groups during stakeholder consultation sessions conducted in August and September 2014, as required by WIOA sec. 167(f). MSFW programs include career services and training, housing assistance, youth services, and related assistance to eligible MSFWs.

The regulations in part 685 support strategic alignment across workforce development programs by: aligning the definition of "farmwork" found in this part with that used in the ES program; adjusting the upper and lower age ranges of eligible MSFW youth to conform to those established in WIOA sec. 129 for OSY and ISY; and requiring that grantees coordinate services, particularly outreach to MSFWs, with the State Workforce Agency (SWA) in their service area and the State Monitor Advocate. These changes are intended to support coordination between MSFW programs and other workforce programs such as the ES program, and facilitate MSFW youth co-enrollments with other WIOA title I programs.

Part 685 includes language regarding training services that reinforces that training must be directly linked to an in-demand industry or occupation that leads to economic self-sufficiency and encourages the attainment of recognized postsecondary credentials when appropriate (see § 685.350).

Part 685 also establishes that grantees funded under WIOA sec. 167 can serve eligible MSFW youth participants (see §§ 685.320 and 685.510). These regulations also require that a percentage of the total funds appropriated each year for WIOA sec. 167 activities must be used for housing grants, and described specific housing assistance activities to better articulate the types of services that can be delivered to eligible MSFWs (see § 685.360).

Based on the public comments received in response to the NPRM, the Department made the following significant changes to part 685 as proposed:

- The Final Rule permits a National Farmworker Jobs Program (NFJP) grantee some flexibility to increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant, provided that such reimbursement rates are consistent with the rates set by the Governor in the State or Local WDB(s) in the local area(s) in which the grantee operates in accordance with WIOA sec. 134(c)(3)(H)(i);
- The Final Rule revises § 685.360(d) to clarify that NFJP-funded permanent housing development activities that benefit eligible MSFWs do not require individual eligibility determinations;
- The Final Rule clarifies in § 685.360 that development of on-farm housing located on property owned and operated by an agricultural employer is an allowable activity; and
- In response to commenters' concerns regarding the negative impact that would result on performance indicator calculations by including individuals who receive only certain

minimal "related assistance" services, which do not require a significant investment of staff time and resources, the Department has added language to § 685.400 that puts the NFJP program in alignment with other WIOA authorized programs regarding performance accountability calculations.

10. Part 686 – The Job Corps Under Title I of the Workforce Innovation and Opportunity Act

This part establishes regulations for the Job Corps program, authorized in title I, subtitle C of WIOA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to site selection, protection, and maintenance of Job Corps facilities; funding and selection of center operators and service providers; recruitment, eligibility, screening, selection and assignment, and enrollment of Job Corps students; Job Corps program activities and center operations; student support; career transition services and graduate services; community connections; and administrative and management requirements. The regulations carry out Congressional direction on contracting and competition for centers and incorporate the requirements of title I, subtitle C of WIOA. Specifically, the regulations describe how the Job Corps program is operated in order to deliver relevant academic and career technical training (CTT) that leads to meaningful employment or postsecondary education and explain the requirements necessitated by the unique residential environment of a Job Corps center.

Although the Department received some public comments that opposed the proposed provision stating that the Secretary of Labor, in consultation with the Secretary of Agriculture, may select an entity to operate a Civilian Conservation Center (CCC) or close low performing CCCs if the Secretary of Labor deems appropriate (§ 686.350(e) through (f)), the DOL WIOA Final Rule retains these paragraphs as proposed because the regulatory text mirrors the statutory

requirements at WIOA sec. 159(f)(2). In addition, regarding concerns expressed by commenters that the proposed high-performing center criteria were too difficult to achieve, the Department is retaining § 686.320 as proposed because the language in the regulation mirrors that of WIOA and the Department does not have the discretion to loosen the criteria.

11. Part 687 – National Dislocated Worker Grants

National Dislocated Worker Grants (DWGs) are discretionary awards that temporarily expand service capacity at the State and local levels through time-limited funding assistance in response to significant dislocation events. These grants are governed by sec. 170 of WIOA. The part 687 regulations set forth the key elements and requirements for DWGs. Additional guidance on DWGs and the application requirements for these grants was published separately by the Department in Training and Employment Guidance Letter (TEGL) No. 01-15, "Operational Guidance for National Dislocated Worker Grants, pursuant to the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act)."

The part 687 regulations establish a framework that will enable eligible applicants to apply quickly for grants to relieve the impact of layoffs, emergencies, and disasters on employment in the impacted area and to meet the training and reemployment needs of affected workers and to enable them to obtain new jobs as quickly as possible. These regulations call for early assessment of the needs and interests of the affected workers, through either rapid response activities or other means, as well as an indication of the other resources available to meet these needs, to aid in the creation of a customer-centered service proposal. The early collection of information about affected workers will allow applicants to have an understanding of the needs and interests of the impacted workers to enable a prompt application for the appropriate level of DWG funds. Early collection of information also will facilitate the receipt of DWG funds when

the Secretary determines that there are insufficient State and local formula funds available. Early intervention to assist workers being dislocated is critical to enable them to access work-based learning opportunities and other types of training that lead to industry-recognized credentials, as appropriate, to help them find new employment in in-demand industries and occupations as soon as possible after their dislocation occurs.

The Department has made several global changes and technical edits to the part 687 regulations proposed in the NPRM for clarity and technical accuracy. For example, "National Dislocated Worker Grants" will be referred to by the acronym "DWGs" in this part for simplicity. In addition, the Department has determined it is necessary to alter the labels of what the NPRM called "Regular" and "Disaster" DWGs to describe more accurately their purpose and intended use. "Regular" DWGs have been renamed "Employment Recovery" DWGs, and "Disaster" DWGs have been renamed "Disaster Recovery" DWGs. Further, the terms "career services" and "employment-related assistance" have been changed to "employment and training assistance" to clarify that the use of DWG funds is not limited to only career services. Training and supportive services also may be provided as appropriate and in accordance with the requirements of part 687. Finally, the term "temporary employment" has been replaced with the term "disaster relief employment" to better align the text of this part 687 with that of WIOA sec. 170. In addition, this DOL WIOA Final Rule clarifies that individuals who relocate to another State, tribal, or outlying area after a disaster may receive services in either the disaster area or the area to which they relocate. However, the Final Rule also includes a provision for the Secretary to allow, in certain circumstances, individuals to receive services in both the disaster and the relocation area. Other non-substantive changes and technical edits are described in detail in the section-by-section discussion of part 687 below.

12. Part 688 – Provisions Governing the YouthBuild Program

The YouthBuild program authorizes grants for job training and educational activities for at-risk youth who, as part of their training, help construct or rehabilitate housing for homeless individuals and families and low-income families in their respective communities. Participants receive a combination of classroom training, job skills development, and on-site training in the construction trades. The Department wants to emphasize the connections across all of our youth-serving programs under WIOA, including the WIOA youth formula program and associated boards and youth committees, connections to pre-apprenticeship and registered apprenticeship programs, and Job Corps centers across the country. WIOA is an opportunity to align and coordinate service strategies for these ETA youth training programs, as well as to align with our Federal partners that serve these same customers. WIOA also ensures that these programs are using common performance indicators and standard definitions, which includes aligning the definitions for homeless youth, basic skills deficient, occupational skills training, and supportive services. Additionally, the YouthBuild regulation adopts the six new performance indicators that were codified across WIOA youth-serving programs and aligns YouthBuild with the WIOA youth formula program performance outcomes.

WIOA affirms the Department's commitment to providing high-quality education, training, and employment services for youth and young adults through YouthBuild grants by expanding the occupational skills training offered at local YouthBuild programs. YouthBuild programs can offer occupational skills training in in-demand occupations, such as health care, advanced manufacturing, and IT, as approved by the Secretary and based on the maturity of the program and local labor market information.

Other changes include revisions to the duration of the restrictive covenant clause, clarifying eligibility criteria for participation, and describing qualifying work sites and minimum criteria for successful exit from the YouthBuild program. Beyond these regulations, the Department will continue to develop guidance and technical assistance to help grantees and the workforce development community operate highly effective YouthBuild programs.

13. Part 651 – General Provisions Governing the Wagner-Peyser Act Employment Service

The Wagner-Peyser Act of 1933 established the ES program, which is a nationwide system of public employment offices that provide public labor exchange services. The ES program seeks to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. In 1998, the ES program was amended to make it part of the one-stop delivery system established under WIA. The ES program has now been amended again under title III of WIOA.

WIOA expands upon the previous workforce reforms in the WIA and, among other provisions, identifies the ES as a core program in the one-stop delivery system, embeds ES State planning requirements into a unified planning approach, and requires the colocation of ES offices into the one-stop centers. The regulations in parts 651, 652, 653, 654, and 658 update the language and content of the regulations to implement amendments made by title III of WIOA to the Wagner-Peyser Act. In some areas, these regulations establish entirely new responsibilities and procedures. In other areas, the regulations clarify and update requirements already established. The regulations make important changes to the following components of the ES program: definitions, data submission, and increased collaboration requirements, among others.

Part 651 sets forth definitions for 20 CFR parts 652, 653, 654, and 658. The Department received several comments regarding these definitions and has eliminated, revised, and added definitions, as needed. Some commenters suggested new terms they would like to see defined in part 651, and other commenters expressed concerns or suggestions relating to specific proposed definitions. Additionally, the Department has made technical and clarifying changes to some of the definitions.

14. Part 652 – Establishment and Functioning of State Employment Service

The regulations at 20 CFR part 652 set forth standards and procedures regarding the establishment and functioning of State ES operations. These regulations align part 652 with the WIOA amendments to the ES program, and with the WIOA reforms to the public workforce system that affect the ES program. The WIOA-amended Wagner-Peyser Act furthers longstanding goals of closer collaboration with other employment and training programs by mandating colocation of ES offices with one-stop centers; aligning service delivery in the one-stop delivery system; and ensuring alignment of State planning and performance indicators in the one-stop delivery system. Other new Wagner-Peyser Act provisions are consistent with long-term Departmental policies, including increased emphasis on reemployment services for UI claimants (sec. 7(a)); promoting robust Workforce Labor Market Information (WLMI); the development of national electronic tools for job seekers and businesses (sec. 3(e)); dissemination of information on best practices (sec. 3(c)(2)); and professional development for ES staff (secs. 3(c)(4) and 7(b)(3)).

Several public comments received in response to the NPRM prompted the Department to make minor changes to parts of the regulations in this section. For example, the Department agreed with comments regarding ensuring comprehensive front-line staff training; and direct

language has been added to § 652.204 from sec. 3(c)(4) of the Wagner-Peyser Act (as amended by WIOA sec. 303(b)(4)) to indicate that professional development and career advancement can be supported by the Governor's Reserve. The Department agreed with the commenter-suggested benefits of aligning definitions across the core programs, and as a result, the terms "reportable individual" and "participant" have been revised to align with the performance accountability of the other core programs. The Department also agreed with commenters who suggested that career services under WIOA are not a substitute for Wagner-Peyser Act sec. 7(a) services; § 652.3(f) has been amended to reference sec. 7(a) of the Wagner-Peyser Act. The Department continues to seek alignment of service delivery with WIOA core programs.

The Department received several varying comments regarding colocation. This part clarifies the intent of colocation; how ES-only affiliate sites do not meet the intent of WIOA; the Department's decision to broaden language in 20 CFR 678.315(b) to allow multiple programs to meet the more than 50 percent threshold by combining the time their staff members are physically present (see Joint WIOA Final Rule); and the expectation that colocation should be completed as expeditiously as possible, and that the Department will issue future guidance on this topic. Many commenters also raised questions and provided comments regarding the allowable uses of Wagner-Peyser Act funds. The Department clarified that there are no changes in the activities that may be funded by Wagner-Peyser Act funds. Specifically, training services may not be provided with sec. 7(a) of the Wagner-Peyser Act funding; however, appropriate career services and labor exchange services may be provided to individuals in training and there is no restriction on funding training services with sec. 7(b) funds under the Wagner-Peyser Act.

In regard to WLMI, some of the clarifications identified in this part include: there is a need to provide extensive education and technical assistance with regard to accessing wage

record data; the Workforce Information Advisory Council (WIAC) will advise on WLMI and may consider what kind of information is needed for planning, but it will not be involved in developing State Plans; and the Departments of Labor and Education will issue joint guidance with regard to use of wage data for performance in the context of the confidentiality requirements for the use of UI wage record data and education data under the Family Educational Rights and Privacy Act (FERPA). The Department also made other clarifying changes to part 652, as discussed elsewhere in this Final Rule.

15. Part 653 – Services of the Wagner-Peyser Act Employment Service

Part 653 sets forth standards and procedures for providing services to MSFWs and provides regulations governing the Agricultural Recruitment System (ARS), a system for interstate and intrastate agricultural job recruitment. In subparts B and F of part 653, the Department is implementing the WIOA title III amendments to the Wagner-Peyser Act, as well as streamlining and updating certain sections to eliminate duplicative and obsolete provisions. Despite these changes, part 653 remains consistent with the "Richey Order." NAACP v. Brennan, 9174 WL 229, at *7.

Upon the consideration of comments suggesting that the Department require outreach workers to be trained on not only how to identify and refer possible incidents of sexual harassment, but also on similar issues such as sexual coercion, assault, and human trafficking, the Department has added such language to the regulatory text at § 653.107(b)(7). Training outreach workers in this way is key in helping to connect victims with appropriate resources and support networks.

16. Part 654 – Special Responsibilities of the Employment Service System

In 1980, the Department published amended regulations at 20 CFR part 654, subpart E providing agricultural housing standards for MSFWs. In the NPRM, the Department proposed to revise these agricultural housing regulations (hereinafter "ETA standards") by updating outdated terminology and by establishing an expiration date for the ETA standards. This proposed expiration date was intended to transition housing currently governed by the ETA standards to the Occupational Safety and Health Administration (OSHA) regulations governing temporary labor camps for agricultural workers as set forth at 29 CFR 1910.142. After considering the public comments received on this aspect of the proposal, the Department is rescinding its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards, as explained in further detail in this Final Rule.

17. Part 658 – Administrative Provisions Governing the Wagner-Peyser Act Employment Service

Part 658 sets forth systems and procedures for complaints, monitoring for compliance assessment, enforcement, and sanctions for violations of the ES regulations and employment-related laws, including discontinuation of services to employers and decertification of SWAs. The Department's proposed changes to part 658 updated terminology and responsibilities and reorganized various regulations to increase the clarity and efficiency of the provisions involved. Additionally, headings were revised, when necessary, to reflect changes to the regulations, and language was added to permit, where relevant, the use of electronic mail and electronic signatures.

Overall, the Department received several comments seeking clarification on processing complaints and apparent violations, attempting informal resolution, and the role of MSFW

complainant's representatives, among many others. The Department has addressed these requests for clarification in the responses to public comments contained in the part 658 section-by-section discussion below (see section V.Q). Additionally, the Department will issue guidance on the Complaint System, informal resolution, referring complaints and apparent violations, and on part 658, subpart F (Discontinuation of Services to Employers by the Employment Service System).

C. Costs and Benefits

This Final Rule has been designated an "economically significant rule" under sec. 3(f)(4) of Executive Order (E.O.) 12866. Therefore, the Office of Management and Budget (OMB) has reviewed the Final Rule, and the Department has conducted a regulatory impact analysis to estimate the costs, benefits, and transfers associated with the Final Rule, which is detailed in full in section V.A of the Final Rule below. In total, the Department estimates that this Final Rule will have an average annual net benefit of $14,806,210 and a total 10-year net benefit of $95,836,706 (with 7-percent discounting).

The Department estimates that this Final Rule will have an average annual cost of $35,037,540 and a total 10-year cost of $278,750,652 (with 7-percent discounting). The largest contributor to the cost is the requirement related to the development and continuous improvement of the workforce development system, followed by the career pathways development and the colocation of ES services.

The Department quantified the expected incremental benefits associated with this Final Rule relative to the baseline of the current practice under the Workforce Investment Act of 1998 (WIA), where possible. Specifically, the Department quantified the benefits expected to result from required competition for all one-stop operators. Competition for all one-stop operators will

result in cost reductions for Local WDBs due to increases in efficiency, which are estimated to amount to approximately $49,843,750 per year and $374,587,357 over the 10-year period (with 7-percent discounting). This quantified benefit resulting from increased competition for all one-stop operators, however, does not account for several other important benefits to society that the Department was unable to quantify due to data limitations or lack of existing data or evaluation findings. Based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies sponsored by the Department), however, the Department identified a variety of societal benefits: (1) training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, in combination with the board membership provision requiring employer/business representation, can be expected to improve the quality of the training and, ultimately, the number and caliber of job placements. The Department identified several channels through which these benefits might be achieved: (1) better information about training providers will enable workers to make better informed choices about programs to pursue; (2) sanctions to under-performing States will serve as an incentive for both States and local entities to monitor performance more effectively and to intervene early; and (3) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities will lead to the benefits discussed above.

In addition, the Final Rule will result in transfer payments, i.e., a shift in costs or benefits from one group to another that does not affect total resources available to society. The Department estimates that this Final Rule will result in annual average transfer payments of $12,887,628 and a total 10-year transfer payment of $96,853,514 (with 7-percent discounting). These transfers result from increased funding for targeting OSY.

The Department has determined that the Final Rule will have no cost impact on small entities and will not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995.

II. Acronyms and Abbreviations

AEFLA	Adult Education and Family Literacy Act
ALJ	Administrative Law Judge
ACS	American Community Survey
ADA	Americans with Disabilities Act
ANRC	Alaska Native Regional Corporation
ANVSA	Alaska Native Village Service Area
AOP	Agricultural Outreach Plan
ARC	Analyst Resource Center
ARS	Agricultural Recruitment System
ATAP	Assistive Technology Act Program
AWPA	Migrant and Seasonal Agricultural Worker Protection Act
AWOL	Absent Without Official Leave
BCL	Business and Community Liaison
BLS	Bureau of Labor Statistics
CBO	Community-based organization
CCC	Civilian Conservation Center
CDBG	Community Development Block Grant
CEO	Chief elected official
CEP	Concentrated Employment Program
CFR	Code of Federal Regulations
Complaint System	Employment Service and Employment-Related Law Complaint System
COO	Chief operating officer
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CPARS	Contract Performance Assessment Reports
CPP	Career Preparation Period
CRIS	Common Reporting Information System
CTS	Career Transition Services
CTT	Career Technical Training
DACA	Deferred Action for Childhood Arrivals
DINAP	Division of Indian and Native American Programs
DOL	Department of Labor
DVOP	Disabled Veterans Outreach Program
DWG	Dislocated Worker Grant
EBSS	Enterprise Business Support System
ED	Department of Education
EEOC	Equal Employment Opportunity Commission

E.O.	Executive Order
EO	Equal opportunity
ES	Employment Service
ESA	Employment Standards Administration
ESARS	Employment Security Automated Reporting System
ETA	Employment and Training Administration
ETP	Eligible training provider
ETPL	Eligible training provider list
FAR	Federal Acquisition Regulations
FECA	Federal Employees Compensation Act
FEIN	Federal employer identification number
FEMA	Federal Emergency Management Agency
FERPA	Family Educational Rights and Privacy Act
FLSA	Fair Labor Standards Act
FOA	Funding Opportunity Announcement
FPO	Federal Project Officer
FR	Federal Register
FTE	Full Time Equivalent
GED	General Educational Development
GIS	Geographic information system
GPRA	Government Performance and Results Act
HEARTH	Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009
HHS	Department of Health and Human Services
HOME	HOME Investment Partnerships
HSD	High School Diploma
HSE	High School Equivalent
HUD	U.S. Department of Housing and Urban Development
IC	Information collection
ICR	Information Collection Request
IEP	Individual Employment Plan
IEVS	Income and Eligibility Verification System
INA	Indian and Native American
IRFA	Initial Regulatory Flexibility Analysis
IRS	Internal Revenue Service
ISDEAA	Indian Self-Determination and Education Assistance Act
ISS	Individual Service Strategy
ISY	In-school youth
IT	Information technology
ITA	Individual Training Account
JIS	Job Information Service
JS	Job Service
JTPA	Job Training Partnership Act
JVSG	Jobs for Veterans State Grants
LEARS	Labor Exchange Agricultural Reporting System

LEHD	Longitudinal Employer-Household Dynamics
LEP	Limited English proficiency
LEWIS	Local Employment and Wage Information System
LLC	Limited Liability Corporation
LLSIL	Lower Living Standard Income Level
LMI	Labor Market Information
Local WDB	Local Workforce Development Board
MOU	Memorandum of Understanding
MPO	Management Performance Outcome
MSFW	Migrant and Seasonal Farmworker
MSWR	Medical Separation with Reinstatement Rights
NAA	National Apprenticeship Act
NAACP	National Association for the Advancement of Colored People
NAETC	Native American Employment and Training Council
NAFTA	North American Free Trade Agreement
NAICS	North American Industry Classification System
NDWG	National Dislocated Worker Grant
NEG	National Emergency Grant
NFJP	National Farmworker Jobs Program
NICRA	Negotiated Indirect Cost Rate Agreement
NIEM	National Information Exchange Model
NLX	National Labor Exchange
NPRM	Notice of Proposed Rulemaking
OA	Outreach and Admissions
OALJ	Office of Administrative Law Judges
OBS	On-board strength
ODEP	Office of Disability and Employment Policy
OFLC	Office of Foreign Labor Certification
OIG	Office of the Inspector General
OJT	On-the-job training
OMB	Office of Management and Budget
OMS	Outcome Measurement System
OPDR	Office of Policy Development and Research
OSHA	Occupational Safety and Health Administration
OSY	Out-of-school youth
OTSA	Oklahoma Tribal Service Area
OWI	Office of Workforce Investment
PART	Program Assessment and Rating Tool
PBP	Program Budget Plan
PEDCS	Post Enrollment Data Collection System
PIA	Privacy Impact Assessment
PII	Personally identifiable information
PIP	Performance improvement plan
PIRL	Participant Individual Record Layout
PMP	Projections Managing Partnership

PPACA	Patient Protection and Affordable Care Act
PRA	Paperwork Reduction Act of 1995
PREP	Profiling Reemployment Program
PRH	Policy and Requirements Handbook
Pub. L.	Public Law
PY	Program year
REA	Reemployment and Eligibility Assessment
RESEA	Reemployment Services and Eligibility
RFA	Regulatory Flexibility Act
RFP	Requests for proposals
RHY	Runaway or Homeless Youth
Richey Order	Judge Richey Court Order
RIN	Regulatory Information Number
RMA	Regional Monitor Advocate
RSA	Rehabilitation Services Administration
SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996
SDA	Service delivery area
sec.	Section of a Public Law or the United States Code
SESA	State Employee Security Act
S-FTP	Secure File Transfer Protocol
SMA	State Monitor Advocate
SOC	Standard Occupational Classification
SNAP	Supplemental Nutrition Assistance Program
SSA	Social Security Act
SSDI	Social Security Disability Insurance
SSN	Social Security Number
State WDB	State Workforce Development Board
STAWRS	Simplified Tax and Wage Reporting System
SWA	State Workforce Agency
SWCAP	Statewide Cost Allocation Plans
TAA	Trade Adjustment Assistance
TANF	Temporary Assistance for Needy Families
TAPR	Trade Act Participant Report
TAT	Technical Assistance and Training
TDD	Telephone device for the deaf
TEAP	Trainee Employee Assistance Program
TEGL	Training and Employment Guidance Letter
TEN	Training and Employment Notice
UC	Unemployment Compensation
UCX	Unemployment Compensation for Ex-service members
UI	Unemployment insurance
U.S.C.	United States Code
VA	Department of Veterans Affairs
VETS	Veterans' Employments and Training Service

VR	Vocational rehabilitation
Wagner-Peyser Act	Wagner-Peyser Act of 1933
WARN	Worker Adjustment and Retraining Notification
WDB	Workforce Development Board
WHD	Wage and Hour Division
WIA	Workforce Investment Act of 1998
WIAC	Workforce Information Advisory Council
WIASRD	Workforce Investment Act Standardized Record Data
WIB	Workforce investment boards
WIC	Workforce Information Council
WIOA	Workforce Innovation and Opportunity Act of 2014
WLMI	Workforce and Labor Market Information
WLMIS	Workforce and Labor Market Information System
WPRS	Worker Profiling and Reemployment Services
WRIS	Wage Record Interchange System
YB-TAP	YouthBuild Trainee Apprenticeship Program
ZT	Zero Tolerance

III. Rulemaking Authority and Background

A. Workforce Innovation and Opportunity Act Principles

On July 22, 2014, President Obama signed WIOA, the first legislative reform of the public workforce system in more than 15 years, which passed Congress by a wide bipartisan majority. WIOA supersedes WIA and amends the Adult Education and Family Literacy Act (AEFLA), the Wagner-Peyser Act, and the Rehabilitation Act of 1973. WIOA presents an extraordinary opportunity for the public workforce system to accelerate its transformational efforts and demonstrate its ability to improve job and career options for our citizens through an integrated, job-driven public workforce system that links diverse talent to our nation's businesses. It supports the development of strong, vibrant regional economies where businesses thrive and people want to live and work.

WIOA reaffirms the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce development system, and enhances and increases coordination among

several key employment, education, and training programs. Most provisions in WIOA took effect on July 1, 2015, the first full program year after enactment, although the new statutory State Plans and performance accountability system requirements take effect July 1, 2016. Title IV of WIOA, however, took effect upon enactment.

WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA has six main purposes: (1) increasing access to and opportunities for the employment, education, training, and support services for individuals, particularly those with barriers to employment; (2) supporting the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system; (3) improving the quality and labor market relevance of workforce investment, education, and economic development efforts; (4) promoting improvement in the structure and delivery of services; (5) increasing the prosperity of workers and employers; and (6) providing workforce development activities that increase employment, retention, and earnings of participants and that increase postsecondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

Beyond achieving the requirements of the new law, WIOA offers an opportunity to continue to modernize the public workforce system, and achieve key hallmarks of a customer centered public workforce system, where the needs of business and workers drive workforce solutions, where one-stop centers and partners provide excellent customer service to job seekers and businesses, where the public workforce system pursues continuous improvement through

evaluation and data-driven policy, and where the public workforce system supports strong regional economies.

Regulations and guidance implementing WIOA titles I and III are issued by DOL, with the exception of the joint regulations issued by DOL and ED on the provisions in title I relating to unified and combined planning, performance, and the one-stop delivery system. Regulations and guidance on implementing titles II and IV of WIOA are issued by ED. The Joint WIOA Final Rule and the ED WIOA Final Rules are published elsewhere in this issue of the Federal Register.

WIOA retains much of the structure of WIA, but with critical changes to advance greater coordination and alignment. Under title I, subtitle A, each State will be required to develop a single, unified strategic plan that is applicable to six core workforce development programs. The core programs consist of the adult, dislocated worker, and youth formula programs administered by the Department under WIOA title I; the Adult Education and Family Literacy program administered by ED under WIOA title II; the ES program administered by the Department and authorized by the Wagner-Peyser Act, as amended by WIOA title III; and the VR program administered by ED and authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program). In addition to core programs, WIOA provides States the opportunity to include other key one-stop partner programs such as the Supplemental Nutrition Assistance Program (SNAP), Unemployment Insurance (UI), Temporary Assistance for Needy Families (TANF), and Perkins Career Technical Education in a Combined State Plan. The law also includes a common performance accountability system applicable to all of the core programs.

The remainder of WIOA title I authorizes the adult, dislocated worker, and youth formula programs; the State and local WDBs (formerly workforce investment boards or WIBs); the designation of regions and local areas; local plans; the one-stop delivery system; national programs, including Job Corps, YouthBuild, Indian and Native American (INA) programs, and Migrant and Seasonal Farmworker (MSFW) programs; technical assistance and evaluations; and general administrative provisions currently authorized under title I of WIA. Title II retains and amends the Adult Education and Family Literacy Program currently authorized under title II of WIA. Title III contains amendments to the Wagner-Peyser Act relating to the ES and Workforce and Labor Market Information System (WLMIS), and requires the Secretary to establish a WIAC. Title IV contains amendments to the Rehabilitation Act of 1973, which were also included under title IV of WIA; it also requires the Secretary of Labor to establish an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. Finally, title V contains general provisions similar to the provisions applicable under title V of WIA as well as the effective dates and transition provisions.

B. Major Changes from the Workforce Investment Act of 1998

This section contains a summary of the major changes from WIA. As indicated above, WIOA retains much of the structure of WIA. Major changes in WIOA are:

- **Aligns Federal investments to support job seekers and employers**. The Act provides for States to prepare a single Unified State Plan that identifies a 4-year strategy for achieving the strategic vision and goals of the State for preparing an educated and skilled workforce and for meeting the skilled workforce needs of employers. States govern the core programs as one system assessing strategic needs and aligning them with service strategies to ensure the public workforce system meets employment and skill needs of all workers and employers.

- **Streamlines the governing bodies that establish State, regional and local workforce investment priorities.** WIOA makes State and Local WDBs more agile and well positioned to meet local and regional employers' workforce needs by reducing the size of the WDBs and assigning them additional responsibilities to assist in the achievement of the State and local strategic workforce vision and goals. The State WDBs continue to have a majority of business representation and a business chair and work for all workers and job seekers, including low-skilled adults, youth, and individuals with disabilities, while they foster innovation, and ensure streamlined operations and service delivery excellence.
- **Creates a common performance accountability system and information for job seekers and the public.** WIOA ensures that Federal investments in employment, education, and training programs are evidence-based and data-driven, and accountable to participants and the public. It establishes a performance accountability system that applies across the core programs, by generally applying six primary indicators of performance: entry into unsubsidized employment at two points in time, median earnings, attainment of postsecondary credentials, measurable skill gains, and effectiveness in serving employers.
- **Fosters regional collaboration to meet the needs of regional economies**. WIOA promotes alignment of workforce development programs with regional economic development strategies to meet the needs of local and regional employers.
- **Enhances access to high quality services through the network of one-stop delivery system.** WIOA helps job seekers and employers acquire the services they need in centers and online, clarifies the roles and responsibilities of the one-stop partner programs, adds the TANF program as a required one-stop partner unless the Governor objects, requires competitive selection of one-stop operators, and requires the use by the one-stop delivery

system of a common one-stop delivery identifier or brand developed by the Secretary of Labor ("American Job Center," see Joint WIOA Final Rule).

- **Improves services to individuals with disabilities.** WIOA stresses physical and programmatic accessibility, including the use of accessible technology to increase individuals with disabilities' access to high quality workforce services.
- **Makes key investments for disconnected youth.** WIOA emphasizes services to disconnected youth to prepare them for successful employment by requiring that a minimum of 75 percent of youth formula program funds be used to help OSY, in contrast to the 30 percent required under WIA. WIOA increases OSYs' access to WIOA services, including pre-apprenticeship opportunities that result in registered apprenticeship. It adds a requirement that at least 20 percent of formula funds at the local level be used on work-based training activities such as summer jobs, OJT, and apprenticeship.
- **Helps employers find workers with the necessary skills.** WIOA contributes to economic growth and business expansion by ensuring the public workforce system is job-driven—matching employers with skilled individuals. WIOA requires Local WDBs to promote the use of industry and sector partnerships that include key stakeholders in an industry cluster or sector that work with public entities to identify and address the workforce needs of multiple employers.

Additionally, successful implementation of many of the approaches called for within WIOA, such as career pathways and sector strategies, require robust relationships across programs and with businesses, economic development, education and training

institutions, including community colleges and career and technical education, local entities, and supportive services agencies.

C. Workforce Innovation and Opportunity Act Rulemaking Process

Since the enactment of WIOA, the Department has used a variety of means to coordinate with other Federal agencies that have roles and responsibilities under the Act. The Department works closely with staff at ED and the Department of Health and Human Services (HHS) on all shared policy and implementation matters. Key areas of collaboration include the Unified State Plan, performance reporting, one-stop service delivery, and services to disconnected youth and to individuals with disabilities. WIOA created an opportunity to enhance coordination and collaboration across other Federal programs through the Combined State Plan and the Department meets with the other Federal agencies regarding those plans.

Before publishing the WIOA NPRM (80 FR 20690, Apr. 16, 2015), the Department solicited broad input through a variety of mechanisms including:

- Issued Training and Employment Notice (TEN) No. 05-14 to notify the public workforce system that WIOA was enacted, accompanied by a statutory implementation timeline, a fact sheet that identified key reforms to the public workforce system, and a list of frequently asked questions.
- Issued TEN No. 06-14 to announce a series of webinars to engage WIOA stakeholders in implementation of WIOA.
- Issued TEN No. 12-14 to provide guidance to States and other recipients of funds under title I of WIA on the use and reporting of PY 2014 funds for planning and implementation activities associated with the transition to WIOA.

- Established a WIOA Resource Page (www.doleta.gov/WIOA) to provide updated information related to WIOA implementation to the public workforce system and stakeholders;
- Established a dedicated e-mail address for the public workforce system and stakeholders to ask questions and offer ideas related to WIOA (DOL.WIOA@dol.gov);
- Conducted, in conjunction with ED and HHS, outreach calls, webinars, and stakeholder and in-person town halls in each ETA region. The Department and its Federal partners hosted 10 town halls across the country, reaching over 2,000 system leaders and staff representing core programs and one-stop partners, employers, and performance staff. This included a town hall with INA leaders and membership organizations serving Indians and Native Americans, Hawaiians, and Alaskan Natives as well as a formal consultation with members of the Native American Employment and Training Advisory Council to the Secretary of Labor.
- Conducted readiness assessments to implement WIOA in all States and 70 local workforce areas to inform technical assistance.

Since the DOL WIOA NPRM was published, the Department has issued additional WIOA guidance using various mechanisms including the following:

- Issued numerous pieces of official guidance to the public workforce system on policies related to WIOA implementation (some jointly with ED), including "Vision for the One-Stop Delivery System under WIOA" (Aug. 13, 2015) and TEGL No. 14-15, "Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans." See http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.
- Provided on-going technical assistance to the public workforce system in the form of Frequently Asked Questions. See https://www.doleta.gov/wioa/FAQs.cfm.

- Developed a network of peer learners titled the Innovation and Opportunity Network (ION) that is designed to help all levels of workforce development professionals, stakeholders, and partners connect with others throughout the public workforce system who are working to implement WIOA. ION's in-person collaboration is provided through the Department's regional Federal Project Officers, and regional meetings with State and local stakeholders. Regarding online collaboration, the ION Web site provides webinars, quick start action planners, podcasts from voices in the field describing their experiences in implementation, and other online resources.
- Conducted, in conjunction with ED and HHS, webinars for stakeholders on a variety of topics, including: Credentials that Count for Youth (Apr. 29, 2015); ION (May 13 and June 3, 2015); Firing Up Youth Standing Committees (May 27, 2015); Making the Shift – Successfully Leveraging In-School Youth (ISY) and OSY Resources and Services (June 24, 2015); WIOA Act Now Series: Partnerships in Action (July 1, 2015); Webinar Series Act Now: Governance, Leadership, and Building a Strategic Board (July 15, 2015); Collaborative Partnerships Serving Youth wish Disabilities (July 29, 2015); Customer-Centered Design Implementation WIOA (July 29, 2015); WIOA Eligible Training Provider Provisions: The First Year (Aug. 5, 2015); WIOA Performance Accountability Reporting Requirements – Overview of Layout and Templates (Aug. 12 and 13, 2015); Career Pathways for Youth (Aug. 26, 2015); Proposed Information Collection: Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications Under WIOA (Aug. 27, 2015); Implementing WIOA in Rural Areas (Sept. 30, 2015); DEI Lessons Learned for WIA/WIOA: How Integrated Resource Teams Achieved WIA Outcomes for Populations that Experience Multiple Challenges to Employment and Implications for WIOA (Oct. 22, 2015);

ApprenticeshipUSA Online Toolkit: A New Tool to Advance Apprenticeship Under WIOA (Oct. 26, 2015); Partnership Between WIOA and TANF to Serve Youth (Oct. 28, 2015).

Workforce Innovation and Opportunity Act Information Collection Requests

There are two new Information Collection Requests (ICRs) and six existing OMB-approved information collections that are being revised as part of this DOL WIOA Final Rule. Section V.B of the NPRM (Paperwork Reduction Act) included descriptions of the new ICRs and how the proposal would change each of the existing information collections. Section VI.D of this Final Rule (Paperwork Reduction Act) provides summary information about the public comments received on these ICRs and details the final burden estimates for the revised information collections.

Soon after publication of the DOL WIOA NPRM and the Joint WIOA NPRM, DOL and ED published a notice in the Federal Register announcing the joint ICR for the WIOA Performance Management, Information, and Reporting System (80 FR 43474, July 22, 2015) and requested comments on this ICR during a 60-day public comment period (hereinafter "WIOA Joint Performance ICR") (see https://www.regulations.gov/#!docketDetail;D=ETA-2015-0007). On September 1, 2015, DOL solicited comments on its own WIOA performance accountability ICR to require the following programs to report on a standardized set of data elements through the WIOA Workforce Performance Accountability, Information, and Reporting System: WIOA adult, dislocated worker, and youth, ES, National Farmworker Jobs, Trade Adjustment Assistance, YouthBuild, INA, and the Jobs for Veterans' State Grants (80 FR 52798) (hereinafter "DOL Performance ICR") (see https://www.regulations.gov/#!docketDetail;D=ETA-2015-0008). On April 16, 2015, ED solicited comments on its ICR related to the VR program Case Service Report (RSA-911) to require VR agencies to report data required under sec. 101(a)(10)

of the Rehabilitation Act of 1973, as amended by WIOA, as well as performance accountability data under title I of WIOA (hereinafter "RSA-911"). DOL and ED received 112 public comment submissions in response to the WIOA Joint Performance ICR, DOL received public comments on the DOL Performance ICR, and ED received public comments on the RSA-911, respectively. The Departments address those comments in the final WIOA Joint Performance and DOL WIOA ICRs.

On August 6, 2015, the U.S. Departments of Labor, Education, Health and Human Services, Agriculture, and Housing and Urban Development proposed a new information collection regarding required elements for submission of the Unified or Combined State Plan and Plan modifications under WIOA (hereinafter "WIOA State Plan ICR") (80 FR 47003) (see https://www.regulations.gov/#!docketDetail;D=ETA-2015-0006). The WIOA State Plan ICR received a total of 16 public comments. These public comment submissions informed the development of the final WIOA State Plan ICR, which OMB approved on February 19, 2016. See http://www.reginfo.gov/public/do/PRASearch (ICR Reference No. 201601-1205-001).

D. Legal Basis

On July 22, 2014, the President signed WIOA (Pub. L. 113-128) into law. WIOA repeals WIA (29 U.S.C. 2801 et seq.). As a result, the WIA regulations no longer reflect current law. Section 503(f) of WIOA required that the Department issue an NPRM and then a Final Rule that implements the changes WIOA makes to the public workforce system in regulations. Therefore, the Department has developed and issued this Final Rule that implements WIOA. The Department has issued regulations regarding the WIOA sec. 188 nondiscrimination and equal opportunity provisions through separate rulemaking. See 80 FR 43872 (July 23, 2015)

(establishing WIOA sec. 188 implementing regulations at 29 CFR part 38); 81 FR 4494 (Jan. 26, 2016) (proposing updates to 29 CFR part 38 consistent with current equal opportunity law).

IV. Public Comments Received on the Notice of Proposed Rulemaking

The Department's NPRM to implement titles I and III of WIOA was published on April 16, 2015 (80 FR 20690). During the 60-day public comment period, the Department received a total of 767 public comments on the WIOA NPRM. In addition to these submissions, the Department also considered portions of 84 public comment submissions from the Joint WIOA NPRM docket that the Department determined related to the DOL WIOA NPRM. The Joint WIOA NPRM, which proposed regulations to implement jointly administered activities authorized under WIOA title I, was also published on April 16, 2015 (80 FR 20574).

General Comments

Comments: Several commenters expressed general support for the proposed regulation, commenting that the regulations would increase employment, make the United States more competitive, lead to higher wages, and produce other benefits. Some of these commenters expressed confidence that that the Department can deliver on this proposal, and that the associated expense is necessary. Several comments made general positive remarks about WIOA, and specifically cited an emphasis on one or more specific aspects of the law, such as adult education, college and career readiness, strengthening connections among programs and recognizing the role of distance learning and technology in reaching broader audiences. The commenters suggested that WIOA provides adequate flexibility to accommodate differences among States (e.g., size, population density and population diversity. Some commenters discussed workforce development-related services currently provided or cited statistics that they asserted illustrate the current or historical use of the public workforce system in terms of services

and participant demographics. For example, one organization cited statistics regarding which aspects of titles I and II are being used by LEP individuals.

Department Response: Since these comments require no response, they are not addressed in this DOL WIOA Final Rule. No submissions expressed general opposition to the proposal. Instead, many commenters discussed their disagreement with specific aspects of the proposal. These comments are addressed in the associated and appropriate sections of the section-by-section discussion of the Final Rule (see section V below).

Requests to Extend the Comment Period

Comments: A few commenters requested a 60-day extension of the comment period. The commenters cited the size and complexity of the five proposed NPRMs implementing WIOA.

Department Response: While the Department recognizes that the issues addressed in the DOL WIOA NPRM are complex and important, the Department concluded that the 60-day comment period was sufficient to provide the public a meaningful opportunity to comment, and this conclusion is supported by the hundreds of complex and thoughtful comments received. Additionally, the NPRM was available to the public for a preliminary review on the Federal Register Web site upon submission of the NPRMs to the Federal Register, which was several weeks prior to publication, thereby providing stakeholders additional time prior to the publication date.

Coordination and the WIOA Rulemaking Process

Comments: A commenter urged the Departments of Labor and Education to increase collaboration, including more coordinated implementation guidance, providing incentives for programs within the two Departments to participate in a Combined Plan, and affording flexibility

in use of funding streams and on performance accountability. Two commenters said that aspects of the proposed regulations suggest lesser coordination of WIOA guidance and oversight across Departments than envisioned by WIOA. Further, these commenters expressed concern that the lack of specificity in areas of the proposed regulations could result in the issuance of Federal guidance on levels that should be in regulation to ensure that States and local areas have an opportunity to comment.

Department Response: The Departments of Labor and Education have taken great care to coordinate the issuance of collaborative guidance regarding WIOA implementation, including TEGL No. 14-15, "Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans"; TEGL No. 04-15, "Vision for the One-Stop Delivery System under the Workforce Innovation and Opportunity Act (WIOA)." The Departments will continue to issue guidance collaboratively. As appropriate, the Department will reach out and consult other stakeholders as it develops guidance and technical assistance. As the Department implements WIOA, it anticipates lots of stakeholder outreach, building on our long established relationships. The Department will continue this robust outreach throughout implementation.

V. Section-by-Section Discussion of Public Comments and Final Regulations

The analysis in this section provides the Department's response to public comments received on the DOL WIOA NPRM. If a proposed CFR section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on the NPRM that were outside the scope of the proposed regulation and the Department offers no response to such comments. Lastly, the Department has made a number of non-substantive changes to correct grammatical

and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

A. Part 603 – Federal-State Unemployment Compensation Program

Relationship Between 20 CFR Part 603 and WIOA

The disclosure of wage record data is governed by 20 CFR part 603, which establishes requirements for maintaining the confidentiality of unemployment compensation (UC) information along with standards for mandatory and permissive disclosure of such information. Part 603 permits State agencies to disclose confidential unemployment compensation information—including "wage information" (referred to in § 603.2(k))—to "public officials" (defined at § 603.2(d)) under limited circumstances (under § 603.5), and authorizes such public officials in turn to use the information to meet certain Federal requirements in the performance of their official duties.

The Department has decided to amend 20 CFR part 603 as proposed in the NPRM. These Final Rules amend current regulations to clarify and expand, in a limited fashion, those public officials with whom the State may share certain confidential information to carry out requirements under WIOA. The regulations enumerate certain additional public officials who may access confidential State wage records for the State's performance reporting. Ensuring such access to these State records will allow State agencies to manage better the information for the purpose of making Federally required reports on certain program outcomes, and to cooperate more effectively and be more informative with respect to Federal program evaluations.

WIOA sec. 116(i)(2) and 20 CFR 677.175(a) (see Joint WIOA Final Rule) require State workforce, training, and education programs to use quarterly wage records to measure the progress of the State on State and local performance accountability measures. The Department

interpreted at 20 CFR 677.175(b) the reference to "quarterly wage records" in WIOA sec. 116(i)(2) to require States to use the confidential UC information in the employer-provided wage reports collected under sec. 1137 of the Social Security Act (SSA), 42 U.S.C. 1320b-7. These are the reports that the State UC agency obtains from employers for determining UC tax liability, monetary eligibility, or for cross-matching against State UC agencies' files to determine if improper payments have been made.

The regulation at 20 CFR 677.175(b) (see Joint WIOA Final Rule) defines "quarterly wage record information" to include three data elements or categories of data elements: (1) a program participant's Social Security Number (SSN); (2) information about the wages that program participants earn after exiting from the program; and (3) the name, address, State, and (when known) Federal Employer Identification Number (FEIN) of the employer paying those wages. The "wage information" defined in § 603.2(k)—which the regulations allow State agencies to disclose under limited circumstances—includes the three data categories or elements (wages, SSN(s), employer information) that States must use as their data source for State and local performance reporting under WIOA. These terms are different but refer to the same information: wage records.

As explained in greater detail below, in the NPRM the Department proposed to change and expand § 603.2 (definition of "public official") and change § 603.5 (governing disclosures to public officials) to help States comply with WIOA's performance requirements, including the performance reports of the States, local areas, and Eligible Training Providers (ETPs). In addition, the Department amended § 603.6 to add a provision requiring disclosure of confidential UC information to a Federal official (or an agent or contractor of a Federal official) requesting such information to meet the new statutory requirement on State cooperation with certain DOL

and ED evaluations. These changes facilitate States' obligations to report on performance through the use of quarterly wage records, and to cooperate in DOL and ED evaluations.

The amendments to 20 CFR part 603 only relate to State agency disclosures necessary to comply with certain provisions of WIOA. Much of part 603 was left intact and was not considered for amendment in the NPRM, the purpose of which was to implement WIOA, not to otherwise impact partner programs. The Department invited comments on the proposed amendments to part 603, but did not consider comments on other portions of part 603 or other UC matters that are outside the scope of the proposed rulemaking.

The Department received 22 comments in response to the proposed changes to part 603. While normally the Department does not discuss comments that are outside the scope of the amendment, the Department notes that only the portions of part 603 that are being amended were part of the NPRM and open for comment. The existing data protections required under other portions of part 603 will continue and will be enforced. These required protections, laid out in §§ 603.8, 603.9, 603.10, and 603.12, ensure that confidential UC data are secure. These portions of part 603 were not considered for amendment and so were excluded from the NPRM.

The analysis that follows provides the Department’s response to public comments received on the proposed part 603 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve

the readability and conform the document stylistically that are not discussed in the analysis below.

Section 603.2 What definitions apply to this part?

Definition of "public official": The changes to this section amend the definition of "public official" as used throughout part 603. The changes to § 603.2(d), to facilitate State compliance with WIOA's reporting requirements, clarify and expand the definition of who and what entities are considered "public officials." The amendments to § 603.2(d) clearly enumerate that "public official" includes officials from public postsecondary educational organizations; State performance accountability and customer information agencies; the chief elected officials of local areas (as that term is used in WIOA sec. 106); and a public State educational authority, agency, or institution. Some of these officials already would meet the definition of "public official" under current § 603.2(d); however, the amendments make this clear.

Comments: The Department received some comments suggesting clarification of the definition and application of the phrase "chief elected official."

Department Response: No changes were made to the regulatory text in response to these comments. Such clarification is best accomplished through guidance and technical assistance as needed.

Disclosure to public postsecondary institutions: Section 603.2(d)(2) permits disclosure to public postsecondary educational institutions, regardless of how those institutions are structured or organized under State law. Section 603.2(d)(2) clearly delineates the types of postsecondary educational institutions that are allowed access to confidential UC information:

(1) Public postsecondary educational institutions that are part of a State's executive branch, i.e., that derive their authority either directly from the Governor or from an entity (State WDB, commission, etc.) somewhere in that line of authority (see § 603.2.(d)(2)(i));

(2) Public postsecondary educational institutions that are independent of the State's executive branch, which means those institutions whose directors derive their authority either directly from an elected official in the State other than the Governor or from an entity (again, a State WDB, commission, or other entity) in that line of authority. This covers any public postsecondary educational institution established and governed under State law, for example, a State Board of Regents (see § 603.2(d)(2)(ii));

(3) State technical colleges and community colleges, which may also be covered under (1) or (2) (see § 603.2(d)(2)(iii)).

Section 603.2(d)(5) permits disclosure to a public State educational authority, agency, or institution; the Department considers the heads of public institutions deriving their authority from a State educational authority or agency to be "public officials" for purposes of part 603.

These changes are designed to help States comply with WIOA's requirement to use wage records to measure performance (WIOA sec. 116(i)(2)) and to facilitate the performance reporting required for ETPs under secs. 116(d) and 122 of WIOA. As long as the recipients of the data adhere to all of the requirements in 20 CFR part 603, this section permits States to make these disclosures to comply with WIOA requirements for Federal, State, or local government reporting on program outcomes and for other specified purposes.

Comments: The Department received several comments requesting that non-public educational institutions, community-based organizations, and for-profit educational institutions be added to the list of entities included in the term "public official."

Department Response: As explained in the NPRM, non-public educational institutions, including non-profit or for-profit educational institutions, community-based organizations, and eligible training providers that are not subject to the authority of the executive branch of a State or other elected official, are not permitted to obtain confidential UC information, including wage information, under this authority. In first proposing the "public official" exception to the UC confidentiality requirement in 69 FR 50,022, 50,027 (2004), the Department explained that "there is less risk of unauthorized use or disclosure of UC information if responsibility for safeguarding confidentiality rests within the executive or legislative branches of government." Any disclosures of confidential UC information to those entities for purposes of complying with WIOA must be authorized under an exception contained in § 603.5 other than § 603.5(e). The Department is issuing guidance to address how non-public entities that need wage record information to complete reports required under WIOA will be able to obtain access to aggregate wage record information for this purpose. No changes were made to the regulatory text in response to these comments.

Section 603.6(b)(8) What disclosures are required by this subpart?

Section 603.6(b)(8) makes the disclosure of confidential UC information mandatory for certain Federal evaluations when the disclosure does not interfere with the efficient administration of State UC law. The addition of § 603.6(b)(8) implements the requirement that States cooperate in conducting evaluations under the authority of either the Secretary of Labor or the Secretary of Education under WIOA sec. 116(e)(4). This cooperation, defined in WIOA, must include "the provision of data (in accordance with appropriate privacy protections established by the Secretary of Labor)"; this includes 20 CFR part 603 and any other privacy protections the Secretary may establish. The final regulation requires disclosure of confidential

UC information to Federal officials or their agents or contractors, requesting such information in the course of an evaluation covered by WIOA secs. 116(e)(4) and 116(e)(1) to the extent that such disclosure is "practicable."

The Department interprets "to the extent practicable" to mean that the disclosure would not interfere with the efficient administration of State UC law. This interpretation is consistent with the application of regulations that apply to disclosures under § 603.5. The introductory language to § 603.5 provides that, in situations where the disclosure of confidential UC information is permitted, the State may make the disclosure only if doing so would not interfere with the efficient administration of State UC law. In effect, § 603.6(b)(8) requires that State UC agencies make disclosures to DOL and ED for the purposes of the Departments' conducting evaluations, when the disclosures do not interfere with the efficient administration of the State UC law. The Department expects this cooperation and related disclosures to include responding to surveys and allowing site visits, as well as disclosing confidential UC information needed for evaluations.

Comments: The Department received two comments that raised concerns that the adoption of § 603.6(b)(8) would allow the creation of a national UC database and require a State's "entire UI file."

Department Response: The information required to be disclosed for a given evaluation is considerably less than what may be included in a State's UC file. Additionally, these disclosures are required only for research, evaluation, and investigation purposes found in WIOA, the Rehabilitation Act of 1973, and the Wagner-Peyser Act, as well as evaluations under other laws. The information disclosed may not be used for purposes other than that for which it was obtained. These disclosures are subject to the appropriate privacy and confidentiality protections

found throughout 20 CFR part 603. Research projects, evaluations, and investigations have set time frames for which data are being reviewed and are generally limited in scope. In general, the Department would not be in possession of any of the information requested under the disclosure provisions at § 603.6(b)(8). The researcher, evaluator, or investigator would be in possession of the information and use it for their stated purposes under proper authority or would be subject to sanctions for breach of the agreement under which the data were obtained. No changes were made to the regulatory text in response to these comments.

B. Part 675 – Introduction to the Regulations for the Workforce Development Systems Under Title I of the Workforce Innovation and Opportunity Act

Part 675 discusses the purpose of title I of the WIOA, explains the format of the regulations governing title I, and provides additional definitions which are not found and defined in WIOA.

Section 675.100 describes the purposes of title I of WIOA.

Section 675.200 outlines the structure of the WIOA regulations.

Section 675.300 provides a list of definitions that are applicable across the WIOA regulations.

Included in this list of definitions, the Department includes the following relevant definitions from the Office of Management and Budget's (OMB) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" found at 2 CFR part 200: Contract, Contractor, Cooperative Agreement, Federal Award, Federal Financial Assistance, Grant Agreement, Non-Federal Entity, Obligations, Pass-Through Entity, Recipient, Subaward, Subrecipient, Unliquidated Obligations, and Unobligated Balance. All other

definitions at 2 CFR part 200 apply to these regulations where relevant, but have not been included in this section.

Contract. The definition for "contract" incorporates the definition established by OMB at 2 CFR 200.22. Specifically, the term "contract" refers to the legal document that a non-Federal entity uses to purchase property or services used to carry out its duties under a grant authorized under WIOA. If the Department determines that a particular transaction entered into by the entity is a Federal award or subaward it will not be considered a contract.

Contractor. The definition of "contractor" incorporates the definition contained in OMB's Uniform Guidance at 2 CFR 200.23. The Uniform Guidance has replaced the term "vendor" with the term "contractor." As used in these regulations, the term "contractor" includes entities that WIOA refers to as "vendors." Additionally, it is important to note that contractors are not subrecipients. Additional guidance on distinguishing between a contractor and a subrecipient can be found at 2 CFR 200.330.

Cooperative Agreement. The definition of "cooperative agreement" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.24.

Department or DOL. This term refers to the United States Department of Labor, its agencies, and organizational units.

Employment and Training Activity. As used in these regulations, the term "employment and training activity" refers to any workforce investment activities carried out for an adult or dislocated worker under sec. 134 of WIOA and 20 CFR part 678 (see Joint WIOA Final Rule).

Equal Opportunity (EO) Data. This term refers to the data required by the Department's regulations at 29 CFR part 37 implementing sec. 188 of WIOA.

ETA. This term refers to the Employment and Training Administration, which is an agency of DOL, or its successor organization.

Federal Award. This definition incorporates the definition in the Uniform Guidance at 2 CFR 200.38.

Federal Financial Assistance. The definition of "Federal financial assistance" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.40.

Grant or Grant Agreement. The definition of "grant agreement" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.51. Because both WIOA and these regulations use "grant" and "grant agreement" interchangeably, the inclusion of both terms here clarifies that the terms are synonymous.

Grantee. The definition of "grantee" refers to a recipient of funds under a grant or grant agreement. Grantees are also referred to as recipients in these regulations.

Individual with a Disability. This definition uses the definition from sec. 3 of the Americans with Disabilities Act, as amended, and is further defined at 29 CFR 37.4.

Labor Federation. This definition remains unchanged from the definition used in the regulations under WIA at 20 CFR 660.300.

Literacy. The definition for "literacy" as used in these regulations is a measure of an individual's ability to participate and successfully function both in the workplace and in society.

Local WDB. This definition clarifies that the term "Local WDB" as used in these regulations refers to the Local Workforce Development Boards (WDB) established under WIOA sec. 107, to set policy for the local workforce development system.

Non-Federal Entity. The definition of "non-Federal entity" incorporates the definition contained in the Department's Exceptions to the Uniform Guidance at 2 CFR 2900.2.

Obligations. The definition of "obligations" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.71.

Outlying Area. The term "outlying area" refers to those Territories of the United States which are not within the definition of "State," including the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, in certain circumstances, the Republic of Palau.

Pass-through entity. The definition of pass-through entity incorporates the definition in the Uniform Guidance at 2 CFR 200.74.

Recipient. The definition of "recipient," which is different than the current definition of recipient under WIA at 20 CFR 660.300, incorporates the definition in the Uniform Guidance at 2 CFR 200.86.

Register. The definition of "register" means the point at which an individual seeks more than minimal assistance from staff in taking the next step towards self-sufficient employment. This is also when information that is used in performance information begins to be collected. At a minimum, individuals must provide identifying information to be registered.

Secretary. This term refers to the Secretary of the U.S. DOL, or their officially delegated designees.

Secretaries. This term refers to the Secretaries of the U.S. DOL and the U.S. ED, or their officially designated designees.

Self-Certification. The term "self-certification" refers to the certification made by an individual that they are eligible to receive services under title I of WIOA.

State. The term "State" refers to each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State WDB. This definition clarifies that the term "State WDB" as used in these regulations refers to the State Workforce Development Boards (WDB) established under WIOA sec. 101.

Subgrant or Subaward. This term incorporates the definition of "subaward" in the Uniform Guidance at 2 CFR 200.92. This term replaces the term "subgrant" found in WIA at 20 CFR 660.300. Because both WIOA and these regulations use "subgrant" and "subaward" interchangeably, the inclusion of both terms here clarifies that the terms are synonymous.

Subrecipient. The definition of "subrecipient" incorporates the definition in the Uniform Guidance at 2 CFR 200.93. This term is synonymous with the term "subgrantee."

Unliquidated Obligations. The definition of "unliquidated obligations" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.97.

Unobligated Balance. The definition of "unobligated balance" incorporates the definition in the Uniform Guidance at 2 CFR 200.98.

Wagner-Peyser Act. As used in these regulations, the term "Wagner-Peyser Act" refers to the Wagner-Peyser Act passed on June 6, 1933, and codified at 29 U.S.C. 49 et seq.

WIA Regulations. The term "WIA Regulations" as used in this regulation or subsequently by the Department refers to the regulations 20 CFR parts 660 through 672. This definition is necessary because, as described in the introduction to these regulations, the Department has chosen to retain the WIA regulations at parts 660 through 672 of title 20 of the CFR.

WIOA Regulations. This term, as used in this regulation or generally by the Department means those regulations in 20 CFR parts 675 through 687, the Wagner-Peyser Act regulations in

20 CFR part 652, subpart C, and the regulations implementing WIOA sec. 188 in 29 CFR part 37.

Workforce Investment Activities. The term "workforce investment activities" is a general term that describes the broad array of activities and services provided to eligible adults, dislocated workers, and youth under secs. 129 and 134 of title I of WIOA.

Youth Workforce Investment Activity. The term "youth workforce investment activity" refers to those activities carried out for eligible youth that fall within the broad definition of "workforce investment activity."

Section 675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?

Comments: An advocacy organization urged the Department to include in § 675.100 a reminder to States and employers of their existing obligations under the Americans with Disabilities Act (ADA), notwithstanding anything else reflected in the WIOA regulations.

Department Response: The Department takes nondiscrimination seriously and addresses it in the regulation at 20 CFR part 38. No change to the regulatory text was made in response to this comment.

Section 675.200 What do the regulations for workforce development systems under title I of the Workforce Innovation and Opportunity Act cover?

Comments: Some commenters provided feedback on technical corrections for this section, while others provided comments that addressed specific provisions found elsewhere in this regulation.

Department Response: Technical corrections were made to this section. In addition, several comments that referenced this section were more appropriately addressed in other parts of the regulation, and have been so addressed.

Section 675.300 What definitions apply to these regulations?

Comments: Some commenters suggested that the Department should provide additional detail on what is involved in a requirement to consult. These commenters generally emphasized the importance of meaningful consultation. For example, referring to the proposed definition of consultation, a Local WDB commented that "exchanging viewpoints and ideas" is only helpful when both parties feel equally empowered to influence the outcome of the discussion. Two commenters expressed concern that the requirement to consult could be interpreted to mean just share information or whatever else is in the best interest of the entity required to consult. Another commenter suggested that consultation should be defined as strongly as possible to stress advanced notice, robust conversation, and collaborative efforts with local areas prior to the State's decision-making process. Some commenters made specific suggestions for what the Department should or could include in a definition of consultation, including active engagement, good faith discussion and decision-making agreement and consent from local elected officials, the Local WDB, and the State WDB, provision of written notice of intended changes with a cost-benefit analysis and a specific timeframe for public comment, process to contest decisions through a formal grievance process, requiring consultation with the largest and smallest local areas in the State, and requiring State WDB members to visit and engage local areas.

Department Response: The Department agrees with the need to emphasize meaningful consultation and revised the definition of consultation in this section to emphasize convening, robust conversation, and an opportunity for all stakeholders to share their thoughts and opinions.

In addition, some of the specific suggestions not incorporated into this definition are addressed in other parts of this regulation and the Joint WIOA Final Rule. For example, 20 CFR part 676 requires public comment on Unified and Combined State Plans (see Joint WIOA Final Rule), and part 679 of this regulation requires governors to appoint only persons who have been nominated by certain stakeholder organizations to certain positions on the State WDB.

Comments: A commenter recommended clearly defining "career pathways" in this regulation in such a way to ensure flexibility in deviation from a pathway if education and employment requirements are met.

Department Response: WIOA secs. 3(7)(A) through (G) define career pathways as a combination of rigorous high-quality education, training, and other services that meet specified guidelines. The Department agrees that additional guidance would help State and Local WDBs implement career pathways. With the Department of Education, the Department has published a Career Pathways Toolkit, which can be found at www.DOLETA.gov, and continues to provide guidance and technical assistance on the implementation of career pathways under WIOA.

Comments: Asserting that neither WIOA sec. 3 nor the WIOA NPRMs include a definition of "family," some commenters suggested that the Department provide clarification on this term.

Department Response: The Department agrees that "family" is a term that should be defined in this regulation and has added a definition of family that is based on the WIA definition and has been updated to reflect the Supreme Court decision in United States v. Windsor, 133 S. Ct. 2675 (2013). While this definition applies to all parts of this regulation, the Department notes that part 681 of this regulation adds a reference to dependents, per

specifications of the Internal Revenue Service, when this definition is considered as part of a determination of eligibility to participate in the WIOA youth programs described in that part.

Comments: Several commenters recommended adding to this part definitions of terms not addressed above or in the NPRM. Most of them were related to indicators of performance of WIOA title I programs, which are addressed in 20 CFR part 677 of the Joint WIOA Final Rule. Several other comments focused on defining or revising definitions of terms that are used in regulations applying solely to Department of Education programs. The Department worked with the Department of Education to ensure they were addressed where they most appropriately fit, which was often in the Joint WIOA Final Rule and sometimes in specific parts of this regulation.

Department Response: The Department considered these comments and addressed them in other parts of this regulation, as appropriate, and worked with the Department of Education to address these comments in the most relevant part of the most appropriate regulation. For example, some commenters suggested definitions of terms related to performance under WIOA title I programs are addressed in 20 CFR part 677 (see Joint WIOA Final Rule) and comments related to serving youth under WIOA title I programs are addressed in part 681.

In addition, the Department realized that the NPRM contained minor inconsistencies in how it defined "individual with a disability" across parts. The Department therefore edited such definitions using the statutory definition at WIOA sec. 3(25), which uses the definition from the Americans with Disabilities Act (ADA), to make them consistent with each other. The Department interprets all references to the ADA to include case law and interpretive guidance. The Department also changed the terms "workforce innovation and opportunity system," and "workforce investment system" to "workforce development system" throughout this rule. This

was done to enhance consistency across parts and avoid confusion, and to be emphasize the role of workforce development boards in this system.

C. Part 679 – Statewide and Local Governance of the Workforce Development System Under Title I of the Workforce Innovation and Opportunity Act

20 CFR part 679 addresses the Statewide and Local Governance provisions of the Workforce Development System under title I of WIOA. This part includes provisions on the State WDB, the Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas), Local WDBs, Regional and Local Plans, and Waivers/Workforce Flexibility Plans.

The analyses that follows provides the Department's response to public comments received on the proposed Statewide and Local Governance regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

1. Subpart A – State Workforce Development Board

Subpart A sets forth the conditions under which the Governor must establish the State WDB. 20 CFR 679.100(a) through (e) explain the purpose of the State WDB. The State WDB represents a wide variety of individuals, businesses, and organizations throughout the State.

WIOA is designed to help job seekers and workers access employment, education, training, and support services needed to succeed in the labor market, and match employers with the skilled workers needed to compete in the global economy. The State WDB has the critical role of leading and guiding the State's implementation of WIOA, which requires aligning Federal investments in job training, integrating service delivery across programs, and ensuring that workforce investments are job-driven and match employers with skilled workers. The State WDB serves as a convener of State, regional, and local workforce system partners to enhance the capacity and performance of the workforce development system and align and improve employment, training, and education programs, and through these efforts, promote economic growth. The State WDB's role as strategic convening place where key stakeholders and partnerships come together can be accomplished only if each State WDB member is an active participant in the business of the board. State WDB members must establish a platform in which all members actively participate and collaborate closely with the required partners of the workforce development system, and other stakeholders, including public and private organizations. This engagement is crucial in the State WDB's role to help integrate and align a more effective job-driven workforce development system that invests in the connection between education and career preparation.

Overarching Comments on State WDBs

Comments: Commenters expressed concern with the WIOA implementation timelines for establishing compliant State WDBs. They said that States should have more flexibility in the time allowable to become compliant with new requirements, including new membership requirements and the new State WDB role, which could require changes by the State legislature.

Department Response: WIOA called for the implementation of most of WIOA, including the State WDB requirements, by July 1, 2015. State WDB requirements are outlined in WIOA sec. 101 and § 679.100. The Department issued operating guidance in TEGL No. 27-14 on April 15, 2015, titled "Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions." This guidance can be found at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.

Comments: One commenter was concerned with potential political influence the Governor holds over State and Local WDBs as well as procurement requirements.

Department Response: WIOA vests certain authority with the Governor, including State WDB appointments, and the Department has no authority to change it.

WIOA sec. 107(e) requires Boards to operate in a transparent manner; §§ 679.140 and 679.390 set forth the parameters for State and Local WDBs to conduct business in an open and transparent manner Transparency in operations also assures that all parties are held accountable to the public and can mitigate concerns of inappropriate influence. Transparency promotes accountability and provides valuable information to citizens on the Federal, State, and local government's activities. The State WDB must make available to the public on a regular basis, through electronic means and open meetings, information about State WDB activities such as the State Plan, modifications to the State Plan, board membership, the board's by-laws, and the minutes of meetings. This information must be easily accessed by interested parties. Ensuring that this information is widely available promotes transparency and provides access to the public on how the State WDB works to align, integrate, and continuously improve the workforce development system. No change to the regulatory text was made in response to this comment.

Comments: Another commenter recommended that developing an overarching vision for the workforce development system and monitoring of progress toward that vision should be a function of the State WDB.

Department Response: These actions are a function of the State WDB. 20 CFR 679.100 implements WIOA sec. 101(d) and outlines the vision and purpose of the State WDB. Among other responsibilities, the State WDB is required to assist the Governor in the "development, implementation, and modification of the State Plan" (WIOA sec. 101(d)(1)) and to support the function of the public workforce system enumerated in WIOA sec. 101(d)(2) through (12). The State Plans must detail the State's strategic workforce approach and vision as outlined in 20 CFR 676.100(a) (see Joint WIOA Final Rule) and no change to the regulatory text was made in response to this comment.

Section 679.100 What is the purpose of the State Workforce Development Board?

20 CFR 679.100 implements WIOA sec. 101 and outlines the purpose of the State WDB. A key goal of Federally-funded training programs is to get more U.S. workers jobs and marketable skills and support businesses to find workers with the skills that are needed. The State WDB is responsible for engaging employers, education providers, economic development, and other stakeholders to help the workforce development system achieve the purpose of WIOA and the State's strategic and operational vision and goals outlined in the State Plan.

The Department encourages the State to take a broad and strategic view when considering representatives of the State WDB, and also in establishing processes which it will use to include necessary perspectives in carrying out State WDB functions. For example, alignment of required one-stop partner investments is essential to achieving strategic and programmatic alignment at the State, regional, and local level. Further, States are encouraged to

examine factors like the natural bounds of regional economies, commuting patterns, and how economic sectors impact the State, which may benefit from inputs either from formal members of the board, or through other engagement. Broad geographic representation as well as a reflection of diversity of populations within the State is critical.

Comments: A commenter emphasized the need for Boards to remain connected to local and regional programs, and another requested more information on how employer engagement would be measured and how a State WDB would know if their engagement was successful. This commenter suggested surveys of partners (both pre-WIOA and annually) to determine level of engagement.

Department Response: There is a primary indicator of performance in WIOA sec. 116(b)(2)(i)(vi) to gauge the system's effectiveness in serving business. WIOA does not provide parameters for measuring the Board's effectiveness in engaging employers. However, this engagement is crucial in the State WDB's role to help integrate and align a more effective job-driven workforce development system that invests in the connection between education and career preparation. The Department will continue to provide technical assistance and guidance to Boards to assist their efforts to fulfill this vision. The Department envisions that the State WDB will serve as a convener of State, regional, and local workforce system partners to enhance the capacity and performance of the workforce development system; align and improve employment, training, and education programs, and through these efforts, promote economic growth.

Comments: A commenter suggested that more information regarding the State Plan and how States will satisfy the needs of individuals with disabilities, and the specific performance metrics that will be used for systemic improvement be included in § 679.100.

Department Response: State Plan requirements as a function of the State WDB are addressed in § 679.130. WIOA sec. 102 describes the requirements for the State Plan; State Plan requirements are also addressed in 20 CFR 676, including requirements to address the needs of the State's workforce and services to individuals with barriers to employment (see Joint WIOA Final Rule). No change to the regulatory text was made in response to this comment.

Section 679.110 What is the State Workforce Development Board?

Local Elected Officials

Comments: Commenters citing the needs of large and diverse States that are concerned with adequate representation of local level interests recommended that Governors include the chief elected official from the smallest and largest workforce areas on the State WDB. Similarly, other commenters recommended that the local elected officials be increased from a minimum of two representatives to a percentage of the Board.

Department Response: Both WIOA and the regulations offer the Governor the flexibility to "include other appropriate representatives and officials designated by the Governor" as detailed in § 679.110(b)(3)(iii)(B). The Governor has the flexibility to appoint more local elected officials to the State WDB as he/she sees fit and a Governor may seek to have such officials represent the range of local government entities. The Department encourages the Governor to use this authority, which may include increasing the representation of CEOs, to ensure accurate representation of the interests of job seekers and businesses in the State. No change to the regulatory text was made in response to these comments.

Representation of Core Programs

Comments: Commenters opposed the Department's interpretation of WIOA allowing for representation of multiple core programs by a single person (as proposed in

§ 679.110(b)(3)(iii)(A)) and indicated that this situation fails to adequately represent adult education. Some commenters called for specifically mandating the State director of adult education on the State WDB. Others were concerned that the Department's interpretation does not satisfy the requirement to have a representative of the lead State official with primary responsibility for each of the core programs.

Department Response: The Governor is responsible for ensuring adequate representation of the core programs, which the Department interprets to mean that the core program's State WDB representative has not only primary responsibility for the program, but also the expertise to actively and meaningfully contribute to the State WDB's understanding of the program's role in the public workforce system, especially with regard to the strategic planning for that system, and in the development and implementation of the State Plan. The Department has added § 679.110(b)(3)(iii)(A)(1)(i) through (iii) to clarify that, for title I and Wagner-Peyser Act programs, a single lead State official with primary responsibility for those programs may represent more than one of those programs. However, the WIOA title II and VR programs must have a single, unique representative. When appointing a board member to represent multiple core programs under § 679.110(b)(3)(iii), Governors should take into account the requirement that the representative has the primary responsibility for the core program which includes direct responsibility for, and understanding of, policy issues involving the core program and the public workforce system. The Department encourages Governors to ensure an ongoing role for all core programs to inform best the Boards' actions. Meeting these requirements may be achieved in a number of ways, such as directly appointing a State's director for those core programs to the Board, gathering direct input from program administrators via a subcommittee or staffing structure, or frequent efforts to gather input.

These provisions are intended to ensure that all core programs have meaningful input on the State WDB, but neither WIOA nor the regulation requires that the adult education director be appointed to the State WDB. The regulation is not changed to require a specific title be named as representative; however, representatives must meet the requirement of primary responsibility.

The Department will issue guidance to support the implementation and maintenance of compliant State WDBs.

Labor Union, Small Business, and Registered Apprenticeship Representation

Comments: Comment on the membership requirements of representatives of labor organizations and registered apprenticeship included multiple suggestions for regulatory text changes. One commenter suggested changing "exists" in § 679.110(b)(3)(ii)(B) to "operating," because "exists" could cause confusion. Another commenter suggested that the term "registered" precede apprenticeship, out of concern that the NPRM language would allow low-quality apprenticeship programs that are not registered be considered.

Department Response: The Department disagrees that "exists" will cause confusion in reference to registered apprenticeship programs available in the State. The Department agrees that the reference to apprenticeship should be changed to "registered apprenticeship" because references throughout WIOA are generally references to registered apprenticeship,

No change to the regulatory text was made in response to these comments, with the exception of revising § 679.110(b)(3)(ii)(B) to refer to apprenticeship as "registered apprenticeship."

Comments: Commenters requested clarification of the total number of labor representatives required on the State WDB, and suggested labor representatives include employee representatives for non-unionized employees.

Department Response: WIOA requires at least two representatives of labor organizations nominated by State labor federations, and a representative of a registered apprenticeship program. Because State WDB members may not serve multiple roles for the categories included in WIOA sec. 101(b)(1)(C)(ii) (as outlined in WIOA sec. 101(b)(3)(B)), the Department's proposed language clarified that, at minimum, two labor representatives and one joint labor-management of a registered apprenticeship program are required. The State WDB must include not less than 20 percent representation of the workforce, including at a minimum these three representatives.

In addition to these representatives, WIOA sec. 101(b)(1)(C)(iii)(II) and § 679.110(b)(3)(iii)(B), give the Governor the flexibility to appoint "other representatives and officials as the Governor may designate." This would allow the Governor to designate non-union employee organizations as additional members of the State WDB. No change to the regulatory text was made in response to these comments.

Nominations

Comments: Two union commenters urged the Department to clarify that the nominations for representatives of joint labor-management registered apprenticeship programs on State and Local WDBs should be made by State and local building and construction trades councils, except where none exist in the State, in which case the representative(s) should be nominated by the local Building Trades Councils within the State.

Regarding the proposed § 679.110(b)(3)(i)(C) requirement that the Governor must appoint required representatives of businesses or organizations based on nominations from business organizations and trade associations in the State, a commenter asked what would

qualify these organizations to submit such nominations and requested that the Department clarify the definition of these organizations.

Department Response: Paragraph (b)(3)(i)(C) of § 679.110 implements WIOA sec. 101(b)(1)(C)(i)(III), which requires State WDB members who represent businesses or organizations representing businesses to be appointed from a list of potential members nominated by State business organizations and business trade associations. WIOA does not further define trade associations; restricting the nominating entity would not comply with WIOA sec. 101(b)(1)(C)(i)(III), but Governors may accept nominations of representatives to the State WDB from Trade Councils. Furthermore, WIOA does not require that the representatives of joint labor-management registered apprenticeship programs (under WIOA sec. 101(b)(1)(C)(ii)(II) be nominated by any organization. The Department declines to add the requirement that trades councils must nominate these members. No change to the regulatory text was made in response to these comments.

Single-Area States

Comments: Relating specifically to concerns for single-area States, one commenter suggested that the core programs can be improved by CEOs on the State WDB and that the Departments of Labor and Education must look critically at any Unified or Combined State Plan that is submitted from a single-area State that does not obviously and fully represent the local viewpoint from a diverse set of stakeholders, as is the intention of this section. Another commenter stated that because local control is primarily with the State WDB in single-area States, the local community advisory groups, who are more familiar with the specific community needs, do not have the influence that they should. Multiple commenters also requested that the Department clarify the meaning of the proposed § 679.110(b)(3)(iii)(A)(2) requirement that the

State WDB include two or more CEOs (collectively representing both cities and counties "where appropriate") and indicate whether this language would exempt single-area States from requiring CEOs to serve on the State WDB.

Department Response: 20 CFR 679.270 implements WIOA sec. 107(c)(4), which describes the requirements of Local WDBs in single-area States. Section 679.270 requires that the State WDB, acting as the Local WDB, carry out the functions of both Boards except that the State is not required to meet and report on a set of local performance accountability measures. Section 679.110(b) requires CEO representation on the State WDB. There is no exemption for membership categories on the State WDB in single-area States. No change to the regulatory text was made in response to these comments.

Community-Based Organizations

Comments: A few commenters recommended that State WDBs should be required to have at least one representative from community-based organizations (CBOs) with experience and expertise in addressing individuals' training, employment, and educational needs. For example, one commenter suggested adding a paragraph § 679.110(b)(3)(ii)(E) that states "State Boards are strongly encouraged to include organization representatives in (C) and (D)."

Department Response: Many comments from stakeholders with mandated representation on the Board under WIA requested that they again be mandated Board members or that they be referenced in regulation. WIOA reduced mandated Board membership in an effort to streamline State WDBs and provide Governors the flexibility to establish Boards that best reflect the diversity of the State's job seeker and employer communities. The Department recognizes that many important system partners with experience with specific job seeker populations, such as required one-stop partner programs, tribal organizations, other Department program grantees,

and those serving the disadvantaged and disabled populations are no longer required members of the Board. However, § 679.110(b)(3)(ii) permits representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment to contribute to the 20 percent workforce threshold. Paragraph (b)(3)(iii)(B) says the Governor has the flexibility to appoint "other appropriate representatives and officials designated by the Governor" which does not preclude any organization as the Governor deems appropriate for the State. The Department encourages the Governor to ensure that State WDB members represent the diversity of job seekers, and employers across the State, which includes ensuring adequate representation on the State WDB. The Department has made no changes to the regulatory text in response to these comments.

Chairperson Requirements

Paragraph (c) of § 679.110 implements WIOA sec. 101(c) requiring the Governor to select a chairperson of the Board from among the business representatives on the Board who are the owner or chief executive officer for the business or organization, or a person who is an executive with the business or organization with optimum policy-making or hiring authority.

Comments: One commenter requested amending the statutory language to allow outlying areas to appoint a representative from a non-governmental organization, a community-based organization, or a small business rather than a business as chair of the State WDB, expressing concern about finding a chairperson who would be willing to dedicate the time and effort to the Board.

Department Response: A small business owner would meet the qualifications outlined in the statue and would not require a change to the regulations. However, WIOA does not delineate

specific Board membership exemptions for outlying areas. No change to the regulatory text was made in response to these comments.

Individuals with Disabilities and Other Barriers to Employment

Comments: Many commenters from stakeholders with mandated representation on the Board under WIA and from other interest groups requested that they again be mandated Board members or that they be referenced in regulation. Various commenters suggested that Governors be required to appoint individuals with disabilities, disability service providers, and direct support professionals, lead State officials from agencies with primary responsibility for providing services to individuals with intellectual, developmental, and other significant disabilities as members of the State WDB. Another commenter recommended that because it is not required, the Department should strongly urge representation of populations with disabilities on State and Local WDBs.

Department Response: WIOA reduced mandated Board membership in an effort to streamline State WDBs and provide Governors the flexibility to establish Boards that best reflect the diversity of the State's job seeker and employer communities. The Department recognizes that many important system partners with experience with specific job seeker populations, such as required one-stop partner programs, tribal organizations, other Department program grantees, and those serving the disadvantaged and individuals with disabilities are no longer mandated members of the Board. However, § 679.110(b)(3)(ii) requires not less than 20 percent of the Board be comprised of workforce representatives which may include one or more individuals who have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment. Paragraph (b)(3)(iii)(B) says the Governor has the flexibility to appoint "other appropriate representatives and officials designated

by the Governor," which does not preclude representatives of any required partner program, community based organizations or other organizations as the Governor deems appropriate for the State. The Department encourages the Governor to ensure that State WDB members represent the diversity of job seekers, and employers across the State, which includes ensuring adequate representation on the State WDB. The Department has made no changes to the regulatory text in response to these comments.

Work-Relevant Training

Comments: Relating to the WIOA provision that provides that State WDB business representatives may represent businesses that provide "employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors," some commenters asked the Department to clarify the definition of "work-relevant training" in proposed § 679.110(b)(3)(i)(B). In particular, some of these commenters asked whether it pertains to for-profit training providers. Another commenter stated while the definition of "in-demand" is located at WIOA sec. 3(23), there are no definitions for the terms "high-quality" and "work-relevant." This commenter recommended that the Department allow definition of these terms at the State or local level.

Department Response: Paragraph (b)(3)(i)(B) of § 679.110 implements WIOA sec. 101(b)(1)(C)(i)(II), which provides that State WDB business representatives must represent businesses that provide "employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors." WIOA sec. 3 provides definitions used in the law, however the terms "work-relevant" training and "high quality" are not defined in WIOA. The State WDB, in conjunction with the Governor, is responsible for crafting appropriate parameters to address circumstances in the State; States are therefore

responsible for defining "work-relevant" and "high-quality" in accordance with the particular circumstances faced by that State. The Department has made no changes to the regulatory text in response to these comments.

Comments: Other commenters said that while they agree that customized training, registered apprenticeship, or OJT are all work-relevant, the Department should clarify that these are just a few examples and not a comprehensive list because such limitation could deem ineligible representatives of the business community who may successfully offer alternative types of training such as a non-registered apprenticeship. Similarly, another commenter recommended that § 679.110(b)(3)(i)(B) should clarify that "a representative of a business providing an alternative form of training can serve on the State Board."

Department Response: The Department acknowledges that the training options mentioned in this section are illustrative, and that other training strategies could reasonably satisfy this requirement. The Department has determined that no further definition is required and has made no changes to the regulatory text in response to these comments.

Voting Rights

Comments: Expressing concern that allowing a Governor to selectively grant voting rights among non-required members could skew a Board or lead to the appearance of discrimination against some of the non-required member interests, a commenter recommended that § 679.110(g) state clearly that the Governor may grant voting privileges to either all or none of the non-required members of the State WDB. Another commenter said that allowing a CEO to give voting rights to non-required members could lead to political tension. Some commenters were concerned that a Governor's authority to convey voting privileges to non-required

members, as stated in § 679.110(g), would be used to circumvent the requirement of a business majority on the State WDB, or otherwise impact the functionality of the Board.

Department Response: WIOA sec. 101(b)(1) mandates certain State WDB members in order to ensure a core set of interests are represented. 20 CFR 679.110(g) requires all mandated Board members to have voting rights. This section also permits the Governor to grant voting privileges to the non-required members of the board, and the Department encourages the Governor to do so, if doing so would further the mission and goals of the board. Additionally, as described below, the Governor may not award voting rights in such a way that would upset the balance of required membership categories. Under the regulations as proposed, Governors cannot circumvent membership requirements by granting voting rights to non-mandated State WDB members because the membership requirements explained in paragraph (b) will always cause the majority of members on the Board to be mandated members. No change to the regulatory text was made in response to these comments.

Indian and Native American Representation

Comments: Paragraph (b) of § 679.110 implements WIOA sec. 101(b) describing the required State WDB membership. Many comments from stakeholders with mandated representation on the Board under WIA and other interest groups requested that they again be mandated Board members or that they be referenced in regulation. Several commenters suggested that Indian and Native American representatives be required as Board members. As part of a Council resolution submitted as a public comment, the Native American Employment and Training Council (NAETC) proposed that each State WDB should have a representative from a tribe or tribal organization.

Department Response: WIOA reduced mandated Board membership in an effort to streamline the State WDBs and provide Governors the flexibility to establish Boards that best reflect the diversity of the State's job seeker and employer communities. Many important system partners with experience with specific job seeker populations, such as tribal organizations, other Department program grantees, and those serving the disadvantaged and disabled populations are no longer required members of the Board. However, § 679.110(b)(3)(ii) requires not less than 20 percent of the Board be representatives of the workforce, which may include representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment. It also says the Governor has the flexibility to appoint "other appropriate representatives and officials designated by the Governor" (§ 679.110(b)(3)(iii)(B)); the Department encourages the Governor to ensure that State WDB members represent the diversity of job seekers and employers across the State. No change to the regulatory text was made in response to these comments.

Section 679.120 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

Paragraph (a) of § 679.120 defines the term "optimum policy-making authority" as an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. This section retains the same requirements that were included in the WIA regulations at 20 CFR 661.203(a). Paragraph (b) of § 679.120 defines the term "demonstrated experience and expertise" as an individual who has documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function."

Comments: The Department sought comment on the definition of optimum policy-making authority, and demonstrated experience and expertise. Commenters recommended adding education and training expertise to § 679.120 by indicating that documented leadership in any of the areas in § 679.110(b)(3)(ii)(C) and (D) also would be considered.

Department Response: The Department agrees with these commenters and changed the regulatory language in § 679.120 to reference § 679.110(b)(3)(ii)(C) and (D).

Comments: Commenters also recommended in-depth criteria including: a successful track record, leveraging of funds, documented service track record, quality partnerships, culturally competent, and a physical location in the area. However, the majority of commenters supported leaving the definition open to State and local discretion. Some commenters expressed concern that the definition proposed in § 679.120 was too specific and may limit the types of representatives on the State WDB to those with experience in human resources.

Department Response: With the clarification that demonstrated experience and expertise may include individuals with experience in education or training of job seekers with barriers to employment as described in § 679.110(b)(3)(ii)(C) and (D), the Department has determined that the definition is sufficiently clear to provide parameters to State WDBs.

Comments: Another commenter suggested removal of the term "documented," referencing experience in the areas described in § 679.120, to avoid added administrative burdens of processing documentation.

Department Response: The use of the term "documented" assures that the selected representatives meet the criteria necessary to contribute meaningfully to the Board's actions for job seekers but does not require any specific administrative burden. Processes and procedures

related to membership are the responsibility of the elected official. No change to the regulatory text was made in response to these comments.

Section 679.130 What are the functions of the State Workforce Development Board?

20 CFR 679.130 implements sec. 101(d) of WIOA and describes the role and functions of the State WDB. Paragraphs (a), (d) through (e), and (g) through (k) of § 679.130 reiterate the relevant statutory requirements at WIOA secs. 101(d)(1), (4) and (5), and (7) through (11). These functions are the primary functions of the State WDB.

Comments: A few commenters suggested text changes such as requiring State WDBs to partner with public television stations due to those stations' experience creating instructional materials on employability skills for job agencies and one-stop centers, providing professional development tools like workshops, and hosting job fairs.

Department Response: The Department encourages State WDBs to partner with a wide variety of organizations, however it declines to require entities not identified in statute. No change to the regulatory text was made in response to these comments.

Comments: One commenter suggested that § 679.130(a) and (b) should require State WDBs to create and implement an appeal process for all policies, monitoring, and negotiations that take place by the Governor, State WDB, or State pass-through entity and the Local WDBs.

Department Response: Section 679.130 implements WIOA sec. 101(d), which does not include the requirement to establish such an appeals process. No change to the regulatory text was made in response to these comments.

Clarification of Role of the State WDB

Comments: Commenters requested clarification of the roles of the State WDB such as how the State WDB is to assist in reviewing recommendations "on actions that should be taken

by the State to align workforce development programs to support a comprehensive and streamlined workforce development system" and whose recommendations the Board is to review.

Department Response: WIOA sec. 101(d) indicates that the role of the State WDB is to assist the Governor in the development, implementation, and modification of the State Plan. To that end the Board is to review policies, programs, and recommendations on actions that should be taken by the State to align workforce development programs in the State. The State WDB is not limited in the types of recommendations that can be reviewed. The Board may consider recommendations from any number of areas, not limited to those resulting from the public comment on the State Plan, from State WDB meetings, or standing committees. In its role in assisting the Governor, the State WDB should review relevant comments regarding State WDB actions, as well as provide its own recommendations of actions to the Governor. No change to the regulatory text was made in response to these comments.

Comments: Commenters requested clarification of the role of the State WDB when other entities perform the same functions such the development and oversight of the State's labor market information (LMI) system, which involves the State WDB and State Unemployment Insurance (UI) Administrator.

Department Response: State WDBs have several roles related to the use of LMI in the State. Paragraph (e)(3) of § 679.130 implements WIOA sec. 101(d)(5)(C) and requires State WDBs to develop effective training programs that respond to real-time data analysis of the labor market. WIOA sec. 101(d)(11) and § 679.130(k) require the development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act which refers to the State's responsibilities. The responsibilities are complementary rather

than duplicative of the roles of other State agencies in these areas. The State WDB should coordinate with all relevant parties to develop and implement a plan for ensuring activities are cohesively leveraged rather than duplicated. No change to the regulatory text was made in response to these comments.

Comments: Two commenters urged the Department to incorporate into § 679.130 an active review of State policies that encourage innovation or hinder innovative strategies that are developed at the local level and both cautioned against over-regulation by the State.

Department Response: Under § 679.130 State WDBs are already required to review policies, programs, and recommendations on actions that should be taken by the State to align workforce development programs in the State. No change to the regulatory text was made in response to these comments.

Comments: A commenter asked whether, for the purpose of carrying out sec. 101(d), WIOA authorizes the Governor to ignore or otherwise disregard existing State laws with regard to agency rulemaking.

Department Response: WIOA does not provide this authority to the Governor. However, States are required to comply with the Final Rule as a condition of the WIOA grant. The Governor should follow applicable State laws in a manner best designed to comply with these regulations when implementing the functions of the State WDB.

Single-Area States

Comments: Single-area States, which operated as such under WIA, are permitted under WIOA. A commenter urged the Department to mandate use of Local WDBs and/or regional consortia in single-area States.

Department Response: WIOA sec. 107(c)(4) requires that State WDBs operating as the Local WDB carry out the same functions, except as noted, required of the Local WDB as detailed in § 679.270. Therefore, State WDBs in single-area States are already required by statute and regulation to meet all requirements of membership and functions of both State and Local WDBs. No change to the regulatory text was made in response to these comments.

Career Pathways (§ 679.130(c)(2))

WIOA sec. 101(d)(3)(B) outlines "the development of strategies to support the use of career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment (including individuals with disabilities), with workforce investment activities, education" as a function of the State WDB and is described in § 679.130(c)(2). WIOA sec. 107(d) and § 679.300 extends the requirement to Local WDBs. WIOA sec. 3(7)(A) through (G) defines career pathways as a combination of rigorous and high-quality education, training, and other services that meet specified guidelines.

Comments: Commenters requested that the Department provide more comprehensive guidance on the implementation of career pathways. Several commenters provided recommended changes to the regulatory text that included adding criteria, including a section specific to Local WDB implementation of career pathways, requiring the State and Local WDBs to define the roles and responsibilities of WIOA programs related to career pathways, listing required partners (such as Job Corps, and public television), and developing strategies to include job seekers with specific barriers.

Department Response: The ideas and suggestions provided by the commenters support career pathways as a dynamic topic that involves input of multiple partners and stakeholders throughout the system. The statutory language provides general criteria for both State and Local

WDBs to reference in developing career pathway strategies. The Department has concluded that more prescriptive regulatory language may limit State WDBs' innovation in developing career pathways to support individuals to retain and enter employment; however, the Department will issue further guidance and technical assistance to help States. No change to the regulatory text was made in response to these comments.

Industry or Sector Partnerships (§ 679.130(c)(4))

Paragraph (c)(4) of § 679.130 implements WIOA sec. 101(d)(3)(D) states that the roles and functions of the State WDB include the development and expansion of strategies to meet the needs of employers, workers, and job seekers particularly through industry or sector partnerships related to in-demand industry sectors and occupations.

Comments: A commenter suggested that the Department should revise § 679.130(c)(4)'s requirement for State WDBs to assist with strategies related to industry or sector partnerships to include the language "with an emphasis on attainment of recognized post-secondary credentials."

Department Response: 20 CFR 679.130(c)(4) states that State WDBs have responsibility for development and expansion of strategies to meet the needs of employers, including sector strategies. State WDB functions already include the requirement to develop and update comprehensive State performance and accountability measures to assess core program effectiveness under WIOA sec. 116, which includes a credential attainment measure. Therefore, attainment of credentials, including postsecondary credentials, should already be a State WDB priority, as should sector strategies. No change to the regulatory text was made in response to these comments.

Best Practices (§ 679.130(e))

Paragraph (e) of § 679.130 requires the Board to identify and disseminate best practices in a number of areas (paragraphs (e)(1) through (3)).

Comments: Commenters had concerns about dissemination of best practices surrounding assessments. One commenter urged the Department to explain further how States would use assessments by including how to report this in title-specific data. This commenter expressed concerns that the value of requiring these assessments could be undercut through a perverse incentive for programs to avoid co-enrollment if the assessments' use in an accountability system is not clearly defined and recommended that States ensure that title II providers have processes for sharing assessment data with title I providers and vice versa.

Department Response: The regulation does not require the reporting of the use of assessments in this section. The State WDB's purpose, as outlined in WIOA sec. 101 and § 679.100, is to convene State, regional, and local workforce system, and partners to align and improve the outcomes and effectiveness of Federally-funded and other workforce programs and investments. Therefore, the Board' responsibility already includes aligning the strategies related to best practices in assessments. The State Plan should address the State's strategic and operational vision. No change to the regulatory text was made in response to these comments.

State WDB One-Stop Delivery System Guidance (§ 679.130(f))

Paragraph (f) of § 679.130 requires the State WDB to develop and review statewide policies affecting the coordinated provision of services through the State's one-stop delivery system which is to include developing objective criteria and procedures for the Local WDBs' use in assessing the physical and programmatic accessibility of one-stop centers.

Comments: A commenter suggested that the language in § 679.130(f) should be strengthened to better reflect the importance of including programmatic and physical

accessibility in the assessment of one-stop centers. This commenter recommended that accessibility of one-stop centers must include the removal of barriers as defined in the Americans with Disabilities Act (ADA) and 28 CFR 36.304 and should extend to technological accessibility, citing sec. 508 of the Rehabilitation Act of 1973.

Department Response: The Department agrees that accessibility is paramount for all job seekers, and it is the State WDB's function to develop the tools to assist local areas to ensure that one-stop centers are both physically and programmatically accessible to all job seekers. As noted by the commenter, physical accessibility is already required under existing statute and individual State laws as well as the regulation implementing WIOA sec. 188 at 29 CFR part 38. WIOA sec. 102(2)(vii) and the WIOA State Plan ICR require that the State Plan address how the one-stop delivery system will comply with the Americans with Disabilities Act of 1990. No change to the regulatory text was made in response to these comments.

Strategies for Technological Improvements to Improve One-Stop Services (§ 679.130(g)) and Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs (§ 679.130(h))

Comments: A State agency expressed concern that the requirement that State WDBs develop strategies to ensure technology is accessible to individuals with disabilities and individuals residing in remote areas (§ 679.130(g)(4)) could become costly and asked the Department for information on if each State would create its own plan and for the expectations for the scope of available technology. A commenter expressed concern that the requirement that State WDBs develop strategies to for aligning technology and data systems across one-stop partner programs in § 679.130(h) could become costly, and asked the Department for an

explanation of why this responsibility is necessary and what the plan development schedule would look like.

Department Response: Paragraph (g)(4) of § 679.130 and paragraph (h) of § 679.130 address technology improvements, and data system alignment across one-stop partner programs. Neither paragraph (g) nor (h) require the development of a plan, or outline specific technology expectations; rather, the Board is responsible for developing strategies for technological improvements. Although the State WDB may choose to develop a technology plan to achieve those requirements, neither WIOA nor the regulations require the submission of a formal technology plan. No change to the regulatory text was made in response to these comments.

Development of Statewide Workforce and Labor Market Information System (§ 679.130(k))

Comments: WIOA sec. 101(d)(11) and § 679.130(k) require the development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act which refers to the State's responsibilities. A commenter requested clarification of the role of the State WDB in the development and oversight of the State's labor market information (LMI) system. State WDBs have several roles related to the use of LMI in the State.

Department Response: Paragraph (e)(3) of § 679.130 implements WIOA sec. 101(d)(5)(C) and requires State WDBs to develop effective training programs that respond to real-time data analysis of the labor market. WIOA sec. 101(d)(11) and § 679.130(k) require the development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act which refers to the State's responsibilities. The responsibilities are complementary rather than duplicative of the roles of other State agencies in these areas. The

State WDB should coordinate with all relevant parties to develop and implement a plan for ensuring activities are cohesively leveraged rather than duplicated.

Section 679.140 How does the State Workforce Development Board meet its requirement to conduct business in an open manner under "sunshine provision" of the Workforce Innovation and Opportunity Act?

20 CFR 679.140 implements WIOA sec. 101(g) requiring the State WDB to conduct business in an open manner.

Comments: A commenter recommended the Department revise § 679.140(b)(3) to require State WDBs to make available the minutes of meetings and any public comments, feedback, or requests for service, and to provide a written response to such comments or requests.

Department Response: The Department notes that paragraph (b)(3) already implements the WIOA sec. 101(g) requirement that meeting minutes be available to the public upon request. The Department encourages all State WDBs to operate with transparency; State WDBs are free to make additional information, such as public comments and other information it deems appropriate, available to the public. No change to the regulatory text was made in response to these comments.

Section 679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?

20 CFR 679.150 implements WIOA sec. 101(e), which authorizes the use of alternative entities to the State WDB under the following conditions: the alternative entity was in existence on the day before the date of enactment of the Workforce Investment Act of 1998; is substantially similar to the WIOA State WDB; and includes representatives of business and labor

organizations in the State. As outlined in § 679.150(c), if the alternative entity does not provide representatives for each of the categories required under WIOA sec. 101(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce development system. The State WDB must maintain an ongoing and meaningful role for an unrepresented membership group, including entities carrying out the core programs.

Comments: Commenters disagreed with the interpretation at § 679.150(d) that required a new State WDB if the membership of the alternative entity had significant change after August 7, 1998 and paragraph (e) that defined the criteria for a significant change. Commenters interpreted the alternate entity provisions of WIOA to mean that an alternative entity may add or remove membership categories and maintain alternative entity status unless those changes make the State WDB "substantially dissimilar" to the State WDB. Commenters requested the Governor be given the authority to make a determination regarding the definition of "substantially similar."

Department Response: The Department agrees and has deleted the proposed text at § 679.150(d) and (e) from the Final Rule. The Department declines to further define "substantially similar" in § 679.150 but considers substantially similar to be aligned with the composition of the WIOA compliant State WDB as outlined in WIOA sec. 101(a) through (c) and § 679.110. The Department considers changes to the alternative entity membership or structure that are contrary to the requirements of WIOA sec. 101(a) through (c) and § 679.110 or those that make the alternative entity less aligned with WIOA State WDB compliance to result in an alternative entity that is not substantially similar to a compliant WIOA State WDB.

Comments: Commenters requested that the Department require a business majority for alternative entities.

Department Response: WIOA sec. 101(e) and § 679.150(b)(3) require alternative entities to have representatives of businesses in the State, however lacks a requirement for a business majority. The Department strongly encourages alternative entities to seek a majority business participation in State WDB activities and decisions. No change to the regulatory text was made in response to these comments.

2. Subpart B – Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

This subpart provides the requirements for identification of regions and designation of local areas under WIOA. WIOA envisions a workforce development system that is customer focused on both the job seeker and business, and is able to anticipate and respond to the needs of regional economies. It requires Workforce Development Boards and CEOs to design and govern the system regionally, aligning workforce policies and services with regional economies and supporting service delivery strategies tailored to these needs. To support this regional approach, this subpart requires States to identify intrastate or interstate regions. When the region contains more than one local area, the local areas are required to plan regionally. WIOA envisions a regional system where public workforce system leaders partner and provide leadership as part of comprehensive, regional workforce and economic strategy. The majority of comments in this section pertained to the structure of regions, and initial and subsequent designation of workforce development areas.

Section 679.200 What is the purpose of requiring States to identify regions?

20 CFR 679.200 implements requirements found at both WIOA sec. 101(d)(3)(E), and WIOA sec. 106(a), which require the Governor to identify regions with consultation from the CEOs and Local WDBs in the affected region. The development of comprehensive regional partnerships facilitates alignment of workforce development activities with regional economic development activities, and better supports the execution and implementation of sector strategies and career pathways. Regional cooperation may also lower costs and increase the effectiveness of service delivery to businesses that span more than one local area within a region and to job seekers through coordination of shared services, processes, and operations. The Department encourages States to ensure that local and regional planning areas are aligned to support improved service delivery, improved training and employment outcomes, better meet employer needs, and greater effectiveness and efficiency in achieving these outcomes.

Comments: A commenter expressed concern that defining boundaries of a region at the State level could result in a lack of coordination among locals in different regions. A different commenter suggested that the Department require cooperation between core partners to align existing services into the appropriate regions and "to reject plans where Governors have not effectively assigned local areas to regions."

Department Response: State WDBs are required to identify regions in consultation with local chief elected officials and Local WDBs. The State WDB is also tasked with ensuring the overall alignment of the public workforce system. The function of identifying regions should not limit coordination among Local WDBs outside of the identified region; in fact, the State WDB function is to ensure that the system becomes more, rather than less, cohesive. No change to the regulatory text was made in response to these comments.

Comments: One commenter said that the market of a local area may lend itself to more than one region and in instances such as this they could exist as a singular local region and partner with the neighboring areas.

Department Response: The Department agrees that the State WDB could reach such a conclusion. No change to the regulatory text was made in response to these comments.

Section 679.210 What are the requirements for identifying a region?

20 CFR 679.210 addresses the requirements for identifying a region and requires a process that includes consultation with Local WDBs and CEOs.

Comments: Commenters suggested additional clarification regarding how consultation will take place including requiring memorandums of agreement, and a detailed policy of the process.

Department Response: The term consultation is used in § 679.210 as a requirement for identifying a region, The Department added a definition of consultation to part 675. This clarifies that consultation constitutes a robust conversation in which all parties are given opportunity to share their thoughts and opinions. The Department declines to add additional requirements.

Comments: The Department requested comment on additional data that may be considered other than that laid out in § 679.210(c)(1) through (8). Commenters provided suggestions for new data points as well as adjustments to those in paragraphs (c)(1) through (8), such as including public transportation when considering commuting patterns, adding the workforce participation rate of people with barriers to employment, especially individuals with disabilities and out of school youth with disabilities, administrative efficiencies, and existing regional capacity and a history of local areas working together.

Department Response: The data points in § 679.210(c)(1) through (8) are for illustrative purposes and should not limit the State's decision-making when identifying regions. The Department will review the suggestions when determining and issuing guidance on any additional factors as outlined in § 679.210(c)(8). No change to the regulatory text was made in response to these comments.

Comments: WIOA sec. 102(b)(2)(D)(i)(II) and § 679.210 require the Governor to develop a policy and processes for identifying regions. Commenters suggested that local areas designated under WIA be able to join one or more region or have the opportunity to remain a single region. Another commenter suggested that any current local areas that incorporate multiple jurisdictions should automatically be considered a region. A commenter requested clarification regarding the difference between the identification of regions and the designation of local areas.

Department Response: Local area designation is addressed in §§ 679.220 and 679.230; the purpose of a local area is to administer workforce development activities. The purpose of a region is addressed in §§ 679.200 and 679.210; the purpose of a regional area is to align workforce development activities and resources with larger regional economic development areas and resources. The regional plan should describe the Governor's processes for ensuring the requirements outlined in WIOA sec. 102 for the identification of regions are met. Local areas designated under WIA are not exempt from the regional identification process. No change to the regulatory text was made in response to these comments.

Comments: Those regions comprised of two or more contiguous local areas are planning regions as described in WIOA sec. 3(48). Commenters have suggested that a single area could

participate in multiple planning regions by being a member, or through a memorandum of agreement.

Department Response: In accordance with WIOA sec. 106(a)(2), a single local area may not be split across two planning regions. Local areas must be contiguous in order to be a planning region and effectively align economic and workforce development activities and resources. The Department encourages States confronted with this issue to reevaluate whether the local areas in question are consistent with labor market areas and with regional economic development areas in the State. If these criteria are not met, the State should consider how best to recast local areas for the purposes of subsequent designation and regional integration. Local areas only may be part of one region, however, local areas within planning regions are not prohibited from working or coordinating with other local areas, and regions may coordinate with other planning regions. Coordination may be especially vital across States; the Department anticipates providing additional guidance regarding the creation and management of interstate planning regions. No change to the regulatory text was made in response to these comments.

Comments: A commenter requested that the Governor be provided flexibility to add more criteria to § 679.210(c) for use when identifying a region.

Department Response: The Department has determined that the Governor must use the criteria at § 679.210 in determining a region in order to ensure consistency among States. However, the list of factors in paragraph (c) is illustrative and additional factors may be considered. The Department will review the criteria when determining and issuing guidance on any additional factors as outlined in § 679.210(c)(8), which states that the Secretary of Labor may provide additional considerations for the development of regions according to the policy

priorities of the Department. No change has been made to the regulatory text in response to this comment.

Section 679.230 What are the general procedural requirements for designation of local areas?

20 CFR 679.230 describes a general public comment process and the general procedural requirements for designation of local areas, which include consultation with the State WDB, chief elected officials and affected Local WDBs. The Governor has the discretion to establish the process and procedures to solicit comments that it determines appropriate. However, a wide-reaching, inclusive process allows sufficient time for stakeholders to provide substantive comments that will enable the Governor to receive meaningful feedback from all interested stakeholders, ensuring that the Governor is able to consider all relevant information, data, and opinions before making a decision to designate or redesignate a local area. WIOA sec. 102(b)(2)(D)(i)(II) requires the State Plan to describe the Governor's processes for designating local areas. In addition, the State Plan must detail how the State will ensure the requirements outlined in WIOA sec. 102 regarding public comments and consultation are met.

Comments: Commenters suggested that regulations require additional clarification regarding consultation.

Department Response: The Department agrees with the comment and has added a definition of consultation to the regulatory definitions in part 675 of the Final Rule. The term "consultation" is used throughout WIOA to describe the process by which State and/or local stakeholders convene to discuss changes to the public workforce system. The Department has concluded that this definition is necessary to clarify that consultation constitutes a robust conversation in which all parties are given opportunity to share their thoughts and opinions. Written correspondence or other simple communication methods do not constitute consultation.

This definition applies to all provisions that use the term unless otherwise specified. With the addition of the definition in part 675 of the Final Rule, the Department considers the requirements of § 679.230 to be clear. No changes were made to the regulatory text in response to these comments.

Comments: Many commenters expressed their agreement with the general procedural language in this section and commented that pursuant to WIA sec. 189(i)(2), Texas's workforce areas were designated before WIA took effect and therefore, they may continue to be used as local areas. One of the commenters agreed commenter, stating that for these reasons, "Texas should continue to operate pursuant to the waiver authority afforded under WIOA."

Department Response: Throughout the sections pertaining to Local WDBs several similar comments referenced operations in Texas as approved under WIA. The Department's response to all comments pertaining to Texas's operation under special rule authority in WIA is that WIOA sec. 193 continues the provisions in effect in WIA and the Department will continue to administer them in the same manner under WIOA.

Section 679.240 What are the substantive requirements for designation of local areas that were not designated as local areas under the Workforce Investment Act of 1998?

20 CFR 679.240 implements WIOA sec. 101 and addresses the substantive requirements for designation of local areas that were not designated as local areas under the Workforce Investment Act of 1998 and § 679.250 addresses subsequent eligibility of local areas.

Comments: One commenter supported this section as proposed. A few commenters, including a State WDB, suggested that the Department add language to the regulation that will provide Governors the flexibility to apply the factors outlined in § 679.240(a) following subsequent designation regardless of whether the area was designated previously.

Department Response: WIOA sec. 106(b)(3) outlines the requirements of subsequent eligibility: "After the period for which a local area is initially designated under paragraph (2), the Governor shall approve a request for subsequent designation as a local area from such local area, if such area—(A) performed successfully; (B) sustained fiscal integrity; and (C) in the case of a local area in a planning region, met the requirements described in subsection (c)(1)." WIOA does not require other criteria, and this provision permits existing areas to continue so long as they meet the statutory criteria. No change to the regulatory text was made in response to these comments.

Section 679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?

Comments: A couple commenters expressed their support for the language in § 679.250(a) through (c). One commenter recommended that in this section and elsewhere in the regulations any language that "prohibits a rural concentrated employment program (CEP) from applying for designation as local workforce area" should be deleted. Another commenter presented the same suggestion and recommended deleting three sections that exclude rural CEPs from being eligible to apply as local workforce areas. These three sections include text from § 679.250(g), the preamble from § 679.250(g), and the preamble for § 679.290(a) and the commenter provided detailed rationale to support the deletion of all anti-CEP language.

Department Response: WIOA Technical Amendments Act, enacted on May 22, 2015, amended WIOA sec. 106(b) to allow rural concentrated employment programs to apply for initial and subsequent designation as a local workforce area. The regulations have been revised to conform with the statutory direction and paragraph (g) now reads as follows: "The Governor

may approve, under paragraph (c) of this section, a request for designation as a local area from areas served by rural concentrated employment programs as described in WIOA sec. 107(c)(1)(C)."

Comments: Many commenters requested clarification regarding the requirements of subsequent designation and the associated timelines in § 679.250.

Department Response: The Department clarified § 679.250 to provide details on the duration of initial designation and the timing of the first available opportunity for local area subsequent designation to occur. The Department revised the proposed requirement to clarify that initial designation is only applicable to PY 2016 and PY 2017. Noting the commenters' concerns regarding availability of WIOA performance data, which is required for the determination of designation, the Department added § 679.250(c) to clarify that no determination of subsequent designation may be made before the conclusion of PY 2017.

Section 679.260 What do the terms "performed successfully" and "sustained fiscal integrity" mean for purposes of designating local areas?

20 CFR 679.260 implements the WIOA sec. 106(e)(1) definition of performed successfully.

Comments: Many commenters asked for guidance in applying the WIOA sec. 106(e)(1) definition.

Department Response: The Department agrees that additional detail is necessary to ensure that initial and subsequent designation requirements are applied consistently. The Department has adjusted the Final Rule at § 679.260 to detail the performance indicators, and corresponding timelines, to be considered for initial and subsequent designation. For clarity and to reduce duplication the Department deleted § 679.260(a)(1) and (2) pertaining to the negotiated

levels of performance. The details in (1) and (2) were unnecessarily duplicative to the requirements covered in (a) which already outline the relevant performance goals. The Department added detailed timeframe information for subsequent designation in § 679.260(b)(1) and (2).

Comments: Some commenters suggested that performance be measured in the aggregate based on the total outcomes for all performance indicators instead of individual performance indicators. Another commenter requested that success be based on achieving 80 percent of the negotiated goal.

Department Response: Based on experiences under WIA, the Department determined that individual indicators of performance provide Governors more detailed information for making designation determinations. 20 CFR 679.260 clarifies that local areas must not fail any individual measure for 2 consecutive years. 20 CFR 679.260(a) clarifies that the local area must meet or exceed the performance levels the Governor negotiated with Local WDB and CEO.

Comments: A commenter asked for clarification regarding appeal rights if a local area is deemed not to have performed successfully if there was no negotiation between a local area and the State for the previous 1 to 2 years before enactment of WIOA.

Department Response: WIA sec. 136(c) and § 666.310(a) of the regulations implementing WIA required the negotiation of local area performance indicators under WIA. In accordance with WIOA sec. 106(e)(1) and § 679.260(a) and (b), the local performance must be judged in accordance with the definitions of “meets” and “exceeds” in place at the time the performance levels were negotiated. Appeals regarding local area designation must adhere to the requirements in §§ 683.630(a), 683.640, and 679.290.

Comments: Paragraph (c) of § 679.260 implements WIOA sec. 106(e)(2), which defines the term "sustained fiscal integrity." Commenters requested clarification of fiscal integrity, and one commenter expressed concern that the three criteria used for determining "sustained fiscal integrity" would limit the Governor's ability to designate local areas and suggested that the Department clarify that only the first criterion requires a formal determination by the Secretary of Labor.

Department Response: In WIOA sec. 106(e), "sustained fiscal integrity" means "that the Secretary has not made a formal determination, during either of the last 2 consecutive years preceding the determination regarding such integrity, that either the grant recipient or the administrative entity of the area misexpended funds . . . due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration." Section 679.260(c) implements the requirements outlined in WIOA sec. 106(e). No changes were made to the regulatory text in response to these comments. To the extent that additional clarification may be needed, the Department will issue separate guidance.

Section 679.270 What are the special designation provisions for single-area States?

20 CFR 679.270 implements WIOA secs. 106(d) and 107(c)(4)(A), which allow for single-area States so designated under WIA to continue, and requires the State WDB to carry out the functions of the Local WDB in a single-area State.

Comments: Commenters requested additional clarification on the roles of the State WDB in single-area States. Several commenters indicate that single-area States tend to be small or substantially rural areas and fulfilling the mandates of both the State and Local WDBs would be both unduly burdensome for single-area States as well as impractical. Others objected to single-

area State WDBs taking on the role of the Local WDB and expressed concern that such situations are non-responsive to local needs and to local stakeholders. Commenters suggested varying solutions which include allowing waivers or exceptions for single-area States of certain Board functions; mandating local representation to a broader extent on the single-area State WDB; creating a specific section regulating exemptions for single-area State WDB functions; and offering non regulatory technical assistance and guidance.

Department Response: WIOA sec. 107(c)(4)(A) requires that single-area States' State WDB carry out the function of the Local WDB with an exemption only for meeting and reporting on local performance indicators, so the requirements of § 679.270(c) cannot be reduced. However, the Department does not intend for single-area States to conduct the required Board functions in such a way as to be inefficient or duplicative. To that end, the Department has amended the regulatory text at § 679.270 by adding paragraph (d), which clarifies that single-area States must conduct the functions of the Local WDB to achieve the incorporation of local interests but may do so in a manner that reduces unnecessary burden and duplication of processes. The Department will issue guidance regarding how single-area States must carry out the duties of State and Local WDBs.

The Department encourages the Governor to ensure that State WDB members represent the diversity of job seekers and employers across the State, which includes ensuring adequate local elected official representation on the State WDB. Single-area States have the additional burden of representing local level interests and stakeholders.

3. Subpart C – Local Workforce Development Boards

20 CFR 679.300 explains the purpose of the Local WDB. The Local WDB represents a wide variety of individuals, businesses, and organizations throughout the local area. The Local WDB serves as a strategic convener to promote and broker effective relationships between the CEOs and economic, education, and workforce partners. The Local WDB must develop a strategy to continuously improve and strengthen the workforce development system through innovation in, and alignment and improvement of, employment, training, and education programs to promote economic growth. Local WDB members must establish a platform in which all members actively participate and collaborate closely with the required and other partners of the workforce development system, including public and private organizations. This is crucial to the Local WDB's role to integrate and align a more effective, job-driven workforce investment system. In this part the Department addresses comments on the roles of the Local WDBs, Local WDB memberships, and the role of local elected officials.

Section 679.300 What is the vision and purpose of the Local Workforce Development Board?

20 CFR 679.300 establishes the vision for and explains the purpose of the Local WDB.

Comments: Commenters suggested the Department clarify that Local WDBs are responsible for organizing the key partners to develop a vision for the system collectively, implementing that system, and monitoring performance.

Department Response: These responsibilities are already laid out in the regulations under § 679.300(b)(1). One of the purposes of the Local WDB is to provide strategic and operational oversight in collaboration with required and other partners to help the workforce development system achieve the purposes outlined in WIOA sec. 2, and assist in the achievement of the State's strategic and operational vision and goals outlined in the State Plan. Paragraphs (b)(2) and (3) of § 679.300 require the Local WDB to assist in the achievement of the State's strategic

and operational vision and goals as outlined in the Unified State Plan or Combined State Plan, and to maximize and continue to improve the quality of services, customer satisfaction, and effectiveness of the services provided. No change to the regulatory text was made in response to these comments.

Section 679.310 What is the Local Workforce Development Board?

20 CFR 679.310 implements WIOA sec. 107 by defining the Local WDB and its functions.

Comments: Commenters suggested changes regarding the function of establishing by-laws covered in § 679.310(g) including suggesting that the criteria that apply to the selection of Local WDB members also should apply to by-laws of the Board, and that Board members should not be required to actively participate in convening system stakeholders.

Department Response: WIOA sec. 107(b)(1) and § 679.320 describe the Local WDB membership requirements as enumerated in WIOA. The WIOA statute does not indicate that by-laws restrict membership. The Department declines to make the suggested regulatory change. No change to the regulatory text was made in response to these comments.

Comments: Some commenters stated that § 679.310(g)(7) should refer to membership on the Local WDB, rather than the State WDB. One commenter suggested that the authority should fall to Local WDBs and not CEOs and recommended that the Department reword § 679.310(g)(7) as follows: "A description of any other conditions governing appointment or membership on the Local Board as deemed appropriate by both the Local Board Chair and the CEO. The rest of these conditions should be under the authority of the [Local Board] and be included as requirements in the [Local Board] developed by-laws."

Department Response: The Department agrees and will make that technical change to § 679.310(g)(7) to replace State WDB with Local WDB. The regulatory text has been revised with this change to § 679.310(g)(7).

Comments: A commenter requested clarification regarding the financial liability for local areas with multiple chief elected officials.

Department Response: Paragraph (e) of § 679.310 says that if a local area includes more than one unit of general local government the chief elected officials may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. This agreement may include the assignment of liabilities among the units of local government. The chief elected officials should address financial roles in this agreement. In addition there is authority under WIOA sec. 107(d)(12)(B)(i)(I) that the Governor may agree to take on the liability of the chief elected official.

Comments: A commenter stated that the term "elect" in the nomination process should be changed to "appoint."

Department Response: The Department agrees and has changed the term "elect" in § 679.310(g)(1) to "select."

Comments: Regarding the nomination process, a commenter asked the Department to clarify whether the Board chair will be nominated by a vote of the Local WDB members and not by the chief elected official.

Department Response: The Local WDB is required to elect the chairperson as outlined in § 679.330 in accordance with WIOA sec. 170(b)(3).

Comments: The proposed regulations in § 679.310(g) would require the CEO to establish by-laws for Local WDBs. A few commenters suggested that the Department revise the language

in proposed paragraph (g) to require that CEOs, "in consultation with the Local Board," must establish by-laws consistent with State policy for Local WDB membership.

Department Response: Paragraph (g) of § 679.310 requires the local elected official to establish by-laws that include the process to ensure Local WDB members actively participate in convening system stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities. The by-laws will outline the process and roles for Local WDB members. An effective Local WDB establishes clear roles, responsibilities, procedures, and expectations through its by-laws, and that these requirements will help Local WDBs to be more agile and proactive in reacting to board turnover, increase board participation when board members are not able to physically attend board meetings, improve board functionality, and help ensure that the public is informed about the operation of the board. No changes to the regulatory text have been made in response to these comments.

Comments: A commenter requested that the Department revise the section so that the Local WDBs must draft by-laws "after consultation with and approval by the chief elected official."

Department Response: WIOA sec. 107 delegates the establishment of by-laws to the chief elected official. The chief elected official must establish the by-laws in order to constitute a Local WDB. Paragraph (c) of § 679.310 allows the Local WDB and the chief elected official(s) to enter into an agreement that describes the respective roles and responsibilities of the parties which does not prohibit the Local WDB's role in the development of future by-laws. The suggested change is not necessary and no change to the regulatory text was made in response to this comment.

Section 679.320 Who are the required members of the Local Workforce Development Board?

20 CFR 679.320 addresses the required members on the Local WDB in accordance with WIOA sec. 107.

Comments: The Department received comments of support for this section but one commenter suggested that it may cause political tension to allow a Chief Elected Official to appoint Local WDB members.

Department Response: WIOA clearly contemplates that Chief Elected Officials will use the State established criteria to appoint Local WDB membership that meets the requirements in WIOA sec. 107(b)(2). Section 679.320(g) requires the Chief Elected Official establish a formal nomination and appointment process. No change has been made to the regulatory text in response to this comment.

Overarching Comments on the Required Members of Local WDBs

Comments: Commenters requested guidance on documenting the inability to find a certain member type.

Department Response: Local WDBs should follow State guidelines for documenting the lack of member types in the area.

Adult Education Representation

Comments: The Department received several comments suggesting that a specific entity be named to represent adult education programs at the local level.

Department Response: WIOA sec. 107(b)(1) and § 679.320(a) require that the chief elected official use the criteria set by the Governor, in partnership with the State WDB, to appoint members of the Local WDBs. The Department concludes that the Governor, in partnership with the State WDBs, has authority for creating a policy regarding the criteria for the membership of the Local WDB, which includes criteria for selecting the representative of a title

II eligible provider of adult education and literacy activities. No change has been made to the regulatory text in response to this comment.

Comments: Commenters also recommended that a process be implemented for selecting a Local WDB representative in the event there are multiple providers in the area.

Department Response: In accordance with WIOA sec. 107(b)(2)(C)(i), § 679.320(d)(1) requires that the Local WDB include at least one eligible provider administering adult education and literacy activities under title II. Nominations are solicited when multiple entities are in a local area as described in § 679.320(g)(3) and WIOA sec. 107(b)(6). No change to the regulatory text was made in response to these comments.

Comments: One commenter asked for clarification between the terms "education and training activities" and "education and training services," stating that they seem to mean the same thing in many instances.

Department Response: In order to avoid confusion, the Department eliminated the term "education and training services" from the regulatory text.

Dual Representation

20 CFR 679.320(h) allows an individual to be appointed as a representative on the Local WDB for more than one entity if the individual meets all of the criteria for representation.

Comments: Several commenters expressed concern with this approach because it differs from State WDB requirements; commenters recommended allowing for all core programs to have separate representation on Local WDBs. One commenter supported the flexibility in permitting a Local WDB member to represent multiple entities. Another commenter recommended that the Department should strongly discourage a Local WDB member from representing two interests, reasoning that a Board member serving the interests of two separate

functions would not be true to the intent of WIOA. This commenter also expressed concern that it would create a conflict of interest under the Sarbanes-Oxley Act and a Board member's heightened fiduciary responsibilities.

Department Response: The Department recognizes that the structure of core programs may differ across the country and separate representation may not be possible or practical in all local areas. The Department offers Governors and Local Chief Elected Officials the flexibility for an individual to be appointed as a representative on the Local WDB for more than one entity if the individual meets all of the criteria for representation. However, there is no requirement that this be the case. In accordance with WIOA sec. 107(b)(1) and § 679.320(a) the CEO must follow the process established by the Governor, in partnership with the State WDB, for appointing members of the Local WDB. With regard to concerns about conflicts of interest under the Public Company Accounting Reform and Investor Protection Act (Sarbanes-Oxley Act) or other applicable laws, neither WIOA nor these regulations exempt an official serving in a dual representation capacity from any applicable ethical rules. In fact, § 683.200(c)(5) imposes specific conflict of interest requirements on WIOA recipients in addition to those applicable under the uniform administrative requirements. For these reasons, the Department has determined that the flexibility for Local WDB membership is appropriate and no change to the regulatory text was made in response to these comments.

Labor Union, Small Business, and Registered Apprenticeship Representation

Paragraph (c) of § 679.320 requires that at least 20 percent of Local WDB membership must be workforce representatives to include representatives of labor organizations, and a joint labor-management registered apprenticeship program, or (if no such program exists in the area) a representative of a registered apprenticeship program in the area if such program exists.

Comments: Commenters requested clarification of the total number of labor representatives required on the Local WDB, and suggested labor representatives include employee representatives for non-unionized employees.

Department Response: Paragraph (c) of § 679.320 clarified that, at minimum, three labor representatives must be included in the Local WDB: two or more representatives of labor organizations, where such organizations exist in the local area, and one joint labor-management representative of a registered apprenticeship program where such program exists in the local area. In the event that these organizations are not present in the local area, representatives must be selected from other employee representatives. For local areas with no union-affiliated registered apprenticeship program, a representative of a non-union registered apprenticeship in the area must be appointed if one exists. The Local WDB may include other individuals or representatives as outlined in paragraph (e). The Department has determined that no change is required to the proposed language to allow for additional representation of the labor force as appropriate.

Regarding the number of small business representation, paragraph (b) of § 679.320 implements WIOA sec. 107(b)(2)(A)(ii), which describes Local WDB membership criteria and calls for members that "represent businesses, including small businesses." The Department interprets WIOA's use of the word "businesses" to indicate that the Local WDB is required to have more than one member representing a small business.

Comments: One commenter requested a definition of the word "business" and asked if it "may include large non-profit organizations." Another commenter requested a definition of "business organization," suggesting it "include trade associations and chambers of commerce," and another commenter also requested clarity that "business organizations can be a local

chamber of commerce or a regional entity." One commenter asked if sector representatives had to come from an established sector or if they also could represent "aspirational industries."

Department Response: WIOA sec. 3 contains definitions of terms used in the law. This section does not specifically define a business or a business organization. The groups suggested by the commenters may be included as long as they meet the membership criteria outlined in § 679.320. 20 CFR 679.320 implements WIOA sec. 107(b)(2) by describing the required members of a Local WDB. Paragraph (b) requires that a majority of the members of the Local WDB be representatives of businesses in the local area and paragraphs (b)(1) and (2) outline the required criteria. The Chief Elected Official (CEO) has the authority in WIOA sec. 107 and § 679.320(e)(4) to appoint other members as he/she deems appropriate. Regarding the comment on "aspirational industries," many organizations can meet the criteria outlined in § 679.320(b) and the CEO has the authority to appoint additional members that meet the needs of the local area employers and job seekers. The Department concludes that no further definition is required and has made no changes to the regulatory text in response to this comment.

Comments: Multiple commenters stated that the Department cites WIOA sec. 3(25) regarding business representative requirements in § 679.320(b)(2) and it should reference sec. 3(23) instead. A commenter asked if trained members who have experience with eligible youth, as referenced in proposed § 679.320(c)(4), would include representatives from local government funded programs such as 4-H.

Department Response: The Department agrees that the reference to WIOA sec. 3(25) in § 679.320(b)(2) is incorrect. WIOA sec. 3(23) defines in-demand industry sector or occupation. WIOA sec. 3(25) defines an individual with a disability which is not relevant to § 679.320(b)(2). The Department has made the correction in § 679.320(b)(2).

Regarding the question of whether representatives from 4-H programs would qualify as members having experience with eligible youth, § 679.320 implements WIOA sec. 107(b) which outlines membership criteria for Local WDBs. As outlined in § 679.320(a), for each local area in the State, the members of the Local WDB must be selected by the CEO consistent with the criteria established under statute and criteria established by the Governor, and must meet the requirements of WIOA sec. 107(c)(2). CEOs are required to establish a formal nomination and appointment process (§ 679.320(g)), which should answer specific questions about local area membership requirements. Due to the number of factors involved, the Department is not able to comment on if a specific entity would meet the requirements set forth by the Governor as well as all of the statutory requirements but advises interested parties to review the CEO's process in their area.

Comments: Paragraph (b)(2) of § 679.320 implements WIOA sec. 107(b)(1)(C)(i)(II), which provides that Local WDB business representatives represent businesses that provide "employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors." Some commenters asked the Department to clarify the definition of "work-relevant training" in proposed § 679.110(b)(3)(i)(B). In particular, some of these commenters asked whether it pertains to for-profit training providers. Another commenter stated while the definition of "in-demand" is located at WIOA sec. 3(23), there is no definitions for the terms "high-quality" and "work-relevant." This commenter recommended that the Department allow these terms to be defined at the State or local level.

Department Response: WIOA sec. 3 provides definitions of terms used in the law. The terms "work-relevant" training and "high-quality" are not defined in WIOA or in the regulations. The Local WDB's functions under WIOA sec. 107(d) and § 679.370 include employer

engagement, career pathways development, and identifying and disseminating promising practices. It is incumbent upon the Local WDB to apply the above terms so that it includes the members it determines best support its functions. No change to the regulatory text was made in response to these comments.

Nominations

WIOA sec. 107 and § 679.320 of this part outline the requirements for Local WDB membership.

Comments: Commenters requested that a nomination process not be required in communities where there are multiple adult education providers.

Department Response: WIOA sec. 107(b)(6) requires a nomination process if there are multiple eligible providers of title II adult education and literacy activities serving the local area (a similar process is required for multiple institutions of higher education in a local area). Section 679.320(g)(3) conforms with WIOA sec. 107(b)(6) and the Department made no changes to the regulatory text in response to these comments.

Comments: Another commenter suggested that Local WDB members must be nominated by an appropriate body, and if no such body is clear, then the opportunity to present nominations should be required to be widely publicized.

Department Response: WIOA does not require that the Local WDB nominations be from particular bodies, except that in instances of multiple adult education providers in a local area nominations will be accepted from those institutions in accordance with WIOA sec. 107(b)(6) and § 679.320(g)(3). In accordance with WIOA sec. 107(b)(1) and § 679.320(a) the CEO must follow the process established by the Governor, in partnership with the State WDB, for

appointing members of the Local WDB which may include processes for soliciting nominations. No change to the regulatory text was made in response to these comments.

Individuals with Disabilities and Other Barriers to Employment

Section 679.320 implements WIOA sec. 107(b) describing the required Local WDB membership.

Comments: As with the State WDBs, many commenters from stakeholders with mandated representation under WIA, requested that they again be mandated members of the Local WDB, or that they be referenced in regulation.

Department Response: WIOA reduced required Local WDB membership in an effort to streamline the Boards and provide Chief Elected Officials the flexibility to establish Local WDBs that best reflect the diversity of job seeker and employer communities. The Department recognizes that many important system partners with experience with specific job seeker populations, such as required one-stop partner programs, tribal organizations, other Department program grantees, and those serving the disadvantaged and disabled populations are no longer required members of the Board. However, § 679.320(c) and (d) require the Board be comprised of workforce representatives that can include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment. Paragraph (e)(4) of § 679.320 says the CEO has the flexibility to appoint "other appropriate individuals as determined by the chief elected official" which does not preclude any organization as the CEO deems appropriate. The Department encourages the CEO to ensure that Local WDB members represent the diversity of job seekers and employers in their local areas, which includes ensuring adequate representation on the Local WDB and ensuring appropriate expertise to address needs

of individuals with barriers to employment. No change to the regulatory text was made in response to these comments.

Voting Rights

20 CFR 679.320 implements WIOA sec. 107 (b) which outlines Local WDB membership.

Comments: Some commenters recommended that Board members from each core program must be individuals working specifically with core programming and they must get a vote on the Local WDB, including grandfathered Boards.

Department Response: 20 CFR 679.320(e)(4) says the CEO has the flexibility to appoint "other appropriate individuals as determined by the chief elected official" which does not preclude any organization as the CEO deems appropriate. The Department encourages the CEO to ensure that Local WDB members represent the diversity of job seekers, employers, and one-stop partner programs in the local area which includes ensuring adequate representation on the Local WDB. 20 CFR 679.320(i), which requires all required Local WDB members to have voting rights, also gives the CEO flexibility to convey voting rights to non-required members. No change to the regulatory text was made in response to this comment.

Comments: One commenter asked how adult education programs that are not funded by the State and do not have voting rights can still contribute.

Department Response: 20 CFR 679.360(a) permits the use of standing committees on the Local WDB. Standing committees may be established to provide information and assist the Local WDB in carrying out its responsibilities under WIOA 107. Standing committee members must include individuals who are not members of the Local WDB and who have demonstrated experience and expertise in accordance with § 679.340(b) and as determined by the Local WDB.

Stakeholders with expertise may wish to contribute as members of standing committees, if the Local WDB establishes such committees. No change to the regulatory text was made in response to these comments.

Section 679.330 Who must chair a Local Workforce Development Board?

Section 679.340 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

Comments: One commenter strongly supported both proposed definitions. Another commenter expressed concern regarding the language used to define "optimum policy-making authority" because TANF is administered at the State level and local leadership does not have "optimum policy-making authority" for the agency. For this reason, the commenter requested that the Department clarify what "optimum policy-making authority" is at the local level.

One commenter asked the Department if it thinks local administrators of State agencies meet the criteria for optimum policy-making authority or if it expects this regulation will require the nomination and appointment of State capital-based agency executives.

Regarding demonstrated experience and expertise, one commenter recommended that all staff working with job seekers and business customers should receive certification through programs like Certified Workforce Development Professional (CWDP) by the National Association of Workforce Development Professionals (NAWDP) to ensure they are qualified in their role.

Department Response: 20 CFR 679.340 clarifies the term "optimum policy-making authority" as an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. The section also defines "demonstrated experience and expertise" at the local level, which includes a

workplace learning advisor as defined in WIOA sec. 3(70); an individual who contributes to the field of workforce development, human resources, training and development, or a core program function; or someone the Local WDB recognizes for valuable contributions in education or workforce development related fields. The Department concludes that the Local WDB has flexibility to make the determinations of optimum policy-making authority and demonstrated experience and expertise within the outlined criteria. No change to the regulatory text was made in response to these comments.

Section 679.350 What criteria will be used to establish the membership of the Local Workforce Development Board?

Comments: 20 CFR 679.350 affirms that the chief elected official appoints the Local WDB in accordance with the criteria in WIOA sec. 107(b) and applicable State criteria. Commenters sought additional detail on which industries can be represented, specifically asking about the healthcare industry and educational institutions. Commenters also requested that 501(c)(3) corporations be defined as businesses.

Department Response: WIOA sec. 3 contains definitions of terms used in the law. This section does not specifically define a business or a business organization. The entities identified by the commenters may be included as long as they meet the membership criteria. No change to the regulatory text was made in response to these comments.

Section 679.360 What is a standing committee, and what is its relationship to the Local Workforce Development Board?

Comments: 20 CFR 679.360 implements WIOA sec. 107(b)(4) and establishes the roles and responsibilities of standing committees within the Local WDB structure. Commenters

supported the text, as well as suggested that the Department require or recommend particular groups, such as Job Corps, to be members of standing committees.

Department Response: Standing committees were not legislated under WIA and are optional under WIOA as clarified in § 679.360(b). The Department declines to mandate a specific entity be represented on a standing committee, but nothing would prevent Job Corps representatives from being appointed to standing committees under § 679.360(b).

Standing committees may be used to assist the Local WDB in carrying out its responsibilities as outlined in WIOA sec. 107.

Comments: One commenter suggested changing the word "must" to "may" regarding the requirement in § 679.360(a) to include those appointed by the Local WDB in standing committees but who are not Board members.

Department Response: The Department encourages the use of standing committees to expand opportunities for stakeholders to participate in Local WDB decision-making, particularly for representatives of organizations that may no longer sit on the Local WDB but continue to have a stake in the success of Local WDB decisions. Such committees also expand the capacity of the Local WDB in meeting required functions and expand opportunities for stakeholders to participate in Local WDB decision-making. For this reason, it is important to require the appointment of non-Board members. No change to the regulatory text was made in response to these comments.

Section 679.370 What are the functions of the Local Workforce Development Board?

Role and Function of the Local WDB

20 CFR 679.370 lists the functions of the Local WDBs as enumerated in WIOA sec. 107(d). Under WIOA, the Local WDB, in partnership with the CEO, must perform a variety of functions to support the local workforce system.

Comments: Commenters recommended the addition of a variety of Local WDB functions.

Department Response: In order to preserve Local WDB flexibility, the Department declines to enumerate additional functions. No change to § 679.370 was made in response to these comments.

Comments: Paragraph (b) of § 679.370 discusses a new role for Local WDBs that are part of a planning region that includes multiple local areas. This provision repeats the WIOA requirement that Local WDBs that are part of a planning region must develop and submit a regional plan in collaboration with the other Local WDBs in the region. Regarding § 679.370(b), a commenter recommended the Department include language allowing any local area that includes multiple jurisdictions and partners to have an automatic designation as a region and to consider that area's local plan to be a regional plan.

Department Response: WIOA sec. 106(a)(2) clearly assigns the State the responsibility of identifying regions after consultation with Local WDBs and chief elected officials. As required in WIOA sec. 106(c)(2), the local plan is incorporated into the regional plan, where required, in accordance with § 679.540. No change to the regulatory text was made in response to this comment.

Career Pathways (§ 679.370(f))

WIOA sec. 3(7)(A) through (G) defines career pathways as a combination of rigorous and high-quality education, training, and other services that meet specified guidelines. WIOA

sec. 101(d)(3)(B) enumerates "the development of strategies to support the use of career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment (including individuals with disabilities), with workforce investment activities, education" as a function of the State WDB and is described in § 679.130(c)(2). WIOA sec. 107(d) and § 679.300 extends the requirement to Local WDBs.

Comments: Commenters requested that the Department provide more comprehensive guidance on the implementation of career pathways. Several commenters provided recommended changes to the regulatory text that included adding criteria, including a section specific to Local WDB implementation of career pathways, requiring the State and Local WDBs to define the roles and responsibilities of WIOA programs related to career pathways, listing required partners (such as Job Corps, and public television), and developing strategies to include job seekers with specific barriers to employment.

Department Response: The Department acknowledges the interest in implementing successful career pathway strategies. The ideas and suggestions provided by the commenters support that career pathways is a dynamic topic that involves input of multiple partners and stakeholders across the public workforce system. The Department agrees that further guidance and technical assistance is needed and will be issued. However, the statutory language provides general criteria for both State and Local WDBs to use in developing career pathway strategies meeting their needs. More prescriptive language may limit State and Local WDBs' ability to be proactive and innovative in developing career pathways to support individuals to retain and enter employment. No change to the regulatory text was made in response to these comments.

Strategies for Technological Improvements to Improve One-Stop Services (§ 679.370(h))

Comments: Proposed § 679.370(h)(1) requires that Local WDBs facilitate connections among the intake and case management information systems of the one-stop partner programs; a commenter asserted that connecting intake and case management information systems will raise significant issues in terms of staffing, technology, and confidentiality.

Department Response: 20 CFR 679.370(h) does not outline specific technology requirements expectations, but rather the Board is responsible for developing strategies for aligning technology and data systems across one-stop partner programs. The Local WDB may connect intake and case management systems, but neither WIOA nor the regulations require a single case management system among one-stop partners. The regulation provides Local WDBs with flexibility to develop systems that best fit their needs and budgets. No change to the regulatory text was made in response to these comments.

Review of Adult Education Provider Applications (§ 679.370(n))

Paragraph (n) of § 679.370 reflects a number of new functions for the Local WDB related to coordination with adult education and literacy providers in the local area. This provision requires the Local WDB to review applications to provide adult education and literacy activities under title II to determine whether such applications are consistent with the local plan; the eligible agency retains approval authority. It also requires the Local WDB to make recommendations to the eligible agency to promote alignment with the local plan.

Comments: Commenters requested clarification regarding the application review process. Further information regarding Local WDB coordination with adult education and literacy providers is provided at 34 CFR part 463, which requires the eligible agency to establish in its competition a processes by which applicants must submit an application to the Local WDB for review prior to its submission to the eligible agency. This part also includes a role for the Local

WDB in replicating and implementing cooperative agreements in accordance with subparagraph (B) of sec. 101(a)(11) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)), and implementing cooperative agreements in accordance with that section with the local agencies administering plans under title I of that Act (29 U.S.C. 720 et seq.) other than sec. 112 or part C of that title (29 U.S.C. 732, 741) to enhance the provision of services to individuals with disabilities and other individuals.

Commenters expressed concerns that Local WDBs will not have the appropriate amount of time to review all adult education provider applications in a timely manner, particularly in large cities with many programs or for education programs serving jurisdictions with multiple Local WDBs. One commenter also expressed concern about the title II adult education provider application review process because Local WDBs do not understand enough about education programs and recommended that the regulations contain a clear conflict of interest policy as well as a process where the adult education stakeholders have the ability to help shape the local plan. One commenter suggested that the review and approval process outlined in § 679.370(n) for adult education providers should be applied to all core partner plans.

Department Response: The Department of Education provides additional information about the review of local applications for grants or contracts to provide title I adult education and literacy services at 20 CFR 463.20 which reiterates that: "(t)he purpose of the local WDB review of an eligible training provider application is to determine whether such plans are consistent with the local plan under sec. 108 of WIOA and to make recommendations to the eligible agency to promote alignment with such a plan. The eligible agency must consider the results of the review along with other statutory considerations in making funding decisions." The Department of Education advises that only appointed local WDB members who do not have a conflict of

interest as defined in sec. 107(h) of WIOA are allowed to participate in the review of an eligible training provider application. Boards may arrange to offer training to local WDB members by adult education experts prior to participating in the review process. No change to the regulatory text was made in response to these comments.

Ensuring Appropriate Use and Management of WIOA Funds

Comments: Under paragraph (h), a commenter asked if the State can limit a Local WDB's authority to increase the on-the-job training reimbursement rate if all factors required in regulation and policy are met.

Department Response: Paragraph (h)(4)(i)(2) of § 679.370 requires Local WDBs, in partnership with the chief elected official for the local area, to ensure the appropriate use and management of funds. Therefore, local areas should establish policies, interpretations, guidelines, and definitions to implement provisions of title I of WIOA to the extent that such policies, interpretations, guidelines, and definitions are not inconsistent with WIOA and the regulations issued under WIOA, Federal statutes and regulations governing one-stop partner programs, and with State policies. States also should establish policies, interpretations, guidelines, and definitions to implement provisions of title I of WIOA to the extent that such policies, interpretations, guidelines, and definitions are not inconsistent with WIOA and the regulations issued under WIOA, as well as Federal statutes and regulations governing one-stop partner programs. Local WDBs, therefore, can set policies but those policies must not conflict with State policy, or WIOA. No change to the regulatory text was made in response to these comments.

Negotiation of Local Performance Indicators (§ 679.370(j))

Comments: Under paragraph (j), a commenter stated that the regulations need to indicate that local areas have the final decision regarding performance negotiations.

Department Response: WIOA sec. 107(d)(9) requires that locals negotiate performance and § 679.510(a)(1)(viii) requires an agreement between Local WDBs and chief elected officials for how a planning region will collectively negotiate and reach agreement with the Governor on local levels of performance. No change to the regulatory text was made in response to these comments.

Negotiating Methods for Funding One-Stop Infrastructure Costs (§ 679.370(k))

20 CFR 679.370(k) requires that the Local WDB negotiate with the CEO and required partners on the methods for funding the infrastructure costs of one-stop centers.

Comments: Comments asked for clarification on the role of CEO.

Department Response: The CEO is not required to provide infrastructure costs, nor is the CEO required to negotiate the infrastructure costs, but rather the Local WDB and the CEO must agree upon the methods that will be applied to determine the infrastructure funding. Section 678.500 (see Joint WIOA Final Rule) describes what must be included in the Memorandum of Understanding executed between the Local WDB, with the agreement of the CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area, and provides for additional details regarding infrastructure costs. No change to the regulatory text was made in response to these comments.

Selection of Youth Services, Training, and Career Services Providers (§ 679.370(l))

Comments: Under paragraph (l), a couple of commenters requested clarification that Local WDBs only can determine eligibility of training providers for their local areas and that

eligibility is contingent on the providers being approved on the State eligible training provider list (ETPL).

Department Response: WIOA sec. 122 and 20 CFR part 677 of the Joint WIOA Final Rule describe the process for determining the eligibility of training providers. Providers must be approved via the Governor's process, however, Local WDBs may set additional criteria for providers on the local list. No change to the regulatory text was made in response to these comments.

Section 679.400 Who are the staff to the Local Workforce Development Board and what is their role?

20 CFR 679.400 describes the Local WDB's authority to hire staff and the appropriate roles for Board staff as outlined in WIOA sec. 107(f).

Comments: Commenters suggested that any prior agreements between Local WDBs and chief elected officials regarding staffing roles and responsibilities be recognized; that the regulations clarify that the State agency is to take responsibility for hiring; and that the regulations should reiterate that the hiring of a director is optional.

Department Response: WIOA sec. 107(f) describes the authority of the Local WDB to hire a director. There is no mandate that Local WDBs hire staff. The authority to hire staff to support the Local WDB is granted under WIOA sec. 107(f) to the Local WDB, not the State agency.

Prior agreements are not automatically recognized. It is in the best interest of the public workforce system to ensure the director of the Local WDB is competent and experienced with workforce programs and service delivery. Paragraph (b) of § 679.400 requires the Local WDB to apply objective qualifications to the Board director, paragraph (d) limits the Local WDB

staff's role to assisting the Board fulfill the functions at WIOA sec. 107(d) unless the entity selected to staff the Board enters into a written agreement with the Board and CEO as noted in § 679.400(e). 20 CFR 679.400 aligns with WIOA sec. 107(f) and no change to the regulatory text was made in response to these comments.

Section 679.410 Under what conditions may a Local Workforce Development Board directly be a provider of career services, or training services, or act as a one-stop operator?

Selection as a One-Stop Operator (§ 679.410(a))

20 CFR 679.410 implements WIOA sec. 107(g) and explains the situations in which the Local WDB may directly act as a one-stop operator, a provider of career services, or training services provider.

Comments: The Department received many comments supporting the requirement that one-stop operators be competitively procured. However, other commenters recommended waivers or exceptions to the requirement that one-stop operators be competitively procured. Some commenters recommended waivers for performance, direct designation of the Local WDB as the one-stop operator with the agreement of the CEO and Governor, and allowing Governors to designate the selection of one-stop operators in single-area States. Several commenters disagreed with the Department's interpretation that WIOA sec. 107(g), which allows for the selection of the one-stop operator with the agreement of the CEO and Governor, is an additional requirement under WIOA sec. 121(d)(2)(A) and not a separate path to designation.

Department Response: A more detailed discussion of this issue is contained in 20 CFR part 678 of the Joint WIOA Final Rule. The Department maintains the interpretation, consistent with 20 CFR 678.605 (see Joint WIOA Final Rule) and WIOA sec. 121(d)(2)(A), that the Local WDB must select the one-stop operator through a competitive process. In instances in which a

State is conducting the competitive process, the State must follow the same policies and procedures it uses for procurement with non-Federal funds. State, Local, and non-Federal entities should follow the applicable procurement guidelines in the Uniform Guidance at 2 CFR part 200. Neither WIOA nor § 679.410 prohibit Local WDBs from competing to become a one-stop operator if they could do so in accordance with the Uniform Guidance. The provision requires the competitive procurement of all one-stop operators. No change to the regulatory text was made in response to these comments.

Career Services Provider (§ 679.410(b))

The Department specified in § 679.410(b) that a Local WDB may act as a provider of career services only with the agreement of the CEO in the local area and the Governor.

Comments: Commenters requested clarification regarding the circumstances under which a Local WDB may provide career services.

Department Response: Although WIOA sec. 107(g) requires that one-stop operators be competitively procured, there is no similarly clear statutory requirement for provision of career services and therefore Local WDBs do not have to undertake a competitive process to offer career services.

Comments: Some commenters suggested that Local WDBs only be permitted to offer career services if the CEO and Governor agree that there are insufficient providers of career services in an area. Another commenter responded that many Local WDBs are currently delivering high quality career services and should not be forced to procure them.

Department Response: The Department has interpreted WIOA sec. 107(g)(2), which states that a Local WDB may provide career services described in WIOA sec. 134(c)(2) through a one-stop delivery system or be designated or certified as a one-stop operator only with the

agreement of the CEO and the Governor, to mean that the Local WDB's delivery of career services is at the discretion of the CEO and Governor. Section 679.410(b) offers the CEO and Governor flexibility in deciding whether to pursue a competitive award of career services. However, the Department supports competition and maintains the opinion that Local WDBs acting as direct providers of these services is not optimal. No change to the regulatory text was made in response to these comments.

Comments: Commenters also requested clarity regarding the role of Local WDB members in delivering training and career services but offered no suggested language changes.

Department Response: Paragraph (d) of § 679.410 provides language that extends the Local WDB limitations outlined in § 679.410(c) to Local WDB staff. No change to the regulatory text was made in response to these comments.

Training Services Provider (§ 679.410(c))

WIOA sec. 107(g)(B) outlines a waiver process for Local WDBs to offer training services. Local WDBs wanting to offer training services, such as GED, are required to apply to the Governor for a waiver and meet the waiver restrictions outlined in WIOA sec. 107(g)(1) and § 679.410(c).

Comments: Commenters asked for clarification regarding the penalties for violating this provision.

Department Response: WIOA sec. 183 requires the Governor to monitor all locals and lays out the course of action for any deficiencies that are not corrected such as corrective action, sanctions, and reorganizing the Local WDB. Entities that do not comply are subject to appropriate administrative and fiscal actions, which may include revocation of the waiver as

described in WIOA sec. 107. No change to the regulatory text was made in response to these comments.

Section 679.420 What are the functions of the local fiscal agent?

Comments: The Department requested comment on § 679.420 which addresses the roles of the local fiscal agent. Many commenters agreed with the regulation as proposed while others provided recommendations for expanding the role and suggested changes to the regulatory text to include requiring the permissible functions in § 679.420(c). Other commenters requested additional guidance on specific concerns such as fees, policy development, clarification on entities that may act as a fiscal agent, and the role of the CEO. Noting that most commenters agreed with the fiscal agent role set forth in the proposed regulatory text, the Department made no changes to the fiscal agent functions under § 679.420.

One commenter said that that the definition of fiscal agent conflicts with § 681.400.

Department Response: The Department disagrees that the two regulatory sections are in conflict. Paragraph (b) of § 679.420 provides a list of the key functions of a fiscal agent. The appropriate role of fiscal agent is limited to accounting and funds management functions rather than policy or service delivery. Section 681.400 provides that the local grant recipient may directly provide youth services. Entities serving multiple roles must adhere to WIOA title I, subtitle E (Administration) and § 679.430 to ensure appropriate firewalls within a single entity performing multiple functions, including when a fiscal agent also functions as a direct provider of services. No change to the regulatory text was made in response to these comments.

Section 679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Proposed 20 CFR 679.430 specified that a written agreement with the Local WDB and CEO is required when a single entity operates in more than one of the following roles: local fiscal agent, Local WDB staff, one-stop operator, or direct provider of career services or training services.

Comments: Several commenters requested clarification regarding how various entities should function in multiple roles.

Department Response: This section requires a written agreement with the Local WDB and chief elected official when a single entity operates in more than one of the specified roles, but does not dictate the specific contents of the agreement, because the regulation cannot account for each individual Local WDB situation. However, the agreement must demonstrate how the organization will carry out its responsibilities while in compliance with WIOA and corresponding regulations, relevant Office of Management and Budget (OMB) circulars, the Uniform Guidance, and the State's conflict of interest policy. While it may be appropriate in some instances for a single organization to fulfill multiple roles, a written agreement between the Local WDB, chief elected official, and the organization fulfilling multiple roles is the best method to limit conflicts of interest or the appearance of conflicts of interest, minimize fiscal risk, and develop appropriate firewalls within a single entity performing multiple functions. Because the regulation must be adaptable to a variety of potential situations, the Department has determined that no regulatory change is appropriate in this section and no change to the regulatory text was made in response to these comments. However, to clarify the multiple roles this section is addressing, the regulatory text was revised to refer to "the direct provider of services" instead of "the direct provider of career and training services" in order to include cases where the entity may be directly providing youth services under WIOA.

Other comments on Local Workforce Development Boards

Comments: A commenter expressed its support for all of the proposed part 679, subpart C regulations. Multiple commenters said that Local WDBs should have more flexibility in the time allowable to become compliant with Federal and State laws during the program year 2015-2016.

Department Response: Regarding timelines, the Department agrees that clarification of the expectation for the process is needed and will add § 679.500(c), which requires the Governor to establish and disseminate a policy for the submission of local and regional plans.

Comments: One commenter asserted that the regulations are missing the vital role of a "system coordinator" that is truly necessary in complex areas like large metropolitan cities. The commenter described three options for designating a "system coordinator" that it asserted would maintain the Local WDB's authority to establish a vision for the local workforce development system, recognize the diversity in models for implementing WIOA, and maintain a competition to ensure the highest quality providers are selected to operate one-stop centers. These options were described as (1) the Local WDB taking on the role of system coordinator (provided it competitively selected one-stop operators per WIOA sec. 121(d)); (2) the Local WDB could, with agreement of the CEO, designate a local public agency or non-profit organization as the system coordinator (provided it competitively selected one-stop operators); or (3) a single one-stop operator could still play this role.

Department Response: WIOA does not define or otherwise reference a role for a system coordinator. WIOA secs. 101 and 107 allow Boards to hire staff for the purposes of assisting in carrying out the Board required functions. The local option to create a role of a system

coordinator is already covered in the Boards' authority to hire staff. No change to the regulatory text was made in response to these comments.

4. Subpart D – Regional and Local Plan

20 CFR 679.500 describes the purpose of the regional and local plans; WIOA provides designated regions and local workforce areas the responsibility and opportunity to develop employment and training systems tailored specifically to regional economies. These systems must meet the needs of the full range of learners and workers, including those with barriers to employment. The system must also address the specific needs of regional employers and the skills they require.

WIOA requires the Local WDB, in partnership with the CEO, to submit a local plan to the Governor. If the local area is part of a planning region, the Local WDB will submit its local plan as part of the regional plan and will not submit a separate local plan. The local or regional plan provides the framework for local areas to define how their workforce development systems will achieve the purposes of WIOA. The regional or local plans serve as 4-year action plans to develop, align, and integrate the region and local area's job driven workforce development systems, and provides the platform to achieve the local area's visions and strategic and operational goals. Since the local plan is only as effective as the partnerships that operationalize it, it must represent a collaborative process among local elected officials, boards, and required and other partners (including economic development, education, and private sector partners) to create a shared understanding of the local area's workforce investment needs, a shared vision of how the workforce development system can be designed to meet those needs, and agreement on the key strategies to realize this vision. The Department received comments on the purpose, the

content, and the structure of regional and local plans. In this subpart the Department addresses comments regarding how regions can be aligned.

Section 679.500 What is the purpose of the regional and local plan?

WIOA sec. 106(c) addresses regional coordination and regional plans are addressed in WIOA sec. 106(c)(2). In accordance with WIOA sec. 106(c), § 679.500 describes the purpose of the regional and local plans.

Comments: Commenters provided feedback for the content of the regional plan, expressed concern about the challenges of coordination, requested additional guidance on plan development, and asked for clarity regarding plan development and submission.

Department Response: The Department has issued some guidance on planning and anticipates issuing additional guidance on planning to the public workforce system. Regarding timelines, the Department agrees that clarification of the expectation for the process is needed and has added § 679.500(c), which requires the Governor to establish and disseminate a policy for the submission of local and regional plans.

Section 679.510 What are the requirements for regional planning?

Participation in a Regional Planning Process (§ 679.510(a)(1))

WIOA sec. 106(c) governs regional coordination and regional planning requirements, which are clarified in § 679.510.

Comments: A commenter asked which local area within a region would be responsible for the performance negotiation process.

Department Response: The representatives of each local area in the region are collectively responsible for the process. Establishing an agreement among the Local WDBs and local CEOs in the region concerning how the planning region will collectively negotiate and

reach agreement with the Governor on local levels of performance for, and report on, the performance accountability measures is required by WIOA sec. 116(c)(1)(H) and § 679.510(a)(1)(viii). No change to the regulatory text was made in response to these comments.

Preparation, Submittal, and Approval of Regional Plans (§ 679.510(a)(2))

Comments: Commenters have suggested that a single local area could elect to participate in multiple planning regions through a memorandum of agreement.

Department Response: In accordance with WIOA sec. 106, a single local area may not be split across two planning regions. Local areas must align with planning regions to align economic and workforce development activities and resources effectively. Local areas may be part of only one region. However, local areas are not prohibited from working or coordinating with other local areas, and regions may coordinate with other planning regions. Similarly, where a single local area is identified as a region, such a local area could reasonably coordinate with other local areas or planning regions. Coordination may be especially vital across States; the Department anticipates providing additional guidance regarding the creation and management of interstate planning regions. As the regulation aligns with WIOA and does not prohibit coordination, no change to the regulatory text was made in response to these comments.

Comments: A commenter asked how the plans are to be submitted.

Department Response: The plans must be submitted to the Governor as outlined in § 679.510(a)(2) and any guidance issued by the Department (§ 679.510(a)(1)(i)).

Other Requirements for Regional Planning (§ 679.510(b), (c), and (d))

Comments: Commenters suggested specific content for the regional plan including how the region coordinates core program services, economic development strategies, education

attainment, credentialing of workforce skills to meet employer skill needs, and data regarding participants with disabilities.

Department Response: WIOA sec. 106(c)(2) and § 679.510 describe the requirements for regional planning, which already address the region's service strategies, regional labor market data, coordination efforts, etc. The Department plans to issue further guidance.

Section 679.520 What are the requirements for approval of a regional plan?

Section 679.520 describes the regional plan approval process.

Comments: The Department received comments regarding the timelines, including suggestions that the timeline for approval in § 679.520 of "90 days after submission" is inconsistent with WIOA sec. 108(e), which says the plan "shall be considered to be approved by the Governor at the end of the 90-day period beginning on the day the Governor receives the plan."

Department Response: The Department agrees that 90-day period should be revised to track WIOA and has amended both §§ 679.520 and 679.570 to reflect the statutory language of 90 days after receipt of the local plan.

Section 679.530 When must the regional plan be modified?

20 CFR 679.530 describes when a regional plan must be modified and § 679.580 requires the Governor to establish procedures governing local plan review and modification to ensure that the biennial review and modification of local plans is conducted consistently throughout the State. The circumstances identified in § 679.530(b)(1) and (2) identify the significant changes that require modification but the Governor may require other factors. While sec. 106(c) of WIOA clearly describes the required contents of the regional plan, it provides less detail about

the approval and modification process, saying only that officials in the planning region must "prepare, submit, and obtain approval" of the plan.

Comments: Commenters requested that the language in this section and of § 679.580 be narrowed to specify that modifications are required only in response to "changes to local economic conditions, and any changes in the financing available" to allow regions more flexibility.

Department Response: Because the local plan is a component of the regional plan, the Department decided to apply the approval and modification requirements to the regional plan, which are reflected in § 679.530(b)(2), and which require modification based on "other factors affecting the implementation of the local plan, including but not limited to changes in the financing available to support WIOA title I and partner-provided WIOA services." In the Department's view, ensuring that regional and local plans remain up-to-date and relevant, and ensuring consistency between regional and local plan requirements, will improve the effectiveness of the public workforce system. No change to the regulatory text was made in response to these comments.

Section 679.540 How are local planning requirements reflected in a regional plan?

20 CFR 679.540 outlines how local planning requirements are reflected in a regional plan. WIOA is silent on the coordination of the regional and local plan, noting only that the regional plan must "incorporate local plans for each of the local areas in the planning region." The Department has determined that the most appropriate and least burdensome approach to implementing this provision is to include a copy of each local plan within the regional plan to accompany the plan's discussion of regional strategies. In this arrangement, the regional plan is completed in cooperation with the Local WDBs and CEOs in a planning region, per

§ 679.510(a). Each individual Local WDB and CEO will respond to the local planning requirements at § 679.560(b) through (e) individually. The Local WDBs and CEOs in a planning region must cooperate to develop a common response to the local planning requirements that discuss regional labor market information, as required by § 679.540(a), and any other appropriate requirements permitted by the Governor per § 679.540(b). When these activities are completed, the planning region submits one regional plan to the Governor that includes the common discussion of regional labor market information and other requirements as required by the Governor, as well as each local plan in a single document.

Comments: A commenter asked the Department to clarify if regions had to submit all of the separate local plans that are encompassed in the regional plan.

Department Response: WIOA sec. 106(c)(2) requires the regional plan to incorporate local plans for each of the local areas in the planning region. As described above, the Department has determined that the most appropriate and least burdensome approach to implementing this provision is to include a copy of each local plan within the regional plan to accompany the plan's discussion of regional strategies. No change to the regulatory text was made in response to these comments.

Section 679.550 What are the requirements for the development of the local plan?

20 CFR 679.550 explains the requirements for the development of the local plan. This section emphasizes the importance of collaboration and transparency in the development and submission of the local plan and subsequent modifications.

Comments: A commenter requested clarification regarding when it was necessary for a local area to submit a local plan.

Department Response: Paragraph (a) of § 679.550 implements sec. 108(a) of WIOA and describes the general requirements for the preparation and content of the local plan. If the local area is part of a planning region, the Local WDB must comply with WIOA sec. 106(c) and §§ 679.510 through 679.540 in the preparation and submission of a regional plan. The local plan is considered submitted when it is incorporated in the regional plan.

Comments: Other commenters asked if the terms plan, the local plan, or the local workforce investment plan are synonymous and recommended consistency be used throughout the regulation.

Department Response: The Department used all terms to refer to the local plan required in WIOA sec. 108 and refers to the local plan in the regulations.

Section 679.560 What are the contents of the local plan?

Contents of a Local Plan

20 CFR 679.560 is consistent with sec. 108(b) of WIOA and outlines the information that must be included in the local plan. These requirements set the foundation for WIOA principles, by fostering strategic alignment, improving service integration, and ensuring that the public workforce system is industry-relevant, responding to the economic needs of the local area and matching employers with skilled workers.

Comments: The Department received comments supporting the proposed section, and some recommending changes to the content of the local plan, as well as comments requesting additional guidance.

Department Response: The Department has determined it is appropriate for § 679.560 to track closely with WIOA sec. 108(b), which outlines the content requirements of the local plan. No changes were made to the regulatory text in response to these comments. The Department

recognizes the need for technical assistance in developing local plans and will issue guidance for State and Local WDBs to assist in developing compliant plans.

Local Levels of Performance

20 CFR 679.560(b)(4) explains that the Local WDB must describe how it will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and promote entrepreneurial skills training and microenterprise services.

Comments: Commenters requested additional information on performance criteria for the ETPL and "microenterprise development."

Department Response: Alignment between the public workforce system and local economic development activities is critical in order to identify and fulfill industry talent needs by training customers for emerging and in demand job skills. Furthermore, microenterprise development refers to training for the purposes of self-employment. This training strategy may be appropriate for individuals or participants with multiple barriers to employment, including persons with disabilities.

20 CFR 679.560(b)(5) focuses on the delivery of services through the one-stop delivery system in the local area and requires descriptions regarding how the Local WDB will ensure the continuous improvement of eligible providers of services—see part 680, subpart D for additional information on the requirements of the eligible training provider list.

Comments: Other commenters suggested that regulations detail the timeline for performance negotiations related to local plan submission.

Department Response: The Department agrees that clarification is needed and has added § 679.500(c), which requires the Governor to establish and disseminate a policy for the

submission of local, and regional plans. This policy must account for the requirement that local areas in a region reach agreement on how they will negotiate performance indicators with the Governor, as provided in § 679.510(a)(1)(viii).

Priority of Service (§ 679.560(b)(21))

Comments: Commenters requested additional clarification on the implementation of priority of service, and recommended methods to ensure consistent implementation.

Department Response: 20 CFR 679.560(b)(21) requires that the plan include description of the process by which priority of service must be applied by the one-stop operator, but also clarifies that such priority is for adult career and training services and must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. Including the priority service policy in the local plan will help ensure a more uniform application of the policy throughout the local area. The Department has issued some guidance on planning and anticipates issuing additional guidance for State and Local WDBs to assist in developing compliant plans; no change to the regulatory text was made in response to these comments.

Comments: A commenter suggested that the WIOA system should provide program participants with access to curriculum-aligned industry-recognized certificates verifying attainment of the critical skills that employers are looking for, so that when opportunities open up, the match between job seeker and employment can be accelerated and career pathways can be illuminated.

Department Response: 20 CFR 679.560(b)(2) requires that the Local WDB describe how such alignment will improve access to services and to activities that lead to a recognized postsecondary credential. The Local WDBs have the flexibility to consider many options; the Department declines to require a specific approach. However, the Department recognizes the

need for technical assistance in developing local plans and will issue planning guidance for State and Local WDBs to assist in developing compliant plans. No change to the regulatory text was made in response to these comments.

Other Comments on Local Plans

Comments: A commenter suggested deleting § 679.560(b)(17) regarding becoming or remaining a high-performing Board.

Department Response: The Department has determined that the requirement is consistent with WIOA sec. 108(b)(18) and has made no changes to the regulatory text in response to this comment.

Comments: The Department received several comments regarding § 679.560(b)(20) regarding the requirement that a local plan include a description of how one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop operators. Commenters had specific questions regarding how such a system is to be implemented.

Department Response: Paragraph (b)(20) of § 679.560 reflects WIOA sec. 108(b)(21). There is a requirement that the plan detail the actions that will be taken but there is no mandate in this section of a particular approach. No change to the regulatory text was made in response to these comments.

Section 679.570 What are the requirements for approval of a local plan?

Overarching Comments on the Approval of a Local Plan Timeline for Approval and Implementation

The Department recognizes that the development of the local plan is dependent on several other essential State and local WIOA implementation activities and that local areas may not be able to respond fully to each of the required elements of the local plan in the timeframe provided. The Department sought comment on the scope of the challenges local areas may face regarding regional and local planning and potential actions that the Department can take to help local areas address these challenges.

Comments: Several commenters requested that the amount of time be extended for both existing local plans that are already compliant with the initial designation criteria and local plans for new areas or regions. Commenters suggested that local plans be due 6 to 9 months after the State Plans are approved. Many commenters expressed concerns about the timeline in developing and submitting all plans. Several suggested timelines that should be regulated. Other commenters suggested that regulations detail the timeline for performance negotiations related to plan submission.

Department Response: 20 CFR 679.570 implements WIOA sec. 108(e). Paragraph (a) of § 679.570 requires that the Governor review completed plans and stipulates that unless the Governor determines that the plan is deficient according to paragraphs (a)(1) through (3), the plan will be considered approved 90 days after the Governor receives the plan. The Department made a clarifying edit to paragraph (a) so that it is clear the 90-day time period begins when the Governor receives the plan, rather than at submission. The Department also edited paragraph (a)(2) to update the citation to the regulation that implements WIOA sec. 188. Regarding timelines, the Department agrees that clarification of the expectation for the process is needed and, as described above, has added paragraph (c) to § 679.500, which requires the Governor to establish and disseminate a policy for the submission of local and regional plans.

With Training and Employment Guidance Letter No. 14-15, "Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans," dated March 4, 2016, and the WIOA State Plan ICR, published under OMB control number 1205-0522, the Department issued guidance on and requirements for Unified and Combined State Plans. The Department also intends to issue guidance or technical assistance on local and regional planning. Section 679.570 aligns with WIOA sec. 108, and the changes described above address the commenters' concerns. No additional change to the regulatory text was made in response to these comments.

Paragraph (b) of § 679.570 outlines the processes, roles, and responsibilities in the local plan process for situations in which the State is a single local area. Paragraph (b)(1) clarifies the State must incorporate the local plan in the State's Unified or Combined State Plan submitted to the Department. Paragraph (b)(2) states that the Secretary of Labor will perform the roles assigned to the Governor as they relate to local planning activities and § 679.570(b)(3) indicates the Secretary of Labor will issue planning guidance for single-area States.

Comments: Commenters asked why the Secretary of Labor would be performing the Governor's role, what those planning activities are, and if the Secretary of Labor should be limited to approving local plans.

Department Response: Single-area States are required to submit the plan to the Secretary of Labor under WIOA sec. 108. The Secretary will perform the Governor's role in local planning as outlined in WIOA sec. 108(a) and (e) regarding plan submission and approval. Section 679.570 aligns with WIOA sec. 108 and the Final Rule makes no change to § 679.570(b) in response to these comments.

Section 679.580 When must the local plan be modified?

20 CFR 679.580 is consistent with WIOA sec. 108(a), which requires the Governor to establish procedures governing local plan review and modification to ensure that the biennial review and modification of local plans is conducted consistently throughout the State. Paragraph (b) of § 679.580 explains that the Local WDB and appropriate CEOs must review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors including changes to local economic conditions, changes in the financing available to support WIOA title I and partner-provided WIOA services, changes to the Local WDB structure, or a need to revise strategies to meet performance goals.

Comments: A commenter recommended that modifications be limited to only substantive changes or as required by the State WDB. Other commenters requested guidance that included examples of changes warranting a local plan modification.

Department Response: As outlined in § 679.580, the Governor is required to establish procedures governing local plan review and modification. The Governor has the flexibility to further define the criteria under § 679.580(b) that require a modification to the local plan. The Department does not agree that additional language is needed to require additional modification requirements. Moreover, as described in the discussion of regional plan modification in § 679.530, in the Department's view, ensuring that local and regional plans remain up-to-date and relevant, and ensuring consistency between local and regional plan requirements, will improve the effectiveness of the public workforce system. The Department declines to change the modification requirements and has made no changes to the regulatory text in response to these comments.

5. Subpart E – Waivers/WorkFlex (Workforce Flexibility Plan)

This subpart describes the statutory and regulatory waiver authority provided by WIOA sec. 189(i), and the requirements for submitting a Workforce Flexibility Plan under WIOA sec. 190. The Department addresses comments regarding the purpose of the waiver authority in WIOA, and the circumstances under which a waiver may apply.

WIOA provides States the flexibility to request a waiver of program requirements in order to implement new strategic goals for the improvement of the statewide workforce development system and to provide better customer service in exchange for accountability for expected programmatic outcomes. A Workforce Flexibility plan provides additional flexibility to the State. In general, a State with an approved Workforce Flexibility plan is given the authority to identify local level provisions to waive without further approval from the Secretary of Labor to achieve outcomes specified in the plan. A description of what provisions of WIOA and the Wagner-Peyser Act may and may not be waived is included, along with an explanation of the procedures for requesting a waiver. The subpart also describes what may and may not be waived under a Workforce Flexibility Plan, and the procedures for obtaining approval of a plan. The WIOA requirements for obtaining approval for a waiver or Workforce Flexibility Plan are similar to those in WIA secs. 189(i) and 192, respectively; therefore, many of the proposed regulations are the same as the regulations implementing WIA. No changes have been made to regulatory text in response to these comments.

Section 679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

WIOA sec. 189(i)(3)(A)(i) establishes the limitations of the Secretary's general waiver authority for WIOA title I, subtitles A, B, and E. As described in the regulation, the Secretary is statutorily prohibited from waiving any provisions related to the following:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and Local WDBs;

(10) Procedures for review and approval of State and local plans;

(11) The funding of infrastructure costs for one-stop centers; and

(12) Other requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter.

Comments: A commenter suggested that the Department consider waivers of some of these provisions to the extent that they enhance wage and labor standards and non-displacement protections.

Department Response: The Department does not have the authority to approve waivers that are prohibited by statute and no change to the regulatory text was made in response to this comment.

Section 679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?

20 CFR 679.620(a) through (f) implements WIOA sec. 189(i)(3) and describes the conditions under which a Governor may request, and the Secretary may approve a waiver of statutory or regulatory requirements. 20 CFR 679.620(a) explains that the Secretary will issue guidelines on waiving WIOA and Wagner-Peyser requirements. States will be required to follow the Secretary's guidelines, which supplement the requirements listed in 20 CFR 679.600 through 679.620.

Comments: A commenter asked for more clarification regarding what the most recent data are that would be required to grant a waiver renewal, as required by proposed § 679.620(d)(7).

Department Response: In general, the Department has not required specific data sources when requesting a waiver under WIA or WIOA. The Governor has the discretion to use the data source or sources that most effectively demonstrates the need and/or benefit of the requested waiver. The Department has made no changes to the regulatory text in response to this comment.

Comments: A commenter asked if existing WIA waivers that are approved to run past 2015 will be applicable under WIOA, and suggested that they remain in effect through the original period for which they were approved. With regard to the WIOA transition period, one commenter supported the current continuation of waivers as granted. Other commenters recommended the continuation of existing waivers until the WIOA State Plan is approved. Regarding States with existing WIA waivers, one commenter recommended that the Department allow such States to keep this flexibility until either the Federal government provides additional time or resources necessary for implementation of WIOA's new requirements, or the States provide evidence that they are prepared to implement the additional requirements.

Department Response: The Department issued TEGL No. 01-15 ("Guidance Regarding the Impact of Workforce Innovation and Opportunity Act Implementation on Waivers Under the Workforce Investment Act"), which addresses the status of waivers during program year 2015 and communicates the Department's position on waivers under WIOA. This guidance includes an attachment that discusses whether each waiver type will be continued into WIOA, as well as those that expired effective July 1, 2015. No change to the regulatory text was made in response to these comments.

Section 679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?

Comments: One commenter expressed support for the language in this section that prohibits the waiver of certain requirements related to labor standards and worker protections.

Department Response: WIOA sec. 189(i)(3)(A)(i) and (ii) describe the statutory limitations to the Secretary's WIOA title I and Wagner-Peyser waiver authority. These prohibitions include any statutory provisions related to labor standards or worker rights. No change to the regulatory text was made in response to this comment.

Other comments on Waivers/Work-Flex

Comments: One commenter expressed support for the proposed language in part 679 subpart E regarding waivers and Work-Flex.

To assist employers and job seekers best, one commenter requested that the Department offer waivers whenever possible. A State agency suggested that the Department add waiver provisions to the Final Rule regarding the application for continued eligibility of ETPs and to the internal control policy requirement provided that a written agreement pursuant to proposed § 679.430 is in place.

Department Response: Specific waiver requests must be requested through the waiver process. The Department declines to make changes to identify specific waivers in the regulatory text.

6. Other Comments on Statewide and Local WIOA Governance

Comments: With regard to the alignment of title I and title II services to improve services for immigrant and LEP individuals, multiple commenters recommended that the Department provide additional guidance to States and localities (whether through regulations or policy directive) that allows for differing eligibility criteria across the titles and encourages States and localities to align services without precluding participation by individuals who may be eligible for services under one title but not another. Another commenter stressed the importance of aiding immigrant and refugee communities and asked that the Department include reference to the need for expertise in serving linguistically and culturally diverse populations in its discussion of part 679.

One commenter expressed its concern about the challenge of meeting all WIOA requirements by July 1, 2015, particularly considering the late issuance of the WIOA regulations.

Department Response: While the Department acknowledges the need to be sensitive to the employment and training needs of immigrant and LEP individuals, WIOA sec. 189(i)(3)(A)(i) prohibits the Department from waiving or otherwise altering eligibility criteria. No change to the regulatory text was made in response to these comments.

The Department acknowledges the challenges inherent in implementing WIOA in the absence of a Final Rule. The Department issued Operating Guidance documents to inform the public workforce system how to comply with WIOA statutory requirements. The Operating Guidance provided a framework for program activities while regulations were finalized.

Comments: Explaining that its local areas have utilized funding to serve customers in their jurisdiction only, one commenter asked whether the State can set policy to allow a broader use of funds under WIOA. In addition, this commenter asked whether, if State agencies grant adult education programs to local areas, the infrastructure costs should come from the local vendor or the State.

Department Response: States have authority to set policy that is consistent with WIOA. The Department has determined that the State is in the best position to develop policy regarding allocating scarce Federal funds; the Department has not made changes to the regulatory text in response to this comment. Further, all funds must expended in accordance with the Uniform Guidance regulations and WIOA subtitle E (Administration). TEGL No. 15-14 ("Implementation of the New Uniform Guidance Regulations") provides additional information on implementing the Uniform Guidance.

Comments: One commenter suggested that Local WDBs should remain responsible for operation of local/regional workforce programs representing business sectors in their communities and that it is a conflict of interest for State governments to receive funding, develop and operate programs, and monitor and evaluate programs. This commenter asserted that State-operated workforce programs are primarily budget-driven, rather than customer-driven, with primarily digital service structures that leave individuals in rural communities lacking internet, transportation, and skills without access to services.

Department Response: Section 679.100 implements WIOA sec. 101 and outlines the vision and purpose of the State WDB. Section 679.130 implements WIOA sec. 101(d) and describes the roles and functions of the State WDB. The State WDB's purpose, as outlined in WIOA sec. 101 and § 679.100, is to convene State, regional, and local workforce system, and

partners to align and improve the outcomes and effectiveness of Federally funded and other workforce programs and investments. Section 679.300 implements WIOA sec. 107 and explains the purpose of the Local WDB. In accordance with the functions of the Local WDB outlined in WIOA sec. 107(d), § 679.300(b)(1) includes the function of providing strategic and operational oversight in collaboration with required and other partners to help the workforce development system achieve the purposes outlined in WIOA sec. 2, and assist in the achievement of the State's strategic and operational vision and goals outlined in the State Plan. Paragraphs (b)(2) and (3) of § 679.300 require the Local WDB to assist in the achievement of the State's strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan, and to maximize and continue to improve the quality of services, customer satisfaction, and effectiveness of the services provided.

D. Part 680 – Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

In this part of the Final Rule, the Department describes requirements relating to the services that are available for adults and dislocated workers under WIOA. Adult services are provided to help job seekers who are at least 18 years old succeed in the labor market. WIOA establishes a priority in the adult program for serving low-income individuals, recipients of public assistance, and individuals lacking basic work skills. Dislocated worker services are provided to workers who have lost their job, through no fault of their own. The goal of dislocated workers services is to help these individuals obtain quality employment in in-demand industries.

Under WIOA, adults and dislocated workers may access career services and training services. WIOA provides for a public workforce system that is universally accessible, customer centered, and training that is job-driven. In this part, the Department also discusses supportive services and needs-related payments that can be provided, based on customer needs, to enable them to participate in WIOA career and training services.

The Department generally received comments that were supportive about the delivery of career and training services. It also received comments about the implementation of the statutory priority for the WIOA adult program, and how various populations, including individuals with disabilities, are able to access WIOA title I adult and dislocated worker services, which the Department has sought to clarify. In addition, the Department received comments about some of the new work-based experience and training opportunities under WIOA, including how registered apprenticeship can be utilized by the one-stop delivery system, and clarifications on transitional jobs, on-the-job training, and incumbent worker training. These comments are discussed below, in the sections corresponding to subparts A-D and F-G. The Department also received a number of comments on the Eligible Training Provider (ETP) eligibility requirements, which are discussed below under subpart D. For the comments received that pertain to the WIOA sec. 116(d)(4) ETP annual performance reports, those comments are discussed in the preamble discussion accompanying 20 CFR 677.230 (see Joint WIOA Final Rule published elsewhere in this issue of the Federal Register).

The analyses that follows provides the Department's response to public comments received on the proposed part 680 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory

text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

2. Subpart A – Delivery of Adult and Dislocated Worker Activities

Introduction

This subpart discusses the role of WIOA adult and dislocated worker services delivered through the one-stop delivery system. The one-stop delivery system provides universal access to career services to meet the diverse needs of adults and dislocated workers. Adult and dislocated worker programs are required partners in the one-stop delivery system and as such, grant recipients are subject to the required partner responsibilities set forth in 20 CFR 678.415 (see Joint WIOA Final Rule).

Career and training services, tailored to the individual needs of job seekers, form the backbone of the one-stop delivery system. While some job seekers may only need self-service or other basic career services like job listings, labor market information, labor exchange services or information about other services, some job seekers will need services that are more comprehensive and tailored to their individual career needs. These services may include comprehensive skills assessments, career planning, and development of an individual employment plan that outlines the needs and goal of successful employment. Under WIA, career services were identified as core and intensive services and participants generally would follow through each level of service to receive training eventually. WIOA provides an individual receiving services in one-stop centers the opportunity to receive the service needed to help

him/her meet his/her employment and career goals. WIOA clarifies that an individual does not need to follow a fixed sequence of services that may not be necessary to meet his or her needs.

Under WIOA, the Department classifies career services into two categories: basic and individualized career services. This grouping is not designed to create barriers to training, but rather identifies the importance that these two types of career services can have in helping individuals obtain employment. Basic career services must be made available to all job seekers and include services such as labor exchange services, labor market information, job listings, and information on partner programs. Individualized career services identified in WIOA and described in these proposed regulations are to be provided by local areas as appropriate to help individuals to obtain or retain employment. Career and training services are more fully discussed in subparts A and B of this part.

Section 680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

Comments: A commenter expressed support for § 680.100 as proposed. In contrast, another commented that CEOs should not be considered one-stop partners. The commenter stated that CEOs are involved in the governance and oversight of the one-stop delivery system through the Board members that they appoint and so neither CEOs nor Board members should be involved in the operation of a one-stop delivery system.

Department Response: WIOA sec. 107 states that the CEO for the local area is the local grant recipient. WIOA sec. 107(c) provides for how CEOs are to be determined in the event that there are multiple units of local government in a workforce area. As the grant recipient for the adult and dislocated worker programs, the CEO or his/her designee is a required one-stop partner in the governance and delivery of services in the one-stop delivery system consistent with sec.

121(b)(1) of WIOA and 20 CFR part 678 (see Joint WIOA Final Rule). No changes have been made to the regulatory text in response to the comments.

Section 680.110 When must adults and dislocated workers be registered and considered a participant?

Comments: A one-stop center requested clarification on how registration can occur through an electronic submission. Specifically, this commenter asked whether eligibility can be determined based solely on an electronic submission. The commenter also requested clarification of the language in the preamble explaining that "minimal" assistance would trigger the need to register.

Department Response: State and local areas have the discretion to determine appropriate intake methods, which may include electronic and virtual means. Additionally, a service being provided to an individual electronically or virtually can be sufficient for the individual to be considered a "participant," provided it meets the standards of the definition provided at 20 CFR 677.150(a) (see Joint WIOA Final Rule).

Comments: A few commenters agreed with the way in which the NPRM described participation for adult and dislocated worker involvement with WIOA services. Specifically, several commenter suggested that self-service and information service should be included as participation for the purposes of registering a person to measure performance.

In contrast, several commenters disagreed with the proposed approach to describing participant or participation. A few commenters said that "participant" was described too narrowly, cautioning that the NPRM could lead to denial of services for individuals in need of assistance. Some commenters recommended revisions to § 680.110(a) to describe a "participant" by referencing 20 CFR 677.150 rather than limiting it to those individuals who

receive staff-assisted services (see Joint WIOA Final Rule). One commenter expressed support for this revision, explaining that removal of minimally assisted customers from metrics would potentially reduce investments in resource rooms, a self-service facility that provides job seekers internet-based job search opportunities that are required by today's employer.

Additionally, several commenters recommended revisions to § 680.110(b) to allow for the provision of WIOA services to individuals who are not participants. In contrast, one commenter recommended that paragraph (b) more broadly define those individuals who are not required to register and be designated as participants to include individuals receiving referral services.

Another commenter requested clarification on the distinction between a "staff assisted WIOA service" and "self service and informational activities." This commenter stated that WIA regulations with similar language had caused analogous confusion. A one-stop center asked whether a basic workshop would be considered "informational services" or a career service for purposes of performance accountability. A commenter asked if there was a distinction between basic and individual career services as it relates to participation. Noting that the NPRM explicitly specifies the activities that will not count towards participation but does not specify the activities that will count, a commenter asked whether it is up to the State to determine which career services will place the individual into participation or performance calculations. Expressing confusion over the meaning of participant, a commenter requested a definition of participant, including a clear indication of whether registration or utilization of services was necessary to be considered a participant, and asked the Department to identify the term for clients that are not registered and not participants.

Several commenters stated that clarification is needed on where and when assessments and information collection efforts relevant to identify self-service individuals, reportable individuals, and participants will occur. Some commenters recommended that the Department provide a framework for how the designation of enrollment intertwines with career and training services, allowing maximum flexibility for States to design their approaches for both in-person and online services. In contrast, a commenter encouraged the Department to create a clear system that ensures a consistent approach across the States. Similarly, another commenter encouraged the Department to provide more details on the level/type of information required to be collected by individual and by required program titles to ensure data system integrity for reporting purposes.

A commenter encouraged the Department to require enrollment in WIOA title I programs to occur when an individual employment plan (IEP) is developed. A commenter recommended the point at which funds must be dedicated to the client for their employment or training needs as the appropriate trigger for enrollment.

Department Response: The Department made some non-substantive changes to align the definition of performance with 20 CFR 677.150(a)(3) (see Joint WIOA Final Rule). It also changed the text of § 680.110(a) to clarify when an individual is considered a "participant." The Department is providing additional clarity in guidance on what services count as self-services or information-only services and activities. Further guidance may be provided to explain which services cause an individual to be considered a "participant."

The distinction between reportable individual and participant is used for the purposes of reporting on performance, and does not have any impact on eligibility or service provision. Further information on performance is discussed in 20 CFR part 677 (see Joint WIOA Final Rule

published in this issue of the Federal Register), and information on the collection and data systems is being provided through the Department's ICRs and guidance.

The Department notes that while an IEP will cause an individual to be considered a participant, there are other ways to qualify for participation because there is no sequence of services requirement in WIOA. An IEP is an individualized career service and can be provided under either title I of WIOA or under the Wagner-Peyser Act Employment Service (ES) (as amended by title III of WIOA). Individualized career services (of which an IEP is one) may be provided with Wagner-Peyser Act funds.

Comments: A few commenters recommended that § 680.110(c) be revised to require the collection of data from only those individuals actually receiving aid, benefits, services, or training.

Department Response: The Department made a technical correction at § 680.110(c), changing "Employment Opportunity" data to "EO" data because that is the data referred to in this section as defined in 20 CFR 675.300. The collection of Equal Opportunity (EO) data on every individual who is interested in being considered for WIOA title I financially assisted aid, benefits, services, or training is necessary to ensure compliance with WIOA sec. 188. The regulations governing WIOA sec. 188 can be found at 29 CFR part 38.

The point at which an individual has indicated "interest" in WIOA title I services is within the grant recipient's discretion; however, the recipient's request for and receipt of information triggers the accompanying responsibility to collect EO data at the same time. The EO data must be maintained in a manner that allows the individuals from whom the data was collected to be identified, and that ensures confidentiality. This responsibility is separate from, and might not arise at the same point in the process as, the registration responsibility.

Section 680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?

Comments: A commenter stated that there is a discrepancy between the preamble and the proposed regulation creating confusion whether individuals who are basic skills deficient also have to be low-income. Similarly, a few commenters stated that priority should be given to low-income adults and public assistance recipients and individuals who are basic skills deficient, in accordance with WIOA sec. 134(c)(3)(E). One commenter recommended that priority should also be given to adults who lack a regionally accredited secondary education diploma or high school equivalent (HSE).

A commenter stated that the change from core and intensive services to career services as in proposed § 680.120 would place a burden on States and local areas to revise policy and procedures. This commenter also requested that the Department define "basic career services" and "individualized career services" and describe when participants get placed into training.

Department Response: WIOA sec. 134(c)(3)(E) provides a statutory priority for public assistance recipients, other low-income individuals, and individuals who are basic skills deficient. The priority for these populations is not a criterion for eligibility for services under this program; rather, it is a statutory emphasis on providing individualized career services and training services to these populations under this program. The Department refers readers to § 680.600, which governs the priority provisions of the adult program. No changes have been made to the regulatory text in response to the comments.

Individuals who are basic skills deficient are to be provided priority with funds for these adult services. Basic skills deficient is defined in WIOA sec. 3(5), and an individual who lacks a secondary education diploma or HSE may qualify based on this standard. Additionally,

§ 680.600 provides Governors and Local WDBs with the authority to designate other priority populations. Individuals who lack a secondary education diploma or HSE could be designated by a Governor or Local WDB under that authority.

Under WIA, priority with adult funds was to be provided in the event that funding was limited; that provision was removed from WIOA. Thus, priority and the policies and procedures for determining priority are statutory requirements for the WIOA title I adult program. The Department refers a commenter to 20 CFR 678.430 for definitions of "basic career services" and "individualized career services" (see Joint WIOA Final Rule).

In addition, when participants are to be placed into training is a decision that must be made consistent with WIOA sec. 134(c)(3) and § 680.210.

Section 680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?

Comments: Commenters requested clarification on the meaning of "unlikely to return to a previous industry or occupation," and what is meant by "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters."

One commenter encouraged the removal of the "unlikely to return" to their previous industry/occupation criteria from the definition of dislocated worker, because it hinders the ability to serve individuals that have been laid off or terminated.

Further, a commenter stated that the process for determining eligibility as a dislocated worker through receipt of unemployment insurance or exhaustion of unemployment insurance currently is a cumbersome process. This commenter recommended that one-stop or the ES staff

have real time access to the unemployment insurance database for verification of eligibility of dislocated workers.

Department Response: WIOA defines "dislocated worker" under WIOA sec. 3(15), and requires the individual be "unlikely to return to a previous industry or occupation" under WIOA 3(15)(A)(iii). The regulation maintains this statutory definition. The Department has added regulatory text at § 680.130(b)(3) allowing for Governors and Local WDBs to establish policies and procedures for one-stop centers to use in determining when an individual is unlikely to return to his or her previous industry or occupation. Any policy or procedure must be consistent with § 680.660, which provides that separating service members meet this criterion.

The Department may utilize guidance and technical assistance to assist States and local areas in determining when an individual is "unlikely to return to a previous industry or occupation" or when an individual is "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters." No other changes have been made to the regulatory text in response to the comments.

Section 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Workforce Development Boards required and permitted to provide?

Comments: A commenter requested a definition of how Local WDBs are allowed flexibility when providing services with adult and dislocated worker funds. This commenter also stated that there would be a burden on States to track local flexibility of funds. Another commenter asked whether subgrantees would need to report expenditures for job seeker services, employer services, or coordination activities, as listed in proposed § 680.140(b)(1-3).

Department Response: Section 680.140 describes the required and permissible employment and training activities with WIOA title I adult and dislocated worker funds.

Paragraph (a) of § 680.140 describes the required activities a Local WDB must provide, which includes career and training services. These services are required under WIOA sec. 134(c)(2) and (3). Paragraph (b) lists the permissible activities a Local WDB may provide. Local WDBs have discretion in what permissible activities and services they provide. All expenditures must be tracked and documented by the State and Local WDB to ensure the proper administration of these funds. No changes have been made to the regulatory text in response to the comments. Section 680.140(b) is further discussed below.

Comments: A few commenters expressed support for the various provisions within proposed § 680.140 covering services for individuals with disabilities and recommended additional language be added to the regulation to urge Local WDBs to focus their optional services on this population because these services are permissive and not mandatory. Two commenters also encouraged the Department to reference veterans' priority of service in § 680.140(a).

A couple of commenters encouraged the Department to mention bridge programs explicitly, which are programs that prepare individuals with limited academic or English skills to succeed in postsecondary education and training programs, as an acceptable activity under WIOA, and to encourage their use in the Final Rule. Another commenter recommended that referrals by one-stop centers to regionally accredited secondary-level educational programs providing entry-level workforce preparation and/or postsecondary education and training activities be included as a basic service and counseling service.

Department Response: The commenters above refer to the permissible local employment and training activities under WIOA sec. 134(d) and § 680.140(b). Paragraph (b)(1) of § 680.140 describes the permissible "job seeker services" that may be provided. The one-stop delivery

system plays a vital role in providing career and training services to individuals with disabilities, as well as the customer supports that may be provided to help individuals with disabilities to navigate multiple services. The Department understands the commenters' desire to make these services to individuals with disabilities mandatory; however, WIOA states that these are permissible activities under WIOA sec. 134(d). The Department does encourage Local WDBs to provide these services for individuals with disabilities, veterans, and other individuals with barriers to employment. No changes have been made to the regulatory text in response to the comments for § 680.140(b)(1)(i) through (iv). The citation to transitional jobs at § 680.190 has been moved from § 680.830 to reflect the Department's position that transitional jobs are a type of work experience, and thus a career service.

Regarding the reference to veterans' priority of service, the regulation at § 680.650 ensures priority of service for veterans in all Department-funded employment and training programs.

The Department notes bridge programs may be an appropriate activity for individuals to obtain meaningful employment; however, bridge programs are not discussed in WIOA and are not included in the regulatory text.

Comments: A commenter recommended that career services for self-employed adults and dislocated workers be defined to include industry sector and/or entrepreneurship training for individuals who wish to remain self-employed.

Department Response: The Department does not propose to mandate any particular career services for self-employed adults and dislocated workers; these decisions are best made locally based on individual need. Decision-making about career and other services and training should be informed by information about in-demand industry sectors and occupations. The

Department notes that entrepreneurship training is allowed for adults and dislocated workers under WIOA sec. 134(c)(3)(D).

Comments: A commenter requested clarification regarding employer services and the relationship to career services provided to job seekers versus employer services provided to businesses. This commenter explained that services provided to employers do not appear to be considered a career service because there would be no specific job seeker to register. Furthermore, the commenter stated that delivery of employer services does not need to be procured for a one-stop center, but can be designated by the local elected officials.

Several commenters recommended that to serve both job seekers and employers effectively, the role of business services outreach staff should, in addition to supporting the priorities of the Local WDB, be focused on the goals of the individual WIOA titles. One commenter sought clarification on whether custom training, on-the-job training (OJT), and incumbent worker training were acceptable services to be offered under the business services function. This commenter also urged the Department to clarify the regulations to make clear that the operation of business services by the Local WDB itself and its staff are acceptable.

A commenter encouraged the Department to define "employment generating activities," which are prohibited by the proposed regulation.

Department Response: Business and employer services are a permissible local activity under § 680.140(b)(2); services to employers are not considered a career service that is a required activity under § 680.140(a). No changes have been made to the regulatory text in response to the comments at § 680.140(b)(2).

The Department acknowledges the comments about defining "employment generating activities," and has addressed them in § 683.245 of the preamble and regulations. The

Department notes that employer services described in § 680.140(b)(2) must not be used to encourage business relocation to the local area from another State or local area.

Comments: One commenter stated that it would be very difficult, if not impossible, to determine accurately when implementing a pay-for-performance training contract the amount of administrative funds that were spent on this specific activity because administrative funds may be pooled and that pooling includes the youth program. This commenter asserted a similar concern for percentage limitations associated with incumbent worker training (§ 680.800), transitional jobs (§ 680.820 in the NPRM; § 680.195 in this Final Rule), and work experience activities in the youth program (§ 681.590).

Department Response: WIOA allows Local WDBs to set aside and use up to 10 percent of their adult and dislocated worker funds on WIOA Pay-for-Performance contract strategies (see WIOA sec. 134(d)(1)(A)(iii) and § 683.500), up to 20 percent on incumbent worker training (see WIOA sec. 134(d)(4)), and up to 10 percent on transitional jobs (see WIOA sec. 134(d)(5)). See also § 680.140(b)(1)(v), (b)(4), and (b)(8). Administrative activities necessary to initiate or procure Pay-for-Performance contract strategies, incumbent worker training, and transitional jobs must be consistent with § 683.215, which discusses how to determine whether an activity is administrative or programmatic for purposes of WIOA. If the activity would be considered programmatic under § 683.215, then the cost would be subject to the caps discussed above. If the activity would be considered administrative under § 683.215, it may be paid for out of the Boards' usual administrative funds, and it is not subject to the caps. Therefore, the Board would not need to specifically account how much of the administrative funds are spent on these particular programs.

Section 680.150 What career services must be provided to adults and dislocated workers?

Comments: A commenter stated that the definition of career services should be clarified to include pre-screening, application assistance, and colocation of application assistance services for the programs for which career services one-stop centers must provide information and referrals.

Another commenter recommended that referrals to regionally accredited secondary-level educational programs providing entry-level workforce preparation and/or postsecondary education and training activities be included as part of basic services and counseling services. A commenter requested clarification regarding whether alternative secondary school (formerly General Education Diploma [GED]) preparation is considered a career service or a training service.

One commenter recommended that § 680.150(c) be revised to refer to activities provided for a "participant" and not a "registered participant" to avoid confusion resulting from "registrants" and "participants" being two separately defined terms. Another suggested that the Department revise the regulations to allow participants to opt out of follow-up services, as was allowed under the WIA regulations. A few commenters requested clarification on the meaning of "follow up services as appropriate."

A commenter recommended that supportive services such as tools, uniforms, bus passes, or childcare, be allowed for up to 1 year after the exit date of adults or dislocated workers, saying some individuals may need a little additional help to keep a job that may not have been known when the individual initially took the job.

A commenter association recommended the addition of new paragraphs within § 680.150 to (1) specify that career services can be provided by any of the one-stop partners, as opposed to having to be provided by a WIOA title I partner; and (2) create a framework by which prior

interviews, evaluations, and assessments of participants can be used for purposes of evaluating eligibility for career services.

Department Response: The Department has added "basic" before "career services" to ensure consistency with 20 CFR 678.430(a) in how these services are described (see Joint WIOA Final Rule). No changes have been made to the regulatory text in response to the comments at § 680.150(b).

Career services are defined in 20 CFR 678.430 (see Joint WIOA Final Rule) and WIOA sec. 134(c)(2). Pre-screening, application assistance, referrals, and other information all would qualify as basic career services under 20 CFR 678.430(a). Basic career services under § 680.150(a) must be made available and are key to ensuring high quality services throughout the one-stop delivery system.

The Department considers adult education and literacy activities (see WIOA sec. 3(3)) that lead to a secondary school diploma to be a training service. An entity that offers a program that leads to a secondary school diploma or its equivalent can be eligible as a State eligible training provider (ETP), see § 680.420. The Department notes, however, that if title I adult and dislocated worker funds are used for these activities, they must be done concurrently or in coordination with any training activities in WIOA sec. 134(c)(3)(D)(i) –(vii). The Department has added regulatory text to clarify this point at § 680.350.

The Department agrees with the suggestion that "registered participant" be changed to "participant" and has made this change in the regulatory text. The Department has added "as determined appropriate by the Local WDB" to proposed § 680.150(c) to clarify how the determination is made to provide follow-up services. This addition is consistent with the

statutory text at section 134(c)(2)(xiii), which states that follow-up services are provided "as appropriate."

The Department declines to make any change in regulatory text to allow the provision of supportive services for adult and dislocated workers for up to a year after exit; section 134(d)(2)(A) of WIOA requires that adults and dislocated workers must be participants to receive supportive services. The Department also declines to modify the regulatory text about the provision of career services. Career services are defined in 20 CFR 678.430, which is the one-stop section of the joint regulation, and they may be provided by any partner program. The Department has decided that the use of prior interviews, evaluations, and assessments of participants for the purpose of eligibility is to be determined by State and local policies.

Section 680.160 How are career services delivered?

Comments: A few commenters expressed opposition to a requirement that Local WDBs obtain a waiver before providing career services. One of these commenters stated that the NPRM requirement that Local WDBs receive a waiver before being allowed to deliver career services would be a major change and a significant burden because getting a waiver is not an easy process. This commenter recommended that the Department provide States with an easier, quicker process for requesting waivers.

A commenter recommended that, at a minimum, a waiver request should address: (1) why the waiver is necessary, (2) how granting the waiver would provide service to the affected area superior to that which would have been provided as the result of a competitive process; (3) why the prospective designee is the best choice as the local one-stop operator or provider of career services; and (4) what process was used in making the determination (including the specific data that supports it).

Department Response: For a Local WDB to provide career services, it must meet the requirements in WIOA sec. 107(g)(2), which allows for Local WDBs to be providers of career services of title I career services for adult and dislocated workers with the agreement of the CEO in the local area and the Governor. Although there is a waiver requirement for Local WDBs to provide training services under WIOA sec. 107(g)(1)(B) and § 679.410(c), which documents how Local WDBs may apply for a waiver with the State, there are no waiver requirements for Local WDBs to provide career services. No change is made in the regulatory text in response to these comments.

Section 680.170 What is the individual employment plan?

The Department has moved the proposed § 680.180 to § 680.170, so that the work experience regulation that was proposed as § 680.170 can be renumbered as § 680.180, closer to the transitional jobs provision at § 680.190. In § 680.170, the regulation also replaces the words "case manager" with "career planner" to be more consistent with the nomenclature used in WIOA

Comments: A few commenters requested clarification on the role of IEPs for all services categories of individuals and programs and urged the Department to ensure consistency at the program enrollment level, including when an IEP is required to be started/completed and some flexibility in serving the general public job seeker. Another commenter asked whether: (1) the development of an IEP requires participation under WIOA title I, (2) this service can be delivered by ES staff, or (3) this determination can be made at the local level.

Department Response: The Department strongly encourages the use of IEPs as a tool in the career planning process. However, there is no sequence of service requirement in WIOA and

determining when an IEP is appropriate for individuals is a local decision. The Department encourages Local WDBs to develop policies and procedures for the appropriate use of IEPs.

An IEP is an individualized career service and can be provided under either WIOA title I or the ES (as amended by WIOA title III and as described in § 652.206), which is decided locally and is a part of the Memorandum of Understanding (MOU) governing the role of the ES in the one-stop delivery system.

Section 680.180 What is an internship or work experience for adults and dislocated workers?

The Department has moved this proposed § 680.170 to § 680.180, so that this work experience regulation is renumbered to be closer to the transitional jobs provision at § 680.190.

Comments: A commenter stated that it is important that WIOA participants who are placed in work experience or internships are fully protected by the nation's wage and hour laws and regulations. This commenter recommended that the Department revise proposed § 680.170 by deleting the language allowing for paid and unpaid work experiences and adding a cross reference to the U.S. Department of Labor Wage and Hour Division (WHD) regulations and guidance concerning unpaid internships. Similarly, a commenter requested clarification on when work experience can be unpaid, including assessment of the implications of unpaid work as a potential violation of the Fair Labor Standards Act.

Department Response: The Department notes the comments and has added language to the regulatory text stating that internships and work experiences under WIOA may be paid or unpaid, as consistent with other laws, including the Fair Labor Standards Act. The Department will continue to use guidance and technical assistance to assist grantees in determining how WIOA intersects with other laws.

Comments: A commenter encouraged the Department to maintain a broad definition of work experience that is applicable to all core programs, reasoning that work experience is an invaluable tool to engage businesses and to support job seekers in overcoming barriers by gaining experience that leads to unsubsidized employment.

Department Response: The Department agrees with the commenter's suggestion and makes no change in the regulatory text.

Comments: A commenter asked whether there were limitations on the percentage of funds to be utilized for paid work experience.

Department Response: Work experiences may be paid or unpaid, consistent with the Fair Labor Standards Act and other applicable laws. Transitional jobs is a type of paid work experience described in §§ 680.190 and 680.195. A Local WDB may use up to 10 percent of funds allocated to the local area under section 133(b) of WIOA to provide transitional jobs. (Sec. 134(d)(5) of WIOA.) Transitional jobs also are subject to certain eligibility criteria along with comprehensive career and supportive services requirements. In addition to transitional jobs, other work experiences may be paid; to be eligible for these work experiences an individual must meet adult and dislocated worker program eligibility and there is no requirement for comprehensive career and supportive services. These other types of paid work experiences are not subject to a statutory funding cap.

Comments: Another commenter encouraged the Department to allow Local WDBs to determine the appropriate timeframe for internships and/or work experience based upon multiple factors, including industry standard and/or practice and the sector-based accepted length of time needed to acquire one or more relevant skills and/or industry-recognized credentials.

Department Response: The Department has set no minimum or maximum duration requirements for work experiences. These factors may be used by Governors and Local WDBs in making such determinations.

Section 680.190 What is a transitional job?

Comments: Many commenters asked for clarification of "transitional jobs" versus "work experience;" including exceptions to the 10 percent cap on transitional jobs, the similarities between transitional jobs and work experiences, and distinctions from OJT

Another commenter expressed concern that the distinctions between transitional jobs and OJT contracts in the NPRM are not clear enough and recommended that the Department expand on the differences in the Final Rule several ways: (1) unlike OJT, the program provider should act as employer of record and assume all responsibilities of the employer-employee relationship; (2) transitional jobs require a 100 percent wage subsidy, while OJT subsidize up to 75 percent of wages; (3) funds for transitional jobs support all components of the service strategy; (4) transitional jobs should be targeted at those job seekers most in need of intervention; and (5) transitional jobs may be structured as offsite placements with private-sector, public-sector, or nonprofit employers or as in-house social enterprise or work crew placements.

Department Response: The Department agrees with the recommendation of some commenters and has added language to § 680.180, which defines what an internship or work experience is for adults and dislocated workers and clarifies that transitional jobs are considered to be a type of work experience. The Department also has moved proposed §§ 680.830 and 680.840 to §§ 680.190 and 680.195 respectively.

The Department agrees with the comments made about the OJT contracts, i.e., that in transitional jobs programs the program provider may act as the employer of record; however,

there may be a joint employment relationship between the worker, the firm in which the worker is placed, and the program provider. The Department has added regulatory text defining transitional jobs as providing an individual with work experience that takes place within the context of an employee-employer relationship, in which the program provider may act as the employer, and with an opportunity to develop important workplace skills. The Department will provide further guidance and technical assistance on transitional jobs programs, including best practices.

Comments: Some commenters asked the Department to define "inconsistent work history." One of these commenters also requested a substantive quantifiable definition of the term "chronic unemployment." One commenter requested that the Department define "transitional jobs" and asked for clarification of the required funds for career services and supportive services that must be provided with transitional jobs. A couple of commenters recommended that the Department strengthen the definition of "transitional jobs" with further guidance and technical support to States and localities. These commenters also recommended that the Final Rule reiterate that the term means "wage-paid" subsidized employment consistent with other definitions in Federal law and agency guidance. Similarly, another commenter recommended that the Department define "transitional jobs" as "time-limited wage-paid experiences that are subsidized for individuals with barriers to employment who are chronically unemployed or have an inconsistent work history."

Department Response: The Department has decided that the definitions of "inconsistent work history" and "chronic unemployment" should be left to the Local WDBs and has added language to the regulatory text in § 680.190 to reflect this. The Department encourages Local WDBs to utilize information such as an individual's labor market history, unemployment status,

durations of unemployment, long-term unemployment, and other factors that the Local WDB may determine appropriate for defining these terms. The Department has added language to better define transitional jobs, including adding the terms “time-limited” and "wage-paid" in § 680.190. WIOA requires transitional jobs to include both comprehensive and supportive services. Local WDBs determine which comprehensive and supportive services are appropriate for each individual.

Comments: One commenter recommended that the Department and the Internal Revenue Service (IRS) identify an acceptable means of paying a training stipend that does not trigger the Patient Protection and Affordable Care Act (PPACA) regulations. Another commenter recommended specific language to amend proposed § 680.830 (as explained above, renumbered in the Final Rule to § 680.190) to articulate that people who participate in transitional jobs are not counted toward labor participation rates, that is, not counted as “employed persons” by the BLS.

Further, this commenter and others asserted that workers in transitional jobs should be classified as employees rather than contractors or trainees and should be subject to protections such as wage and hour laws, minimum wage laws, unemployment insurance, and workers compensation.

Department Response: The ACA employer responsibility provisions are governed by the IRS and any training and employment agreements the grantees make may be subject to those provisions. The Department encourages grantees to utilize IRS resources and guidance when determining those responsibilities. The Department will issue subsequent guidance and technical assistance to help identify appropriate IRS resources and guidance. Transitional jobs and other work-based training often establish an employer-employee relationship that must follow

applicable laws and regulations that govern such relationships, including: wage and hour laws, minimum wage laws, unemployment insurance, and workers' compensation.

The suggestion that transitional jobs not count in the labor force participation rate that is captured by the Current Population Survey that the BLS administers is not germane to WIOA or these regulations.

Comments: A couple of commenters recommended that transitional jobs programs be targeted at populations with multiple employment barriers and people with sporadic, problematic and inconsistent work histories within the 2 years prior to engaging in the program. These commenters recommended targeting people experiencing homelessness; opportunity youth; people reentering communities from prison and those with criminal records; long-term recipients of TANF, SNAP and other public benefits; low-income noncustodial parents; and other chronically unemployed people.

Some commenters recommended that allowable use of funds should include: wages paid to transitional jobs program participants during their subsidized job placement; funding for employment-related case management and support such as transportation vouchers and clothing allowances; funding for job retention services for no fewer than 6 months after placement in a subsidized job; supporting integration of literacy, adult basic education, training, and career advancement resources; and supporting program capacity-building needs, such as adding additional staff and/or infrastructure improvements as appropriate.

Department Response: The Department considers these recommended criteria to be appropriate factors that a Local WDB may use when determining who is eligible for a transitional job and which groups to target. Thus, no change is made in the regulatory text. The Department will provide further guidance and technical assistance as appropriate.

Allowable uses of transitional jobs funds include wages to the participant and supportive services such as transportation vouchers. The Department encourages local staff to align services and provide the appropriate mix of services to meet individuals' needs. Staff and infrastructure improvements are not allowable uses of transitional jobs funds.

Comments: Commenters asserted that transitional jobs are typically 3 to 9 months and seldom longer than 1 year. They recommended that transitional job arrangements include the following in order to avoid displacement of incumbent workers: strong prohibitions against substitution and displacement; protections for recently laid-off employees, workers on leave, and striking workers; and preservation of recall rights under collective bargaining agreements for union employees of transitional job employer partners.

Department Response: The regulations at § 683.270 contain safeguards against displacement of employees that are applicable to WIOA title I employment and training activities, including transitional jobs. The Department also added § 680.840, which clarifies that funds for work-based training and work experiences may not be used to fill openings that resulted from a labor dispute.

Comments: Commenters recommended several ways to maximize the likelihood that workers are retained in unsubsidized employment after a transitional job program: (1) monitoring participants and providing retention services for at least 6 months following unsubsidized job placement; (2) regular, frequent follow-up contacts by retention specialists; (3) ongoing retention-focused activities such as workshops, peer learning groups and support groups; (4) retention incentives in the form of monetary bonuses or nonmonetary incentives such as child care services; and (5) reemployment services for workers who are terminated from unsubsidized employment. The commenters also recommended several specific structure

elements and polices that they asserted are essential: (1) a flexible length of time in subsidized employment based on the skill development needs of the individual; (2) subsidized employment offered should be no fewer than 20 hours per week and workers should be allowed to remain in the subsidized employment until unsubsidized employment slots are available for transition; (3) employers should support participant development and skill building; and (4) personal contact and consistent follow-up should be provided among program staff, participants, and employment supervisors, as well as opportunities to work with a case manager for the participant to address serious issues if they arise.

Department Response: The Department declines to propose a minimum or maximum duration for transitional jobs that could create unnecessary restrictions that may prevent an individual from obtaining unsubsidized employment. The Department also declines to create a one-size-fits-all approach to transitional jobs, and considers these decisions are best made by the Local WDB and the individual's career planner. No changes have been made to the regulatory text in response to these comments. The Department will address these issues further through guidance and technical assistance.

Comments: A commenter recommended that proposed § 680.830 (as explained above, renumbered in the Final Rule to § 680.190) be amended to refer to "*time-limited* work experience" to be consistent with the language and intent of WIOA sec. 134(d)(5).

Department Response: The Department agrees with this comment and has amended the language in § 680.190 to include the phrase "time-limited work experience."

Comments: Another commenter asked what is the employer reimbursement rate and contract length?

Department Response: The employer reimbursement rate is to be determined by the Local WDB and can be up to 100 percent. The Department encourages Local WDBs to work with employers that are willing to provide a certain percentage of the cost of the transitional job.

Section 680.195 What funds may be used for transitional jobs?

Comments: Some commenters requested clarification on the 10 percent limit on use of funds. In particular, some commenters asked if the 10 percent limit would apply to work experience as an activity. A State WDB asked whether all adult and dislocated workers transitional job work experience is subject to the 10 percent cap.

Department Response: The Department considers transitional jobs to be a targeted service that includes comprehensive career and supportive services. Non-transitional job work experiences have no requirement that they must be paid or unpaid, and they do not have the same requirements for comprehensive career and supportive services. They also are not subject to the 10 percent funding cap that transitional jobs are. The Department has added text to the regulatory text to further clarify the 10 percent cap and that transitional jobs, defining them as a certain type of work experience which is targeted to a specific population that is: "chronically unemployed" or has an "inconsistent work history."

Comments: A commenter asked for clarification on what "comprehensive career services" means when required to be part of transitional jobs, and asked if it includes basic career services, individualized career services, or both, and if there is a sequence of services before service can be provided.

Department Response: Comprehensive career services may include both basic and individualized career services and are based on the needs of the participant. Comprehensive career services and supportive services, which are required to be provided as part of any

transitional jobs strategy, are not subject to the 10 percent cap described at § 680.195. However, the Department is providing flexibility to allow for these services to be provided with the funds set-aside for transitional jobs. Local areas determine which comprehensive and supportive services are appropriate for each individual. There is no sequence of service required.

3. Subpart B – Training Services

Training services are discussed at §§ 680.200 through 680.230. WIOA is designed to increase participant access to training services. Training services are provided to equip individuals to enter the workforce and retain employment. Training services may include, for example, occupational skills training, OJT, registered apprenticeship (which incorporates both OJT and classroom training), incumbent worker training, pre-apprenticeship training, workplace training with related instruction, training programs operated by the private sector, skill upgrading and retraining, entrepreneurial training, and transitional jobs. Training services are available for individuals who, after interview, evaluation or assessment, and case management are determined to be unlikely or unable to obtain or retain employment that leads to self-sufficiency or higher wages than previous employment through career services alone. The participant must be determined to be in need of training services and possess the skills and qualifications to participate successfully in the selected program. It also must be determined that they are unlikely or unable to retain employment that leads to self-sufficiency or higher wages. Some participants may need additional services to assist their vocational training, such as job readiness training, literacy activities including English language training, and customized training.

Comments: Comments generally were supportive of the Department's flexible approach to the delivery of training services for the WIOA title I adult and dislocated worker programs.

Department Response: The Department has updated and clarified language regarding how registered apprenticeship and other apprenticeships may be utilized as a training solution for adult and dislocated worker customers.

Section 680.200 What are training services for adults and dislocated workers?

Comments: Two commenters strongly recommended that local flexibility be preserved as it relates to determining the appropriate availability, structure, and mix of training services that are offered locally to individuals and employers. Another commenter encouraged the Department to avoid restrictive standards and allow customization of varying training practices because there is slower adoption among small businesses of newer best practices. This commenter stated that this flexibility is particularly important when considering the effectiveness of competency-based training versus number of hours trained.

Department Response: The Department agrees that it is important to maintain local flexibility to make decisions about the appropriate mix of career and training services and has provided local flexibility in making those determinations.

Comments: A few commenters provided input on pre-apprenticeships and non-registered apprenticeships. One commenter encouraged the Department to add more flexibility into the regulations as they relate to pre-apprenticeships and non-registered apprenticeships so that manufacturers can develop and use programs that best meet their unique needs. Another commenter cautioned the Department not to discriminate against non-registered apprenticeships because many smaller employers rely on these types of programs. One commenter recommended that employer-sponsored craft training programs that are not registered, but that lead to an industry-recognized credential, should have an automatic initial ETP determination and then, be required to satisfy continued eligibility requirements after 1 year.

Department Response: WIOA sec. 122(a)(2)(B) provides automatic qualification for registered apprenticeship programs on eligible training provider lists (ETPLs) and WIOA in general provides an overall emphasis on registered apprenticeship programs throughout the one-stop delivery system. The Department has used this emphasis to highlight the unique flexibilities the one-stop delivery system has in making use of registered apprenticeship programs to provide training services, including Individual Training Accounts (ITAs) and OJT. This in no way restricts pre-apprenticeship programs and non-registered apprenticeship programs from being an ETP according to the criteria in WIOA sec. 122(a). These training providers, in order to receive ITA payments, must go through the same eligibility criteria as other training providers on the ETPL. The Department considers programs that lead to an industry-recognized credential as valuable providers of training, and these programs are welcome to apply to become ETPs. The Department declines to make changes to the regulatory text in response to these comments.

Comments: One commenter encouraged the Department to allow adult education providers to provide workforce preparation rather than training in sector work. The commenter stated that if community-based adult education providers were required to offer sector training, most of these providers would have to be completely transformed, would require significant capacity boosts, would be less likely to reach the hard-to-serve, and would have drastically reduced enrollment.

One commenter requested clarification on the role of adult basic education.

Department Response: Under WIOA sec 134(c)(3)(D)(x), title I adult and dislocated worker funds may be used to support adult education and literacy activities, provided concurrently or in combination with other training services. The Department has added regulatory text clarifying this use of WIOA title I adult and dislocated worker funds in

§ 680.350. This regulation involving appropriate uses of adult education and literacy activities only applies to WIOA title I adult and dislocated worker funds.

Comments: A commenter expressed support for having both OJT and classroom training available to adult and dislocated workers. Two commenters supported the inclusion of integrated English literacy/civics education programs in WIOA. These commenters recommended that the Departments of Labor and Education provide diverse examples of how such programs may be designed, including ways in which they may represent components of sector partnerships and/or career pathways initiatives, and how they may facilitate the economic, linguistic, and civic integration of participants.

Department Response: The Department of Labor will work with the Department of Education to provide additional guidance and technical assistance on sector partnership and career pathways initiatives under WIOA, including how to integrate programs such as those the commenters highlighted.

Comments: One commenter described the benefits of entrepreneurship training and encouraged the Department to revise performance indicators that would create a barrier to the inclusion of entrepreneurship training in the WIOA public workforce system.

A few commenters requested clarification on what constitutes entrepreneurial training as cited at sec. 134(c)(3)(D)(vii) of WIOA.

Department Response: Entrepreneurial training is an allowable training activity, and the Department will issue guidance and technical assistance to support its use and to address performance accountability. Additionally, the Department has addressed instances where quarterly wage records are not traditionally available for performance accountability purposes, as

may be the case where participants have received entrepreneurial training, in 20 CFR 677.175 (see Joint WIOA Final Rule).

Comments: Two commenters recommended that the regulations explicitly recognize the need for direct support professionals to address the growing "direct support worker crisis".

Department Response: WIOA sec. 108(b), which lists the required contents of local plans, states that the plans must include an analysis of existing and emerging in-demand industry sectors and occupations including the employment needs of employers in those sectors and occupations. Training programs for WIOA title I adult and dislocated worker programs are to be linked to in-demand industries and occupations in the local plan. The Final Rule does not explicitly recognize any specific industry or occupation needed to meet current workforce needs because these needs may change and often are based on State and local labor markets.

Comments: One commenter suggested that the regulations should better articulate the important role for digital literacy instructions, reasoning that these skills are critical to job advancement as well as educational credentials, including high school equivalency diplomas. Additionally, this commenter urged the Department to adopt a flexible framework as it relates to the integration of occupational skills training, which the commenter stated should include a student-centered approach in which co-enrollment in workforce education programs be optional rather than required.

Department Response: The Department considers digital literacy to be a pre-vocational service or a workforce preparation activity, both of which are considered to be individualized career services and not training services. The Department agrees that digital literacy is an important skill to succeed in the 21st century workforce, but considers it to be a service that may be made available based on individual need as determined by the local area. While WIOA

encourages program alignment, and co-enrollment is one way to align service delivery, the Department does not require co-enrollment across programs.

Comments: A commenter suggested that the Department provide the list of training services found in WIOA in the regulations rather than simply referencing the statutory citation.

Department Response: The Department agrees with the recommendation and has adjusted the regulatory text of § 680.200 to include the list of training services provided in WIOA sec.134(c)(3)(D).

Comments: Commenters requested clarification on whether alternative secondary school (formerly GED) preparation is considered a career service or a training service.

Department Response: The Department considers a program that leads to a secondary school diploma to be a training service. A program that leads to a secondary school diploma or its equivalent can be eligible as a State ETP, see § 680.420.

Section 680.210 Who may receive training services?

Comments: A commenter asked who would be responsible for determining what constitutes self-sufficiency when determining who may receive training services under proposed § 680.210(a)(1).

Department Response: Under WIOA sec. 134(a)(3)(A)(xii), States may use statewide funds reserved by the Governor for adopting, calculating, or commissioning for approval an economic self-sufficiency standard for the State that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations. Under WIOA sec. 134(d)(1)(A)(x), local areas may use employment and training funds to adjust the State standard for local considerations, or can adopt, calculate, or commission for approval a self-sufficiency standard for the local area that specifies the same

factors required of the State standard. Under WIOA sec. 134(c)(3)(A)(i) individuals who receive training must be unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services. Additionally, they must be in need of training services to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment. The one-stop center is responsible for determining if an individual meets the self-sufficiency standard set by this process.

Comments: A commenter requested clarification about the division of responsibilities between one-stop centers and local service providers, including clarification on who is responsible for determining who can receive training services.

Department Response: The Department considers the ultimate responsibility for determining who can receive training services to rest with the Local WDB. However, through the service procurement process and other arrangements established through the local MOU, the board may delegate those responsibilities to the one-stop center or local service providers.

Comments: A commenter disagreed with the language in proposed § 680.210(a) that indicates that a determination needs to be made that the training will result in receipt of wages higher than wages from previous employment, reasoning that economic conditions can make this difficult.

Department Response: The Department notes that § 680.210(a) mirrors the requirements for title I adult and dislocated worker services found in WIOA sec. 134(c)(3)(A), and that training that leads to a “comparable wage” also is allowed for individuals to receive training services. No changes have been made to the regulatory text in response to the comments.

Comments: A commenter recommended that the Department make efforts to inform employers of the availability of training services to assist workers on short-term or long-term disability programs.

Department Response: The Department considers this to be an example of an appropriate business or employer service that may be provided through the one-stop delivery system. While the Department will not add language to the regulatory text mandating specific employer services, the Department does recognize the importance of ensuring quality services for individuals with disabilities and will utilize guidance and technical assistance to ensure best practices in serving businesses and individuals with disabilities.

Comments: A commenter suggested that the regulations should direct one-stop centers to take into account older workers' different training needs and lesser access to financial aid, and make sure that older workers are not discriminated against in access to WIOA-funded ITAs.

Department Response: Older workers are identified as a target population for WIOA services, based on their inclusion in the definition of individuals with a barrier to employment in WIOA sec. 3(24). The Department will issue guidance and technical assistance on best practices in providing career and training services to older workers.

Section 680.220 Are there particular career services an individual must receive before receiving training services under the Workforce Innovation and Opportunity Act?

Comments: One commenter stated that there should be no required sequence of services prior to providing training services to allow more flexibility in meeting the needs of customers. Another commenter asked whether there is a frequency rate permitted to bypass career services and whether bypassing career services before training was considered to be an exception.

One commenter requested further guidance and direction on how Local WDBs should document the circumstances that justify determinations that training services should be provided.

Department Response: There is no sequence of service requirement and therefore, no requirement that career services must be provided before training services. Section 680.220(b) states, if training services are provided without career services, the Local WDB must document the circumstances that justified its determination to provide training without career services. Eligibility for training must be determined by an interview, evaluation, or assessment, and career planning or any other method through which the one-stop partner or partners can obtain enough information to make an eligibility determination for training services. Paragraph (b) of § 680.220 requires a case file that includes a determination of need for training services, based on the criteria discussed in § 680.220(a). There is no frequency requirement; the need for training services should be determined prior to their provision. There have been no changes to the regulatory text in response to these comments.

Comments: Several commenters requested clarification as to how far back an assessment could have been conducted to satisfy the prerequisite for training services.

Department Response: The Department does not mandate a certain length of time that previous assessments may go back; however, the Department expects that the previous assessments must be recent. The Department recommends that Governors and Local WDBs develop policies for the use of recent assessments that are appropriate for the individual and the one-stop center. The recent assessment must have sufficient information to make an eligibility determination for training services.

Comments: A commenter recommended replacing the references to “eligibility” and “eligible” in proposed § 680.220(a) with “determined appropriate,” “suitable,” or “ability to

benefit" to make it clear that this is not an additional eligibility determination beyond the eligibility determination conducted in § 680.110.

Department Response: WIOA sec. 134(c)(3)(A) refers to "eligibility" for training services and this language is incorporated in the regulatory text. The Department recognizes that there are two types of eligibility – eligibility for program services and eligibility for training services. An individual must meet program service eligibility to be considered for training service eligibility.

Comments: A commenter stated that the proposed steps required before a participant can receive training are appropriate for a customer who is in career transition, but questioned the appropriateness of the path where an employed worker is in need of skills upgrade to achieve economic self-sufficiency.

Another commenter encouraged the addition of a provision that training for jobs that fall below economic self-sufficiency standards also must include ongoing training post-hire for career ladders within the industry and take into consideration other factors including benefits, retirement, vacation, and education that can mitigate and improve lower wage jobs.

Department Response: The steps before a participant can be determined eligible for training services in the regulatory text are the minimum required by WIOA sec 134(c)(3)(A). The Department allows flexibility for local areas to develop methods to provide services for individuals in need of a skills upgrade to achieve economic self-sufficiency. As part of the training eligibility, training services provided must be determined to lead to economic self-sufficiency or wages comparable to or higher than previous employment.

Section 680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

Comments: A commenter suggested that the Department revise the regulations to require, rather than recommend, that one-stop centers and partners take into account the full cost of training, including the cost of supportive services, when coordinating grant assistance.

Department Response: The Department considers the full cost of training services to be an important factor when coordinating assistance from other grants or resources. The Department strongly encourages this coordination and consideration be taken into account. WIOA allows for one-stop centers or partners to make this a consideration and does not require it. Therefore, the Department has changed "should" to "may" in § 680.230(a).

Comments: Some commenters recommended revisions to the proposed regulations as they relate to reimbursement of WIOA funds for participants who eventually receive Pell Grants. Specifically, because of the difficulties associated with implementing the proposed framework, these commenters recommended that WIOA funds not be reimbursed in situations where a Pell Grant is subsequently awarded after a one-stop center has paid for training. A commenter asked whether required educational fees are considered part of the training expenses or education-related expenses. This commenter sought clarification on this issue, but recommended that they be considered training expenses and not education-related expenses.

Department Response: The Department maintained the requirements of Pell Grant reimbursement, as described in § 680.230(c). WIOA sec 134(c)(3)(B)(ii) requires reimbursements to local areas from Federal Pell Grants to an individual who received WIOA title I training services while his or her Pell Grant was pending. The Department agrees with the commenters' suggestion that educational fees be considered part of the training expenses that should be reimbursed to the local area and has added language in § 680.230(c) to require this reimbursement.

Comments: A commenter stated that WIOA funds should be directed toward Temporary Assistance for Needy Families (TANF) recipients to enhance the work and training needs of the public assistance population without a requirement that TANF funds first be considered. Furthermore, the commenter stated that when resources in a local area are limited, local areas are best suited to determine which funds are dedicated to provide training and WIOA should be a primary funding source.

Department Response: The Department declines to make a change in the regulatory text at § 680.230(b). WIOA funds supplement other sources of training grants and do not supplant them.

Comments: To ensure consistency with previous Federal guidance, a commenter suggested that the Department add language to § 680.230 to clarify that education and training benefits earned by veterans are not required to be coordinated with training funds available under WIOA title I.

Department Response: While the Department declines to make a change in the regulatory text, it notes that the Department of Veterans Affairs benefits for education and training services are not included in the category of "other sources of training grants" listed in § 680.230(b). Therefore, veterans and spouses are not required to first use any available benefit entitlements associated with their military service before being considered eligible for WIOA funded training, and one-stop centers are not required to consider the availability of those funds.

Comments: Some commenters recommended that the Department clarify that WIOA title I funds can support title II adult education programs, as the WIOA sec. 134(c)(3) definition of training includes "adult education and literacy activities, including activities of English language acquisition and integrated education and training programs" at sec. 134(c)(3)(x). Commenters

asserted that this clarification was needed as expeditiously as possible so that the planning processes in the States can proceed efficiently.

Department Response: Under WIOA sec. 134(c)(3)(D)(x), title I adult and dislocated worker funds may be used to support adult education and literacy activities, provided concurrently or in combination with other training services. The Department has added regulatory text clarifying this use of WIOA title I adult and dislocated worker funds in § 680.350. This regulation involving appropriate uses of adult education and literacy activities only applies to WIOA title I adult and dislocated worker funds.

Comments: Because availability of training assistance depends on whether participants have access to other sources to pay for training, a commenter strongly encouraged the Department to stress to Local WDBs the importance of the optional services outlined in § 680.140 for individuals with disabilities.

Department Response: The Department identifies in § 680.140 all of the required and permissible WIOA title I adult and dislocated worker services that Local WDBs may provide. The Department considers the permissible activities described in § 680.140(b) that may help individuals with disabilities to navigate among multiple services and activities to be important. The Department also has listed "reasonable accommodations for individuals with disabilities" to be an allowable supportive service in § 680.900.

4. Subpart C – Individual Training Accounts

Individual Training Accounts (ITAs) are key tools used in the delivery of many training services. The Department seeks to provide maximum flexibility to State and local programs in managing ITAs. These regulations do not establish the procedures for making payments, restrictions on the duration or amounts of the ITA, or policies regarding exceptions to the limits.

The authority to make those decisions resides with the State or Local WDBs. The authority that States or Local WDBs may use to restrict the duration of ITAs or restrict funding amounts must not be used to establish limits that arbitrarily exclude eligible training providers.

Through the one-stop center, individuals will be provided with quality and performance information on providers of training and, with effective career services, case management, and career planning with the ITA as the payment mechanism. ITAs allow participants the opportunity to choose the training provider that best meets their needs. Under WIOA, ITAs can more easily support placing participants into registered apprenticeship programs.

Section 680.300 How are training services provided?

Comments: A commenter expressed support for the ability to pay an ITA at the beginning of the training program rather than on an incremental basis, because it would allow Local WDBs to budget and manage their ITAs much more easily, eliminates the concern about putting customers into training that straddles 2 program years, and simplifies the determination of how much carry over funding to include in the next program year's budget.

Department Response: The Department considers it important to maintain flexibility in how ITA payments are made to support Local WDBs to use the most effective payment mechanisms. There have been no changes to the regulatory text in response to these comments.

Section 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?

Comments: A few commenters expressed support for the approach proposed in § 680.320. One commenter expressed support for the opportunity to contract for services rather than rely solely on ITAs, potentially support streamlining and more effective administration and planning for training providers. Another commenter expressed support for the training of

cohorts, allowing States and local areas to contract with providers to assist groups of participants through one contract for services with defined goals and outcomes, rather than the administratively burdensome process of having each individual participant request services from providers through an ITA. Another commenter supported the Department's detailed list of circumstances under which a mechanism other than an ITA may be used to provide training services.

Several commenters provided input on funding mechanisms for training for individuals with barriers to employment. One commenter expressed support for allowing local areas to contract directly with training providers to supply training that will effectively service individuals with barriers to employment, expanding innovative and effective models for helping participants obtain industry-recognized credentials. Another commenter recommended that the Department recognize the need for coordination with vocational rehabilitation programs when addressing services for individuals with disabilities to avoid duplication of effort.

Department Response: The Department generally received supportive comments about the use of alternative methods to ITAs. The Department encourages coordination with Vocational Rehabilitation programs when serving individuals with disabilities to ensure effective service delivery. No changes have been made to the regulatory text in response to the comments, but the Department is adding, "and the local area has fulfilled the consumer choice requirements of § 680.340" to § 680.320(a), to ensure that the statutory requirement at WIOA sec. 134(c)(3)(G)(ii)(I) is included. This provision requires that a local area have a full ITA system in place even if it decides to provide training through contracts because one or more of the situations in § 680.320(a)(1-5) applies. Section 680.320(c) provides that the local plan describe

the process to be used in all cases to select training under a contract to be consistent with WIOA sec. 108(b)(16).

Comments: A few commenters recommended that the Department clarify which individuals are considered to have a barrier to employment as a result of being an English language learner. Specifically, these commenters asserted that the preamble and the regulatory text differ in that one requires that three elements be met ((1) English language learners, (2) individuals who have low levels of literacy, (3) individuals facing substantial cultural barriers) while the other allows any one element as triggering categorization of having a barrier to employment. One commenter asked that the Department add a definition of "ex-offender" and encouraged the Department to include individuals with deferred sentences to be included within the definition because these individuals encounter similar barriers to employment as those individuals who actually spend time incarcerated. Another commenter asserted that the regulation should include employer incentives to encourage the hiring of ex-offenders.

Department Response: WIOA sec. 3(24) defines "individuals with barriers to employment," and WIOA sec. 3(24)(I) includes the following groups that qualify for this definition: "Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers." The Department clarifies that if an individual meets any one of the three criteria in WIOA sec. 3(24)(I), that individual may be considered to have a barrier to employment. WIOA defines "English language learner" in WIOA sec. 203(7) and is one of the criteria that may be met to be considered an individual with a barrier to employment. The Department also considers the definition of "literacy" provided in WIOA sec. 203(13) as the standard to be used for determining if an individual is considered to have low literacy, and therefore a barrier to employment. The Department will use guidance and

technical assistance to States and Local WDBs to aid in determining when these elements are met. The term "offender" is defined in WIOA sec. 3(38) and the Department considers this to be the basis by which an individual is determined to be an "ex-offender." The Department declines to alter the regulatory text to include employer incentives for hiring of specific groups.

Comments: One commenter expressed support for the inclusion of "older individuals" in the list of barriers to employment, reasoning that the aging community has more challenges than younger workers in regaining employment once it has been lost and are more likely to be among the long term unemployed. Two commenters requested that the Department define the duration of unemployment that must be reached for an individual to be considered a long term unemployed individual.

Department Response: The Department generally defers to the Bureau of Labor Statistics (BLS) definition and will provide additional guidance to States and local areas on long-term unemployed.

Comments: Another commenter urged the Department to provide flexibility and guidance to use ITA funds concurrently or successively with paid work experience or OJT, reasoning that this combined use of ITA/OJT or ITA/paid work experience would provide additional benefits to the participants.

Department Response: The Department notes that there is no prohibition on the combined use of ITAs and OJT as well as any other contracted training services under WIOA sec. 134(c)(3)(G)(iv). These decisions must be based on individual need and they must be paying for separate program elements. There also is no prohibition on using career services, such as work experience, in combination with ITAs.

Comments: A commenter asked how the Department defines "institution of higher education" as the term relates to funding mechanisms for training services in proposed § 680.320.

Department Response: The term "institution of higher education" is defined in WIOA sec. 3(28); the Department has added this citation into the regulatory text in § 680.320(a)(4).

Comments: One commenter recommended a minor technical correction to proposed § 680.320(a)(4) to replace the phrase "will facilitate" with "in order to facilitate."

Department Response: The Department agrees with the commenter's suggestion and has made this nonsubstantive correction in the regulatory text in § 680.320(a)(4).

Section 680.330 How can Individual Training Accounts, supportive services, and needs-related payment be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?

In this section, a new paragraph (a) was created, and proposed paragraph (a) is now (a)(1). Similarly, proposed paragraph (b) is now (a)(2). Proposed paragraph (c) has been renumbered to (b), and the following proposed paragraphs (d) and (e) are now (c) and (d).

Comments: A few commenters expressed support for allowing ITA funding to be used to pay for supportive services and needs-related payments to support the placement of a participant into a registered apprenticeship program. A commenter asked whether supportive services would be provided throughout a multi-year apprenticeship and whether supportive services would be provided to an employed individual participating in an apprenticeship. Additionally, the commenter asked how WIOA would assist an already employed worker who moves up the career ladder and is put into an apprenticeship either through OJT, ITA, or support services.

Another commenter stated that one-stop centers should provide career services and supportive services during the final year of an apprenticeship because this is a crucial time that can directly lead to employment.

Some commenters stated that there should be no limitations placed on program service funding, including incumbent worker funding, which these commenters described as possibly the most appropriate funding to serve apprentices. In regard to incumbent worker funding, these commenters said that some companies may select current employees to upskill in a registered apprenticeship program given the length of the investment and the increased likelihood of the individual remaining engaged.

Department Response: The Department refers to the regulatory text in §§ 680.900 through 680.920, the general requirements for supportive services. Supportive services may be used for both employed and unemployed individuals to support their participation in career and/or training services. Decisions about the provision of supportive services, including the duration, timing, and type, are to be made by the Local WDB.

The Department refers to the regulatory text in §§ 680.700 through 680.750 and in particular § 680.710, which discusses the requirements for OJT contracts for employed workers. Incumbent worker training may be an appropriate service that would help an individual move up a career ladder within an apprenticeship program.

Comments: A commenter recommended that the Department revise proposed § 680.330(b) (renumbered in regulatory text as § 680.320(a)(2)) to allow for payments from ITAs to non-profit, joint labor-management training to defray the cost of providing apprenticeship or pre-apprenticeship training for programs that do not charge "tuition." This commenter suggested that these payments should include not only the pro-rata cost of delivering

direct training to enrollees, but also should cover costs incurred to retain third-party providers. Two commenters stated that ITAs could be used to pay for pre-requisites for apprenticeship such as math courses, required education courses, and/or certifications as part of the work-based experience. Another commenter encouraged the Department to support the use of ITAs for competency-based apprenticeship models.

Department Response: The Department agrees with the comment that the term "tuition" does not reflect the funding arrangements of registered apprenticeship programs and has changed the text in § 680.330(a)(2) to change it to "Training services provided under a registered apprenticeship program" to address this and be consistent with the way the Department refers to other types of training. The other suggestions from commenters about allowable uses for ITA funds are acceptable as long as the providers of those services are on the ETPL. No other changes have been made to the regulatory text in response to the comments.

Comments: A commenter recommended that the regulations should allow for contracted apprenticeship programs as well as the placement of trainees into these programs solely through the ITA system, which the commenter described as not allowing for the easy organization of cohort-based programs. This commenter asserted that cohort-based apprenticeships and pre-apprenticeships can work with students recruited through the one-stop delivery system as well as those recruited from outside the system but would require a threshold number of trainees to be cost effective. The commenter concluded that the availability of trainee cohort classes in apprenticeship and pre-apprenticeship programs is a cost-effective approach to training.

Department Response: The Department considers that these types of training cohorts are allowable provided that the individuals meet the training eligibility requirements and the training providers are on the ETPL.

Comments: A commenter expressed the desire to be able to use ITAs to pay for apprenticeship programs that are not on the ETPL and that can last for many years to ensure that participants receive the training needed and that the local area is able to capture all applicable credentials received for performance purposes. Similarly, a commenter asked how long WIOA enrollment lasts past the 6 months of OJT if an apprenticeship lasts multiple years. This commenter also asked how a credential is documented if a WIOA participant exits the system prior to completion of the apprenticeship.

Department Response: To receive funds from an ITA, the training provider must be on the ETPL. The Department encourages interested providers to apply to be ETPs. The Department is issuing guidance about the credential measures in performance. WIOA enrollment is governed by the definitions of "participant" and "exit" in 20 CFR 677.150 (see Joint WIOA Final Rule). Local areas can develop ITA contracts within the framework of these definitions and the requirements for ITAs. Training services should be provided based on the needs of the individual and ITAs should be structured to address those needs.

Comments: To expand pre-apprenticeships and apprenticeships, some commenters recommended that the one-stop centers be given authority to initiate the application for registered apprenticeships. A commenter recommended that one-stop centers build and maintain relationships with apprenticeship programs that operate within their region to provide a point of contact for individuals that would like to enroll. To serve individuals enrolled in pre-apprenticeship or registered apprenticeship programs best, a commenter suggested including a regulatory requirement that the one-stop delivery system receive technical assistance to help expand one-stop center capacity to serve women entering these training programs.

Department Response: There is no prohibition in WIOA on one-stop centers initiating applications for registered apprenticeships. The Department encourages Local WDBs to partner with registered apprenticeships, work to align service delivery, and make appropriate arrangements to build on these partnerships. The Department encourages the one-stop delivery system to help populations access training in nontraditional employment and will provide technical assistance to share best practices on this subject.

Comments: Two commenters listed the following ways in which a one-stop delivery system could serve the pre-apprenticeship programs, including, marketing, referrals, training costs, direct placements in registered apprenticeships, and use of OJT funds.

Department Response: The Department considers these recommendations to be examples of best practices to be shared through guidance and technical assistance.

Comments: A commenter requested clarification on several issues related to pre-apprenticeships: (1) with pre-apprenticeship programs moving to ITAs and therefore onto the ETPL, is the expectation that all other intensive service providers also will be included in the ITAs and ETPL; (2) the treatment of pre-apprenticeship programs that are not linked to a registered apprenticeship under WIOA; and (3) whether an out-of-school youth under 18 or an in-school youth be approved for an ITA for a pre-apprenticeship program?

Department Response: Pre-apprenticeship programs may be eligible for an ITA if they are on the ETPL. The Department encourages pre-apprenticeship programs that provide training services under an ITA to apply to be an ETP. The Department considers pre-apprenticeship programs to be directly partnered with at least one registered apprenticeship program; programs that do not meet this criterion are not considered a pre-apprenticeship program for the purposes

of WIOA. In order to receive an ITA under WIOA title I adult and dislocated worker programs, an individual must meet program eligibility criteria as well as the training eligibility criteria.

Section 680.340 What are the requirements for consumer choice?

Comments: A commenter indicated that proposed § 680.340 does not speak effectively to the concept of "consumer choice." This commenter stated that it would take serious efforts by the Department to develop more extensive information regarding the learning providers to inform individuals seeking training opportunities properly. Furthermore, the commenter asserted that posting information about eligible trainers has not proven to assist the learner.

Department Response: The regulations on consumer choice are consistent with the language in WIOA sec 134(c)(3)(F). The Department emphasizes the importance of performance information on training providers to ensure consumers may make an informed assessment of their training options. The Department considers the role of the career planner as critical to support individuals to make well-informed training decisions. Career planners are responsible for making training eligibility determinations, and these determinations require that States and local make available high quality performance information to participants to make informed training choices.

Comments: One commenter suggested that the Department rewrite proposed § 680.340(b) so that it is clear that there is no requirement for the employer to report outcomes when using OJT and customized training other than in those circumstances required by the Local WDB.

Department Response: The Department agrees with the commenter and has changed the regulatory text in § 680.340(b) to emphasize that the ETPL is a separate list from the list that the Governor may require for work-based training providers.

Comments: A commenter recommended that proposed § 680.340 be revised to make it clear that training funds are not an entitlement and that criteria in addition to eligibility are assessed prior to referral to a provider and program. Two other commenters requested clarification as to the reasons that training could be refused.

Department Response: WIOA is not an entitlement program. Determinations for training are made consistent with the law, including WIOA sec. 134(c)(3)(A), State and local policies, funding availability, and other appropriate considerations. There have been no changes to the regulatory text in response to these comments.

One commenter requested that the Department provide a definition for the term "cost of referral" as used in proposed § 680.340(d).

Department Response: The Department declines to define the term "cost of referral" in the regulatory text.

Comments: A commenter expressed support for the prioritization of funding for training programs that result in a recognized postsecondary credential.

Department Response: The Department acknowledges the comment and has added language to the regulatory text in § 680.340(f) referencing the citation for WIOA sec. 3(52), which defines a recognized postsecondary credential.

Comments: A commenter recommended a technical correction to proposed § 680.340(b) to reference paragraph (d) in WIOA sec. 122 rather than paragraph (e).

Department Response: The Department agrees and has made this nonsubstantive correction in the regulatory text in § 680.340(b).

Section 680.350 May title I adult and dislocated worker funds be used to directly support adult education and literacy activities?

Comments: Some commenters recommended that the Department clarify that WIOA title I funds can support title II adult education programs, as the WIOA sec. 134(c)(3) definition of training includes "adult education and literacy activities, including activities of English language acquisition and integrated education and training programs" at sec. 134(c)(3)(D)(x). A commenter recommended that referrals to regionally accredited secondary-level educational programs providing entry-level workforce preparation and/or postsecondary education and training activities be included as part of basic services and counseling services. A commenter requested clarification regarding whether alternative secondary school (formerly General Education Diploma [GED]) preparation is considered a career service or a training service.

Department Response: Under WIOA sec. 134(c)(3)(D)(x), title I adult and dislocated worker funds may be used to support adult education and literacy activities, provided concurrently or in combination with other training services. The Department has added regulatory text clarifying this use of WIOA title I adult and dislocated worker funds in § 680.350. The Department notes that these activities for title I adult and dislocated worker funds must be done in coordination with other training activities in WIOA sec. 134(c)(3)(D)(x).

5. Subpart D – Eligible Training Providers

This subpart describes the process by which organizations qualify as eligible training providers of training services under WIOA. It also describes the roles and responsibilities of the State and Local WDBs in managing this process and disseminating the State Eligible Training Providers and Programs List (ETPL). Throughout the preamble, the Department refers to the State Eligible Training Providers and Programs List as the "State List," the List, and the ETPL. The State ETPL and the related eligibility procedures ensure the accountability, quality, and labor market relevance of programs of training services that receive funds through WIOA title I,

subtitle B. The regulations emphasize that the List and accompanying information must be easily understood and disseminated widely in order to maximize informed consumer choice and serve members of the public.

The State plays a leadership role in ensuring the success of the eligible training provider system in partnership with Local WDBs, the one-stop delivery system, and the one-stop's partners. The Governor, in consultation with the State WDB, must establish eligibility criteria and procedures for initial and continued eligibility for training providers and programs to receive funds under WIOA title I, subtitle B. In doing so, the Governor may establish minimum performance levels for initial and continued eligibility and the Department encourages Governors to do so. In establishing minimum performance levels for eligibility, the Governor should take into consideration the need to serve targeted populations. Except for with respect to registered apprenticeship programs, the Local WDB may establish higher performance levels or require additional information from State eligible training providers to receive funds through the local area Individual Training Accounts (ITAs).

The regulations in this subpart implement WIOA sec. 122 and refer to WIOA secs. 107, 116, and 134 where those sections affect program and provider eligibility, the ETPL, the use of ITAs, and the inclusion of registered apprenticeship programs on the ETPL. In § 680.410, the regulations clarify what entities can be eligible training providers. Section 680.470 provides that registered apprenticeship programs, which WIOA treats differently than other eligible training providers in some respects, are automatically eligible to be included on the ETPL. Finally, § 680.500 requires the Governor or State Workforce Agency (SWA) to disseminate the State ETPL with accompanying performance and cost information to Local WDBs in the State and to members of the public through specified means. The performance information must be

presented in a way that is easily understood, in order to maximize informed consumer choice and serve all individuals seeking information on training outcomes, including WIOA participants and individuals with disabilities. Separately, 20 CFR 677.230 (see Joint WIOA Final Rule) addresses the ETP annual performance reports mandated at WIOA sec. 116(d)(4), which require providers to report on, among other things, the levels of performance for the WIOA primary indicators of performance for all individuals enrolled in the program of study.

In response to concerns expressed by stakeholders that some providers of training would face difficulties in participating in this WIOA-revised system, the Department has clarified the interrelated eligibility requirements and explained that while WIOA places an emphasis on quality training as measured by performance criteria, State and Local WDBs and training providers must work together in achieving this goal. The regulations emphasize the Governor's role in offering financial or technical assistance to training providers where the information requirements of this section result in undue cost or burden. Making a wide variety of high-quality programs of training available to participants will increase customer choice and training providers may find performance information useful to improve their programs of study, which in turn will provide a direct benefit to participants. The Department also encourages the Governor to work with eligible training providers to return aggregate performance information to the providers in ways that will help the providers improve their program performance. The State and Local WDBs must work together to ensure sufficient numbers and types of training providers and programs to maximize customer choice while maintaining the quality and integrity of training services. In addition, the regulations explain that community-based organizations (CBOs) can be eligible training providers, provided they meet the requirements to become eligible training providers in WIOA sec. 122 and this subpart. Because of WIOA's emphasis on

ensuring the provision of quality training, and the importance of using performance criteria to obtain such quality, the Department does not intend to waive the requirement to submit performance information at this time.

Throughout this subpart, the Department has changed references from the Eligible Training Provider List to the list of eligible training providers and programs to convey that the list is a compilation of the programs of training services for which ITAs can be used. The Department has also made revisions throughout this subpart for consistency in the use of the term "program of training services" and to incorporate the use of youth funds for ITAs for out-of-school youth (OSY) aged 16-24.

The Department received a number of comments that pertain to the WIOA sec. 116(d)(4) ETP annual performance reports. The Department notes that submission of the ETP annual performance reports is required by WIOA sec. 116(d)(4) and comments and responses relating to this report are addressed in the Joint WIOA Final Rule preamble section for 20 CFR 677.230. This subpart D of part 680 addresses the ETP eligibility requirements.

Section 680.400 What is the purpose of this subpart?

Proposed § 680.400 explained the purpose of this subpart. It stated that the list must be accompanied by relevant performance and cost information and made publicly available online through Web sites and searchable databases as well as any other means the States use to disseminate information to consumers. The Department has made non-substantive corrections for consistency in how the Department uses terms throughout this section. Additionally, the Department has made substantive changes to paragraphs (a) and (b) of this section which are described in detail below.

Comments: A commenter requested that Local WDBs ensure the availability of training providers that understand the unique needs of individuals with disabilities. Another commenter cited the challenges faced by older workers and recommended that the regulations direct one-stop centers to take into account older workers' different training needs and lesser access to financial aid, and make sure that older workers are not discriminated against in access to WIOA-funded ITAs.

Department Response: The unique needs of individuals with disabilities require a minor revision to § 680.400 to emphasize the importance of disseminating the State ETPL to individuals with disabilities. One of WIOA's stated purposes is to increase access to employment and training for individuals with barriers to employment, which is defined in WIOA to include individuals with disabilities as well as older individuals. Individuals with disabilities (e.g., those who are blind or hearing-impaired) may have unique needs that prohibit access to information through the Internet or other common databases. To fulfill the statutory purpose of WIOA, the Department has added language to § 680.400(b) that requires States to disseminate information to consumers in formats accessible to individuals with disabilities. In response to the comment that the regulations direct one-stop centers to take into account older workers' different training needs, the Department notes that the ability to provide services to individuals with barriers to employment is a factor that must be taken into account in the Governor's eligibility procedures under § 680.460(f)(9) and that WIOA sec. 3(24)(D) and (E) define "individual with a barrier to employment" to include individuals with disabilities and older individuals. Because this is a required factor in the eligibility procedures, the Department has decided not to address this in the purpose section of the regulation. No changes were made to the regulatory text in response to these comments.

Comments: Another commenter requested that the Department explain whether programs other than those authorized by WIOA title I must use the eligible training provider list. A few commenters recommended that § 680.410 specify that the requirements apply to entities providing training to participants paid for with WIOA title I adult or dislocated worker funding only and are not more generally applicable to all entities providing training to adult and dislocated workers.

Department Response: WIOA's requirements regarding the State list of eligible training providers pertains to WIOA title I, subtitle B funds only. Core programs and partners other than the title I programs are not required to use the list of eligible training providers and programs, although States may choose to employ their ETP list for other activities. No changes were made to the regulatory text in response to this comment.

Comments: The Department received a number of comments regarding whether youth may use ITAs in response to proposed § 681.550 (Are Individual Training Accounts permitted for youth participants?).

Department Response: In § 680.400, the Department has added that this subpart describes the process for determining eligible training providers and programs for the adult, dislocated worker, and youth programs. More information about this is provided in the preamble corresponding to § 681.550. The Department has updated §§ 680.400(a), 680.430, and 680.490 to clarify which requirements of this subpart apply to the eligible training providers and programs that serve OSY aged 16 through 24 with ITAs.

Section 680.410 What is an eligible training provider?

The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. Additionally, the Department has made significant substantive revisions to this section that are explained below.

The Department significantly revised this section to more clearly define the term "eligible training provider" (ETP) and changed the section's title to reflect this change. The Department made these changes to clarify which entities are considered ETPs, as many of the requirements of WIOA sec. 122 apply only to those entities that are considered ETPs under WIOA. This clarification responds to commenters' requests for clarification on which requirements of WIOA sec. 122 apply to which entities.

Section 680.410(a) through (c) lays out the defining characteristics of ETPs. Specifically, revised § 680.410(a) provides that ETPs are the only types of entities that can receive funding for training services through an ITA. This means that if an entity is not on the State ETPL, the entity may not receive ITA funds to pay for training services. Section 680.410(b) was revised to make clear that ETPs must be included on the State ETPL. The Department added new § 680.410(c) to provide that ETPs must provide a program of training services as that term is defined at § 680.420.

The Department also added new § 680.410(d) to describe the kinds of entities that can be ETPs. Eligible training providers can be institutions of higher education that provide a program which leads to a recognized postsecondary credential, entities that carry out programs registered under the National Apprenticeship Act (29 U.S.C. 50 et seq.), and other public or private providers of training services, which may include community-based organizations (§ 680.410(d)(3)(i)), joint labor-management organizations (§ 680.410(d)(3)(ii)), and eligible training providers of adult education and literacy activities under WIOA title II if such activities

are provided in combination with the training services described at § 680.350 (§ 680.410(d)(3)(iii)).

The Department deleted proposed paragraph (b) of § 680.410 to clarify that this subpart is focused on ETPs and the State list of ETPs. The requirements for individuals receiving training from entities other than ETPs are addressed in §§ 680.320 and 680.530. Further description of the training that can be provided to individuals through entities other than ETPs can be found in § 680.530.

Part of the reason for this revision to this section is to make it clear that only entities that have gone through the Governor's ETP eligibility procedures and registered apprenticeship programs are considered ETPs, are able to be on the State ETPL, and can receive funding through ITAs. Additionally, because only these entities are on the State ETPL, only these entities, except for registered apprenticeship programs, are required to provide information for the ETP annual eligible training provider performance report required by WIOA sec. 116(d)(4).

Comments: Many commenters provided input on specific categories of training providers. A few commenters supported allowing Local WDBs to provide training services as long as the Local WDB is licensed, registered, or otherwise exempt by the State office of education. Some commenters requested guidance on approval of distance learning providers requesting to be put on the ETPL. One commenter requested that the Department define and add a distance learning category as a potential ETP.

Another commenter encouraged the Department to expand the definition of eligibility for training providers to include platforms that work with accredited institutions of higher education to provide Massive Open Online Courses (MOOCs). Several commenters encouraged the Department to revise § 680.410(a) to identify public television stations explicitly as an ETP with

demonstrated expertise in developing and implementing evidence-based training services. Another commenter recommended that § 680.410 explicitly identify public libraries as potential providers, and particularly for enhanced digital literacy training and services. One commenter recommended that industry-based multi-employer training programs with a minimum of 50 percent employer representatives be eligible for inclusion on the ETPL to allow for training funds to be included as providers who would then be eligible for WIOA support. Another commenter urged the Department to consider integrating microenterprise development organizations, entities that help people in the very earliest stages of creating their own businesses, into the WIOA system. In addition, one commenter suggested a revision to paragraphs (a)(1) through (3) of § 680.410 to include, as examples of eligible training providers of training services with WIOA adult funds under title I, public or private organizations that have demonstrated effectiveness in providing regionally accredited secondary-level educational programs that include entry-level workforce preparation and/or postsecondary education and training activities.

Department Response: The Department has determined it is not appropriate in the regulation to specify types of public and private entities that are appropriate to be ETPs, as many of these entities could be ETPs if they meet the requirements for initial and continued eligibility under § 680.410(d)(3). Instead, the Department has defined broadly the kinds of entities which are eligible to be ETPs based on WIOA sec. 122(a)(2). The public and private entities commenters encouraged for inclusion on the ETPL are within the parameters of entities under § 680.410(d) that can be ETPs, provided they meet all other applicable requirements, such as the Governor's eligibility requirements. In addition, the Department has not regulated to require training to be delivered in a specific format; programs may be delivered in-person, online, or in a

blended approach. Nothing in the regulation precludes any of these approaches to training; therefore, it is unnecessary to regulate specifically that these are permissible types of training. In addition, the Department is clarifying that Local WDBs may provide training services, if they meet the conditions of WIOA sec. 107(g)(1), which includes the information required in a written waiver request to the Governor. This provision is addressed in § 679.410. In response to the commenter that suggested Local WDBs can provide training as long as the Local WDB is licensed, registered, or otherwise exempt by the State office of education, the Department notes that WIOA sec. 107(g)(1) establishes the requirements that must be met if a Local WDB wishes to provide training. Therefore, the Department has not included this in this section.

Section 680.420 What is a "program of training services"?

This section defines the term "program of training services" that is used throughout the regulations. The Department proposed to define the term as one or more courses or classes, or a structured regimen that leads to specified outcomes, including recognized postsecondary credentials, secondary school diplomas or their equivalent, employment, or measurable skill gains toward such credentials or employment. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive revisions to paragraphs (a) and (b) which are described in detail below.

In the NPRM preamble, the Department explained that the definition of a WIOA "program of training services" includes a structured regimen that leads to an industry-recognized credential. The NPRM preamble indicated that the outcomes in the definition of program of training services aligned with performance requirements in WIOA sec. 116(b)(2)(A).

Comments: Many commenters requested that the definition of "program of training services" be clarified with options to recognize "non-credentialed training, such as incumbent

worker training, work-based learning opportunities, or single courses that fall within a career pathway for employment." These commenters also requested clarification of "industry-recognized credentials" to avoid confusion over which programs should qualify as eligible for WIOA funding. Several commenters requested clarification regarding how or when a program of training services leads to "a recognized postsecondary credential, secondary school diploma or its equivalent." A few commenters recommended that § 680.420 include training programs that lead to a "recognized postsecondary degree or industry recognized credential" to avoid a potential debate over what constitutes a "postsecondary credential." Other commenters suggested that a definition of "recognized industry credential" include a degree, diploma, or certification provided by an educational institution, third-party industry association, or industry accreditation body if it is not widely recognized by multiple employers in a region or industry. One commenter recommended that the term "industry-recognized credentials" as used in the preamble to the NPRM be added to the regulatory text. Another commenter asked whether having a group of five employers state the certificate of completion from a training provider is "industry recognized" would meet the definition of industry-recognized credential. One commenter recommended a change to § 680.420(a) through (c), to include, as outcomes of programs of training services, regionally accredited secondary education diplomas and career certification for entry-level work force preparation earned as a part of a secondary education program.

Department Response: The Department has revised the regulatory text of § 680.420 to further clarify which programs qualify as WIOA "programs of training services." The introductory text of § 680.420 was modified to clarify that a "program of training services" is one that provides the services in § 680.200 and leads to any of the outcomes listed in paragraphs

(a) through (d) of this section, making clear the relationship between the definition of "program of training services" in this section and the definition of "training services" in § 680.200.

Section 3(52) of WIOA defines the term "recognized postsecondary credential," which was used in the Department's proposed definition of a "program of training services." The Department has revised § 680.420(a) to include all of the credentials, certificates, licenses, and degrees included in the WIOA definition of "recognized postsecondary credential." However, the Department removed the term "recognized postsecondary credential" from the definition of "program of training services" in response to comments that this may be read as too limiting if it is interpreted to mean that these credentials can only be obtained by individuals who have a secondary degree, or a high school diploma or its recognized equivalent. The new definition of "program of training services" remains consistent with the program outcomes described in WIOA sec. 116(b)(2)(A) and 20 CFR part 677 (see Joint WIOA Final Rule).

The Department chose not to define the term "industry-recognized credential" in the subpart and used the term "industry-recognized certificate or certification" in the definition of "program of training services" in order to mirror the definition of "recognized postsecondary credential" under WIOA. The term "industry-recognized credential" is an evolving term and the Department determined that defining it in the regulation may limit future innovation around industry-relevant training.

The Department agrees that programs of training services should be inclusive of non-credentialed training, such as incumbent worker training, work-based learning opportunities, or single courses that fall within a career pathway. The introduction to § 680.420 emphasizes that training services that "lead to" any of the outcomes listed at § 680.420, which includes

employment, is a program of training services. Therefore, programs that are components of such a regimen may be eligible programs.

In addition, as explained in §§ 680.410 and 680.350 and associated sections of the preamble, WIOA title I adult and dislocated worker funds may be used for programs of training services that provide adult education and literacy activities if they are provided concurrently or in combination with occupational skills training and training services specified in § 680.350. For example, English as a second language may be part of a program of training services that leads to measurable skill gains toward postsecondary credentials, industry-recognized credentials, or employment. The Department has added a cross reference to § 680.350 in § 680.420(b) to clarify that a participant may utilize a program offering a secondary school diploma or its equivalent only when that program is offered in conjunction with occupational skills training and other training options listed at § 680.350. The revised definition of program of training services and the acceptable outcomes to which a structured regimen may lead align with the definitions within WIOA sec. 116(b)(2)(A) and in 20 CFR part 677 (see Joint WIOA Final Rule). Section 680.420(d) provides that a program of training services is one that leads to measurable skill gains towards a credential described in paragraph (a) or (b) of this section. In this context, the term "measurable skill gains" is used similarly to its use in 20 CFR part 677 and the accompanying ICR. For clarification, the Department notes that the ETP annual performance report layout required under WIOA sec. 116(d)(4) uses the term "training program," which is synonymous with "program of training services."

Section 680.430 Who is responsible for managing the training provider eligibility process?

Section 680.430 outlines the roles and responsibilities of the Governor, the State WDB, any designated State agencies, and Local WDBs in establishing and implementing criteria and

procedures for determining the eligibility of training providers. The Department received several comments addressing § 680.430. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section and to this section's title. The Department also made substantive changes to paragraphs (a), (c)(3), and (d), and these changes are described in detail below.

The title to this section of the NPRM was "Who is responsible for managing the eligible provider process." The Department is making a non-substantive edit and inserting the word "training" between "eligible" and "provider" for consistency.

The Department modified § 680.430(a) to clarify that the Governor, in consultation with the State WDB, establishes the criteria, information requirements, and procedures, including procedures identifying the roles of the State and local areas, governing eligibility of providers and programs of training services to receive funds for out-of-school youth as described in § 681.550.

The Department renumbered and re-arranged paragraph (d) and added paragraph (e) for consistency with other portions of this subpart, including §§ 680.450, 680.460, and 680.470, in regard to what is required for registered apprenticeship programs to be an eligible training provider. These provisions of the subpart make it clear that registered apprenticeship programs are not required to follow the Governor's eligibility procedures (initial or continued) in order to be eligible training providers. This is consistent with WIOA sec. 122(a)(3), which provides that registered apprenticeship programs are maintained on the State List for so long as the program is registered under the National Apprenticeship Act. Therefore, the Department modified this section to ensure that the registered apprenticeship programs are not subject to the additional standards that may be established by a local area.

Because registered apprenticeship programs are not subject to the Governor's criteria and information requirements or required to report on their levels of performance for eligibility, Local WDBs cannot establish additional criteria and information requirements or establish higher levels of performance for these entities to receive training services in the local area. Moreover, permitting the Local WDBs to establish additional criteria and performance standards for registered apprenticeship programs would be in tension with what the Department has determined is a key purpose of sec. 122(a)(3): encouraging the integration of the registered apprenticeship program into the WIOA system. Section 680.430(d) provides that the Local WDB can make recommendations to the Governor on the procedure used in determining the eligibility of providers and programs. This is not a change from the NPRM.

The Department has added new § 680.430(e), which contains the provisions from proposed § 680.430(d)(2) and (3), but clarifies that the provisions do not apply with respect to registered apprenticeship programs. Except for registered apprenticeship programs, the Local WDB may establish higher performance levels or require additional information from State eligible training providers to receive funds through local area ITAs. Paragraph (e)(1) provides that the Local WDB can, except with respect to registered apprenticeship programs, require additional criteria and information from local programs to become or remain eligible, and paragraph (e)(2) states that the Local WDB can set higher levels of performance, except with respect to registered apprenticeship programs, than those required by the State for local programs to become or remain eligible. In paragraph (e)(2), the Department made a non-substantive edit changing the phrase "local providers" to "local programs" to clarify that eligibility is determined on a program-by-program basis and removed the word "particular" from this paragraph as unnecessary.

Comments: One commenter commended the Department for outlining the responsibilities of State and Local WDBs to ensure adequate availability of training services for individuals with disabilities and recommended that § 680.430(c)(3) similarly remind Local WDBs to disseminate and maintain lists of providers in formats accessible to individuals with disabilities.

Department Response: As noted above under § 680.400, the State List must be made publicly available in a format this is accessible to individuals with disabilities. One of WIOA's stated purposes is to increase access to employment and training for individuals with barriers to employment, which WIOA defines as including individuals with disabilities as well as older individuals. Individuals with disabilities (e.g., those who are blind or hearing-impaired) may have unique needs that prohibit them from accessing information through the Internet or other common databases. To fulfill one of the statutory purposes of WIOA articulated in WIOA sec. 2(1), the Department has added language to § 680.430(c)(3) requiring that Local WDBs ensure that the State list of eligible training providers and programs is disseminated through the one-stop delivery system in formats accessible to individuals with disabilities.

Comments: A commenter asked the Department to revise § 680.430(d)(1) to require the Governor to engage with the Local WDB and to require an equal exchange of information that allows for mutual consent in the management of the ETP process.

Department Response: The Department considered this comment; however, WIOA sec. 122 explicitly states that the Governor, in consultation with the State WDB, is to establish the criteria, information requirements, and procedures governing the eligibility of providers and programs and the Department will not create an additional requirement that the Governor obtain mutual consent of the Local WDBs. Moreover, § 680.430(d) already provides a role for the

Local WDB in this process: it allows Local WDBs to make recommendations to the Governor on the procedures used to determine eligibility of providers and programs. The Department encourages Local WDBs to make such suggestions and strongly encourages the Governor to carefully consider and incorporate the Local WDBs' suggestions, as they are most familiar with the training needs of their specific area. No changes were made to the regulatory text in response to this comment.

Comments: One commenter recommended that the regulation explicitly require a Governor to make the process for becoming an ETP transparent and ensure adequate access for CBOs to become ETPs. The commenter stated that a transparent and accessible process is necessary in order to expand access to a variety of high-quality providers and programs for individuals seeking employment and a way out of poverty.

Department Response: The Department notes that § 680.410 was modified to include paragraph (d)(3)(i), which explicitly acknowledges that CBOs may be eligible training providers. Moreover, CBOs can provide training through training contracts with the Local WDB under § 680.320. The Department agrees that a transparent process is important. Section 680.450(c) requires the Governor to solicit and take into consideration recommendations from Local WDBs and providers, provide an opportunity for interested members of the public to comment, and designate a specific time for doing these things. Additionally, § 680.460(e) requires that the Governor's procedures be described in the State Plan, which is subject to the public comment requirements for State Plans. Because the Department concludes the process will already be transparent as public comment is required in the development of the procedures and in the development of the State Plan, no changes were made to the regulatory text in response to this comment.

Comments: Another commenter recommended that "may" be changed to "must" in § 680.430(c)(2), to ensure that States with large Indian, Alaska Native and Native Hawaiian populations focus attention on the special circumstances of these populations.

Department Response: The Department notes that § 680.430(c) requires the Local WDB to carry out the activities in § 680.430(c)(2) and already uses the term "must." This section of the regulation implements WIOA sec. 107(d)(10)(E), which requires the Local WDB to work with the State to "ensure there are sufficient numbers and types of providers of career services and training services (including eligible training providers with expertise in assisting individuals with disabilities and eligible training providers with expertise in assisting adults in need of adult education and literacy activities) serving the local area and providing the services involved in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities." This section is focused on ensuring consumer choice for individuals with disabilities and adults in need of adult education and literacy activities. However, the Department interprets § 680.430(c)(2) to ensure that there are sufficient numbers and types of providers of career services and training services, to include ensuring that such services are available to assist specific populations such as the Indian, Alaska Native, and Native Hawaiian populations. No changes to the regulatory text were made in response to these comments.

Section 680.440 What are the transition procedures for Workforce Investment Act-eligible providers to become eligible under the Workforce Innovation and Opportunity Act?

Section 680.440 implements WIOA sec. 122(c), which requires States to establish an application procedure for training providers to maintain their eligibility and the eligibility of their programs. Specifically, it allows the Governor to establish a transition procedure for training

providers eligible under WIA to continue to be eligible to provide training services under WIOA until June 30, 2016, or an earlier date established by the Governor, as authorized by WIOA sec. 122(i). The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive changes to paragraphs (a) and (b), which are described in further detail below.

In order to transition from WIA to WIOA, training providers and programs that were eligible under WIA are subject to the application procedures for continued eligibility under WIOA. However, the NPRM was not consistent in how it treated certain providers eligible under WIA. In order to reconcile these inconsistencies, the Department modified § 680.460(a)(1) to make clear that providers and programs eligible under WIA procedures will be subject to continued eligibility procedures.

Comments: Several commenters expressed confusion about how providers designated under WIA between WIOA's enactment on July 22, 2014, and implementation of WIOA's ETP provisions on July 22, 2015, are to be treated. One commenter requested that the Department clarify the date at which States are no longer allowed to use their old eligibility-determination process. Another commenter recommended either grandfathering or offering States the discretion to allow training providers that become eligible under WIA between July 22, 2014, and June 30, 2015, to remain eligible training providers until December 31, 2015, or to an earlier date according to the Governor's transition procedures.

Department Response: The Department is clarifying that WIOA sec. 122(i) covers all providers and programs that were previously eligible under WIA. Thus, § 680.440 makes any provider that was previously eligible under WIA procedures, regardless of whether this was before or after the date of WIOA's enactment on July 22, 2014, subject to the continued

eligibility procedures under WIOA. This reading is consistent with WIOA and with the Department's intention stated in the NPRM to grandfather all WIA providers through the duration of the Governor's transition period. This did not require any change to the proposed text of § 680.440; however, the Department modified § 680.460(a)(1) to make the treatment of providers and programs eligible under WIA consistent, regardless of whether they became eligible before, on, or after July 21, 2014. This interpretation is in accord with WIOA secs. 122(b)(4)(B) and 122(i) because all WIA providers determined eligible through June 30, 2015, were deemed eligible under the version of WIA sec. 122 requirements in effect on July 21, 2014 (the day before enactment of WIOA).

Comments: Commenters also addressed the Department's proposed timeline and transition procedures for implementation of the continued eligibility provisions for current ETPs. A handful of commenters expressed support for exempting ETPs eligible under WIA from initial eligibility procedures and for providing these ETPs a transition period before requiring compliance with the application procedures to establish continued eligibility.

A number of commenters requested that the Department allow States more time to implement the continued eligibility procedures. One commenter recommended that the Department extend the time allowed for transition of ETPs to meet the new requirements under WIOA until June 30, 2016. Another commenter recommended that the Department allow all ETPs to receive initial and/or subsequent eligibility under WIA regulations until the State publishes and implements its new eligibility procedures, no later than June 30, 2016, reasoning that this approach would be consistent with the Department's transition authority in sec. 503 of WIOA. One commenter cautioned that the procedures for initial and continued eligibility are

lengthy and that there would not be enough time for implementation, then urged the Department to adopt more flexible procedures for easier implementation.

A few commenters recommended that a waiver provision be added in the WIOA Final Rule relating to the application for continued eligibility of ETPs. Another commenter recommended a longer period of transition (i.e., more than 12 months) because of the additional information required from applicants to become an ETP under WIOA as well as the additional programming needed to electronically capture this information.

One commenter recommended that States be allowed to use existing procedures for new providers and develop and implement new procedures by July 1, 2016, consistent with the start date of Unified State Plans. The commenter reasoned that this timeframe would allow States to identify best procedures and update software programming and user training and communicate these to potential providers. Other commenters recommended that the timeframe relevant in § 680.440 be determined by each individual State policy as determined by the Governor, without providing additional detail about the specific activities of concern. One commenter requested that continued eligibility be implemented as a phased transition.

Department Response: In response to comments received on the timeline for implementing continued eligibility procedures for WIA eligible training providers and programs, the Department has revised § 680.440(a) and (b) to reflect its decision to use transition authority to extend the timeline for implementation of continued eligibility requirements for training providers eligible under WIA by 6 months through June 30, 2016, unless the Governor determined that an earlier date was possible. While this is not the 12-month extension requested by a commenter, the Department concluded this was sufficient time for States to implement the continued eligibility procedures. The Governor's procedure for continued eligibility must be

implemented in a timely manner. The Department has provided guidance concerning application of this provision and will provide technical assistance as necessary. The Department has chosen not to regulate waiver policy in the Final Rule.

WIOA sec. 122(b)(4)(B) requires providers not previously approved under WIA to complete the initial eligibility procedure. WIOA sec. 122(i) requires that the Governor and Local WDBs implement these requirements no later than 12 months after the date of enactment. Although States are required to implement new procedures for initial eligibility and continued eligibility, rather than using existing procedures, the regulation at § 680.460(f)(1)(v) allows the Governor to use alternate factors for performance until performance information is available to establish continued eligibility. The Department notes that the Governor has discretion to determine what the alternate factors for performance are; thus the Governor's procedure may take into account existing performance information. Moreover, the regulation at § 680.450(e)(2) requires the initial eligibility procedures to take into account "a factor related to" the indicators of performance which may take into account existing performance information.

It is unclear what the commenter is suggesting by a "phased transition." The Governor's procedures may be implemented in phases if the Governor chooses, as long as the continued eligibility procedures are implemented in a timely way to ensure that continued eligibility is established prior to the end of the transition period in that State, which may extend no later than June 30, 2016.

The Department notes that it also received comments on this section related to the eligible training provider annual performance report required under WIOA sec. 116(d)(4). The Department addresses these comments and provides responses in the preamble to 20 CFR 677.230 (see Joint WIOA Final Rule).

Section 680.450 What is the initial eligibility process for new providers and programs?

Section 680.450 establishes the requirements for the initial eligibility procedures for new providers and programs. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive edits to paragraph (b), which are discussed in detail below.

Comments: The Department received comments addressing various issues relating to § 680.450. Several commenters expressed support for the proposed initial eligibility process. Other commenters suggested that provisions for waivers be included in §§ 680.450 (initial eligibility) and 680.460 (continued eligibility) of the Final Rule, and that WDBs be given authority to waive eligibility requirements on a case-by-case basis where it is in the best interest of those receiving training services. Some commenters recommended that Governors be given authority to approve public higher education schools automatically, similar to the proposed approach for registered apprenticeship programs, including eliminating the need for these institutions to be subject to initial or continued eligibility. These commenters stated that this was a duplicative burden on these institutions that are already required to report on programs to their primary funding sources. Several commenters recommended that National Farmworker Jobs Program (NFJP) grantees be presumed to be ETPs and be included on their States' ETPLs automatically to encourage and streamline the ability of WIOA adult and dislocated worker programs to co-enroll participants who also qualify for NFJP. In addition, one commenter expressed concern that its State would be unable to implement a new process that includes creating a technical system to track provider performance and other new WIOA requirements, as well as have public comment and implement by July 22, 2015, the date by which initial eligibility procedures are required to be implemented. Another commenter stated that even

though local areas may set more stringent standards for performance for eligible training providers, because providers can apply to any Local WDB for approval to the statewide list, these more stringent standards are ineffective in ensuring provider quality. This commenter suggested that local areas should have full control over their Eligible Training Provider List, provided minimum standards are met.

Department Response: The Department is clarifying in this preamble that States and local areas are the only entities authorized to determine new provider or program eligibility under WIOA. WIOA sec. 122(a) requires the Governor to determine eligibility procedures. State and Local WDBs do not have authority under WIOA to waive initial or continued eligibility requirements. The Department is therefore not including such waiver authority in this subpart. However, the eligibility requirements in the regulations are quite flexible because although they require the Governor to take certain factors into account, they do not proscribe what weight is given to any one factor. Additionally, Local WDBs may use contractual arrangements under §§ 680.320 and 680.530 to ensure that training is available. Automatic approval of higher education institutions or NFJP grantees as eligible training providers is not permitted under WIOA; these institutions and grantees will need to apply for initial eligibility in the same manner as all other training providers. In response to comments about duplicative burden, the Department acknowledges that there may be some duplication of requirements. However, the Department encourages these institutions to examine where there is overlap in the reporting requirements to minimize duplicative work in complying with all of the institution's reporting requirements. Therefore, no change was made in response to this comment.

The Department has made no change to the timeline for implementing initial eligibility procedures in order for new training providers and programs to be included on the State Eligible

Training Provider and Programs List. The States must implement initial eligibility procedures within 1 year of WIOA's enactment as is required under WIOA sec. 122(c).

The Department corrected the reference to paragraph (d) in § 680.450(c) to paragraph (e).

Comments: Several commenters provided input on the specific performance information that the Governor of each State is required to request from potential training providers under § 680.450(e).

Department Response: The Department considered commenters' suggestions on what kinds of information could be considered a "factor related to the indicators of performance" to meet § 680.450(e)'s requirement. However, with regard to the comments on the performance information requirements in § 680.450(e), no substantive changes were made to the regulatory text in response to these comments. In part, because the factors related to performance that a Governor must take into account to establish initial eligibility are set forth in WIOA sec. 122, the regulations are consistent with the statutory requirements. Moreover, WIOA sec. 122 gives the Governor the discretion to determine the procedures for initial eligibility and establish minimum performance standards and the Department wants to allow the Governor the flexibility to establish procedures that are most relevant and applicable to the Governor's State.

Section 680.450(e)(2) requires the initial eligibility procedures to take into account "a factor related to the indicators of performance…." This does not mandate a specific factor and it is at the Governor's discretion to determine what information to require for the applicant to meet this requirement. The Department has listed below the comments and responses received on the requirement at § 680.450(e)(2).

Finally, the Department notes that it revised § 680.450(e)(4) to clarify its implementation of WIOA sec. 122(b)(4)(E)(iii). This provision of WIOA permits the Governor to require other

factors that indicate high-quality training services, including the factor described at WIOA sec. 122(b)(1)(H). WIOA sec. 122(b)(1)(H) requires an analysis of the quality of a program of training services, including programs of training services that lead to recognized postsecondary credentials. Therefore, the Department has made a minor revision to § 680.450(e)(4) to reflect that the Governor's criteria may require applicants to provide information demonstrating the program is a high quality program, which can include information related to training services that lead to recognized postsecondary credentials.

Comments: A few commenters described the burden associated with the proposed performance information requirements and cautioned that they may limit the options available to training customers. Similarly, one commenter stated that the performance information requirements under both §§ 680.450 and 680.460 were too burdensome for small training providers, who are generally not equipped for tracking employment outcomes.

Department Response: The Department considered commenters' concerns about the burden of providing performance information under §§ 680.450 and 680.460. However, the information required for submission is set out in WIOA sec. 122 and the sections implement WIOA's requirements for initial and continued ETP eligibility. The Department encourages States and providers to consider the benefit to the programs of training of having robust performance outcome data that can be used to evaluate and advertise the effectiveness of their programs of training. No changes were made to the regulatory text in response to these comments.

Comments: A commenter cautioned against requiring past performance information for new training providers that do not have past performance information to evaluate. Another

commenter recommended requiring applicant training providers to present average earning rates after exit rather than median earnings.

Department Response: The Department considered the commenter's recommendation, but determined that the Governor's flexibility to determine what factors related to the performance indicators will be selected as part of the initial eligibility criteria is sufficient. This includes determining what factor related to performance may be used for new training providers. The Department notes that while the Governor has discretion to determine the factor related to performance that may be used for initial eligibility, once eligibility is established, WIOA sec. 116(b)(2)(A)(i)(III) requires approved ETP programs to report on median earnings. However, this does not prohibit the Governor from also requiring ETP programs to report on average earnings. No changes were made to the regulatory text in response to these comments.

Comments: One commenter requested changes in training provider eligibility criteria for providers that are different from WIA occupational skill providers (e.g., pre-apprenticeships, entrepreneurial training, customized and incumbent worker training, and youth services).

Department Response: As explained above, the provider eligibility criteria are left to the Governor's discretion. No changes have been made to the regulatory text in response to this comment. However, the Department notes that it is within the Governor's discretion to have specific eligibility criteria for providers that provide training that is distinct from traditional WIA-occupational skill providers, as long as the criteria also comply with §§ 680.450 and 680.460 and are included in the State's policies. Section 680.530 and its preamble provide additional information on how States may provide customized and incumbent worker training.

Comments: One commenter asked whether each State is required to specify which elements from § 680.450(e)(2) training providers need to provide information on or whether the training provider can submit information on any of the factors listed.

Department Response: The State procedure must specify which elements from § 680.450(e)(2) training providers need to provide information on and what verifiable information will satisfy this requirement.

Comments: Another commenter sought clarification of the definition of "partnership with a business" as used in NPRM § 680.450(e)(3), and asked how this would impact the eligibility of a training provider.

Department Response: The Department is clarifying that information about whether a provider is "in a partnership with a business" under § 680.450(e)(3) could include information about the quality and quantity of employer partnerships. However, the Department did not include this example, or others in the regulation text, as States may have other methods for determining whether the provider is in a partnership with a business and including one example may be seen as limiting State options. The impact of this factor on the eligibility of the training provider is determined by the Governor's initial eligibility procedure.

Comments: One commenter requested flexibility in initial eligibility requirements for training providers in rural areas and those serving the hardest to serve populations.

Department Response: The Governor may require additional information in order to ensure that the needs of the State are being met, including in rural areas and in serving hard-to-serve populations. The Governor's procedure determines how these additional factors may impact initial eligibility. In addition, the Local WDB must work with the State to ensure there are sufficient numbers and types of providers of training services, including eligible training

providers with expertise in assisting individuals with disabilities and eligible training providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area. No changes were made to the regulatory text in response to this comment.

Comments: Another commenter urged the Department to require new applicants to be subject to the same anti-discrimination provisions as registered apprenticeship programs under 29 CFR part 30. This commenter suggested that new applicants provide the following: a plan for recruitment to ensure underrepresented populations have access to nontraditional opportunities; capacity to deliver equitable training practices and classroom and OJT training environments that support underrepresented populations' success and retention in the training program; and support services, case management, mentorship, and other strategies necessary for underrepresented populations' success in training and employment.

Department Response: 29 CFR part 30 governs the policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and State apprenticeship programs registered with recognized State apprenticeship agencies. Therefore, the Department will not apply 29 CFR part 30 to all eligible training providers. However, for all other programs, the Department notes that the Governor has discretion to consider a wide range of factors when determining initial and continuing eligibility under §§ 680.450 and 680.460. Therefore, if the Governor wishes to consider factors such as an eligible training provider's treatment of underrepresented populations, this is within the Governor's discretion. The Department has determined that applying criteria developed for one type of program of training to all types of training programs may unnecessarily limit the types of

programs of training available to participants in WIOA programs. No changes were made to the regulatory text in response to this comment.

Comments: The Department also received responses to the specific solicitation in the NPRM requesting comments about the types of verifiable program-specific information the Governor must require from providers seeking initial eligibility as ETPs under § 680.450(e).

Department Response: The Department has carefully analyzed the comments regarding verifiable program specific performance information, including the suggestions of specific factors and methods of providing verifiable information in the least costly manner. The Department has determined that no substantive changes to regulatory text are necessary in response to these comments. Instead, the Department is clarifying that the Governor and the States have discretion when developing their initial eligibility criteria and requirements to decide what constitutes verifiable program specific performance information and the factors related to indicators of performance. This flexibility will enable States to meet the individual needs of each State and allow each State to establish requirements that the ETPs and the State are able to manage given their current levels of technology. Examples of potential criteria include average earnings rates, average cost of training, and criteria based on information available in UI wage records. However, these examples are not intended to be an exhaustive list and States are not limited to the Department's suggestions.

In meeting the requirement that the factor be "related" to the WIOA sec. 116 reporting requirements in § 680.450(e)(2), this factor need not be limited to WIOA participants, even though under sec. 116 the primary indicators of performance require reporting on WIOA participants. This is because programs of training applying for initial eligibility will be applying

to serve WIOA participants for the first time and will not have results available for WIOA participants.

Comments: One commenter stated that the easiest-to-verify information that providers could furnish would be customer-level data that States can match to unemployment insurance (UI) wage records to determine employment outcomes. The commenter stated that providers would be expected to submit that information if they are placed on the ETPL because this information would be required for the ETP annual performance report. The commenter asserted that requiring information for an eligibility determination that matches information required for the ETP annual performance report would reduce costs for both providers and States and increase data integrity. A few commenters stated that the most valid, reliable, and efficient way to measure training providers' performance is for the State to first collect a small set of seed records from each provider for each student (e.g., social security number, program of study, start date, end date, credential, and demographic characteristics) and then link the records with UI wage records and other administrative records used to determine outcomes.

Department Response: The Department notes that these are potential options for States and the Governor may choose to utilize these approaches. However, the Department has chosen not to require States to implement these approaches for initial eligibility to give States the flexibility to determine the most effective method for obtaining verifiable program specific performance information for determining initial eligibility. As explained earlier, the Department recognizes that there is overlap between what is required for eligibility and the WIOA sec. 116(d)(4) ETP annual performance report. The Department strongly encourages States and ETPs to work together to find efficiencies in how information can be reported in the performance

report and for eligibility purposes. No changes were made to the regulatory text in response to these comments.

Comments: Another commenter stated that the regulations should encourage ETPs to focus their follow-up efforts on participants who do not appear in the UI wage records, relieving data collection burdens on the individual participants and the non-public training providers.

Department Response: The Department recognizes that social security numbers will not be available for each participant and has determined that supplemental follow-up methods will be allowable. The use of supplemental information in performance reporting is further discussed in 20 CFR part 677 (see Joint WIOA Final Rule) and the associated ICR.

Comments: Another commenter requested that the system used to gather ETP data should be accurate by nature so that Local WDBs are not required to monitor or ensure accuracy of information.

Department Response: The Governor or the Governor's designated SWA (or appropriate State entity) is responsible for ensuring that programs meet eligibility criteria and performance levels established by the State, including verifying the accuracy of the information. The Local WDB must carry out the procedures assigned to the Local WDB by the State, including monitoring and ensuring accuracy of the information. No changes were made to the regulatory text in response to this comment.

Comments: One commenter recommended specific performance information to be collected, including average cost of training to include tuition, supplies, and supportive service needs; loan default rates; employer partners; and the completion rates of all students rather than the exit rates.

Department Response: The Departments have included in the subpart only the performance information required by WIOA secs. 122 and 116. However, as described in § 680.490(c), the Department notes that the Governor may require additional specific performance information that the Governor determines to be appropriate to determine or maintain eligibility. No changes were made to the regulatory text in response to this comment.

Comments: One commenter stated that wages and retention should be verified using the employment base wage.

Department Response: The Department is unclear what the commenter intends by "employment base wage." However, the Department has chosen not to require States to implement these approaches for initial eligibility. States have the flexibility to determine the most efficient method for obtaining and verifying program specific performance information for determining initial eligibility.

Comments: A few commenters suggested that States should be allowed to use supplemental/existing data because most schools are already required to report on programs to their primary funding sources, making the ETP reporting requirement a duplicative effort. These commenters asserted that the local area should determine if a training provider's performance is acceptable and whether the training provider should continue to be listed on the ETPL.

Department Response: The Department recognizes that some of the information ETPs are currently reporting might overlap with the information required for reporting for initial eligibility. The Department encourages States to examine closely WIOA reporting requirements and the other requirements ETPs are subject to, to find overlap and reporting efficiencies. Regarding the commenter's suggestion that the local area determine if a training provider's performance is acceptable, the Department notes that WIOA sec. 122(b)(3) and § 680.430(e)

provide that Local WDBs can establish criteria and information requirements, in addition to the Governor's, and require higher levels of performance than the Governor for purposes of determining the continuing eligibility of providers to receive funds to provide training services in the Local WDB's area. No changes to the regulatory text have been made in response to this comment.

Comments: Some commenters recommended that the Department allow States to determine the definition of verifiable information. Another commenter requested clarification regarding the "program specific" indicators required by the Department and recommended that States be allowed the flexibility to define what those mandated indicators will be through their ETP State policy.

Department Response: As explained above, this subpart leaves the Governor the flexibility to determine what constitutes "verifiable program-specific information." No changes were made to the regulatory text in response to this comment.

Comments: One commenter suggested that providers report data on (and States determine eligibility for) all similar degree programs as one. For example, all bachelor's degree programs at that provider are reporting as one bachelor's degree program, rather than breaking them out into bachelor's in education, bachelor's in biology, bachelor's in math, etc. This commenter also suggested that providers report data on (and States determine eligibility for) the main program of study, rather than all of the individual courses that make up the program. Further, this commenter recommended that providers do not need to report on (and States determine eligibility for) courses that are pre-vocational intensive service or skills upgrade courses, or courses that cross industry sectors and occupations or which are less than 3 days in duration.

Department Response: In response to the recommendation that eligibility be determined generally at the degree level, the Department is clarifying that eligibility is determined at the level of "program of training" as described in § 680.420, rather than at the class, course or general degree level. A program of training may involve one course or a course of fewer than 3 days in duration, if the course leads to one of the outcomes as described in the definition of a program of training services at § 680.420. In order for such a program of training to receive WIOA title I adult, dislocated worker, or youth training funds through an ITA, the program must be determined eligible and is therefore subject to reporting requirements. Registered apprenticeship programs are an exception to the eligibility requirements. Work-based training options do not receive training funds through an ITA, and are described at § 680.530. No changes were made to the regulatory text in response to this comment.

Comments: One commenter recommended that States be given an additional 2 years to implement the performance information requirements in §§ 680.450(e) and 680.460(f). After stating that the Department does not anticipate complete performance data derived from wages until PY 2018, a few commenters suggested allowing eligibility to be based on completion rates and credentials until complete employment and wage performance data can be collected.

Department Response: The Department has determined that a regulation change is not necessary given the flexibility in the regulation at §§ 680.460(f)(1) and 680.450(e)(2). Under § 680.460(f)(1), the State may use alternate factors for performance until data from the conclusion of each performance indicator's first data cycle is available. Under § 680.450(e)(2), the Governor's procedure must require applicant providers to provide information addressing a factor related to performance indicators, meaning that the Governor's initial eligibility procedure may not require the provision of the results for each of the indicators of performance. The

required factors for initial and continued eligibility allow the Governor's procedure to determine whether to set minimum performance standards and how much emphasis to put on any one factor that is taken into account.

Although the Department determined no change to the regulation was necessary in response to those comments, the Department has made a revision to § 680.450(f) by inserting the word "performance" between "minimum standards" to clarify that the minimum standards a Governor may set refer to minimum performance standards. Additionally, in response to commenters who requested that initial eligibility last for longer than a year because more time is needed to generate enough exiters to provide a meaningful outcome measurement given the data lag for performance indicators, the Department is clarifying that § 680.460(f)(1)(v) allows the Governor to take into account alternate factors related to the performance indicators described in § 680.460(f)(1) until performance information is available. Similarly, for initial eligibility, the Governor may use a factor related to performance in determining eligibility. Thus, the Governor's ability to establish continued eligibility procedures and to take other factors into account enable the State to build in consideration of the limits of initially eligible training providers to supply performance information after only 1 year. The Department notes that it also plans to launch an intensive technical assistance effort.

Comments: A commenter requested that initial eligibility under § 680.450(g) last longer than 1 year because more time is needed to generate enough exiters to provide a meaningful outcome measurement given the data lag for performance indicators, such as earnings in the fourth quarter after program exit.

Department Response: The Department has determined that initial eligibility will be maintained at 1 year. WIOA sec. 122(b)(4)(B) provides that initial eligibility is "for only 1 fiscal

year." However, because program eligibility is not aligned with a fiscal year, the Department has removed the word "fiscal" from paragraph (g) in this section. Since initial eligibility may be determined at any time during a calendar year or program year, requiring initial eligibility to be for 1 year, rather than 1 fiscal year enables the State to establish a 12-month initial eligibility period for each program.

Comments: One commenter recommended that the Department launch an intensive technical assistance effort for States to develop the IT infrastructure needed to meet these requirements. Another commenter requested that the regulation allow States and localities to waive the reporting requirements for libraries when developing lists of ETPs in the first year, on the grounds that libraries would be prevented from providing training with WIOA funding without such a waiver. A few commenters stated that reductions in overall funding and limited funding for the Governor's set-aside will make performance reporting requirements, including the need to modify data reporting systems, difficult. As a solution to this concern, commenters recommended that the full Governor's set-aside be reinstated. One commenter encouraged the Department to pay particular attention to the impact that the requirements would have upon students that have expressed a desire to reengage back into the educational system and obtain their accredited high school diploma. The commenter made several specific recommendations about programs that would be helpful for this particular population, including making State WIOA program eligibility to be dictated by regional accreditation.

Department Response: The Department has already deployed technical assistance for ETP requirements, including webinars and a Quick Start Action Planner and plans to engage in a technical assistance effort to assist with ensuring adequate information technology infrastructure to implement the new WIOA requirements.

The Department has chosen not to regulate waiver policy in the Final Rule. The Department does not have authority under WIOA to provide States and local areas the ability to grant waivers. Therefore, the Department has not included such waiver provisions in the Final Rule for libraries. However, the Department notes that small CBOs, such as libraries, can provide programs of training services under contracts with local areas as described at §§ 680.530 and 680.320. Programs of training services provided under such contracts are not eligible training providers and are not included on the State ETPL. Thus, they are not required to comply with the requirements to be on and stay on the list. The Department additionally notes that because CBOs providing training services through a contract are not on the State ETPL, they are also not required to submit the WIOA sec. 116(d)(4) ETP annual performance report.

The set-aside amount is determined by Congress as part of the annual appropriations process and is therefore outside the scope of this regulation.

The Governor's procedure for initial eligibility may require other information in order to demonstrate high quality training services and such information may include regional accreditation and the ability to serve students who wish to reengage the educational system. As described under § 680.420, a program of training services may lead to a secondary diploma or its equivalent, as long as this is consistent with § 680.350. No changes to the regulatory text were made in response to this comment.

However, the Department has made a change to the regulatory text at § 680.450(b) to align with changes made to § 680.470, providing that apprenticeship programs registered under the National Apprenticeship Act are exempt from initial eligibility procedures and must be included and maintained on the State ETPL unless the program is removed from the list for the reasons in § 680.470. This change was made to conform with changes made to § 680.470, which

are discussed in the preamble corresponding to that section. Although this is discussed more fully in the preamble to 20 CFR 677.230 (see Joint WIOA Final Rule), the Department notes that registered apprenticeship programs are not required to submit the WIOA sec. 116(d)(4) ETP annual performance report. Outcomes for WIOA participants in WIOA-funded registered apprenticeship programs must still be included in the State's annual performance report under WIOA sec. 116(d)(2). The Department also made a non-substantive change to this provision by removing the word "corresponding" from the phrase "corresponding program" as the word "corresponding" did not provide needed clarification and therefore was unnecessary.

Section 680.460 What is the application procedure for continued eligibility?

Section 680.460 sets out the requirements for the application procedure for continued eligibility. The Department has made non-substantive edits to this section for consistency with how the Department uses terms throughout the regulation. The Department has also made substantive revisions to paragraphs (c), (f)(1) and (10), and (j). The Department made edits to (i) to clarify the requirements for biennial review of eligibility information. These changes are discussed in further detail below.

Comments: Several commenters supported requiring public comment during the development of continued ETP eligibility procedures as well as allowing the Governor discretion to set the timetable for consultation and public comment. One commenter recommended that the regulations be revised to provide assurance that the biennial review is transparent and that it allows for adequate input from employers, as well as to provide guidance on specific ways in which Governors may hold providers accountable for meeting the needs of local employers. Another commenter suggested that the Department provide more structure for the process of

including education programs on the ETPL and include specific examples for gauging program quality by demanding standards of effective practice.

Department Response: The Department has determined that no changes to the regulatory text are necessary to address the concerns raised by commenters as the section already achieves the commenters' suggestions. The Governor's procedure for biennial review may take into consideration factors to ensure that the State will meet the needs of local employers. The Governor establishes the procedure after taking into consideration recommendations from Local WDBs and training providers and providing an opportunity for comment from interested members of the public, including representatives of business and labor organizations as required by § 680.460(b)(1) through (3). In addition, States must describe the eligibility procedures in their State Plans, which are subject to public comment requirements that include allowing for input from key stakeholders such as employers. This is further discussed in 20 CFR part 676 (see Joint WIOA Final Rule) and the WIOA State Plan ICR. Therefore, commenters' concerns about public comment during the development of the policies are already addressed.

In response to commenters' concerns about the Governor setting up a timetable for consultation with the public, the Department notes that § 680.460(b)(3) requires the Governor to set up a time period for soliciting and considering recommendations from Local WDBs and providers and giving the public an opportunity for comment. However, this section of the regulation does not prescribe a specific time period. Therefore, the Governor has discretion to set up a timetable for considering recommendations and public comment. Per § 680.460(f)(4), the Governor must take into account the degree to which programs of training relate to in-demand industry sectors and occupations in the State. Further, as described in § 680.460(f)(11), the Governor may take into account other factors such as ensuring that one-stop centers are

meeting the needs of local employers and participants. It is unclear what additional structure the commenter is recommending in order to gauge program quality by demanding standards of effective practice. WIOA performance accountability requirements, as addressed in the ETP performance reports in 20 CFR 677.230 (see Joint WIOA Final Rule), are highly structured. Through technical assistance, States will have opportunities to share effective practices to gauge program quality.

The Department modified proposed § 680.460(c). In the NPRM, this paragraph required programs registered under the National Apprenticeship Act (NAA) to be included and maintained on the list for as long as the program was registered and required the Governor's eligibility procedures to include a mechanism for registered apprenticeship programs to indicate interest in being on the list as described in § 680.470. The Department reorganized this paragraph for clarity, moving the sentence that procedures for including registered apprenticeship programs on the list are found in § 680.470 to the beginning of the paragraph, instead of the end of the paragraph, and made a substantive revision for consistency with § 680.470. This section now provides that programs registered under the NAA are automatically eligible to be on the State's list and must remain on the State's list unless they are removed from the list for the reasons set forth in § 680.470. This is a conforming edit to changes made in § 680.470 and more can be read about that change below. The Department also made a non-substantive edit to this section removing the word "corresponding" as it was unnecessary.

Comments: Many commenters responded to our request for comment under proposed § 680.460(f)(1) on the alternate factors that may be used until performance data are available. The Department revised § 680.460(f), breaking the requirements into separate subsections for clarity and consistency with WIOA sec. 122(b)(1)(A)(i) and (ii). The flexibility for the Governor

to use alternate factors until performance data are available is now located at § 680.460(f)(1)(v). The regulation at § 680.460(f)(1)(v) allows the Governor to use alternate factors for performance until performance information is available to establish continued eligibility. Several commenters suggested that alternate factors for performance be left to the Governor and Local WDBs to decide, while others offered a variety of specific alternate factors that the Governor could take into account. These suggestions included: WIA criteria; use of other information already supplied for State and Federal accountability measures, such as Carl D. Perkins Act performance indicators; three letters from local employers; completion rates; credentials; gainful employment measure; and graduation rates.

Department Response: The Department acknowledges that the suggestions provided by commenters offer appropriate options for the Governor's procedure, but has chosen not to include these in the regulation text to give Governors flexibility in choosing what performance information to use. In this way, the Governor's procedure can be tailored to the best performance data available among applicant training providers in that State.

Comments: A few commenters recommended a separate, lower set of performance standards for training providers who serve hard to serve participants, such as tribal colleges and programs specifically designed to provide combined workplace language and workplace skills to new Americans needing English literacy instructions. A few commenters recommended allowing States and local areas to grant waivers to CBOs for the reporting of data to ensure that these entities have the capacity to qualify as ETPs. However, a few other commenters stated that CBOs, including those serving hard to serve participants, must be held to the same standards as any other provider on the list.

Department Response: The regulatory language authorizes the Governor to take into account such factors as meeting the needs of hard-to-serve participants and programs specifically designed to provide combined workplace language and workplace skills to new Americans needing English literacy instruction when developing the State's continued eligibility procedures. Section 680.460(f)(9) specifically requires the Governor to take into account the ability of providers to provide training services to individuals who are employed and individuals with barriers to employment. In addition, local areas may enter into contracts to provide training services under specific circumstances, including with CBOs. Because CBOs which are providing programs of training through contracts are not considered ETPs, they do not need to meet the initial and continuing eligibility requirements of this subpart. However, CBOs that are included in the State List of Eligible Training Providers and receive payment for the training services through ITAs, rather than contracts, are subject to the eligibility and reporting requirements of the State list. No changes to the regulatory text were made in response to these comments.

Comments: Commenters addressed the performance information under § 680.460(g) that the Governor must require for continued eligibility for the State list of ETPs. One commenter questioned whether 20 CFR 677.230, which requires reporting performance information on all participants, is in conflict with § 680.460(g) which requires reporting on WIOA-participants only.

Department Response: The Department does not consider these provisions as being in conflict as they are derived from different statutory provisions and serve different purposes under WIOA. The ETP annual performance report is required by WIOA sec. 116(d)(4) and explicitly requires information on the levels of performance for all individuals in a program of study. As

explained above, more information about this requirement can be found in 20 CFR 677.230 and its corresponding preamble (see Joint WIOA Final Rule). Separately, the requirements for a training provider to continue to be on the State List of Eligible Training Providers and programs are found in WIOA sec. 122, and sec. 122(b)(2)(A) explicitly identifies the performance information the ETP must provide for this purpose. Thus, the WIOA sec. 116(d)(4) annual report is for reporting on performance, while the requirements in § 680.460 are for staying on the State List of Eligible Providers and Programs. In order to continue to be eligible, the ETP must provide information on the performance accountability measures in sec. 116 of WIOA for "participants" whose training is funded under title I, subtitle B. However, the Department notes that both the Governor, under WIOA sec. 122(b)(1)(J), and the Local WDB, under WIOA sec. 122(b)(3), have authority to require additional data from ETPs, which might include data on all students. In addition, WIOA sec. 122(b)(1)(A)(ii) explicitly permits the Governor to require reporting on all individuals enrolled in the programs in which WIOA-funded participants studied.

Comments: Several commenters cited the potential problem of a small number of participants ("small in size") when providing WIOA-participant-only data. These commenters stated that the resulting data would be too small to yield useful outcome information and would risk revealing personally identifiable information (PII). Other commenters suggested that § 680.460(g) specifically include instructions similar to those found in WIOA sec. 116(d)(6)(C), which states that the disaggregation of data for the State performance reports is not required when the number of participants is too small to yield statistically reliable information or when results would reveal PII about an individual participant. One commenter said that an alternative approach is needed for using performance results for management, provider selection, and

public/consumer information, but did not specify what the alternative approach would be. Some commenters suggested that the State List require reporting on all students in order to yield a larger data set. One commenter urged the Department to require biannual reporting of all completers and placement numbers for the previous year utilizing a standardized template to collect data to ensure an educated training program selection process. Several commenters recommended that the materials to be considered when determining ETP continued eligibility include information reported to State agencies on Federal and State training programs other than WIOA title I, subtitle B, and asked for submission of performance results for all students and not just those who received training subsidized by WIOA title I adult or dislocated worker funds.

However, several commenters supported a requirement that performance reports include only WIOA-funded students. One commenter cautioned that the cost for reporting all students and not just WIOA-funded students by program could result in training providers not accepting WIOA-funded students to avoid the reporting burden. One commenter stated that in order to avoid revealing data on any individual, it would normally not be required to disclose performance information on any program with a small number of participants and that performance data would be relatively meaningless if too few individuals are in the performance cohort. This commenter recommended that the regulations specifically recognize that this information shouldn't be revealed for those programs with low participant numbers.

Department Response: With respect to the privacy concerns that arise from the small numbers in participant data, the Department notes that the regulation already addresses this issue. Paragraph (e) of § 680.500 addresses privacy concerns for the dissemination of the ETPL by requiring that the State List and accompanying information be made available in a manner that does not reveal personally identifiable information about an individual participant and that, in

developing the information to accompany the State List of Eligible Training Providers and Programs, disclosure of personally identifiable information from an education record must be carried out in accordance with the Family Educational Rights and Privacy Act, including the circumstances relating to prior written consent. Accordingly, additional regulatory text for § 680.460 is not needed. While the Governor must take into account all of the information listed in WIOA sec. 122(b)(1) in setting the criteria for eligibility on the State ETPL, the Department interprets WIOA sec. 122(b)(1)(A)(ii) to provide discretion to the Governor to determine whether reporting on all students is an "appropriate" measure of performance outcomes under that paragraph. The Department is not regulating State eligibility procedures to require reporting on all students in order to yield a larger data set; however, the Governor may choose to do so as part of the State's eligibility procedures.

With respect to the minimum size of a data set that would ensure participant confidentiality and the reliability of outcomes data, the Department has determined that States will maintain confidentiality and reliability of data by complying with relevant State law and with WIOA itself. WIOA sec. 122(d)(3) states that the State List and accompanying information must be made available to such participants and to members of the public through the one-stop delivery system in the State in a manner that does not reveal PII about an individual participant. WIOA sec. 122 does not require that the performance information that accompanies the State List be statistically reliable in the same way that WIOA sec. 116(d)(6)(C) does for the annual performance reports. Therefore, the Department has not regulated this as a requirement.

In response to commenters suggesting that the Department require biannual reporting of all completers and placement numbers for the previous year utilizing a standardized template, the Department has chosen not to require a template for the State List of Eligible Training Providers.

While a standardized template is required for the reporting of information in the ETP Performance Reports, as described in 20 CFR 677.230 (see Joint WIOA Final Rule), the Department has concluded that WIOA intends the development of the State List to be at the State's discretion in order to meet the needs of individuals seeking training in that State. In addition, the flexibility to determine the format and presentation of the State List enables the State to accommodate additional information that the Governor may choose to require as part of the State's eligibility procedures.

In response to commenters that suggested that eligibility information include materials submitted to State agencies on Federal and State training programs other than programs within WIOA title I, subtitle B, this is already reflected in the factors that the Governor's continued eligibility must take into account under § 680.460(f)(3).

The Department again wishes to clarify that reporting on all participants is a requirement of the ETP performance reports described in 20 CFR 677.230. Suggestions that the ETP performance reports include WIOA-funded students only, and related comments citing potential concerns by training providers, are addressed in that section.

Comments: Several commenters requested that the Department add waiver provisions to ease the transition to WIOA or to adjust reporting requirements for providers applying for continued eligibility for the ETPL. Other commenters disagreed with the proposed continued eligibility procedures for ETPs eligible under WIA and described them as a time-consuming burden for State and Local WDBs.

Department Response: Because of WIOA's emphasis on ensuring the provision of quality training, and the importance of using performance criteria to obtain such quality, the Department is not including waivers in the regulation. In transitioning to collection of WIOA

data, § 680.460(f)(1) already provides sufficient flexibility by allowing the Governor to use alternate factors for performance until WIOA performance information is available for an ETP. No changes were made to the regulatory text in response to these comments.

Comments: The Department received comments in response to the request for ideas on how to reduce the burden and avoid duplication of effort to meet reporting requirements under WIOA secs. 122 (provider eligibility) and 116 (performance accountability).

A few commenters responded to the requirement that the State criteria for continued eligibility take into account the timely and accurate submission of ETP performance reports. Several commenters commented on the ETP annual performance report requirements under WIOA sec. 116(d)(4). Comments related to this report are more fully addressed in the preamble to 20 CFR 677.230 (see Joint WIOA Final Rule). A commenter cautioned that requiring training providers to submit appropriate, accurate, and timely information to the States to create the ETPL under § 680.460(f)(10) is an unnecessary burden because most case management systems already capture and validate this information as part of case management, and that collecting this information from training providers would compromise the accuracy, validity, and consistency of the information. This commenter recommended that States be granted flexibility to capture this information in the manner that best balances the validity of data and efficiency of progress, rather than strictly from training providers. Another commenter stated that the Governor and local WDBs should have the discretion to utilize alternative data sources in the interim to determine ETPs' performance outcomes and that these data outcomes should not be prescribed by the Department because local case managers have real-time participant outcomes not subject to the lag time associated with DOL performance indicators. One commenter disagreed with the

proposed WIOA continued eligibility requirements and recommended that the Department continue to use the WIA requirements.

One commenter, referring to § 680.460(l), questioned what qualifies as an "undue cost or burden" to remove a training provider from the performance requirement.

Department Response: The information required under § 680.460 to maintain continued eligibility is separate from the ETP annual performance reports required under 20 CFR 677.230 (see Joint WIOA Final Rule). Paragraph (e)(3) of 20 CFR 677.230 addresses coordination and dissemination of the ETP performance reports and the State list of eligible training providers as described at § 680.500. With respect to the commenter's recommendation that the requirement to consider whether a provider timely and accurately submits information for the WIOA sec. 116(d)(4) ETP annual report to the State, the Department acknowledges that there will be some overlap in what is required for inclusion in the WIOA sec. 116(d)(4) report and the information the State already has in its case management files. The Department recommends that States work with training providers to minimize the reporting burden and utilize integrated systems as much as possible. No change in the regulation text was made in response to this comment.

Additionally, the Department notes that the provision at § 680.460(l) does not allow a State to remove a training provider from this performance requirement based on undue cost or burden. Rather, this provision allows the Governor to establish procedures and timeframes for providing technical assistance to training providers that are failing to meet the criteria and information requirements due to undue cost or burden. The Governor's procedures determine what constitutes undue cost or burden. The Department has chosen not to regulate what constitutes "undue cost or burden" in order to provide Governors the flexibility needed to best address the particular needs of the ETPs in each State.

WIOA, not WIA, dictates the continued eligibility requirements and the Department declines to substitute WIA requirements for WIOA requirements. WIOA sets forth factors and the Governor's continued eligibility procedures determine how these WIOA-required factors are taken into account. WIOA and the regulations further provide that the Governor's criteria for eligibility and information requirements may include any appropriate additional information that the Governor may require. In addition, WIOA allows for WIA-eligible providers to remain eligible through December 31, 2015. The Department has used its transition authority under WIOA sec. 503(a) to extend this timeline to June 30, 2016.

Comments: One commenter requested clarification on the timeline for initial eligibility compared to the beginning of the biennial review and renewal period.

Department Response: States have discretion in how they implement eligibility procedures and timelines for biennial review. Some States may find it efficient to review the entire State list every 2 years, while others may have a system for reviewing each provider on the second anniversary of when that provider established continued eligibility under WIOA. The timeline for how initially eligible training providers are deemed continued eligible training providers and thereby incorporated into the review system will vary from State to State. The Department made minor edits to § 680.460(i) for clarity regarding the requirement for biennial review of eligibility information by inserting the word biennial before the word "review."

The Department modified § 680.460(j) on the biennial review to provide that, in addition to the verification of the registration status of registered apprenticeship programs, the biennial review also must include removal of any registered apprenticeship programs that are removed from the list under § 680.470. This change was made to conform with changes to § 680.470. More can be read about the Department's changes to proposed § 680.470 below.

Paragraph (f)(10) of § 680.460 proposed to require the Governor, in establishing the eligibility criteria for continued eligibility, to take into account whether providers timely and accurately submitted the information needed for the WIOA sec. 116(d)(4) ETP report. The Department also revised this provision to require the Governor to take into account whether the provider timely and accurately submitted the information required for initial and continued eligibility. Additionally, the Department revised this provision to require that the Governor consider whether the provider submitted "all of the" information for the report and eligibility procedures, which means the Governor must take into account whether the information the provider submitted is complete.

In response to comments and to ensure that providers comply with the requirement to timely and accurately submit all of this information, the Department added § 680.460(l) to require that the Governor's procedure include what the Governor considers to be a substantial violation of § 680.460(f)(10). And § 680.460(l)(2) requires those providers that substantially violate this requirement be removed from the State list of eligible training providers and programs consistent with § 680.480(b).

These modifications were made for consistency with WIOA sec. 122(f)(1)(B), which requires programs be removed from the State list of eligible programs and providers when a provider substantially violates any of the requirements of title I of WIOA. Given WIOA's focus on performance accountability in WIOA sec. 116 and informed consumer choice in WIOA sec. 122, the Department has concluded that failure to timely and accurately submit the information required for the WIOA sec. 116(d)(4) ETP report and the initial and continued eligibility constitutes a substantial violation of WIOA title I requirements.

Because WIOA sec. 122(f)(1)(B) requires the determination of a substantial violation to be made by an individual or entity specified in the Governor's procedures, § 680.460(l) gives the Governor the discretion to determine what constitutes a substantial violation of the requirement to timely and accurately submit all of the required information. Therefore, the Governor has the flexibility to take into account the specific circumstances in the State that affect a provider's ability to submit the required information. Moreover, the Department notes that paragraph (l)(1) requires the Governor's determination of what constitutes a substantial violation of the requirement to timely and accurately submit all of this information to take into account exceptional circumstances beyond the provider's control, such as natural disasters, unexpected personnel transitions, and unexpected technology-related issues. The Department included this provision specifically to address instances in which, through no fault of its own, a provider may not be able to timely or accurately submit all of the information required. In those instances, the Governor may not determine that a substantial violation has occurred. Additionally, the Department notes that the list of the exceptional circumstances in this regulatory provision is not exhaustive and the Department encourages Governors to consider the particular needs of providers in the State in creating the policy and determining what constitutes exceptional circumstances beyond the provider's control.

The Department also has made a clarifying change to § 680.460(f)(10) adding the words "information required for completion of" between "submitted" and "eligible" to clarify that while the ETPs are required to provide accurate and timely information for purposes of completion of the ETP performance report required by WIOA sec. 116, an ETP will not have all of the information to complete that report.

Finally, the Department removed paragraph (k) because the authority for the Local WDBs to require higher levels of performance for local programs is already referenced in § 680.430(e). Therefore, this provision was unnecessary. The Department renumbered what was previously proposed paragraph (l) to paragraph (k) to conform to this change.

Section 680.470 What are the procedures for including and removing registered apprenticeship programs on a State list of eligible training providers and programs?

Section 680.470 described the process for including and maintaining registered apprenticeship programs on the ETPL. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive changes to § 680.470(a) and (b), and added new paragraphs (c) and (f). The Department received comments regarding § 680.470(d), which is now renumbered as (e).

Proposed § 680.470(a) provided that all registered apprenticeship programs would be automatically eligible to be included on a State Eligible Training Providers and Programs List and required the Governor to establish a mechanism by which registered apprenticeship programs may indicate whether they wish to be included on the State Eligible Training Providers and Programs List. The NPRM required registered apprenticeship programs to indicate interest to be included in the State Eligible Training Providers and Programs List. Due to concern that some registered apprenticeship programs may not wish to be on the State ETPL, proposed § 680.470(b) provided that registered apprenticeship programs will remain on the List until they are deregistered or have notified the State that they no longer wish to be included on the List. The proposed section was silent on whether a registered apprenticeship program could be subject to the provisions for removal from the ETPL under § 680.480, and § 680.480 did not provide an express exclusion from those procedures for registered apprenticeship programs. Proposed

§ 680.470(d) encouraged Governors to consult with State and Local WDBs and other entities to establish voluntary reporting of performance information for registered apprenticeship programs, because WIOA sec. 122(a)(3) specifically exempts registered apprenticeship programs from the criteria and information requirements and Governor-established procedures required for inclusion on the State ETPL, and therefore the NPRM did not require registered apprenticeship programs to provide performance information in order to be included on the ETPL. In addition, 20 CFR 677.230(b) of the Joint WIOA NPRM (regarding information required for the ETP performance report) exempted registered apprenticeship programs from reporting information for purposes of the ETP performance report required by WIOA sec. 116(d)(4) but specified that any such information submitted voluntarily to a State must be included by the State in the ETP annual performance report required by 20 CFR 677.230. A number of changes were made to this § 680.470 in response to comments received and for purposes of clarity.

Comments: Several commenters expressed support for automatic qualification of registered apprenticeship programs for the State ETPL. In addition, several commenters offered suggestions on how registered apprenticeship programs are added to and removed from a State List of Eligible Training Providers and Programs. One commenter urged the Department to create a uniform standard for all Governors to follow when developing a mechanism by which registered apprenticeship programs request inclusion on the List. The commenter warned that nationally registered apprenticeship programs that offer training in various States would need to assess each State's process, which could prove overly burdensome if States have different mechanisms. Another commenter objected to placing the burden on registered apprenticeship training programs to ensure inclusion on the ETPL, in part because of the statutory mandate that registered apprenticeship programs be eligible to be included on the List. The commenter

expressed concern that the added requirement to indicate interest would create confusion and cause delay in getting registered apprenticeship programs on the State List. A few commenters were concerned that States with a history of being unfriendly or hostile to unions or of having significant bureaucratic inertia may use the requirement as an excuse to disfavor registered apprenticeship programs. Another commenter recommended revising the regulations to create an opt-out framework rather than an opt-in framework, such that registered apprenticeship programs would be included on the ETPL unless the program took steps to be excluded. This commenter stated that an opt-out system would allow program sponsors that may not wish to be on the State List to remove themselves while avoiding ill-designed opt-in procedures that could preclude or delay, intentionally or accidentally, the sponsors of registered joint labor-management apprenticeship programs from appearing on the State ETPL. Other commenters supported the proposal to require registered apprenticeship programs to opt in. Some commenters suggested revising the regulation to clarify when registered apprenticeship programs may be removed from the State List of Eligible Training Providers and Programs and whether registered apprenticeship programs are exempt from the enforcement provisions of WIOA sec. 122(f) that were set forth in proposed § 680.480. One commenter asked how States should monitor registered apprenticeship programs for compliance and what the criteria are to qualify as a registered apprenticeship program.

One commenter stated that proposed § 680.480 was inconsistent with WIOA to the extent that it allows registered apprenticeship programs to be removed from the List for any reason other than deregistration because, in this commenter's view, the requirement in WIOA sec. 122(a)(3) that registered apprenticeship programs shall be included and maintained on the State ETPL for so long as the program is registered precludes removal for any reason other than

deregistration. According to the commenter, the standards for deregistration under the National Apprenticeship Act are sufficient to trigger removal from the ETPL where appropriate, and application of the enforcement provisions in WIOA sec. 122(f) is inappropriate and unnecessary. The commenter states that regulations implementing the National Apprenticeship Act already include clearly-defined, qualitative standards governing when such a program can be deregistered. The commenter suggested a change to the enforcement section of the ETP requirements at proposed § 680.480 to affirm that registered apprenticeship programs are not subject to these enforcement provisions. The commenter suggested adding language to § 680.480(a) that states: "Except for a provider described in section 122(a)(3) of WIOA, a training provider may lose its eligibility pursuant to this section."

Department Response: The Department has made revisions to § 680.470(a) to clarify the process for including registered apprenticeship programs on the State List of Eligible Training Providers and Programs. Through a mechanism established by the Governor, registered apprenticeship programs must be informed of their automatic eligibility and must be provided an opportunity to consent to their inclusion before being placed on the State Eligible Training Providers and Programs List. The Department chose this approach in order to ensure that the States include registered apprenticeship programs that are interested in accepting WIOA participants while at the same time ensuring that all registered apprenticeship programs are readily included with minimal burden. The Department chose to allow Governors to develop such a process, rather than create a uniform standard for all States, in keeping with the Governor's discretion to implement procedures regarding the State List of Eligible Training Providers. This approach will also allow each Governor to establish a procedure that works best for the registered apprenticeship programs in that specific State.

While the NPRM provided that the Governor's mechanism "should" be developed based on guidance from the U.S. Department of Labor Office of Apprenticeship representative in the State or the assistance of the recognized State apprenticeship agency, § 680.470(a) now requires the procedures to be developed based on such guidance. This guidance includes how to ensure that national registered apprenticeship programs are included as eligible training providers. Finally, this paragraph has been amended to add a requirement that the Governor develop a process to impose only minimum burden on registered apprenticeship programs. In response to commenters' concerns that States with a history of being unfriendly or hostile to unions or of having significant bureaucratic inertia may use the requirement as an excuse to disfavor registered apprenticeship programs, these changes together with Departmental technical assistance and guidance ensures that States are inclusive of registered apprenticeship programs.

These revisions will provide registered apprenticeship programs the opportunity to consent to being included on the State List of Eligible Training Providers and Programs while minimizing the affirmative burden placed on them to do so. The Department has concluded that this type of process will increase the participation rate of registered apprenticeship programs on the ETPL and further the aims of the registered apprenticeship program by having such programs included on the State List as soon and as easily as possible. The Department chose not to revise the regulation to require registered apprenticeship programs be included on this List unless they choose to opt out, in order to reduce the potential confusion for participants utilizing the List. Allowing for registered apprenticeship programs to consent allows States to ensure that only providers that are willing to accept WIOA participants are included on the State List of ETPs.

The Department has also revised the regulation at § 680.470(b) and added a new § 680.470(c) to clarify that registered apprenticeship programs may be removed from the State

List of Eligible Training Providers and Programs for violations of WIOA and that enforcement provisions may apply in such cases. The regulation now includes § 680.470(b)(3), which provides that a registered apprenticeship program may be removed from the State List of Eligible Training Providers and Programs for having intentionally supplied inaccurate information or substantially violated any provision of WIOA title I (e.g., civil rights or discrimination violations) or WIOA regulations.

Section 680.470(c) provides that removal from the List for reasons under § 680.470(b)(3) will result in a termination of eligibility for the ETPL for not less than 2 years and liability to repay all training funds received during the period of noncompliance, consistent with the requirements under § 680.480 for all other ETPs. Section § 680.470(c) further provides that the Governor must specify in enforcement procedures established under § 680.480 the process for and the entity making the determination of ineligibility, and must provide an opportunity for hearing. The Department has concluded that the process used for all non-compliant eligible training providers must be applied to noncompliant registered apprenticeship programs, including removal from the State ETPL. This is needed to maintain the integrity and quality of the State ETPL. Application of the WIOA enforcement provisions to registered apprenticeship programs enables the State to take action to remove a registered apprenticeship program from the State List, if that program is in significant violation of WIOA. The Department wishes to avoid a scenario where a registered apprenticeship program that is in significant violation of WIOA could remain on the State List of ETPs until that program's registered status is reviewed under the National Apprenticeship Act.

In addition, the Department disagrees that WIOA requires the Department to exclude registered apprenticeship programs from the enforcement provisions of WIOA sec. 122(f).

WIOA sec. 122 contains express statutory exceptions for registered apprenticeship programs from providing performance information as a requirement for inclusion and maintenance on the State ETPL but WIOA sec. 122 contains no similar exception for registered apprenticeship programs from the enforcement provisions. In fact, WIOA sec. 122(h) contains express exemptions from the enforcement provisions for several types of providers, but does not include registered apprenticeship programs on that list of exempted entities. The Department interprets this silence to mean that the regular WIOA enforcement provisions apply to registered apprenticeship programs. Accordingly, the Final Rule now allows the State to take action as appropriate, in addition to the enforcement and deregistration process under the National Apprenticeship Act.

The Department has also revised the wording in the title of § 680.470 to reflect that this section addresses both inclusion and removal of registered apprenticeship programs from the State List of Eligible Training Providers and Programs.

Comments: A few commenters encouraged mandatory reporting of performance information for all training programs, including registered apprenticeship programs, that seek to be included on a State's List of Eligible Training Providers and Programs. Several commenters stated that registered apprenticeship programs should not be exempt from reporting ETP performance data, reasoning that this information is valuable in determining the effectiveness of registered apprenticeship programs in leading individuals to unsubsidized employment. One commenter supported exempting registered apprenticeship programs from the application procedures, information requirements, and performance reporting requirements of other training providers in light of the rigorous process for registering apprenticeship programs with the Department. Several commenters opposed any additional reporting for registered apprenticeship

programs and requested that the regulation clearly describe applicable reporting requirements for registered apprenticeship programs. One commenter pointed out that States and local areas will have to determine and establish data collection for tracking for performance and asked whether the Department will define the measures for registered apprenticeship program performance.

Department Response: The Department has decided to maintain the wording of proposed § 680.470(d) in the Final Rule, renumbered to § 680.470(e), because of the addition of new § 680.470(c). The exception for registered apprenticeship programs from providing performance information to be included or maintained on the State ETPL is required by WIOA sec. 122(a)(3). However, the Department is clarifying that voluntary reporting of performance information by registered apprenticeship programs is encouraged under the regulation. More information can be read on this in the preamble to 20 CFR 677.230 (see Joint WIOA Final Rule). In addition, the Department is maintaining the exception for registered apprenticeship programs from providing performance information for the ETP performance report required under 20 CFR 677.230 for the reasons discussed in the preamble to that section, but notes that outcomes for WIOA participants in WIOA-funded registered apprenticeship programs must still be included in the State's annual performance report under WIOA sec. 116(d)(2).

Comments: A few commenters recommended that apprenticeship programs be required to demonstrate recruitment of underrepresented populations. One commenter suggested that a key qualification for apprenticeship programs' integration into the use of ITAs be adherence to existing requirements under 29 CFR 30, which prohibits discrimination based on race, color, religion, national origin, or sex in apprenticeship programs. Another commenter suggested that the WIOA regulations should ensure that older workers are not discriminated against in apprenticeship programs.

Department Response: The Department has concluded that putting additional requirements on registered apprenticeship programs in order to participate in the State List of ETPs or to use ITAs is outside the scope of this regulation because WIOA designates registered apprenticeship programs as eligible to serve as ETPs. In addition, registered apprenticeship programs are already required to comply with 20 CFR part 30 anti-discrimination provisions.

Comments: Other commenters recommended that pre-apprenticeship programs be included on the State ETPL but with a performance measurement model that is more appropriate for the activity, for example, enrollment in an apprenticeship program or a community college program would both be positive outcomes.

Department Response: The commenter did not specify whether it meant that pre-apprenticeship programs should be included under the exception for registered apprenticeship programs or included through the Governor's eligibility procedures for eligible training providers. However, the Department acknowledges the need to clarify how pre-apprenticeship programs are treated for inclusion on the State ETPL. The Department has added a § 680.470(f) to clarify that because pre-apprenticeship programs are not registered under the National Apprenticeship Act and are not included in the exceptions for registered apprenticeship programs under WIOA sec. 122(a)(3), they must follow the Governor's procedure for eligibility in this subpart. Pre-apprenticeship providers that wish to use WIOA funds to provide training services may go through the normal training provider program application procedure to be included on the State List of Eligible Training Providers and Programs. Therefore, such pre-apprenticeship programs would be subject to the eligibility and information reporting requirements of the State ETPs.

Comments: One commenter expressed concern throughout the regulation that in defining how individual training accounts may be used, and defining the use of on-the-job training funds, preference is given to registered apprenticeship programs. The commenter urged the Department to revise the regulation to reflect the importance of other OJT programs. The commenter emphasized the robust and valuable non-registered apprenticeship programs embraced by many manufacturers, and that training for in-demand skills is available in multiple venues and that these programs should be considered based on the value of their training, rather than their registration status with a government entity. However, the commenter did not provide suggestions on how the Department could address the commenter's concerns.

Department Response: The Department has determined that no changes to the regulatory text are needed in response to this comment. Both the requirement that registered apprenticeship programs shall be included on the State ETPL and the exemption for registered apprenticeship programs from the requirement to submit performance information for inclusion on the State List are specifically limited to registered apprenticeship programs by WIOA sec. 122(a)(3). Regarding the commenter suggesting a revision to the regulatory text to emphasize OJT, it is unclear what revisions to the regulation the commenter is suggesting. The Department has made revisions to § 680.530 to clarify how exceptions to the eligible training provider List, which may provide training through contracts with the Local WDB, including OJT, are to be treated; more about this change can be read in the preamble to § 680.530. The Department agrees with the commenter that non-registered apprenticeship programs and work-based training are important training options.

Section 680.480 May an eligible training provider lose its eligibility?

Section 680.480 describes the enforcement provisions available to apply to training providers who are not in compliance with WIOA and WIOA regulations. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive changes to paragraphs (b) and (c) which are further described below.

The Department made a clarifying edit to § 680.480(a). The Department is deleting the phrase "deliver results" and replacing it with language to clarify that this provision requires that training programs meet the Governor's eligibility requirements and that training providers provide accurate information.

The Department also made a clarifying edit to § 680.480(e) to clarify that if a training program is removed from the eligible training providers in a local area because the training program failed to meet the local area's higher performance standards, the training provider may appeal this eligibility denial under § 683.630(b). This provision no longer requires Local WDBs to create an appeals procedure for these purposes.

Proposed § 680.480(b) provided that providers whose eligibility is terminated under this section are liable to repay all adult and dislocated worker funds received during the period of non-compliance. The Department revised this paragraph for consistency with § 681.550 that permits youth funds to pay for training for out-of-school youth aged 16-24 and such funds are also subject to the requirement to repay funds received during non-compliance.

Comments: The Department received only a handful of comments addressing proposed § 680.480. As discussed above, one commenter stated that proposed § 680.480 was inconsistent with WIOA to the extent that it allows registered apprenticeship programs to be removed from the List for any reason other than deregistration.

Department Response: The Department revised § 680.480(c) by adding language stating that registered apprenticeship programs may only be removed from the List for reasons set forth in § 680.470. The regulation includes registered apprenticeship programs within the enforcement provisions in WIOA sec. 122(f) for the reasons set forth in the preamble to § 680.470. WIOA sec. 122 does not require registered apprenticeship programs to supply performance information in order to be determined eligible training providers, in light of the extensive vetting process that registered apprenticeship programs undergo in order to become registered. Therefore, the Department is not regulating that registered apprenticeship programs be removed from the State List of Eligible Training Providers for reasons related to performance.

Comments: Another commenter stated that training providers should be considered to be noncompliant when less than 50 percent of those enrolled complete the program in the allotted training period or when less than 50 percent of completers fail to find employment within 180 days of completion. The commenter stated that these statistics should be based on all enrolled students, not just WIOA-funded individuals. In addition, a commenter suggested that ETPs that do not provide performance information as required under WIOA should be removed from the State ETPL, as those that are non-compliant or intentionally provide inaccurate information. The commenter said that such providers should also be liable for repayment of adult and dislocated worker funds. Another commenter asked how monitoring of training providers will be conducted and who has ultimate responsibility for this task.

Department Response: The Governor's procedures for establishing eligibility may establish minimum performance standards for all providers other than registered apprenticeship programs. Under § 680.480(c), the Governor may remove provider programs from the State List during its biennial renewal procedure for failure to meet State eligibility criteria, including any

minimum performance levels established. The Department has not regulated specific threshold amounts for compliance because it is within the Governor's authority under WIOA to establish appropriate minimum standards through its procedure. Under § 680.430(e), the Local WDB may establish higher levels of performance than those required by the Governor for a provider to be eligible to receive training funds from that local area. The Department made a minor revision to § 680.480(e) for consistency with § 680.430(e) to clarify that if the Local WDB has established higher performance standards pursuant to § 680.430(e), the Local WDB can remove a program of training services from the eligible programs in that local area for failure to meet those higher performance standards. In response to the comment suggesting that ETPs who do not provide performance information should be removed from the State ETPL, the Department refers readers to § 680.460 and its accompanying preamble.

Regarding comments on which entity is responsible for monitoring ETPs, the Department notes that under WIOA sec. 122, States and local areas are responsible for monitoring eligible training providers and for determining how such monitoring is conducted. Per § 680.430(b)(2) and (c), the Governor or the Governor's designated SWA (or appropriate State entity) is responsible for ensuring that programs meet eligibility criteria and performance levels established by the State, including verifying the accuracy of the information, and the Local WDB must carry out procedures assigned to the Local WDB by the State.

Section 680.490 What kind of performance and cost information must eligible training providers other than registered apprenticeship programs provide for each program of training services?

Section 680.490 describes the information that training providers must submit to the State to meet initial and continued eligibility criteria for inclusion on the State List of Eligible Training Providers and Programs under § 680.460(h). Proposed § 680.490(d) required the Governor to

establish a procedure and methods to assist training providers who demonstrate that providing the required information is unduly burdensome or costly. This section has been adopted as proposed, with revisions for clarity and consistency of terms and one substantive change at paragraph (c).

The Department revised proposed § 680.490(a) for clarity. Proposed § 680.490(a) provided that, in accordance with § 680.460(h), every 2 years training providers are required to submit appropriate, timely, and accurate performance and cost information. However, the Department changed the reference to § 680.460(h) in this paragraph to § 680.460(i) to clarify that eligible training providers, except registered apprenticeship programs, must submit this information at least every 2 years in accordance with the State's continued eligibility policy.

The Department also modified § 680.490(c) by adding that the Governor may require additional performance information if the Governor determines it is appropriate to better inform consumers. This paragraph originally provided that the Governor could add this information if the Governor determined it was appropriate for determining or maintaining eligibility. However, WIOA sec. 122(b)(1)(J)(iii) provides that the Governor's criteria and information requirements can include other factors the Governor determines are appropriate to ensure informed choice of participants among training service providers, and the modification to this section reflects this authority.

Comments: Several commenters agreed with the Department's message that the Governor must assist providers in supplying the information required of them under WIOA and the NPRM. These commenters urged that the State ETPL coordinators at the State level be required to maintain a list of available technical assistance for training providers and that a probationary period be included for all those who may miss eligibility. One commenter

encouraged the Department to ensure that the regulations provide maximum flexibility for the State to work with training providers to report on the primary indicators of performance.

Department Response: The Department cannot require States to provide a probationary period or maintain technical assistance lists. However, the Governor has significant flexibility under § 680.490(d). For example, if a provider demonstrates that providing additional information required under this section would be unduly burdensome or costly, the Governor may provide additional resources from funds for State workforce investment activities reserved under WIOA secs. 128(a) and 133(a)(1) as provided in § 680.490(d)(2) to assist providers in the information collection. Further, in addition to the required factors, the regulations allow the Governor to take any appropriate additional factors into account when developing procedures for providers to be included and maintained on the State List of Eligible Training Providers and Programs. No changes to regulatory text were made as a result of these comments.

Comments: Several commenters supported the § 680.490(d) requirement that Governors have a procedure in place to address the costs and burden of any increased reporting requirements. One commenter expressed appreciation for the Department's recognition of the potential cost and burden of WIOA's requirements for ETPs in meeting their performance reports and urged the Department to issue guidance to the States on how to streamline performance reporting for training providers and minimize the burden associated with reporting on multiple programs through the ETP performance reports required by WIOA sec. 116 and the performance information required by WIOA sec. 122 for inclusion and maintenance on the State ETPL. A number of comments appear to reflect confusion between these two types of performance information.

A few commenters stated that many of the requested reporting elements are not valuable to the consumer and asserted that local areas should determine if a provider should continue to be listed on the ETPL because local areas' performance is directly related to the quality of the training programs. One commenter suggested that for each program of study, the following information be collected: number enrolled, number completed, number of completers employed at 90 and 180 days after exit, and wage at placement of those employed.

Department Response: WIOA sec. 122 requires specific information that must accompany the State List of Eligible Training Providers and Programs. The Departments of Education and Labor are issuing joint guidance on data sharing. Submission of ETP performance reports is required by WIOA sec. 116(d)(4) and addressed in 20 CFR 677.230 of the regulations (see Joint WIOA Final Rule). This section of the preamble addresses § 680.460 and is focused on the requirements for ETP eligibility and maintenance of the State ETPL. Comments related to the ETP annual performance reports required under WIOA sec. 116(d)(4) and other issues related to specific performance indicators are addressed in the Joint WIOA Final Rule preamble section relating to 20 CFR part 677. In addition, the Governor's procedure for continued eligibility and for publishing the State List may include the specific information suggested by the commenter. No changes were made to the regulatory text in response to these comments.

Comments: Several commenters stated that flexibility is needed in the performance reporting requirements for inclusion on the State ETPL to allow Local WDBs to assess providers at the course, program, or institutional level because the proposed ETP performance reporting requirements could raise data privacy concerns where PII is provided. One commenter

suggested that performance information be maintained at the participant level and not across programs.

Department Response: The Department has determined that reporting requirements for inclusion and maintenance of the State ETPL must be established at the program level only. WIOA clearly establishes initial and continued eligibility requirements for provider programs. Eligibility and performance reporting is thus determined on a program-by-program basis for each provider under the regulations. Therefore, reporting is done through the program of study, rather than the individual courses that make up the program. All performance reporting requirements must be carried out consistent with all applicable Federal and State privacy laws and the Department is issuing guidance to assist States in complying with these laws.

In addition, the Department made a revision to the title of § 680.490 to clarify that registered apprenticeship programs are not subject to these performance reporting requirements. As the Department explained in the preamble addressing § 680.470, WIOA exempts registered apprenticeship programs from ETP performance reporting requirements for inclusion on the ETP list. However, voluntary reporting of performance information by registered apprenticeship programs is encouraged under the regulation. The Department also modified § 680.490(a) to clarify, consistent with the decision that registered apprenticeship programs are exempt from the performance reporting requirements, that registered apprenticeship programs are not required to submit the performance and cost information required by this section.

Finally, as noted in the preamble to § 680.400, § 680.490(b) has been revised to require performance reporting on all WIOA participants enrolled in a program of training services and receiving funding through an ITA for the performance information on WIOA participants required by § 680.490(b). This includes OSY aged 16-24. As the Department is permitting

youth program funds for OSY aged 16-24 to use ITAs, it is important that the performance information required encompass these WIOA participants. However, the ETPs will report based on the adult primary indicators of performance for these youth to provide comparability and to eliminate the burden that would be imposed if ETPs were required to report on separate performance indicators for adults and dislocated workers and for the subset of youth who may receive training through ITAs.

Section 680.500 How is the State list of eligible training providers and programs disseminated?

Section 680.500 describes the requirements for distributing the State List of Eligible Training Providers and Programs and accompanying cost and performance information to Local WDBs and to the general public. Other than non-substantive changes for consistency of terms, the Department has adopted this section as proposed.

Comments: One commenter supported making the ETPL publicly accessible in a consumer friendly format. Another commenter stated that only one List per State should be permitted to be published because multiple publications within a State would be confusing for participants and ETPs. One commenter recommended that States be required to identify and list credentialing organizations and helpful information about key or high growth sectors on the homepages of the State Lists of Eligible Training Providers and Programs, including providing a list of high growth industries. This commenter stated that when a nationally-recognized, industry-driven credential has been discovered by a State or local entity, or the Federal government, this information should be shared publicly to raise the bar on training programs and help ensure that tasks are performed to the highest standards available, while maintaining and improving American competitiveness.

Department Response: WIOA requires the State to generate and disseminate its List of ETPs that contains, at a minimum, the information required by WIOA sec. 122(d) and § 680.500. However, as provided at § 680.430(e), Local WDBs may establish higher performance standards or additional information and criteria, except with respect to registered apprenticeship programs. In addition, the Department notes that States have the discretion to identify credentialing organizations or to restrict the types of providers included on the State List. It is up to the State to determine what providers meet its initial and continued eligibility criteria in order to be included on the State List. Some of this information, including whether a provider organization provides an industry-recognized credential may be noted on the State List. No changes were made to the regulatory text in response to these comments.

Comments: Several commenters responded to the Department's request for comments on the value of a summary sheet to accompany the ETPL. A few commenters stated that a summary sheet was not necessary because applicants only need the following key data to make an informed choice: completion rate, placement rate, credential, and wages. In contrast, another commenter encouraged the use of a uniform summary sheet to help prospective students compare information across all participating programs. This commenter recommended that the summary sheet include detailed information about the programs, including many data points that are part of the ETP performance reports, such as comparative information about costs, program completion, and job placement rates, average starting salaries, and debt upon completion. Other commenters recommended that each State be allowed to design its own accompanying information. One commenter suggested that the information required for the ETP be detailed in a simple chart format with cohort information for completion and placement information, and that the public site should include information that is pertinent to the customer. One commenter

urged the Department to consider the work of Local WDBs that already have scorecards. Another commenter encouraged developing "ease of use reports" that meet the needs of training seekers while minimizing the reporting burden on providers and States. Another commenter recommended allowing States to design their own display.

Department Response: The Department has determined that no revisions to the regulatory text are needed in response to these comments. The list of ETPs and accompanying cost and performance information must be disseminated in coordination with the ETP annual performance reports in accordance with 20 CFR 677.230(e)(3) (see Joint WIOA Final Rule). The ETP annual performance report must include the information required under WIOA sec. 116(d)(4) and must be provided using a template created by the Department. In contrast, WIOA sec. 122(d) does not require that the State List of Eligible Training Providers and Programs and accompanying information comport with a Federal template or format. The Department, therefore, has decided that the statutory mandate is best met by leaving it to the States' discretion to determine: (1) what information should accompany the State ETPL provided that the accompanying information meets statutory requirements (including the requirement in WIOA sec. 122(d)(1) that the accompanying information identify the recognized postsecondary credential); (2) the best format to provide that information to users; and (3) how to coordinate its distribution with the ETP performance reports. The Department plans to issue further guidance to States regarding the relationship between ETP performance reports and the State List of Eligible Training Providers and Programs.

Comments: One commenter stated that some State laws include additional restrictions on data sharing beyond the Federal law requirements and encouraged the Department to consider how regulations and guidance can help States interpret or revise their own laws to allow greater

access to data for strategic planning and evaluation purposes. One commenter urged the Department to issue guidance and technical assistance on how data shared for WIOA performance reporting may be incorporated into Statewide Longitudinal Data Systems (SLDS) in compliance with both UI confidentiality provisions and the Family Educational Rights and Privacy Act (FERPA). The commenter stated that the data collected would be useful for a variety of stakeholders, including for longitudinal research and evaluation to improve the mix and targeting of program services.

Department Response: Privacy concerns in regard to how the State List and accompanying information are made available are addressed under the regulations in § 680.500(e). In developing the information to accompany the State List described in § 680.490(b), disclosure of personally identifiable information from an education record must be carried out in accordance with the Family Educational Rights and Privacy Act, including the circumstances relating to prior written consent. No changes were made to the regulatory text in response to these comments. Instead, the Department intends to provide additional guidance on this issue and will also provide technical assistance to States who face legal barriers in complying with performance reporting requirements.

Section 680.510 In what ways can a Local Workforce Development Board supplement the information available from the State list of eligible training providers and programs?

The Department did not receive any comments addressing § 680.510 other than a general statement of support for the provision as drafted. The Department made non-substantive edits to the title of this section for uniformity in use of the term "State list." The Department also modified § 680.510 to clarify that, as explained above, the Local WDB cannot supplement the

criteria and information requirements established by the Governor for registered apprenticeship programs.

Section 680.520 May individuals choose training providers and programs located outside of the local area or outside of the State?

Section 680.520 governs when an individual can choose to attend a training program located outside of the local area or State. The Department has made non-substantive revisions to this section for consistency in the use of terms, and made revisions for clarity to this section.

Section 680.520(a) provides that individuals may choose training providers and programs outside of the local area provided that the training program is on the State List and it is consistent with local policies and procedures. For State ETPs that are outside of the local area or that do not meet the local area's criteria for eligibility, local policies and procedures determine whether participants in the local area may utilize ITAs for training. However, the local area may choose to make exceptions to its local eligibility criteria. The local policies and procedures must be consistent with State policies and procedures in order for the program to receive funds through an ITA.

Section 680.520(b) provides that individuals may choose eligible training providers and programs outside of the State consistent with State and local policies and procedures and that State policies and procedures may provide for reciprocal or other agreements established with another State to permit eligible training providers in a State to accept ITAs provided by the other State. The State policies and procedures may allow training providers or programs located outside of that State to receive funds through a participant's ITA within specific circumstances, or a State may enter into a broader agreement with another State to establish that ETPs in the other State are eligible in the "home" State. State policies may determine whether the training

providers and programs in another State must meet any or all of the "home" State's eligibility criteria order to receive the ITA funds provided by the State. In either case, the local policies and procedures can have more stringent standards than the State policy, and therefore any use of ITAs for training providers and programs outside of the State must be consistent with both State and local policies and procedures.

Comments: The Department received a handful of comments addressing proposed § 680.520. One commenter supported allowing participants to choose training located outside the local area or in other States. Another commenter agreed with allowing individuals to choose training providers located outside of the local area as long as the training providers meet the performance criteria set by the Local WDB in the local area where the person resides.

One commenter urged the Department to work with inter-governmental organizations to develop guidance for the active inclusion of out-of-area and eLearning options into the training approaches of Local WDBs. This commenter stated that guidance would be preferable to reciprocity agreements to reduce the time required to understand and implement the specifics of interstate agreements.

Department Response: The Department has concluded that reciprocity agreements will be maintained in § 680.520 because they are specifically authorized under WIOA sec. 122(g) and they further the goals of WIOA. Reciprocity agreements reduce the burden on States and providers by eliminating duplicative procedures. They also expand the array of training options available to individuals seeking training. The Department recommends that States consider how best to establish and implement reciprocity agreements, and how these agreements may be used to expand distance and online training options. The Department notes that its revisions to this section, in § 680.520(b), permit the States to develop other agreements that permit ETPs in a

State to accept ITAs provided by another State. This provides additional flexibility to the States as the agreement does not have to be reciprocal. The Department will consider whether there is a need for additional guidance on this issue in the future.

Section 680.530 What eligibility requirements apply to providers of on-the-job training, customized training, incumbent worker training, and other training exceptions?

Section 680.530 explains that providers of OJT, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional jobs are not subject to the same WIOA eligibility requirements of sec. 122(a) through (f) that are established for providers listed on the State List of Eligible Training Providers and Programs. Section 680.530 requires local one-stop operators to collect any separate performance information required by the Governor and determine whether these providers meet the Governor's performance criteria. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section and made substantive edits to the provision which are further explained below.

The Department reorganized this section for clarity by breaking what was one paragraph into several paragraphs. Paragraph (a) now provides that providers of OJT, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional jobs are not subject to the requirements applicable to providers and programs which are included on the State ETPL. Paragraph (b) now provides that the Governor may establish performance criteria those providers must meet to receive funds through the adult or dislocated worker programs pursuant to a contract consistent with § 680.320. Thus, while these kinds of programs cannot be paid for with ITAs, Local WDBs may enter into a contract with these entities to provide these training services. More information can be read about this in § 680.320 and its accompanying

preamble. Paragraph (c) provides that one-stop operators must collect any performance information required by the Governor and determine if the provider meets these performance standards. For those that meet the Governor's standards, paragraph (d) requires the one-stop operator to distribute information about those programs, with the relevant performance information, throughout the system.

Comments: Several comments requested clarification of whether these other training providers are exempted from the State eligibility process required by WIOA sec. 122 and/or from the ETP performance reporting process required by WIOA sec. 116, if they are not included on the State List of Eligible Training Providers and Programs. Other commenters supported allowing local areas to contract with providers not on the State List of Eligible Training Providers for customized training, incumbent worker training, internships, paid or unpaid work experience, and transitional employment. One commenter expressed support for exempting OJT, customized, and incumbent worker training from the ETP process but recommended that these training programs be subject to performance reporting. Another commenter recommended revising § 680.530 to provide that OJT, customized training, incumbent working training, and other training exceptions are not exempt from rigorous performance standards even though they are exempt from the general performance metrics in WIOA sec. 122 and must be subjected to rigorous performance standards suited to the type of program. This commenter recommended that § 680.530 be revised to emphasize that local one-stop operators must collect the performance information that the Governor shall require and to emphasize that local one-stop operators must disseminate this list of training exceptions. This commenter recommends requiring inclusion of the Governor's performance criteria for OJT, customized training, and incumbent worker training in the State Plan and annual reports and that

the monitoring of these programs be referenced in § 680.530. Further, this commenter recommended that performance of these programs be detailed by industry, company, and occupation at the quarterly meetings of Local and State WDBs Another commenter suggested the Local WDB must concur with the Governor that such information is worth collecting and that the Local WDB should determine how best to collect the information. This commenter felt that requiring the operator to collect such information is likely to be less efficient that obtaining the information directly from the service provider or UI wage records, and that local areas should decide if it is worth collecting data on every work-based, customized, incumbent worker training, internship, or work experience arrangement.

One commenter recommended that work experience programs be excluded from reporting. Another commenter suggested that the Department require the Governor's performance standards for these exceptions to be described in the State Plan. Some commenters recommended that these exceptions be subject to the same accountability, transparency, and monitoring standards that apply to all programs regulated by WIOA. One commenter recommended that where a Local WDB is using short-term and/or eLearning assisted "training," these training services should be regarded as being provided by the Local WDB, and these approaches should be exempted from the ETP process. This commenter stated that these training programs should be subject to performance reporting. One commenter stated that OJT and customized training providers should not be included on the State ETPL because these should be matters of negotiation between Local WDBs and affected business entities. Finally, one commenter said that customized training, registered apprenticeship, or OJT are all work-relevant, but the section-by-section discussion in the regulation should clarify that these are examples and not an exhaustive list of the types of training that would have to be provided by a business. Such

limitation could deem ineligible representatives of the business community who may successfully offer alternative types of training such as a non-registered apprenticeship.

Department Response: The Department has made changes to the regulatory text of § 680.530 to clarify that the training providers listed in this section are not included on the State ETPL. The Department is including among these exceptions the types of work-based training included at WIOA section 122(h), which does not specifically identify non-registered apprenticeship programs but does include on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience, and transitional jobs. There is no Federal restriction on States and Local WDBs including non-registered apprenticeship programs on the ETPL; however, these programs must apply through the Governor's eligibility procedure to become an eligible training provider, just as any other potential eligible training provider would. Additionally, there is no restriction on non-registered apprenticeship programs participating in on-the-job training or customized training through contracts as described in § 680.530, if it is determined appropriate by the State and Local WDB. This decision is based on the exception in WIOA sec. 122(h) exempting these providers from the requirements for inclusion on the List, maintenance on the List, and removal from the List. Notwithstanding this exclusion, that exemption in WIOA sec. 122(h) further authorizes the Governor to require the local area to collect performance information on these providers. That information can be the same as that required for ETPs or may be different information.

Local WDBs may provide training services, including short-term and/or eLearning assisted training, if the Local WDB meets the conditions of WIOA sec. 107(g)(1), which includes the information required in a written waiver request to the Governor.

The revised regulatory text at § 680.530(d) clarifies that one-stop operators must disseminate information identifying providers and programs that have met the Governor's performance criteria and the relevant performance information as required by the Governor throughout the one-stop delivery system. Local WDBs are not required to concur with the Governor regarding the value of the performance information that the Governor chooses to require.

While States are not required in their State Plans to describe the State's performance standards for on-the-job training, incumbent worker training, transitional jobs, and customized training, the State is required to describe the State's strategies for how these exceptions ensure high quality training for both the participant and the employer. State Plan requirements are fully described in the WIOA State Plan ICR and 20 CFR part 676 (see Joint WIOA Final Rule).

The Department does not have the authority to require State or Local WDBs to review performance information by industry at quarterly meetings.

Further, the regulatory text has been modified to clarify that these other training providers are eligible to receive WIOA funding through a contract for services rather than through ITAs. The regulatory text was also edited to remove the statement that approved providers under this section are considered eligible training providers services, which could inappropriately suggest that these entities may serve as ETPs and receive funding through ITAs without going through the Governor's eligibility procedures. As explained, this is not the case. The regulation text was also revised to clarify that these providers are not subject to the other requirements that training providers and programs which are on the State ETPL must fulfill. However, these providers are still subject to other requirements of WIOA outside of this subpart.

The Department has also made a change to the terminology used in reference to transitional employment. For consistency with other areas of the WIOA Final Rule, the Department is using the term transitional jobs.

Comments: One commenter recommended that § 680.530 be revised to ensure that non-credit training and education be included on the ETP, and that performance-related elements are consistent across all ETPs, including community colleges, to ensure better program outcomes and a level playing field for all ETPs. Two commenters suggested that work experience should be excluded from any reporting required of these training exceptions.

Department Response: Section 680.530 describes programs that are not included on the State ETPL. The programs listed in this section may or may not offer credit, and the eligible training providers included in the State List of Eligible Training Providers and Programs may or may not offer credit. For performance reporting, the performance-related elements required by WIOA are consistent across all eligible training providers, except for registered apprenticeship programs. For eligibility procedures, the performance-related elements in the Governor's procedure should be consistent across all programs in the State. However, the Governor's performance criteria for the work-based training exceptions described at § 680.530 may be quite different and these programs are not a part of the State List of Eligible Training Providers. No changes were made to the regulatory text in response to these comments.

Comments: Several commenters requested clarification of how the Governor may treat providers who fall within the exceptions to ITAs described at §§ 680.320 and 680.530 as to whether these excepted providers may use ITAs or only contracts, and what is required if they are to be on the State ETPL.

Department Response: As described above, local areas may contract for these work-based training exceptions and these programs of training services do not need to be on the State List nor are they subject to the ETP eligibility procedures. However, these providers also could have programs of training that are not excepted under § 680.530 and that the provider wishes to be eligible to use ITAs. As explained above, only ETPs on the State List are able to use ITAs. Therefore, when a provider that provides a program of training services through contract to a local area wishes to be eligible to receive students using ITA funding, the training provider would need to complete the ETP eligibility process described in this subpart. These programs would be subject to the Governor's eligibility procedure. An example of such a case would be a company that provides OJT through a contract with a local area and also offers classroom training or credentialing; the classroom training could be a regular ETP while the company could have a contract for the OJT. More information about the ETP exceptions can be found in § 680.320. No changes were made to the regulatory text in response to these comments.

6. Subpart E – Priority and Special Populations

Introduction

The services provided with adult funds can be a pathway to the middle class for low-income adults, public assistance recipients, and individuals who are basic skills deficient. The regulations implement the statutorily-required priority for the use of adult funds, and ensure any other priorities or designations are consistent with the statutory priority. This subpart contains regulations about how participants from certain populations are able to access adult and dislocated worker services, and regulations establishing priority access to these services. WIOA sec. 134(c)(3)(E) provides that priority for adult training services and certain career services must be given to recipients of public assistance, other low-income individuals, and individuals

who are basic skills deficient. Under WIOA, priority access to services by members of this group is always in effect regardless of funding levels. Nonetheless, WIOA allows one-stop centers to provide individualized career services to individuals who are not members of these groups, if determined appropriate by the one-stop center.

The Department encourages close cooperation between WIOA-funded programs and other Federal and State sources of assistance for job seekers. Coordination between WIOA-funded programs and the TANF program is a crucial element in serving individuals who are on public assistance. TANF is a required partner in the one-stop delivery system. Through close cooperation, each program's participants will have access to a much broader range of services to promote employment retention and self-sufficiency than if they relied only on the services available under a single program.

In this subpart, the Department explains how displaced homemakers may be served with both adult and dislocated worker funds. Under WIOA, a displaced homemaker qualifies as an "individual with a barrier to employment" (see WIOA sec. 3(24)(A) and § 680.320(b)). Additionally, displaced homemakers meet the definition of a "dislocated worker," as defined in WIOA sec. 3(15)(D). Displaced homemakers, whose work, albeit without a formal connection to the workforce, is recognized for its value, may need WIOA services to develop further work skills. WIOA also expands the definition of displaced homemakers to include dependent spouses of the Armed Forces on active duty to ensure they have access to WIOA title I services.

This subpart ensures that veterans and certain service members have access to adult and dislocated worker programs. Under WIOA, as was the case under WIA, veterans receive priority of service in all Department-funded employment and training programs. The regulations in this subpart describe what is meant by "priority of service." The regulation is consistent with

guidance it issued in TEGL No. 22-04 ("Serving Military Service Members and Military Spouses under the Workforce Investment Act Dislocated Worker Formula Grant"), dated March 22, 2005 (http://wdr.doleta.gov/directives/attach/TEGL22-04.pdf) and expanded in TEGL No. 3-15 ("Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services"), dated July 1, 2015 (http://wdr.doleta.gov/directives/attach/TEGL/TEGL_03-15.pdf) that separating service members meet the eligibility requirements for dislocated worker activities. This regulation will ensure that service members will have access to the full array of services available through the one-stop delivery system.

Section 680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?

Comments: Several commenters expressed general support for giving priority for service to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. In contrast, a few commenters expressed disagreement with the priority of service provisions, reasoning that the regulations fail to address employer needs and focus instead solely on the needs of the employee. Two commenter recognized the need to be responsive to both the employers and the employees.

Department Response: The Department notes that WIOA sec. 134(c)(3)(E) requires priority be given to individuals who are public assistance recipients, low income, or basic skills deficient, with regard to the provision of individualized career services and training services. This priority applies to funds allocated to a local area for the WIOA title I adult program, It is not an eligibility criterion for the program, but it is the means to ensure an emphasis on providing

services to these populations. This priority is not required for the WIOA title I dislocated worker program. The Department recognizes the need to serve not only low-skilled individuals but also those with more advanced skills and training who also need assistance. The Department also recognizes the importance of the one-stop delivery system's employer customer, assisting them to find, hire, train, or upskill their workforces. The one-stop delivery system connects the provision of career services and training to help individuals get good jobs and build careers and the development of the skilled workers employers need and their match to employers. Work-based training focuses on employer workforce needs, particularly incumbent worker training, where the employer is the primary customer.

Comments: A few commenters supported the removal of the WIA "limited funding" exception. Two commenters strongly urged the Department to clarify in the Final Rule that the priority is in effect regardless of funding. Two commenters stated that it was preferential to apply the proposed priority of service provisions when funds are limited. One commenter questioned whether the regulations pre-suppose that limited funding exists and expressed support for the development of criteria that would give local areas the authority to set priority of service thresholds that would take effect only during times of limited funding.

Department Response: The application of priority under the title I adult program applies at all times as required in WIOA sec. 134(c)(3)(E).

Comments: A commenter recommended that the regulation allow for local definition of low income rather than the Federally defined Lower Living Standard Income Level (LLSIL), reasoning that an individual might not be below the low-income level as defined by the LLSIL, but still be far below the level of self-sufficiency in the local area. Another commenter asked what the definition of "family" would be when determining whether someone is considered low

income in regard to priority of service. One commenter recommended incorporating the definition of family from WIA sec. 101(15) into the regulations to clarify the meaning of low income. One commenter questioned how the priority groups included in the regulation relate to Equal Employment Opportunity (EEO) considerations and requested clarification within the regulation that EEO applies within the priority groups rather than before prioritization is considered.

A few commenters asserted that insufficient detail was provided in the regulations (e.g., family income calculations) and expressed concern with an approach that provided these details through guidance, reasoning that guidance allows for requirements to change over time.

Department Response: The term "low-income individual" is statutorily defined in WIOA sec. 3(36); it includes language that the LLSIL is determined by the Secretary. The Department agrees with the commenters requesting a definition of "family" and has added language to the definitions in part 675 of this Rule. Discussion of the added definition is provided in the preamble accompanying part 675.

The non-discrimination provisions of WIOA sec. 188 do not provide for preference for services. They protect against discrimination in the provision of services and prevent individuals from being otherwise adversely affected because of their membership in a protected class. Therefore, the Department has declined to make changes in the regulatory text in response to this comment.

Comments: Several commenters recommended a revision to proposed § 680.600(c) to clarify that any designation of priority for other eligible individuals must be subject to both the veterans priority of service requirements at § 680.650 and the WIOA statutory priority of service requirements in sec. 134(c)(3)(E). A commenter suggested that any guidance in this area,

including guidance on expectations for State and local implementation, should support flexibility to allow States and localities to serve their unique and diverse populations best. One commenter questioned the relative priority that should be applied to other groups of individuals designated by the Local WDB or Governor as receiving priority of service compared to those explicitly listed in WIOA.

Department Response: The Department agrees with the commenters' suggestion that any additional priority populations identified by the Governor must be consistent with the statutory priority as well as the veteran's priority of service. The Department has made changes to the regulatory text at § 680.600(c) to reflect this suggestion. The Department will issue guidance and technical assistance about the implementation of these priority requirements.

Comments: Several commenters stated that the Department must revise proposed § 680.600(a) to align with WIOA and allow for priority to be given to "recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient," not "recipients of public assistance, other low-income individuals, who are basic skills deficient," as was proposed. A commenter requested clarification as to whether being basic skills deficient alone would quality an individual for priority of service.

Department Response: The Department agrees with the commenters and has modified the regulatory text in § 680.600(a) to make clear that individuals who are basic skills deficient is its own category to be eligible for priority of service in the WIOA title I adult program.

Basic Skills Deficient

Comments: A commenter provided several recommendations about priority of service for individuals who are basic skills deficient: (1) basic skills deficient should include computer literacy skills as a skill necessary to function on the job; (2) the process for identifying basic

skills deficient should allow self-attestation and observation by one-stop staff; (3) a standard tool for measuring basic skills deficient should be developed and should include consideration of career-oriented employability skills; and (4) any individual who meets the definition of basic skills deficient should be eligible for services.

A few commenters cautioned against using a definition of basic skills deficient that considered how the individual's skill set would allow them to "function on the job." These commenters reasoned that such a definition could create a loophole that might diminish the priority of service requirement by permitting services to otherwise non-low- income individuals who simply lack some skill needed to do a specific job. A few commenters recommended that the methodology for determining basic skills deficiency should be identified in State or local policy, rather than in regulation or Department policy.

Department Response: The term "basic skills deficient" is defined in WIOA sec 3(5). States and Local WDBs have flexibility in determining when an individual meets this definition.

Comments: A commenter stated that proposed paragraphs (a) and (c) of § 680.600 included inconsistent language when describing individuals who are basic skills deficient, one paragraph using the term "basic skills deficient" and the other using the term "individuals without basic work skills." The commenter asserted that consistent terminology is important.

Department Response: The Department agrees with these comments and has modified the regulatory text to incorporate this suggestion.

Implementation of Priority of Service Requirements

Comments: Several commenters requested guidance on the implementation of the priority of service requirements. A few commenters stated that guidance should include an explanation of how States and localities will be monitored to ensure that an appropriate process

or protocol is established and details on what the protocols should include. Because the priority groups could be seen as a threat to successful performance tracking, one commenter stated that reporting and incentives should be put into place to ensure these participants are actually served and supported.

Several commenters provided additional input on how to implement the priority of service requirements, including the following recommendations, building on the Department's use of veterans' priority of service, utilizing technical assistance and best practices, developing performance metrics and benchmarks, and coordination with immigration and refugee organizations and State Refugee Coordinators.

A few commenters described how U.S. Census data could be used to implement or verify the priority of service requirements. To verify that the priority of service has been properly implemented, two commenters recommended that the Department require that State and local planning efforts utilize the most current Census and administrative data available to develop estimates of each priority service population in their planning efforts and update these data year to year. Additionally, these commenters recommended that this data be used in Federal reviews of State Plans to ensure that system designs and projected investments are equitably targeted to service priority populations. The commenters also stated that this data should be used to benchmark system performance in actual implementation of the priority of service from year to year.

Department Response: The Department will provide further guidance to clarify how priority of service should be implemented and monitored.

Section 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

Comments: A commenter sought clarification as to whether the same priority given to adult funds applied to dislocated worker funds that were transferred to the adult program.

Department Response: The Department considers funds transferred from the dislocated worker program to the adult program to be adult program funds and fall under the priority requirements of the adult program. Likewise, any transfer of funds from the adult program to the dislocated worker program will fall under the requirements of the dislocated worker program.

Comments: Commenting that older workers are more likely to show up in the dislocated worker program than in the adult program, one commenter recommended that priorities and protections should be established within the dislocated workers program.

Department Response: There is no priority in the dislocated worker program, other than veteran's priority of service. Participants must meet the dislocated worker eligibility criteria in order to participate in this program. No changes have been made to the regulatory text in response to the comments

Section 680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?

Comments: A commenter suggested that the statement in the NPRM introduction to subpart E that the "Department strongly encourages close cooperation" between WIOA-funded programs and other Federal and State sources of assistance for job seekers does not convey the strength needed to have full coordination between WIOA-funded programs and the TANF program. This commenter recommended changing the wording to "mandates close coordination with funding tied to coordinated partnerships."

One commenter recommended that the Department seek out opportunities for increased alignment between WIOA common performance indicators and TANF. This commenter stated

that one challenge is that TANF programs are not measured by the same accountability measures as the other core WIOA programs.

Department Response: WIOA delegated the authority to Governors and Local WDBs, to decide how closely to align and coordinate their plans with WIOA programs and other sources of public assistance like TANF. The Department encourages strong partnership and close alignment with TANF at the State and local level.

Comments: A commenter requested clarification on whether TANF funding had to be used, rather than WIOA funds, if available, and how TANF organizations should document that TANF funds are not available.

Department Response: Under § 680.230(b) and WIOA sec. 134(c)(3)(B), one-stop centers are required to consider the availability of other sources of grants to pay for training costs, which includes TANF funds. The Department will provide additional guidance and technical assistance to one-stop centers to answer questions about how to document whether funds from other sources such as TANF are available.

Comments: Several commenters recommended that the Department ensure that Local WDBs or their standing youth committees identify how connections will be made with TANF partners at one-stop centers to ensure policy and programmatic alignment for the young adult population under 25, who may receive a different set of services if they are not served though WIOA title I youth programs. These commenters asserted that WIOA and TANF differ greatly from each other, requiring specific policy and programmatic alignment by the State and Local WDBs to service TANF recipients in a WIOA program.

Department Response: Coordination between TANF and WIOA services must take place at the State and local level and therefore, States and local areas are responsible for establishing

policies and MOUs, and aligning plans wherever they deem to be appropriate to serve participants best. The Department recognizes that there are challenges associated with such planning and coordination and will continue to provide guidance and technical assistance to assist with these processes. No change is made in the regulatory text.

Section 680.630 How does a displaced homemaker qualify for services under title I?

Comments: A commenter expressed support for the inclusion of spouses of members of the Armed Forces on active duty as a displaced homemaker. Two commenters encouraged the Department to urge States to highlight the displaced military spouse homemakers in dissemination of information about services to this population.

Department Response: The Department agrees with the commenters' suggestion and encourages States and Local WDBs to highlight the eligibility for displaced military spouse homemakers in the information they disseminate about this program. No changes have been made to the regulatory text in response to the comments.

Section 680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Workforce Innovation and Opportunity Act be eligible for priority as a low-income adult?

Comments: A few commenters expressed support for the provisions in § 680.640 as proposed. One comment also expressed support for the provisions in proposed § 680.640 to keep a family's income separate from the adult with a disability's income to that services are provided to all individuals who need it and that another eligibility barrier is not created to ensuring access to these services.

One commenter requested clarification on whether the provisions specifying the circumstances under which an individual with a disability may still qualify as a priority low-

income adult, even when family income does not meet the low-income eligibility criteria, also apply to persons receiving Social Security Disability Insurance.

Another commenter recommended the Department clearly identify receipt of Social Security disability benefits as a barrier to employment.

Department Response: The circumstances that allow these individuals to qualify still as a low-income adult, regardless of family income, do not apply to persons receiving Social Security Disability Insurance (SSDI). The Department considers WIOA to be very specific about what does count and what does not with regard to income-based eligibility in its definition of "low-income individual" in WIOA sec. 3(36). This definition allows individuals on Supplemental Security Income (SSI) to be considered low-income, but does not consider individuals on SSDI to be considered low-income of the basis of that status alone. Also, SSDI payment cannot be excluded when making income-based eligibility determinations. However, individuals receiving SSDI meets the definition of an individual with a disability, which means the individual meets the criteria of an individual with a barrier to employment under WIOA sec. 3(24) and § 680.320(b). The Department encourages individuals receiving SSDI who are seeking to return to employment to access services through the one-stop delivery system. WIOA is subject to 38 U.S.C. 4213, and therefore military benefits are excluded from income-based eligibility determinations under WIOA.

7. Subpart F - Work-Based Training

Sections 680.700 through 680.850 are regulations for work-based training under WIOA. The regulations apply to (OJT) training, customized training, incumbent worker training, and transitional jobs. The regulations include specific information about general, contract, and employer payment requirements. Work-based training is employer-driven with the goal of

unsubsidized employment after participation. Generally, work-based training involves a commitment by an employer or employers to employ successful participants fully after they have completed the program. Registered apprenticeship training is a type of work-based training that can be funded in the adult and dislocated worker programs; additionally pre-apprenticeships may be used to provide work experiences that can help participants obtain the skills needed to be placed into a registered apprenticeship.

Work-based training can be an effective training strategy that can provide additional opportunities for participants and employers in both finding high quality work and in developing a highly skilled workforce. Each of these work-based models can be effectively used to meet a variety of job seeker and employer needs. OJT is primarily designed to first hire the participant and provide them with the knowledge and skills necessary for the full performance of the job. Incumbent worker training is designed to ensure that employees of a company are able to acquire the skills necessary to retain employment and advance within the company or to provide the skills necessary to avert a layoff. Customized training is designed to provide local areas with flexibility to ensure that training meets the unique needs of the job seekers and employers or groups of employers.

Both training providers and employers providing OJT opportunities must be providing the highest quality training to participants. OJT contracts must be continually monitored so that WIOA funds provided through OJT contracts are providing participants the training to retain employment successfully. It is important that OJTs provide participants with relevant skills and opportunities for career advancement and provides employers with a skilled workforce.

Under WIOA, the statute enables a Governor or Local WDB to increase the reimbursement rate for OJT from 50 to 75 percent. This is designed to give States and Local

WDBs additional flexibility in developing OJT opportunities that work best with the participating employers and in the local economy.

WIOA also explicitly allows for incumbent worker training at the local level. WIOA introduces incumbent worker training as an allowable type of training for a local area to provide. Incumbent worker training is designed to either assist workers in obtaining the skills necessary to retain employment or to avert layoffs and must increase both a participant's and a company's competitiveness. Local areas may use up to 20 percent of their local adult and dislocated worker funds for incumbent worker training. The Department seeks to ensure that incumbent worker training is targeted to improving the skills and competitiveness of the participant and increasing the competitiveness of the employer. The training should, wherever possible, allow the participant to gain industry-recognized training experience and ultimately should lead to an increase in wages. To receive incumbent worker funding under WIOA, an incumbent worker must have an employer-employee relationship, and an established employment history, with the employer. Incumbent workers are employed at the time of their participation, and the contract funds are paid to the employer for training provided to the incumbent worker either to avert a lay-off or otherwise retain employment. A "model" incumbent worker training would be one where a participant acquires new skills allowing him or her to move into a higher skilled and higher paid job within the company, thus permitting the company to hire a job seeker to backfill the incumbent worker's pre-training position.

Comments: A commenter recommended that the regulations clarify that OJT, customized, and incumbent worker training are exempt from the ETP process.

Department Response: Work-based training and work experiences are subject to the dissemination requirements of WIOA sec. 134 (a)(2)(B)(v) and the requirements of WIOA sec.

122(h) as the Governor may require. These requirements are separate from the ETP section of WIOA sec. 122(a) through (f). The Department has modified the language of the regulatory text in § 680.340(b), which requires Local WDBs to disseminate the list of ETPs, to make clear that the work-based training provider information requirements are separate from the requirements governing the ETPL. These provisions of WIOA sec. 122(h) apply to providers of work-based training.

On-the-job training

Comments: A commenter expressed support for the proposed requirements regarding OJT. Another asked the Department to earmark funding either on the national or State level for employer education as to the benefits of hiring after training is received.

Department Response: The Department considers employer engagement to be critical to the success of these programs. It plans to provide additional guidance and technical assistance for this purpose.

Comments: A commenter expressed concern that the different "employer match" requirements for OJT, customized training, and incumbent worker training would present a challenge to explain to employers, and recommended that the Department simplify the match requirements and lower them for small businesses to encourage their participation in the programs. Specifically, this commenter recommended that the match requirement be the same across all three types of training and be differentiated based on business size.

Department Response: The matching requirements training for these three types of training are specified in WIOA, and are provided, consistent with WIOA, at: § 680.700 for OJT, § 680.760 for customized training, and § 680.820 for incumbent worker training. Each type of training emphasizes a different need of employers and individuals, and the employment match is

designed to reflect the differences in those training types. No change is made in the regulatory text.

Section 680.700 What are the requirements for on-the-job training?

Comments: Two commenters asked if it would be permissible to enter into an OJT contract with a public non-profit agency such as a local fire department or board of education.

Department Response: Yes, as long as the requirements of §§ 680.700 through 680.730 are met, this type of OJT contract would be allowable.

Comments: Regarding the circumstances under which adult and dislocated worker funding may not be used to enter into an OJT contract, two commenters recommended adding to § 680.700(b) that OJT training contracts may not be entered into with employers that have unpaid unemployment insurance and workers compensation taxes.

Department Response: The Department considers this to be at the discretion of State and Local WDBs and declines to modify the regulatory text to include this requirement.

Comments: Two commenters recommended adding language to § 680.700 requiring OJT contracts that cover "apprenticeable occupations" and pre-apprenticeship programs to be attached to registered apprenticeship programs. These commenters also recommended adding an additional condition to the list of factors that the Governor or Local WDB must take into account when exercising discretion to increase the reimbursement rate for OJT contracts in § 680.730(a). Specifically, these commenters recommended that the Department add a new subparagraph that would prohibit reimbursements for OJT programs for apprenticeable occupations unless they are part of a registered apprenticeship program.

This commenter also suggested that this new regulatory provision require the Governor to consider whether the OJT contracts are harmonized with registered apprenticeship programs

such that no OJT contract operates to train in an apprenticeable occupation unless it is part of a registered apprenticeship program (or comparable program determined by the Secretary not to undermine registered apprenticeship programs) and that any contract for pre-apprenticeship is articulated with at least one registered apprenticeship programs.

Department Response: Section 680.740 specifies how registered apprenticeship program sponsors or participating employers in registered apprenticeship programs may be contracted to provide OJT. The Department declines to add language that restricts the OJT portion of non-registered apprenticeships from receiving OJT funds providing that they meet the requirements of §§ 680.700 through 680.730 and any criteria established by the Local WDB.

Comments: One commenter requested that the Department amend § 680.700 to include work-based learning activities that are identified and linked to training provided by ETPs.

Department Response: There are no prohibitions to ETPs providing work-based learning activities, provided that those activities meet the conditions of §§ 680.700 through 680.730.

Comments: To prevent hiring workers for the duration of the OJT with no job continuity afterwards, a commenter recommended there be a minimum standard to address performance relating to both employment and career pathways to which all Governors would be required to adhere.

Department Response: OJT participants are part of the performance accountability system under WIOA which includes employment related outcomes, and performance information will be collected on all participants in OJT. This approach will help to ensure that States and local areas are utilizing high quality training providers for both ITAs and work-based training. In addition to the required performance information, Governors may set additional

performance criteria for work-based training under WIOA sec. 122(h). The Department will continue to support collaboration across all WIOA title I programs.

Comments: Regarding the duration of an OJT contract, a commenter recommended that OJT be used for 6 to 12 months with discretion resting with the Local WDB.

Department Response: The Department is not requiring specific OJT duration limitations. The Department agrees with the comment that the discretion should be left to the Local WDBs and declines to make changes to the regulatory text at § 680.700(c).

Comment: Two commenters requested that § 680.700 include a reference to agreements with registered apprenticeship programs under § 680.740(a), to make clear OJT can be provided by registered apprenticeship programs.

Department Response: The Department has added language to § 680.700 to be clear that OJT contracts may be written with registered apprenticeship program sponsors.

Section 680.710 What are the requirements for on-the-job training contracts for employed workers?

Comments: A commenter stated that the determination of a "self-sufficient wage" should be left to the State and local areas and driven by local circumstances.

Department Response: The Department maintains the self-sufficiency standard. States may develop a State self sufficiency standard, and local areas may adjust the standard, within the set parameters of WIOA sec. 134(c)(3) and (d)(1)(a).

Comments: A commenter recommended insertion of a reference to "workers with barriers to employment, including people with disabilities" in § 680.710(a) and broadening OJT contracts to include introduction of accessible technology and other workplace accommodations for workers with emerging disabilities in need to training to stay on the job.

Department Response: Title I adult and dislocated worker funds are to be used to target services to individuals with barriers to employment as defined in WIOA sec. 3(24). Individuals with disabilities are a part of this definition. The Department has added "reasonable accommodations for individuals with disabilities" as an allowable supportive service in § 680.900, which can be used to help enable an individual to participate in OJT training.

Section 680.720 What conditions govern on-the-job training payments to employers?

Comments: Several commenters concurred with the Department's decision not to define "extraordinary costs" through the regulation, allowing for flexibility. One commenter would leave the definition up to the States, while another recommended that it be left to local discretion to ensure their OJT arrangements are applicable to local market conditions.

One commenter recommended that "extraordinary costs" be defined according to the Association for Talent Development Guidelines, which divide expenses according to whether they are direct or indirect. The commenter suggested that at a minimum that the regulations provide explicit coverage of unrecoverable material expenses (i.e., materials and articles nonproductively expended in training that do not create a usable product) and of participant trainees and trainers lost from productive work.

Two commenters recommended deleting proposed § 680.720(c), which specified that employers are not required to document the extraordinary costs associated with training OJT participants and replace it with a requirement that the Governor collect performance data regarding OJT to ensure that OJT contracts are fulfilling the purposes of WIOA.

Department Response: The Department declines to require additional cost or other documentation from employers to avoid creating an unnecessary burden. States and local areas may further define what constitutes an "extraordinary cost" at their discretion.

Section 680.730 Under what conditions may a Governor or Local Workforce Development Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?

Comments: A commenter requested clarification about when a Local WDB may increase the rate for OJT contracts up to 75 percent, and specifically asked if a Governor may limit the Local WDB's authority to increase the reimbursement rate if all factors required in the regulation and under local policy are met.

Department Response: The Governor may not limit the Local WDB's authority to increase the reimbursement rate for OJT contracts provided with funds allocated to the local area. The difference between the Governor and the Local WDB with respect to OJT reimbursement rates is what funding source each is allowed to raise the reimbursement rate for. The Governor may increase the reimbursement rate for OJT contracts provided with Governor's Reserve funds or NDWG funds. Local WDBs may increase the reimbursement rate for OJT contracts provided with funds allocated to the local area.

Comments: A commenter suggested that employers paying above the median wage for the occupation should be eligible for increased reimbursement as follows: "Entry Level" at 50 percent, "Median" at 60 percent, and "Experienced" at 75 percent.
Another commenter described its current waiver that allows for a graduated rate of OJT reimbursements based on the size of the company, which it asserted has helped small businesses gain funding and skilled employees.

Department Response: The Department declines to add these factors into the regulatory text. They may be determined appropriate by the Governors or Local WDBs under § 680.730(a)(4).

Comments: One commenter asked if a State needs to seek a waiver to reimburse employers more than 75 percent of the OJT wage, and if the waiver could be obtained before July 1, 2015. This commenter described its current waiver to provide up to a 90 percent employer reimbursement rate.

Department Response: The Department is not considering waiver requests as part of this rule making. All WIOA title I adult and dislocated worker OJT projects going forward are expected to adhere to the reimbursement rates set forth in WIOA.

Comments: A commenter urged the Department to provide guidance to State and Local WDBs on coordinating the increased reimbursement criteria with high-road economic development strategies that improve wages, benefits, and other job quality factors for front-line employment in a State and region.

Department Response: The Department will issue guidance and technical assistance on work-based learning, including OJT, sector strategies, and industry partnerships.

Comments: A commenter recommended that the Department include a reference to individuals with disabilities in § 680.730(a)(1) to provide an incentive to State and Local WDBs to focus on this population.

Department Response: Paragraph (a)(1) of § 680.730 states that Governors may take the characteristics of the participants into consideration when raising the reimbursement rate, emphasizing "individuals with barriers to employment" as defined in WIOA sec. 3(24). Individuals with disabilities are included in this definition. No change is made to the regulatory text.

Comments: Some commenters stated that the factors to be considered regarding the relation of training to the competitiveness of the participant should be the size of the employer or

the characteristics of the participant as determined by the Governor or Local WDB. A commenter agreed that employer size should be a factor related to increasing an OJT reimbursements rate, stating that smaller employers often need additional support.

Two commenters requested that the Department numerically clarify or define "small businesses" as it applies to the employer size factor under § 680.730(a)(2). Similarly, two commenters recommended that the Department clarify the meaning of "with an emphasis on small businesses" in § 680.730(a)(2). One commenter recommended that the Department rely upon the Small Business Administration's (SBA's) definition of "small business." Another commenter requested that "size of the employer, with an emphasis on small businesses" be removed from § 680.730(a)(2), or at least clarified to ensure that it does not negatively impact medium and large employers seeking a higher OJT reimbursement rate.

Department Response: The Department included "the size of the employer" as a factor that Governors and Local WDBs may take into account when deciding to raise the reimbursement rate for a particular OJT project. The Department recognizes that providing these services to small businesses, which may need additional support in providing OJT, is an important factor in determining the reimbursement rate for OJT. However, there is not requirement that only small businesses may receive a higher reimbursement rate. The Department recommends that Governors and Local WDBs refer to SBA's definition of "small business" as a guide which varies by industry; it can be found at https://www.sba.gov/content/summary-size-standards-industry-sector.

Comments: A commenter stated that before entering training, all individuals should be thoroughly assessed to determine appropriateness of training—including demand of an occupation, post-training wages, and other individualized customer-level criteria—to be as

efficient as possible with limited training resources. Several commenters specifically addressed the "competitiveness of the participant" factor (proposed § 680.730(a)(4)); including, its use in the provision of incumbent worker training, a measure used in determining wages for eligibility purposes, job retention, and credential attainment.

Department Response: In order for an individual to receive training, he or she must meet the criteria in WIOA sec 134(c)(3)(A). The Department notes that there is no sequence of service requirement; however, the eligibility for training must be established by the Local WDB. An assessment is one appropriate ways of determining training eligibility. The Department considers the "competitiveness of a participant" to be an appropriate factor that Governors or Local WDBs may use when determining the OJT reimbursement rate, under § 680.730(a)(4). The Department agrees with the commenters' recommendation and declines to define "competitiveness of a participant" through regulation. Governors and Local WDBs may develop a policy or criteria to be used in determining "competitiveness of a participant."

Section 680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?

Comments: Many commenters addressed the issue of maximum amount of time for OJT funds to be used to support registered apprenticeships; including, what entity decides the duration, flexibilities in determining duration, and tailoring to the needs of the participant.

Department Response: The Department has considered these comments and declines to make changes to the regulatory text that would limit the flexibility of States and local areas to determine the appropriate duration for OJT funds used to support placing apprentices into a registered apprenticeship program. These decisions to be best made on a case-by-case basis at the State and local level based on individual need.

Comments: One commenter stated that WIOA funding for apprenticeship is useful only if it: (1) could support a pre-apprenticeship class of 15 to 20 students for a 90-day training class; and (2) provide additional funding for State-approved apprenticeship training, and if funding could go directly to the program and not an intermediary like the State WDB. The commenter warned that most registered apprenticeship programs are multi-employer, which makes it difficult to offer OJT contracts to employers as a hiring incentive; instead, the commenter suggested that it would be more productive to use OJT contracts as an incentive to enroll OJT contract-eligible individuals in their apprenticeship programs.

Two commenters requested clarification regarding management of reimbursement to employers by the registered apprenticeship training program when relationships with multiple employers exist; for example, when registered apprenticeship participants work for multiple employers during an OJT to maintain full-time employment.

A commenter urged the Department to revise § 680.740 to provide that OJT contracts may be written with a registered apprenticeship program, an employer participating in a registered apprenticeship program, or both. This commenter stated that having registered apprenticeship programs as signatories to OJT contracts guards against OJT becoming an employer subsidy without advancing the worker's progress. Further, the commenter recommended that OJT funds initially be received by the apprenticeship program, then reimbursed to the participating employer for the "extraordinary costs."

Several commenters said that States would benefit from guidance and technical assistance on facilitation and implementation of apprenticeships.

Department Response: The Department recognizes the value of pre-apprenticeships and encourages pre-apprenticeship programs to become ETPs through WIOA sec. 122(d). Pre-

apprenticeship programs do not automatically qualify to be on the ETPL like RA programs do; however, if they meet the requirements under the provisions of sec. 122(a-f) to become ETPs, they can be funded using ITAs. To provide information and new technical assistance resources for starting and enhancing registered apprenticeship programs, the Department issued Training and Employment Notice No. 20-15, dated January 11, 2016 (http://wdr.doleta.gov/directives/attach/TEN/TEN_20-15.pdf). The Department plans on issuing additional guidance and technical assistance clarifying pre-apprenticeship and registered apprenticeship use in the one-stop delivery system. The Department has changed the regulatory text in § 680.740(a) to make it clear that OJT contracts may be entered into with registered apprenticeship program sponsors or participating employers in a registered apprenticeship program for the OJT portion of the registered apprenticeship program.

Comments: Commenters urged the Department to revise the regulation to allow OJT funding to be used for non-registered apprenticeship programs. Similarly, two different commenters stated that § 680.740 should not limit OJT funds to registered apprenticeship programs.

Department Response: WIOA sec. 122(a)(2)(B) provides automatic qualification for registered apprenticeship programs on ETPLs and provides an overall emphasis on registered apprenticeship programs throughout the one-stop delivery system. The Department has used this emphasis to highlight the unique flexibilities the one-stop delivery system has in making use of registered apprenticeship programs to provide training services, including ITAs and OJT. The regulatory text in § 680.740 is designed to highlight those flexibilities for OJT. This in no way restricts other appropriate uses of OJT, including for use with non-registered apprenticeships. The Department declines to make a regulatory text change include all allowable training types;

however, because of WIOA's emphasis on registered apprenticeship, the Department has determined it appropriate to highlight.

Comments: A commenter expressed support for combining funds to support registered apprenticeship training under §§ 680.740 and 680.750.

Department Response: This allows for the combined use of OJT and ITAs to support placing participants in a registered apprenticeship program. The Department notes that there is no prohibition on the combined use of ITAs and OJT as well as any other contracted training services under WIOA sec. 134(c)(3)(G)(iv). However these decisions must be based on individual need, and they must be paying for separate program elements. No changes have been made to the regulatory text in response to the comment.

Section 680.760 What is customized training?

Comments: A commenter requested clarification of the "commitment" by the employer to employ all individuals upon successful completion of customized training; specifically, whether it must be by written letter or verbal, and whether an employer may use a temporary agency for the first 90 days of employment. Similarly, another commenter urged that the regulations address an employer's expectation to commit to hire.

Department Response: The "commitment" is a statutory requirement in WIOA sec. 3(14) and 134(c)(3)(g)(1) requires a contract between the employer and the Local WDB for customized training. Local WDBs have flexibility in determining what constitutes an appropriate commitment to hire the individuals on behalf of the employer.

Comments: One commenter requested that the Department include language in § 680.760 that would exempt the requirement that "the employer pays a significant cost of the training" when the Local WDB determines that the workers are "at-risk" for layoff. This

commenter reasoned that customized training seems the most appropriate support to provide when workers are determined to be vulnerable to layoff or closure and have basic skills but may lack a preferred credential and/or industry-recognized certification.

Department Response: WIOA sec. 3(14) states that for customized training, employers must pay for a significant cost of the training, which is to be determined by the Local WDB. Customized training is generally for hiring new or recent employees and not for retraining existing employees. Incumbent worker training may be used to provide training for current employees as a layoff aversion strategy. No changes have been made to the regulatory text in response to the comments.

Comments: Two commenters asked if the § 680.760(c) requirement that an employer pay a “significant cost of the training” means the employer must pay for more than 50 percent of the cost of training. One commenter recommended that “significant cost of the training” should be eliminated as a criterion for customized training under § 680.760 because it is vague and arbitrary.

Department Response: WIOA sec. 3(14)(C) requires that employers pay a "significant cost of the training" of WIOA. Local WDBs have the discretion to define the term "significant cost of the training" as is appropriate for their local areas. No change is made in the regulatory text.

Comments: A commenter proposed adding a paragraph (d) to the definition of customized training in § 680.760 stating, “For which the training results in a degree, certificate, or industry-recognized credential.”

Department Response: The requirements for customized training are defined in WIOA sec. 3(14). No change is made to the regulatory text. The Department encourages the use of customized training that leads to credentials, but this is not a requirement of customized training.

Section 680.770 What are the requirements for customized training for employed workers?

Comments: Two commenters recommended that the Department remove the requirement for employed workers to be under the self-sufficient wage to participate in customized training because it is a deterrent for many companies and does not provide an optimal situation for new hires. Other commenters asserted that the provision would prevent dislocated workers reemployed at a lower wage but still above the self-sufficiency wage from participating in customized training that could help them reach their prior wage levels. One commenter recommended that the Department eliminate "self-sufficient wage" as a criterion or standard for use by Local WDBs in determining work-based training arrangements under § 680.770 because it is arbitrary and holds different meanings in different communities. This commenter asserted that wage gain is a more objective measure.

One commenter expressed concern that the self-sufficient wage requirement and the requirement for training to incorporate new technologies, processes, or procedures are too restrictive.

Department Response: The Department is maintaining the self-sufficiency standard for employed workers to be eligible for customized training, consistent with eligibility for training services under WIOA sec. 134(c)(3)(A). The Department considers wage gain an important measure that a Local WDB may consider when determining if customized training would be appropriate.

Comments: A commenter recommended adding a criterion to the regulation that would allow customized training for individuals making more than self-sufficient wage if it would prevent them from being unemployed as a result of a layoff.

Department Response: The Department considers incumbent worker training to be the most appropriate type of training for layoff aversion. Customized training is generally for hiring new or recent employees and not for retaining existing employees, although there may be instances where customized training is appropriate in that circumstance. In those instances customized training may be used for individuals making more than self-sufficient wages if all appropriate criteria are met. Lastly, customized employment can be used for individuals making more than self-sufficient wages as long as it leads to comparable to or higher than previous employment.

Comments: A commenter cautioned that if customized training and incumbent worker training are differentiated for low-skilled workers below the self-sufficiency wage, the regulations should add language that requires local areas to fund and promote both options to employers.

Department Response: Under WIOA, both incumbent worker training and customized training are permissible activities, each with specific eligibility, funding, and allowable criteria. Local WDBs have the flexibility to provide the appropriate types of training and services needed by their local area.

Comments: One commenter recommended that small businesses and Local WDBs be given maximum flexibility to develop customized training programs tailored for their individual needs. This commenter stated that customized training should definitely include OJT. Expressing concern that proposed § 680.770 is overly burdensome and would erect a significant

barrier for access to training funds, another commenter stated that, by definition, if a manufacturer is providing the training then it is in-demand and valuable in the workplace.

Department Response: Customized training and OJT are two distinct types of allowable training. OJT participants learn on the job, while customized training is generally designed so that participants are trained by a third party for the employer. The regulatory text at § 680.770 is consistent with WIOA sec. 134(c)(3)(A) about how individuals may qualify to receive training services. Local WDBs determine training service investments based upon an analysis of the employment needs of the employers in current and emerging in-demand industry sectors and occupations and the needs of the area's labor force.

Comments: A commenter stated that for customized training involving multiple employers, opportunities must be offered to contract directly with a training provider without triggering procurement requirements.

Department Response: Grant recipients and subrecipients must adhere to the procurement standards set forth by the Uniform Guidance at 2 CFR 200.317 through 326. When procuring property and services under a Federal award, States must follow the same policies and procedures used for procurements from its non-Federal funds [2 CFR 200.317]. All entities that are not States must ensure that procurements are conducted in a manner that is consistent with 2 CFR 200.318-326.

Comments: Several commenters addressed the distinction between OJT and customized training; including, customization, use of classroom training, and needs of the participant and employer.

Department Response: WIOA defines both customized training and OJT at WIOA sec. 3(14) for customized training and sec. 3(44) for OJT and provides the differentiation, which is

primarily OJT is focused on learning on the job, while customized training is generally classroom based and is often provided by a third party for the employer. There have been no changes to the regulatory text in response to this comment.

Section 680.780 Who is an "incumbent worker" for purposes of statewide and local employment and training activities?

Comments: One commenter expressed concern that the definition of "incumbent worker" was unclear and stated that if the definition of incumbent worker is to be refined by Governors, factors such as hours worked and skill level should be considered. Another commenter stated that there was confusion under WIA about the distinctions between "employed" and "incumbent" workers.

Department Response: While the Department agrees that hours worked and skill level are appropriate considerations that may be used by Governors and the Local WDBs when deciding when an employer is eligible to receive incumbent worker training under § 680.810. Any further definition may occur outside of the regulation, including by Governors and Local WDBs.

Incumbent worker training is designed to meet the workforce needs of an employer or group of employers. The employer must meet the eligibility criteria established in § 680.810. The incumbent worker must meet the requirements established in § 680.780 and the incumbent worker training requirements described in § 680.790, which discuss the requirements for incumbent worker training for individuals receiving training and the standard by which incumbent worker training should be provided. An incumbent worker does not have to meet the eligibility criteria for WIOA title I adult and dislocated worker programs. An employed worker must meet title I eligibility criteria for adult and dislocated worker programs in order to receive

career services, and/or must meet the wage requirements of WIOA sec. 134(c)(3)(A)(i) and § 680.210(a)(1-2) to receive training services while also being employed at the beginning of participation in career and training services. No changes have been made to the regulatory text in response to these comments.

Comments: Many commenters addressed the issue of the appropriate amount of time an employee must have worked for an employer before being eligible for incumbent worker training. There was a range of timeframes recommended, ranging from 3 months to 1 year, and some commenters recommending no minimum timeframe. Some commenters stated that it should be when an employee is off of probationary status or once the employer-employee relationship is established. One commenter discussed that new employees are often the most in need of training. One commenter wanted Local WDBs to develop policies on employee tenure with a company. A commenter recommended that the Department utilize a standard that is based on the company's tenure in a community as the standard not to incentivize business relocation. Lastly, a commenter wanted the Department to ensure there was no maximum duration of time an employee could work for a company and not be eligible for incumbent worker training.

Department Response: Incumbent worker training is intended for workers with an established work history with the current employer, and who have the knowledge, skills, and abilities needed by their current employer but because of changes in the necessary skills to remain in their position, to advance in the company, or to avoid a layoff, the employees now need additional training. Thus, the Department has decided to retain the 6-month requirement for incumbent workers.

The Department does not consider incumbent worker training to be part of the occupational training for the position in which the new employee was hired. This type of

training is most appropriate for an OJT or customized training. However, given that some incumbent worker training may be provided for a cohort of employees, the Department recognizes the concern about excluding certain members of a cohort based on this criterion and has added language into the regulatory text in § 680.780 to create an exception for cohort training, stating that a majority of the cohort must meet the 6-month requirement.

Comments: Many commenters recommended adding specific language to § 680.780 recognizing the need for incumbent training services to assist long-term workers who were hired when skill level requirements were much lower.

Department Response: While the Department has established a 6-month rule for the minimum duration of employment for incumbent worker training eligibility, it has not set a maximum duration of employment. Long-term workers who are looking to gain new skills may benefit from incumbent worker training.

Comments: The Department received a number of comments on the requirement incumbent worker training "must satisfy the requirements in WIOA sec. 134(d)(4) and § 680.790 and increase the competitiveness of the employee or employer." Because this sentence is more properly included in § 680.790, which discusses what incumbent worker training is, the Department removed the text from § 680.780 and instead included it in § 680.790. The comments received about this text are discussed below, in the discussion of § 680.790.

The Department made one final clarifying change at the end of § 680.780. The NPRM stated that an incumbent worker does not necessarily have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA. The Department has added language to make clear that if the worker is receiving other services in addition to

incumbent worker training, the individual must meet the eligibility requirements like all other adult or dislocated worker participants.

Section 680.790 What is incumbent worker training?

Comments: Two commenters urged the Department to define how incumbent worker training should "increase the competitiveness of the employee or employer" and recommended that such training be designed to retain a skilled workforce or avert the need to lay off employees. Another commenter urged the Department to define "improving the skills and competitiveness of the participant" and "increasing the competiveness of the employer" and to stipulate how competitiveness will be initially assessed and continuously measured. One commenter recommended that "increasing the competitiveness of the employee or employer" be defined in State policy to allow for flexibility or, alternatively, be defined as training that retains and advances a skilled workforce.

Department Response: The Department agrees that the phrase "increase the competitiveness of the employee or employer" may be defined under State and Local WDB policy, as consistent with the discussion below, and with any future guidance provided by the Department. No change is made to the regulatory text.

Comments: A commenter stated that incumbent worker training should be "employer driven" and "competitiveness of the participant" should be a factor only for determining if incumbent worker training is appropriate.

Another commenter recommended that States be allowed to develop incumbent worker training policies while the Department provides technical assistance and guidance. This commenter urged against relying on layoff aversion and recommended using available labor market data and sector strategies to target occupations for training.

Some commenters urged the Department to omit layoff aversion as a criterion for incumbent worker training, asserting that it would have a chilling effect and would not be offered during healthy economic times. One commenter asserted that proposed § 680.790 is too restrictive in focusing only on averting layoffs or retaining employment. This commenter recommended that the Department add specific language allowing incumbent training "to promote the competitiveness of both the participant and the employer" and "to ensure an employee's skill set is advanced."

One commenter stated that incumbent worker training should be used for individuals who are at a self-sufficient wage and require training that helps the employer stay competitive and retain a skilled workforce or avert a layoff.

Department Response: WIOA sec. 134(d)(4)(B) states that incumbent worker training is to assist workers in obtaining the skills necessary to retain employment or avert layoffs. The Department considers these to be two distinct, although not mutually exclusive, types of requirements for the training, and the regulatory text retains the requirements at § 680.790. Further definition of these terms may be articulated in State and local policies. There have been no changes to the regulatory text in response to this comment.

Comments: Some commenters recommended using earnings growth in the 6 months following incumbent worker training to measure increased competitiveness of the employee. One commenter recommended measuring increased competitiveness by higher wages 1 year after training, portability, layoff aversion, and progress toward self-sufficiency.

Another commenter recommended measuring "competiveness of the employee" by documented wage increases; access to other documented benefits, bonuses, or commissions; obtaining industry-recognized certificates or credentials; or ascension of the worker into an

advanced job classification or pay grade. This commenter stated that identifying opportunities for increased competitiveness of employers might require access to confidential business information.

One commenter recommended that the Department require the following to "increase the competitiveness of the employee and employer": (1) training takes place on company time and trainees are compensated at no less than their normal rate of pay while attending training; (2) training is short-term and ideally 6 months or less; (3) training focuses on occupational skills; and (4) businesses must demonstrate that the costs of training are reasonable.

Department Response: Section 680.810 outlines the factors that a Local WDB must consider when determining eligibility for an employer to receive incumbent worker funds and provides flexibility to the Local WDB to establish other factors in making such a determination. The Department notes that some ideas commenters provided about how to provide incumbent worker training have merit, and the Department will include them in guidance and technical assistance. No changes have been made to the regulatory text in response to these comments.

Comments: One commenter recommended the following metrics for evaluating the effectiveness of incumbent worker training: revenue increase, contracts awarded, sales data, geographic expansion, wage increase, increased education attainment, and increased credential attainment. Another commenter stated that incumbent worker training arrangement should be flexible, with success measured by metrics such as earnings gains, new skills and competencies gained, new certifications received and/or number of employees migrating into new employment, especially in the case of layoff aversion. One commenter recommended that an employer should demonstrate where incumbent worker training would increase revenue and lead to an increase in wage level within 90 days of training completion.

Department Response: With respect to eligibility for incumbent worker training, many of these metrics are what the Department considers to be possible factors for a State or local area in determining incumbent worker training eligibility for training providers, employers, and employees, as included under §§ 680.780 and 680.810. The Department may issue further guidance on this subject.

The Department clarifies that, because of the unique nature of the Incumbent Worker Training Program, where the Local WDB only evaluates the employers for eligibility consistent with § 680.810, individuals receiving Incumbent Worker Training are not subject to the eligibility criteria that apply to participants in the adult or dislocated worker programs, unless they are also receiving other services under those programs. Therefore, individuals who only receive incumbent worker training and no other WIOA title I service do not fall within the definition of "participant" in 20 CFR 677.150(a) (see Joint WIOA Final Rule). As such, they are not included in calculations for the State Primary Indicators of Performance. The Department is making a change to be consistent with this in § 680.810(a) and (b) by removing the word "participant" and inserting "individual" to reflect that incumbent worker training eligibility is decided at the employer level.

States and Local WDBs are, however, required to report on individuals who receive incumbent worker training, including employment status after training, wages after training, and credential attainment, the details of which are provided through the Department's ICR process and subsequent guidance. As part of future collections and guidance, the Department may seek to collect additional employer data, such as employer size, industry, and other information that may be used to evaluate the effectiveness of Incumbent Worker Training programs for both the employer and employee.

Regarding the development and provision of Incumbent Worker Training by States and local areas, the Department encourages States and local areas to cultivate opportunities and develop policies that can appropriately support employers in their efforts to develop a more competitive workforce or avert potential layoffs and that provide incumbent workers with opportunities for advancement and wage gains within their company. Incumbent Worker Training policies must be aligned with State and Local Plans, as well as with sector strategy approaches for in-demand occupations.

In addition to the required performance indicators, WIOA sec. 122(h)(2) says that the Governor may require and use performance information relating to incumbent worker training and other work-based training to determine whether providers meet such performance criteria as required by the Governor. More detailed information on performance definitions and metrics are in 20 CFR part 677 (see Joint WIOA Final Rule).

Comments: Several commenters said that it is unrealistic to expect incumbent worker training to result in the employee being promoted; instead, local areas need flexibility on timing of training and hiring new workers that coincides with the needs of business. In response to the NPRM preamble statement that ideal incumbent worker training would result in promotion and hiring to backfill the incumbent worker's position, two commenter asked if it is realistic to expect a company, through a round of training to retain workers, to also be able to add new employees. One of these commenters stated that this is an ideal structure that would be better served under customized training for employed workers. However, one commenter agreed with the Department's goal of using incumbent worker training to "advance-and-backfill" to benefit two employees.

Department Response: The Department clarifies that the ideal incumbent worker training strategy of upskilling and backfilling employee positions is meant as an illustrative example of an ideal incumbent worker opportunity and not as the only type of successful incumbent worker training strategy. In a situation where incumbent worker training is needed to avert a layoff, the alternative of upskilling and backfilling positions would be unlikely. The Department is committed to ensuring that the regulations maintain flexibility for States and local areas to develop incumbent worker training strategies that best fit the needs of their State and community.

Comments: One commenter asked if the definition of incumbent worker training would allow for contracted training through business and industry, adult education, etc.

Department Response: The Department declines to specify all of the incumbent worker training contracting options in regulatory text. However, to secure incumbent worker training, grant recipients and subrecipients must adhere to the procurement standards set forth by the Uniform Guidance at 2 CFR 200.317-326. When procuring property and services under a Federal award, States must follow the same policies and procedures it uses for procurements from its non-Federal funds [2 CFR 200.317]. All entities that are not States must ensure that procurements are conducted in a manner that is consistent with 2 CFR 200.318-326.

Comments: A commenter recommended that incumbent worker training be structured to incorporate the biggest return on investment for Local WDBs, workers, and businesses by using economies of scale to upskill many workers at a time.

Department Response: The Department agrees with this concern and has added language to § 680.780 to clarify that cohort training is an acceptable use of incumbent worker training funds.

Comments: A commenter stated that apprenticeship should be an approved expense for incumbent worker training if it would lead to a higher paid, higher skilled job.

Department Response: The Department considers apprenticeship training to be an allowable incumbent worker training expense, provided the requirements for incumbent worker training in §§ 680.780 and 680.790 are met.

Comments: A commenter recommended that cost reimbursement be limited to: costs of outside vendors or in-house trainers; costs of textbooks and training materials; distance learning fees; and credentialing exam fees. This commenter stated that trainees should be full-time or part-time employees with a permanent, year-round attachment to the business, so that temporary employees, seasonal employees, public employees, and volunteers would not be eligible.

Department Response: Allowable costs of incumbent worker training are consistent with the allowable costs rules for all types of training. The allowability regulations are explained in Departmental guidance. To be eligible, the incumbent worker must be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history for more than 6 months. The Department may utilize guidance to clarify specific types of employment relationships that are eligible for employers to receive incumbent worker training funds.

Section 680.800 What funds may be used for incumbent worker training?

Comments: A commenter asked the Department to clarify if the 20 percent in proposed § 680.800(a) refers to total dollars or program dollars and does not include administrative funds. Another commenter recommended that the regulations clearly indicate the difference between employed workers and incumbent workers and that the 20 percent limitation on training for incumbent workers would not apply to employed workers.

Department Response: WIOA sec. 134(d)(4) allows Local WDBs to set aside up to 20 percent of their total allocation of title I adult and dislocated worker funds on incumbent worker training, this includes administrative funds. The Department agrees with the commenter about the 20 percent restriction only applying to incumbent workers and not employed workers.

Comments: A commenter asked for clarification to distinguish customized from incumbent worker training, and commented that §§ 680.800, 680.810, and 680.820 seem to apply to customized training for employed workers rather than incumbent worker training.

Department Response: Customized training, as defined in WIOA sec. 3(14), is used to train individuals who are not employed with the participating employer at the start of participation. Incumbent worker training, as defined in WIOA sec. 134(d)(4), is used to enhance the competitiveness of the employee/employer and/or avert a layoff. Incumbent workers are employed with the participating company when the training begins consistent with § 680.780. The Department will provide further clarification through guidance and technical assistance.

Comments: A commenter stated that it may be difficult, if not impossible, to determine accurately the amount of administrative funds that were spent on incumbent working training and transitional jobs.

Department Response: WIOA allows Local WDBs to set aside up to 10 percent of their adult and dislocated worker funds on Pay-for-Performance contract strategies (see WIOA sec. 134(d)(1)(A)(iii)), Up to 20 percent on incumbent worker training (see WIOA sec. 134(d)(4)), and up to 10 percent on transitional jobs (see WIOA sec. 134(d)(5)). These provisions are discussed in § 680.140(b)(1)(v), (b)(4), and (b)(8). Administrative activities necessary to initiate or procure a Pay-for-Performance contract strategies, incumbent worker training, and transitional jobs must be consistent with § 683.215, which also discusses how to determine whether an

activity is administrative or programmatic for purposes of WIOA. If the activity would be considered programmatic under § 683.215, then the cost would be subject to the caps discussed above. If the activity would be considered administrative under § 683.215, it may be paid for out of the Local WDBs' usual administrative funds, and it is not subject to the caps. Therefore, the Local WDB would not need to specifically account how much of the administrative funds are spent on these particular programs.

Section 680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?

Comments: A commenter asserted that proposed § 680.810 would impose a burden on States to write a policy for use of funds for incumbent worker training and asked what is the requirement for performance.

Department Response: The Department acknowledges that State and local policy must be developed to govern the use of funds for incumbent worker training; however, since this activity was required to properly perform incumbent worker training under WIA, it is not an increase in burden. Incumbent worker training is a permissible activity; if a State or Local WDB decide to utilize incumbent worker training as a workforce strategy for local businesses then they need to have clear State and local policies on its use.

The Department declines to add specific language to the regulatory text addressing the concern about performance requirements. Specific definitions of metrics that will be used to evaluate performance are defined through the WIOA Joint Performance ICR. More detailed information on performance definitions and metrics are at 20 CFR part 677 (see Joint WIOA Final Rule). The Department plans to issue guidance on incumbent worker training, including how it is impacted by performance.

The Department notes, as explained above, that it made a clarifying change to § 680.810 to replace the word "participant" with "individual" to reflect that incumbent worker training eligibility is decided at the employer level; individual workers participating in incumbent worker training are not considered "participants" under 20 CFR 677.150(a), unless they receive other adult or dislocated worker services (see Joint WIOA Final Rule).

Comments: Two commenters requested that the Department add a paragraph (d) directing that incumbent worker training contracts may not be entered into with employers that have unpaid unemployment insurance and workers compensation taxes.

Department Response: The Department declines to add specific language to the regulatory text addressing this concern. The Department considers the suggested factor to be an allowable consideration under § 680.810(c).

Section 680.820 Are there cost sharing requirements for local area incumbent worker training?

Comments: A commenter suggested that the required non-Federal share for incumbent training be waived for companies that are close to a layoff.

Department Response: The non-Federal share for incumbent worker training is required under WIOA sec. 134(d)(4). The Department expects Local WDBs to adhere to the requirements for non-Federal share contributions as set forth in WIOA. Thus, the Department declines to discuss waivers of this provision and makes no change to the regulatory text.

Comments: A commenter asked if § 680.820 is meant to ensure that no other funding source is contributing to the cost of the incumbent worker training or that the employer is paying 100 percent of the cost from its own funds, excluding the Federal contribution.

Department Response: Under WIOA sec. 134(d)(4) employers participating in incumbent worker training are responsible for paying the non-Federal share of the cost of

providing training to their incumbent workers. Employers have flexibility in how they arrange to pay for these costs; however, the payments must not come out of any other Federal funds.

Section 680.830 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?

Comments: The Department received comments in support of § 680.850 (renumbered as § 680.830) as proposed, regarding the relationship between work-based training funds and union organizing.

Section 680.840 May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?

Comments: A commenter suggested that for transitional jobs there should be protections around the displacement of workers.

Department Response: The Department has added a new section to the regulatory text at § 680.840 entitled "May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?" This section clarifies that funds for work-based training may not be used for this purpose. It is consistent with WIOA and with the Wagner-Peyser Act regulatory text in § 652.9 to remain neutral in matters relating to union organizing and activities that would promote or deter organization.

8. Subpart G – Supportive Services

This section defines the scope and purpose of supportive services and the requirements governing their disbursement. A key principle in WIOA is to provide local areas with the authority to make policy and administrative decisions and the flexibility to tailor the public workforce system to the needs of the local community. To ensure maximum flexibility, the regulations provide local areas the discretion to provide the supportive services they deem

appropriate subject to the limited conditions prescribed by WIOA. Local WDBs must develop policies and procedures to ensure coordination with other entities to ensure non-duplication of resources and services and to establish limits on the amount and duration of such services. Local WDBs are encouraged to develop policies and procedures that ensure that supportive services are WIOA-funded only when these services are not available through other agencies and that the services are necessary for the individual to participate in title I activities. Supportive services may be made available to anyone participating in WIOA title I activities.

A commenter expressed support for the proposed regulations in subpart G.

Section 680.900 What are supportive services for adults and dislocated workers?

Comments: A commenter recommended that § 680.900 include an exhaustive list of available support services consistent with the approach in the section on support services for youth. Another commenter strongly supported the inclusion of legal aid services in the Department's list of examples of supportive services, noting that legal aid can uniquely address certain barriers to employment, including access to driver's licenses, expunging criminal records, and resolving issues with debt, credit, and housing. One commenter recommended that supportive services involving WIOA funding be available to cover all steps/aspects of the licensing process (e.g., testing and transcripts).

Because access to many supportive services is an impediment to individuals with disabilities in entering or re-entering the workforce, one commenter recommended specific reference to this population in subpart G.

Department Response: The Department agrees with the commenter that supportive services for adults and dislocated workers under WIOA title I programs be aligned with the supportive services available under the title I youth program. The Department has modified the

regulatory text to include a list of supportive services that may be made available at § 680.900(a) through (l). This list is not intended to be exhaustive, but rather to illustrate the types of supportive services that may be made available. The changes to the regulatory text also include a couple of suggestions that commenters provided regarding the addition of providing assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes. The Department concurs that legal aid can uniquely address certain barriers to employment, as enumerated by the commenter. Therefore, the Department has included legal aid services under § 680.900 and made a corresponding change to the list of supportive services allowable in the youth program in § 681.570. Additionally, the Department added that payments and fees for employment and training-related applications, test, and certifications be covered, because these costs may be a barrier to entry for individuals looking for unsubsidized employment. The Department also has added "Reasonable accommodations for individuals with disabilities" as § 680.900(g).

Comments: Citing the requirement that participants first obtain supportive services through other programs before relying on WIOA title I funding, a commenter stated that it is vital that the programs covered by WIOA work closely together to ensure that job seekers receive all the benefits to which they are entitled under all aspects of the law.

Department Response: The Department agrees with this comment and encourages that programs work closely together in order to align programs better and leverage resources as WIOA is intended to do to serve job seekers better.

Section 680.910 When may supportive services be provided to participants?

Comments: The Department received a comment regarding the importance of coordinating across programs allowed in § 680.140, because § 680.910 states that supportive

services must be provided through non-WIOA programs first. The commenter particularly emphasized the need for coordinating services with vocational rehabilitation programs so individuals with disabilities receive the supportive services they need.

Department Response: The Department agrees with the commenter that coordinating services across the WIOA core programs, as well as non-core programs is vital to help individuals with barriers to employment, including individuals with disabilities, obtain the support they need to successfully participate in and complete WIOA career and training services and ultimately, obtain unsubsidized employment. Local WDBs are responsible for developing supportive service policies, and the Department considers how these services are coordinated to be a key part of those policies.

Section 680.920 Are there limits on the amount or duration of funds for supportive services?

Comments: A commenter recommended that the definition of supportive services and extended case management include ongoing, extended services as participants proceed through training and employment.

Department Response: Supportive services under WIOA sec. 134(d)(2) are provided to allow an individual to participate in career and training services. The commenter was interested in extending supportive services after the period of exit from the WIOA title I adult and dislocated worker programs; however, this is outside of the authority of WIOA. Supportive services are provided to enable participation in career and training services. No changes have been made to the regulatory text in response to the comment.

Comments: Two commenters raised a similar concern about the authority related to the one-stop center determining what supportive services may be provided if the one-stop center is not the WIOA service provider in a local area.

Department Response: To guide supportive service determinations, the Local WDB ultimately is responsible for developing a supportive service policy for the area, including eligibility, types of supportive services to provide, and the methods of service delivery.

Section 680.930 What are needs-related payments?

Comments: A few commenters provided input on needs-related payments. One commenter suggested that the Department consider whether the underemployed should be considered for needs-related payments. One commenter stated that funding levels are not adequate to support needs-related payments, which the commenter stated will result in these services being provided on a very limited basis. Some commenter focused on funding levels for needs-related payments.

Department Response: To receive needs-related payments, individuals must be unemployed and must not qualify for (or have ceased to quality for) unemployment compensation. While underemployed individuals are not eligible for needs-related payments under WIOA sec. 134(d)(3), there is no prohibition on providing supportive services to the underemployed, other than needs-related payments. Additionally, WIOA sec. 134(d)(1)(B) allows for work support activities for low-wage workers. The Department may provide additional guidance on how to ensure quality services to individuals who are underemployed. No changes have been made to the regulatory text in response to the comments. The Department notes that needs-related payment levels are permissible and thus, are left to the discretion of the Local WDB.

Section 680.970 How is the level of needs-related payments determined?

Comments: Two commenters recommended that States be allowed to determine the amount for needs-related payments for State funded projects.

Department Response: The Department agrees with the suggestion that States be allowed to make determinations for needs-related payments for State funded projects and has added language to the regulatory text at § 680.970(a) to reflect this change. No other changes have been made to the regulatory text in response to the comments.

Other comments on adult and dislocated worker activities under WIOA title I

Limited English Proficiency Individuals

Comments: A commenter encouraged the Department to provide additional guidance, whether through regulation or other types of policy directives, to States and localities regarding the alignment of WIOA title I and title II services to improve services to immigrant and limited English proficiency (LEP) individuals. This commenter recommended that the guidance acknowledge and allow for differences in eligibility criteria across the titles, encouraging States and localities to align services without precluding participation by individuals who may be eligible for services under one title but not another.

Department Response: The Department agrees with the commenter on the importance of aligning services among titles to ensure that individuals receive the services they need. The Department will provide guidance and technical assistance on this issue.

Industry or Sector Partnerships

Comments: A few commenters recommended the establishment of a new subpart H covering industry or sector partnerships. These commenters discussed at length the topics they believed should be addressed in this proposed new subpart, including, the purpose of industry and sector partnerships, permissible partners, who may lead partnerships, evaluating effective partnerships, and ensuring minimum standards.

Department Response: The Department recognizes the importance of the industry and sector partnerships as an important strategy for economic and workforce development. Due to the constantly changing nature of business and industry, these partnership strategies continue to be most appropriately addressed through guidance and technical assistance issued by the Department.

E. Part 681 – Youth Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

WIOA affirms the Department's commitment to providing high quality services for youth and young adults beginning with career exploration and guidance; continuing support for educational attainment, opportunities for skills training in in-demand industries and occupations; and culminating with a good job along a career pathway or enrollment in postsecondary education. All of the Department's youth-serving programs continue to promote evidence-based strategies that also meet the highest levels of performance, accountability, and quality in preparing young people for the workforce.

WIOA maintains WIA's focus on out-of-school youth (OSY) in Job Corps and YouthBuild, while greatly increasing the focus on OSY in the WIOA youth formula-funded program. The shift in policy to focus on those youth most in need is based on the current state of youth employment. In 2015, an estimated 5.5 million or 13.8 percent of 16 to 24 year olds in our country were not employed or in school. WIOA youth programs provide a continuum of services to help these young people acquire skills and pursue careers. The Department, working with its Department of Education and Health and Human Services partners, plan to provide intensive technical assistance around meeting the needs of this population.

WIOA calls for customer-focused services based on the needs of the individual participant. This includes the creation of career pathways for youth in all title I youth programs, including a connection to career pathways as part of a youth's individual service strategy (ISS) in the youth formula-funded program. The ISS must directly link to one or more of the performance indicators. WIOA also calls for participants to be intimately involved in the design and implementation of services so the youth voice is represented and their needs are being met.

This integrated vision also applies to the public workforce system's other shared customer – employers. Employers have the opportunity to build a pipeline of skilled workers: they are critical partners that provide meaningful growth opportunities for young people through work experiences that give them the opportunity to learn and apply skills in real-world settings and ultimately jobs.

WIOA includes a number of significant changes for the youth formula-funded program. WIOA shifts to focus resources primarily on OSY, increasing the minimum percentage of funds required to be spent on OSY from 30 to 75 percent. The Department recognized the transition to serve more OSY would take time to implement, and, as explained in WIOA operating guidance TEGL No. 23-14 ("Workforce Innovation and Opportunity Act (WIOA) Youth Program Transition"), found at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm, the Department has provided States and local areas a year to show progress towards meeting the 75 percent minimum OSY expenditure rate requirement. In addition, WIOA increases the focus on providing youth with work experience opportunities, with a requirement that local areas must spend a minimum of 20 percent of local area funds on work experience.

Under WIOA, work experience becomes the most critical of the program elements. WIOA also introduces 5 new program elements: financial literacy; entrepreneurial skills training;

services that provide labor market and employment information about in-demand industry sectors or occupations available in the local areas; activities that help youth prepare for and transition to postsecondary education and training; and education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.

During the 60-day comment period for the NPRM, the Department received hundreds of comments that expressed general support for the proposed youth program regulations as well as some constructive feedback that made the Final Rule clearer.

The most significant change between the NPRM and the Final Rule occurs in § 681.400. This section clarifies that youth activities may be conducted by the local grant recipient and that only when the Local WDB chooses to award grants or contracts to youth service providers, such awards must be made using a competitive procurement process in accordance with WIOA sec. 123. While this revision represents a significant change in that it provides Local WBDs with flexibility in determining which WIOA youth services to procure, the Department expects Local WDBs to continue to contract with youth service providers to provide the program elements that youth service providers are best positioned to offer participants based on prior success in serving youth.

The analyses that follows provides the Department's response to public comments received on the proposed part 681 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made

a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

2. Subpart A – Standing Youth Committees

Section 681.100 What is a standing youth committee?

This section describes a standing youth committee. WIOA does not require Local WDBs to establish a youth council; however, the Local WDBs are encouraged to establish a standing youth committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth (WIOA sec. 107(b)(4)(A)(ii)). The Department received many comments on standing youth committees and in response to the comments made a small addition to the regulation text as explained here.

Comments: One commenter expressed support for all of the proposed regulations regarding standing youth committees. Several commenters also supported the proposed language that would allow Local WBDs to maintain existing effective youth councils as standing youth committees. Several commenters recommended that the proposed language allow Local WDBs the flexibility to maintain existing effective youth councils, have the Local WDB secure the role of the standing youth committee, or create a new standing youth committee.

Department Response: The Department notes the comments received about standing youth committees. The language in §§ 681.100 and 681.110 provides Local WDBs with the flexibility to maintain existing effective youth councils; have the Local WDB take on the role of the standing youth committee; or create a new standing youth committee.

Comments: One commenter expressed disappointment with the removal of mandated youth councils and stated that the Department should strongly encourage Local WDBs to establish standing youth committees.

Department Response: The Department recognizes the challenges some local areas experienced in finding and retaining the required youth council members. In the final regulations, the Department accepted the suggestion to "encourage" Local WDBs to establish standing youth committees rather than the proposed language, "a Local WDB may choose to establish a standing committee." This change recognizes that Local WDB have a choice as to whether or not they have a standing youth committee while at the same time reflects the Department's support of such entities.

Comments: A couple of respondents stated that because the proposed regulations did not mandate the implementation of a standing youth committee or any other youth organization, a Local Workforce Development Board (WDB) should be able to assemble a group to oversee youth activities without having to formally create a standing youth committee that would be subject to regulations.

Department Response: As discussed above, the Department recognizes the challenge of bringing together required partners and understands the local area's interest in taking advantage of the flexibility under WIOA to form an ad hoc group that would informally advise the Local WDB on youth matters. The Department supports Local WDBs seeking outside youth expertise to inform the programs. If such groups do not have the required members as outlined in § 681.110, however, they may not call themselves standing youth committees.

Comments: Second, a commenter raised the concern over how a Local WDB could efficiently oversee youth activities without the expertise of a standing youth committee with

prior experience in handling the youth activities. This commenter requested additional clarification as to how the Local WDB would provide efficient oversight. The commenter further asked if the Department would provide recommended models in order to ensure that they were implementing youth activities effectively and if the Department will provide recommended approaches in future technical assistance activities.

Department Response: If a Local WDB chooses not to delegate this function to a standing youth committee, it is still responsible under WIOA sec. 107(d)(8)(A)(i) for conducting oversight in partnership with the CEO for the local area of youth workforce investment activities under WIOA sec. 129(c). The Department notes the commenter's concern and recognizes that without youth experts it may be hard for a local area to oversee its youth program properly. The Department will address this commenter's concerns through technical assistance.

Section 681.110 Who is included on a standing youth committee?

This section describes the members of a standing youth committee.

Comments: Two commenters recommended that Local WDBs be given the maximum flexibility possible when determining membership requirements for their standing youth committee, stating that the Local WDBs would have the best understanding of their local area's needs. One of these commenters reasoned that there should be no rigid membership requirements for standing youth committees because the committees would be optional under the proposed language. Similarly, another commenter remarked that Local WDBs should be able to define the appropriate level of experience needed for members of the standing youth committee. This commenter stated that Local WDBs also should have the ability to establish the standards for what a community-based organization's (CBO's) "demonstrated record of success" must be.

One respondent suggested that the Department provide more specific guidance on committee membership requirements. This commenter further recommended that the committee should include individuals from CBOs who serve youth with disabilities, as well as individuals from the local education system.

Department Response: The Department concurs with the commenters that said the Local WDBs need the maximum flexibility possible when establishing membership requirements for their standing youth committee. The NPRM and Final Rule reflect the WIOA requirements found in sec. 107(b)(4)(A)(ii). The Department does not define a CBO's demonstrated record of success in the proposed regulation or Final Rule. The Department did accept the suggestion to add disability organizations and local education entities to the list of possible standing youth committee members.

Section 681.120 What does a standing youth committee do?

This section describes the duties of a standing youth committee. Commenters expressed support for the proposed roles of standing youth committees.

Comments: Several commenters suggested that the Department include a list of suggested tasks in the final regulation that a standing youth committee could be charged with. These commenters recommended that the Department reemphasize that if the Local WDB chooses not to establish a youth council or standing youth committee, oversight of the suggested activities listed in the regulations will fall under the jurisdiction of the Local WDB, which will then be responsible for overseeing the activities and providing opportunity for stakeholder comment. These commenters also suggested that the Department should require that Local WDBs and/or their standing youth committees state how they will:

- Facilitate co-enrollment of individuals across core programs, especially for those individuals between the ages of 18 and 24 who could be served under WIOA titles I, II, and IV.
- Implement specific provisions related to career pathways requirements.
- Adapt the procurement and request for proposal processes, in order to encourage longer-term and more thorough services for OSY.
- Align Temporary Assistance for Needy Families (TANF) with WIOA youth programs, so that TANF recipients who are under 25 can benefit from OSY programs when appropriate.

Department Response: The Department concluded that standing youth committees need as much flexibility as possible to reflect the needs of their local area. The Department will provide technical assistance to local areas and plans to incorporate many of the commenters' ideas. No change to the regulatory text was made in response to these comments.

3. Subpart B – Eligibility for Youth Services

Section 681.210 Who is an "out-of-school youth"?

This section describes how one meets the eligibility for an OSY for purposes of the title I WIOA youth program. OSY youth must not attend any school, be between the ages of 16 and 24 at time of enrollment, and meet one or more of a list of nine criteria. The section clarifies that age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment he or she can continue to receive WIOA youth services beyond the age of 24. Low income is not a requirement to meet eligibility for most categories of OSY under WIOA. Low income is, however, a part of the criteria for youth who need additional assistance to enter or

complete an educational program or to secure or hold employment. Also, WIOA has made youth with a disability a separate eligibility criterion.

Comments: A few commenters expressed their support of the expansion of the age requirements from 21 to 24. One commenter stated that this increase would be a positive change as it continues to see greater numbers of older young adults who are seeking employment and training services. Another commenter expressed support of the proposed regulations' focus on the needs of OSY. The Department recognizes that many youth service providers moved to serving more OSY under WIA. In Program Years 2011 and 2012, the national OSY expenditure rate was 57 percent.

On the other hand, a number of commenters noted that the proposed regulations mark a substantial change in the delivery of services to youth, specifically shifting service priorities from ISY to OSY. These commenters stated that because of this significant change, Governors and Local WDBs should have jurisdiction over defining the eligibility requirements for OSY.

Department Response: The Department acknowledges that WIOA's focus on OSY represents a significant change in the focus of the youth formula program. The Department also acknowledges the important role State and local leaders play in implementing the law. Nonetheless, WIOA clearly defines the eligibility requirements for OSY. No change was made in the regulatory text in response to these comments.

Comments: Several commenters proposed additions to the OSY definition. A few commenters offered that any individual who does not pass the high school exit exam should automatically be considered an OSY as well.

Department Response: The impact of high school exit exams on individual youth represents only one reason why the Department has concluded that under WIOA, local areas will

need to work closer than ever with the local education providers to ensure the success of their participants. In-school or out-of-school eligibility status is determined at the time of enrollment. Therefore, a student enrolled in high school when taking high school exit exam, would count as an ISY.

Comments: Another commenter recommended that the definition of OSY be broadened to include "youth ages 16-24 who may be enrolled in school, but in fact are spending less than 10 hours per week at that school or adult education center," noting that often students are technically enrolled in school but in reality hardly ever attend. Similarly, a commenter expressed concern that "if compulsory school attendance is defined by State law as 16, what happens to 14 and 15 year olds who are out-of-school?"

Department Response: The Department understands that many students attend high school irregularly and are at great risk of becoming disconnected. In the cases where compulsory-age students do not attend school on a regular basis, under WIOA they count as ISY. WIOA clearly defines the eligibility requirements for OSY. No changes were made to the regulatory text in response to these comments.

Measuring Attendance by School Year Quarters

WIOA includes a new criterion for determining OSY eligibility: a youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent school year calendar quarter. The school year quarter is based on how a local school district defines its school year quarters.

Comments: One commenter asked the Department to include an alternative definition for OSY requirements for schools that do not utilize school year quarters. This commenter suggested that the Department could use calendar year quarters as an alternative benchmark.

Another commenter expressed a concern over the proposed language's reliance on school year quarters as a benchmark to measure OSY eligibility because it would require local areas to have an understanding of the local school district's school year quarters.

Department Response: In Final Rule text, the Department added language clarifying that when schools do not use a quarter system, schools must use calendar year quarters. The Department encourages local areas to know their local school system's leaders as a strategy to ensuring that all youth know about the public workforce system and maximizing the limited resources available in an area. Conversations around school year calendars may serve as an entry point for future collaboration. Both commenters requested further clarification from the Department as to the measurement of length of attendance by school year quarters. The Department will issue additional guidance on school year quarters.

Definition of Attending

Comments: A number of commenters recommended that the Department define what "attending" means when determining the eligibility of an individual. These commenters asked the Department for clarification as to whether taking one course at a community college would count as "attending" and thus, render an individual ineligible for OSY services. These commenters also asked the Department whether or not being enrolled in a non-credit granting course or continuing education class would be classified as attending school, making those individuals ineligible for OSY services.

Another commenter requested clarification around the definition of OSY and a concern that youth with disabilities who are involved in remedial, non-credit coursework would be excluded from title I youth programs under WIOA. The commenter noted that non-credit education and remedial coursework often provide a vital opportunity to strengthen basic skills

needed in order to enroll in credentialing programs and to maximize independence. The commenter suggested the Department include language creating an exception to ensure that students with disabilities in need of remedial coursework will remain eligible for title I youth programs under WIOA.

Another commenter noted that the OSY definition language includes "an individual that is not attending any school as defined under State law" and it creates inconsistency in the application of State regulations resulting in a different treatment of youth from one State to the next. The commenter proposed clarification to the regulation to include attendance at an alternative high school for eligibility in the OSY component, for all States.

Department Response: The Department will provide further guidance around “attending” and non-credit granting courses, continuing education classes, and one community college course.

General Education Development (GED) & Dropout Prevention/Recovery Program Eligibility

Comments: A few commenters expressed support for the proposed language that would classify individuals enrolled in a GED class as OSY. These commenters further recommended that youth in GED programs be classified as “high school drop-outs” in the proposed regulations so that they would not be subjected to compliance with the low-income eligibility requirements, and suggested that because they did not complete their high school education, it would be illogical to define them as ISY. Two commenters recommended that individuals enrolled in GED or high school equivalency programs be considered OSY.

Two other commenters suggested that individuals enrolled in a dropout re-engagement program also be classified as OSY under the proposed regulations. Specifically, a commenter

recommended adding the following language, "…for purposes of WIOA, the Department does not consider providers of dropout re-engagement programs or providers of adult education…to be schools." This commenter stated that this language would provide clarification that after an individual has dropped out of school, he or she can continue his or her education in an alternative form without being considered an ISY. Another commenter suggested that youth in these programs are not participating in traditional schools and therefore should not be classified as ISY.

Department Response: Based on the recommendation of commenters, the Department has added high school equivalency programs and dropout re-engagement programs as additional types of programs in § 681.230 that are not considered "schools" for the purposes of determining school status.

Comments: Other commenters asked for clarification from the Department as to whether an individual recruited and persuaded to return to school through a dropout recovery program would be considered an OSY under the proposed regulations, even if he or she had not missed an entire semester of school. One commenter also asked for clarification from the Department regarding why an individual would be required to wait an entire semester to be classified as an OSY.

Department Response: As a point of clarification, WIOA does not require a person to miss an entire semester; rather, the law considers school year quarters. Further, the Department reminds service providers that ISY or OSY status determination occurs when a youth enrolls into the WIOA Youth Formula Program and does not change as the youth moves though the program. Therefore, an OSY who returns to school through a dropout recovery program remains classified as an OSY for WIOA purposes.

Foster Care Individuals/Individuals in the Justice System

Comments: Regarding the eligibility requirements for individuals in the foster care or justice systems, one respondent commented that the proposed regulation's definition of OSY would not efficiently serve individuals in the foster care or juvenile justice systems, stating that the proposed language would require individuals in the juvenile justice system or foster care system to drop out of school in order to be eligible to receive WIOA youth services, which the commenter suggested would put them at an even greater risk. Another commenter recommended that the Department amend the OSY eligibility criteria regarding youth in foster care to include youth who were formerly in foster care, but may have returned to their biological families before turning 18, sharing that although these individuals are no longer in foster care and did not technically "age out" of the system, they are still disadvantaged and in need of assistance. Two commenters recommended that any incarcerated youth be automatically considered an OSY.

Department Response: Although the Department recognizes that a few State-level foster care policies may result in this practice occurring, the Department does not interpret WIOA to require individuals in the juvenile justice system or foster care system to drop out of school in order to be eligible to receive WIOA youth services. Nor is it the Department's intent to have youth leave school in order to receive WIOA youth program services.

Relating to the comment that individuals who stay in foster care until late adolescence may not technically "age out" of the system but remain disadvantaged, the Department agrees. The Department consulted with the Department of Health and Human Services John H. Chafee Foster Care Independence Program and added "or an individual who has attained 16 years of age and left foster care for kinship guardianship or adoption," to the final regulation for §§ 681.210 and 681.220 to encompass this fragile population.

Further, to make the regulation easier to understand, the Department separated foster care youth and homeless and runaway youth into two separate eligibility categories. In addressing the comments around individuals involved in the juvenile justice system, WIOA uses slightly different wording between ISY and OSY eligibility criteria. For OSY eligibility WIOA at sec. 129(a)(1)(B)(iii)(IV) states, "An individual who is subject to the juvenile or adult justice system," while for ISY, sec. 129(a)(1)(C)(iv)(III) says, "offender." WIOA sec. 3(38) defines "offender'' as "an adult or juvenile— (A) who is or has been subject to any stage of the criminal justice process, and for whom services under this Act may be beneficial; or (B) who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction." The Department changed the wording in the Final Rule to use "offender" for the eligibility criteria for both ISY and OSY, to clarify that the OSY eligibility criterion at § 681.210(c)(4) includes all individuals who fit the definition of "offender" under sec. 3(38). The Department concluded that the intent of the OSY eligibility criterion is not to treat youth who were subject to the juvenile or adult system differently from those who are currently subject, but rather to call attention to the fact that both the juvenile and adult justice systems may include OSY.

Homeless Individuals

Comments: A commenter expressed support for the inclusion of homeless individuals as one of the possible eligibility criteria for OSY in the proposed regulations. This commenter further recommended that the definition of homeless individual in § 681.210(c)(5) be derived from the Runaway and Homeless Youth Act (42 U.S.C. 5601 et seq.) and read "…a homeless child or youth (as defined in sec. 725(2) of the McKinney Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), a runaway or homeless youth (as defined by 42 U.S.C. 5601 et seq.) who is

referred to the labor board by an RHY provider…." This commenter also suggested that homeless status of an individual should be determined by referral from a runaway or homeless youth (RHY) or other homeless youth provider, but that pure self-attestation by the individual should also count as sufficient evidence of homelessness.

Department Response: Runaway and Homeless Youth programs serve individuals as young as 12 years old, which is younger than permitted by WIOA youth formula program statute. Therefore, no changes were made in the regulatory text in response to these comments. The Department will provide future guidance and technical assistance around provider referrals and self-attestation when determining program eligibility. The Department did add language to clarify that for the OSY category, all homeless individuals qualify up to the age of 24.

Individual Who is Pregnant or Parenting

Comments: A commenter asked the Department to clarify that an "individual who is pregnant or parenting" includes noncustodial parents, such as fathers. Suggesting that re-engagement of fathers and noncustodial parents is critical to supporting children, this commenter pointed out that because youth served by its members often are parenting a child whose paternity has never been determined, these partners are in fact parenting, even if not legally custodial.

Department Response: The Department recognizes the role all parents, custodial and non-custodial, play in the lives of their children and plans to provide future technical assistance on this subpopulation.

Disability

Comments: Another respondent noted that the NPRM defines OSY as an individual who meets criteria in paragraphs (a) and (b) in this section, as well as one or more of the criteria identified in paragraph (c). Two of the criteria described in this part are: (8) an individual with a

disability; (6) a low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. The commenter further described that low income is a part of the criteria for youth who need additional assistance to enter or complete an educational program or to secure or hold employment, and WIOA has made youth with a disability a separate eligibility criterion. The commenter asked the Department to state specifically that low income is not an eligibility requirement for serving youth with a disability.

Department Response: The commenter's observation does not necessitate a change to the Final Rule. For OSY, low income is not an eligibility requirement for serving youth with a disability. For ISY with disabilities, low-income eligibility requirements exist. However, for ISY with disabilities, WIOA sec. 3(36)(A)(vi) provides that the income level for eligibility purposes is based on the individual's own income rather than his/her family's income. The Department plans to provide additional technical assistance around serving youth with disabilities.

Section 681.220 Who is an "in-school youth"?

This section describes how one meets the eligibility for an ISY for purposes of the WIOA title I youth program. ISY youth must be attending school, including secondary or postsecondary school, be between the ages of 14 and 21 at time of enrollment, be low-income, and meet one or more of a list of eight criteria. These are essentially the same criteria as under WIA but the disability criterion has been separated from the "needs additional assistance" criterion. The section clarifies that age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment, he or she can continue to receive WIOA youth services beyond the age of 21. WIOA includes a youth as low-income if he or she

receives or is eligible to receive a free or reduced-price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751, et seq.).

Foster Care Individuals

Comments: A commenter recommended that the Department amend the OSY eligibility criteria regarding youth in foster care to include youth who were formerly in foster care, but may have returned to their biological families before turning 18 because although these individuals are no longer in foster care and did not technically "age out" of the system, they are still disadvantaged and in need of assistance.

Department Response: The Department concluded that same logic applies to § 681.220: individuals who leave foster care after remaining there until late adolescence may not technically "age out" of the system and yet remain disadvantaged. The Department, in consultation with the Department of Health and Human Services John H. Chafee Foster Care Independence Program, added "or who has attained 16 years of age and left foster care for kinship guardianship or adoption," to the final regulation for §§ 681.210 and 681.220 to encompass this fragile population.

Homeless Individuals

Comments: A commenter expressed support for the inclusion of homeless individuals as one of the possible eligibility criteria for OSY in the proposed regulations. This commenter further recommended that the definition of homeless individual in § 681.210(c)(5) be derived from the Runaway and Homeless Youth Act (RHYA) (42 U.S.C. 5601 et seq.) and would read "…a homeless child or youth (as defined in sec. 725 (2) of the McKinney Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), a runaway or homeless youth (as defined by 42 U.S.C. 5601 et seq.) who is referred to the labor board by an RHY provider…." This commenter also

suggested that homeless status of an individual should be determined by referral from an RHY or other homeless youth provider, but that pure self-attestation by the individual should also count as sufficient evidence of homelessness.

Department Response: The Department consulted with the Department of Health and Human Service's Administration for Children and Families when considering this comment. The Department learned that the Runaway and Homeless Youth programs serve individuals as young as 12 years old which is younger than permitted by WIOA youth formula program statute. No changes were made to the regulatory text in response to this comment. The Department will provide future guidance and technical assistance around provider referrals and self-attestation when determining program eligibility.

Similar to the OSY criteria, the Department added language to clarify that for the ISY category, homeless individuals aged 14-21 qualify. Also similar to the OSY criteria, to make the regulation easier to understand, the Department separated foster care youth and homeless and runaway youth into two separate eligibility categories. This more accurately distinguishes between the types of barriers youth may experience.

Individual Who is Pregnant or Parenting

Comments: A commenter asked the Department to clarify that an "individual who is pregnant or parenting" includes noncustodial parents, such as fathers. Suggesting that re-engagement of fathers and noncustodial parents is critical to supporting children, this commenter pointed out that because youth served by its members often are parenting a child whose paternity has never been determined, these partners are in fact parenting, even if not legally custodial.

Department Response: An individual who is pregnant or parenting does include noncustodial parents, such as fathers. The Department recognizes the role all parents, custodial

and non-custodial play in the lives of their children and plans to provide future technical assistance on this subpopulation.

Section 681.230 What does "school" refer to in the "not attending or attending any school" in the out-of-school and in-school eligibility criteria?

The eligibility criteria for the WIOA title I youth program for out-of-school youth at WIOA sec. 129(a)(1)(B)(i) requires that the individual is "not attending any school (as defined in State law)," and for in-school youth, sec. 129(a)(1)(C)(i) requires that the individual is "attending school (as defined in State law)." The Department has changed the title of § 681.230 to clarify that the terms the section uses are from those eligibility criteria. The term "school" refers to both secondary and postsecondary school as defined by the applicable State law for secondary and postsecondary institutions. Section 681.230 provides that for purposes of title I of WIOA, the Department does not consider providers of adult education under title II of WIOA, YouthBuild programs, or Job Corps programs as schools. Therefore, if the only "school" the youth attends is adult education provided under title II of WIOA, YouthBuild, or Job Corps, the Department will consider the individual an OSY youth for purposes of title I of WIOA youth program eligibility.

Comments: The Department received comments on several provisions within this section. Some commenters expressed concern over the proposed allowance of State law to determine the definition of "school." Discussing the fact that their particular State's laws only apply to grades K-12 and do not include postsecondary school, these commenters suggested that the definition of "school" should be clarified, and amended to address potential inconsistencies that would arise due to varying State laws. One commenter recommended that each State WDB should be given the flexibility to determine whether to include postsecondary education as in-school or out-of-school, if the State does not specify it in its statutes. A number of commenters suggested that the

definition of OSY be expanded to include individuals who are enrolled in postsecondary education. Similarly, a commenter stated that States do not support the definition in the proposed regulations that would classify youth engaged in postsecondary programs as ISY because the proposed language would lead to fewer youth in postsecondary education being served due to the 75 percent OSY expenditure requirement. Another commenter suggested that youth enrolled in postsecondary developmental education courses be considered OSY.

Department Response: WIOA's increased OSY expenditure rate is designed to increase focus on disconnected youth. All State education agencies recognize 2- and 4-year colleges as "schools," and the Department has determined that both secondary and postsecondary institutions are considered "schools" for the purpose of determining school status for WIOA youth program eligibility.

Comments: A number of commenters recommended that the definition of OSY include individuals attending alternative schools. One of these commenters stated that an individual who attends an alternative school is at as great a risk as those who are attending no school. Some of these commenters suggested that an individual's enrollment at an alternative school is an implicit indicator of need for WIOA youth services because of the low graduation and high dropout rates associated with alternative schools. A commenter recommended that the Department enhance the definition of school to include: individuals in court-mandated programs, alternative schools, community schools, incarcerated youth, those who have not passed the high school exit exam, and individuals who attend independent studies programs.

Department Response: The Department did not incorporate the term "alternative school" into the definition of an OSY because alternative school is a general term that may encompass many different types of programs. Rather, the Department has incorporated into the Final Rule

additional types of programs that it does not consider schools, such as high school equivalency programs and dropout re-engagement programs.

Comments: A number of commenters recommended that youth participating in a dropout re-engagement program be considered out of school for the purposes of WIOA and suggested clarifying that in § 681.230. Another commenter encouraged the Department to clarify further that youth in high school equivalency programs, such as GED programs, also are considered dropouts.

Department Response: Based on the recommendation of commenters, the Department has added high school equivalency programs and dropout re-engagement programs as additional types of programs that are not considered "schools" for the purposes of determining school status.

Comments: With regard to the eligibility of individuals who are enrolled in adult education programs, a number of commenters expressed support for these individuals' eligibility as OSY. Several of these commenters stated that the potential for co-enrollment would be very beneficial to youth in need of these services. Citing data from a survey that found low rates of co-enrollment, two commenters stated that because of this past evidence of low percentages of co-enrollment, they supported the proposed regulations, which would not define adult education programs as schools. Another commenter recommended that the Department expand the provision to include those individuals who are officially enrolled in school, but who in actuality only are receiving an education at an adult education center. A number of commenters requested that individuals who are enrolled in an adult education program would be considered OSY under WIOA title I, regardless of how the adult education services are funded. Several commenters suggested that many individuals attend adult education programs that are not funded by title II of

WIOA, and that limiting eligibility for OSY services solely to those who attend programs funded by title II would limit the number of youth who would be eligible for co-enrollment.

Department Response: The Department agrees that the determination of whether an adult education program is considered a "school" should not be based on funding source. Providers of adult education under title II of WIOA do not need to be wholly funded by title II in order to meet the provision described in § 681.230.

Comments: Regarding the school status of individuals participating in YouthBuild programs not funded by the Department of Labor, a few commenters recommended that the Department revise the proposed regulation to apply to all YouthBuild programs regardless of how they are funded. Another commenter also stated that the exception of not classifying YouthBuild programs as schools should be applied to all YouthBuild programs, suggesting that many YouthBuild programs have a variety of funding sources outside of Department grants and that the individuals enrolled in those programs should not be penalized because of how their program is funded.

Department Response: The Department agrees that the determination of whether a YouthBuild program is considered a "school" should not be based on funding source. All YouthBuild programs, whether funded by the Department of Labor wholly, partially, or not at all meet the provision described in § 681.230 and are not considered schools for purposes of WIOA youth program eligibility determination.

Comments: One commenter stated that all individuals enrolled in Job Corps programs should be considered OSY for WIOA youth services. A number of commenters requested clarification from the Department as to whether individuals involved in all Job Corps programs

would be considered OSY, since Job Corps students may finish accredited high school diploma program or complete a high school equivalency certificate or diploma.

Department Response: The Department does not consider any Job Corps program to be a "school" for purposes of determining WIOA youth program eligibility regardless of whether students in the Job Corps program are pursuing a high school diploma a high school equivalency certificate.

Section 681.240 When do local youth programs verify dropout status?

This section provides that dropout status is determined at the time of enrollment for eligibility as an OSY and that once a youth is enrolled as an OSY, that status continues, for purposes of the minimum 75 percent OSY expenditure requirement, for the duration of the youth's enrollment, even if the youth later returns to a school.

Comments: Several commenters expressed their support for the proposed language. A number of these commenters specifically expressed their support for the allowance of youth who are determined eligible to receive services at the time of their enrollment to continue to receive services and maintain eligibility even if they are placed later in an alternative school. These commenters recommend that an individual's status be portable when moving across other WIOA funding streams as long as that movement is part of the individual career plan and part of an articulated agreement among the partners. One commenter recommended changing an individual's school status from ISY to OSY when a youth graduates from high school as this would assist States with achieving the required minimum 75 percent OSY expenditure rate and will accurately reflect the status of youth with WIOA expenditures.

Department Response: The Department has concluded that the most straightforward and least burdensome approach is for school status to remain the same throughout the program. In

addition, this policy will encourage local programs to assist OSY re-engage in school without concern that re-engaging them in school would negatively impact their minimum OSY expenditure rate.

Comments: A number of commenters expressed concerns over the provision that would allow States to define the term "alternative school." Some of those commenters suggested that States with broad definitions of schools could end up preventing youth who have dropped out of school and are attending alternative schools from receiving WIOA OSY services. One of the commenters recommended that the Department not leave the definition of alternative schools up to States, saying that there should be a consistent definition across States. Another commenter recommended that, consistent with the State's definition of alternative education, any youth that attends an alternative school also be considered an OSY.

Department Response: The Department agrees on the importance of consistent definitions across States. Because the term "alternative school" is a general term that may encompass many different types of programs, the Department deleted all references to the term "alternative school" in § 681.240, and it is no longer required to be defined in State Plans. Rather, as discussed in § 681.230 above, the Department has added high school equivalency programs and dropout re-engagement programs as additional types of programs that are not considered "schools" for the purposes of determining school status.

Section 681.250 Who does the low-income eligibility requirement apply to?

This section discusses the low-income eligibility criteria for OSY and ISY. All ISY must be low-income with the exception that up to 5 percent of ISY youth who meet all the other eligibility requirements need not be low-income. The up to 5 percent is calculated based on all newly enrolled youth who would ordinarily be required to meet the low-income criteria in a

given program year. For OSY, only those youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner and youth who require additional assistance to enter or complete an educational program or to secure or hold employment must be low-income.

Comments: Commenters expressed support for the amended low-income eligibility requirements, and their streamlined documentation and process requirements, with one commenter remarking the change would be beneficial to youth. Another commenter stated that the OSY low-income eligibility criteria would be confusing.

Department Response: The Department concurs with these commenters that the new low-income eligibility requirements will lead to streamlined documentation and process requirements.

Comments: A commenter expressed concern over needing to document low-income status for ISY, fearing it may create a challenge in working with schools on career pathway activities. The commenter noted that schools prefer to provide all students with the same experience regardless of family income.

Department Response: The Department notes the concern expressed about the compatibility between how schools and workforce partners approach youth. The Department cannot change the ISY income level requirements as WIOA defines them. The Department plans to provide tools on approaches to implementing career pathways.

Comments: A commenter recommended that all OSY be exempt from having to meet low-income eligibility requirements, stating that there is a high correlation between being disconnected from school and work and the likelihood of entering poverty, especially at a young age. Similarly, a commenter recommended that the low-income requirement be removed from

the OSY eligibility criteria for individuals who need additional assistance to complete an educational program or to secure or hold employment, and for recipients of a secondary school diploma who are basic skills deficient or an English language learner, asserting that the OSY requirements would be more effective if the low-income criteria were removed from these two categories of individuals.

Department Response: The Department recognizes the high correlation between being disconnected from school and work and the likelihood of entering poverty. It also understands that removing low-income criteria from all of the OSY eligibility criteria would simplify the program. Nonetheless, these eligibility requirements are statutory comments in WIOA, and therefore the Department cannot change them in regulation.

Comments: Another commenter requested that the Department revise the proposed regulations so that OSY may be considered low-income if they receive or are eligible to receive free or reduced lunches, asserting that currently the proposed regulations are written so that only ISY who are eligible for free or reduced price lunches are considered to be low-income.

Department Response: The Department considered the commenter's suggestion that OSY may be considered low-income if they receive or are eligible to receive free or reduced lunches. The Department decided not to change the Final Rule because youth must be enrolled in school to be eligible for the Richard B. Russell National School Lunch Act.

Comments: A commenter requested clarification from the Department concerning the criteria that would be used to determine if an individual is an English language learner for the purposes of the low-income eligibility requirement.

Department Response: The Department understands the need for criteria for determining if an individual is an English language learner for the purposes of the low-income eligibility

requirement. There will be guidance and technical assistance provided on this topic in the future. No regulatory change was made in response to this comment.

Comments: A person commented that the proposed regulations would make youth with a disability a separate eligibility requirement from low-income requirements. This commenter and another commenter suggested that the Department specifically clarify that for youth with a disability, low income would not be an eligibility requirement under the proposed regulations for OSY with a disability.

Department Response: Upon analyzing these comments the Department discovered a technical error in the NPRM. The Final Rule clarifies that OSY with disabilities do not need to meet low-income eligibility requirements and the Department has changed the regulatory text to read as follows: "All other OSY meeting OSY eligibility under § 681.210(c)(1), (2), (4), (5), (6), (7) and (8) are not required to be low-income. Additionally, the Department clarified in § 681.280 that OSY with disabilities are not required to be low income. For ISY with a disability, the youth's own income rather than his or her family's income must meet the low-income definition and not exceed the higher of the poverty line or 70 percent of the lower living standard income level.

Comments: A commenter suggested that any youth who attends a school that is considered by the U.S. Department of Education to be a "designated low-income school" should be considered a low-income youth for the purpose of WIOA services. Similarly, another commenter requested that the Department add to the regulations that any youth who attend a title I school would automatically be considered low-income for eligibility purposes for WIOA youth services.

Department Response: The Department analyzed these two similar suggestions and did not modify the regulation text. The Department reviewed the Department of Education's title I designation and concluded that the WIOA high poverty threshold represents a more impoverished area than the Department of Education's title I school status.

Comments: A commenter asked for clarification as to whether this 5 percent of youth means new youth enrollees in a given program year or 5 percent of all youth enrolled. Another commenter asked whether the 5 percent who do not have to be low income includes youth that are eligible because of non-income applicable criteria such as being homeless, a member of the juvenile justice system, or having dropped out of high school.

Department Response: The Department clarified in the regulation text that for the 5 percent low-income exception, the 5 percent of youth means new youth in a given program year. In addition, the Department has clarified in regulatory text that the calculation for the 5 percent exception is based on only those youth who would ordinarily need to be low income. It is not based on all youth since many of the OSY categories do not require low-income status. In fact, all nine categories at § 681.210(c) except for paragraphs (c)(3) and (c)(9) do not require low-income status. Because not all OSY are required to be low-income, the 5 percent low-income exception under WIOA is calculated based on the 5 percent of youth enrolled in a given program year who would ordinarily be required to meet the low-income criteria. For example, a local area enrolled 200 youth and 100 of those youth were OSY who were not required to meet the low-income criteria, 50 were OSY who were required to meet the low-income criteria (i.e., either § 681.210(c)(3) or (c)(9)), and 50 were ISY. In this example the 50 OSY required to be low income and the 50 ISY are the only youth factored into the 5 percent low-income exception calculation. Therefore, in this example, 5 of the 100 youth who ordinarily would be required to

be low-income do not have to meet the low-income criteria based on the low-income exception. This percent is calculated at the end of a program year based on new enrollees in that program year.

Comments: A few commenters were concerned that setting a limit on the percent of youth that may be deemed eligible based on needing additional assistance limits who can be served when there is not an abundance of youth that have one of the other eligibility characteristics. A number of commenters requested that the Department consider recommending that the 5 percent limitation be removed at such time that WIOA is amended that states that 5 percent of youth who meet all other WIOA youth services eligibility requirements do not have to be low income.

Department Response: While the Department did not include language in the NPRM relating to the 5 percent limitation on the "requires additional assistance" criterion for ISY, that was an unintentional omission. The Department has added § 681.310(b), which describes the 5 percent ISY limitation for the "requires additional assistance" criterion. The Department will take the concerns about the 5 percent limitation into consideration when providing any technical assistance to Congress on WIOA reauthorization.

Comments: A few commenters asked for clarification regarding a definition for "family" for the purposes of determining low-income eligibility for WIOA title I youth program. Another commenter recommended that the Department incorporate the definition of "family" from WIA sec. 101(15) into the WIOA regulations. A request was made that the Department provide an updated version of the WIA definition that is more inclusive of all family types, including same-sex marriages and domestic partnerships.

Department Response: In response to the comments seeking clarification of "family" in WIOA, the Department added a definition of family in 20 CFR part 675, and it is further discussed in the preamble that applies to that part.

Comments: Some commenters asked what items would be included for determining if an individual is in a family with total family income that does not exceed the poverty line. In particular, these commenters asked the Department if sources of funding such as pensions, foster care child payments, or unemployment compensation would be included when determining a family's low-income status. A commenter asked the Department what the definition of a dependent child would be for purposes of determining income eligibility and up to what age could an OSY be considered a dependent child of the parent or guardian.

Department Response: When determining up to what age an OSY could be considered a dependent child of the parent or guardian use the IRS definition of dependent. The Department will provide additional guidance on eligibility.

Section 681.260 How does the Department define "high poverty area" for the purposes of the special rule for low-income youth in the Workforce Innovation and Opportunity Act?

WIOA contains a new provision that allows for youth living in a high poverty area to meet automatically the low-income criterion that is one of the eligibility criteria for ISY and for some OSY.

Comments: The Department received many comments on how to define "high poverty area." A number of the commenters focused on the 30 percent rate as set every 5 years using American Community Survey 5-Year data and if that was the appropriate threshold. For example, a few commenters expressed their support for the proposed language in this section, suggesting that the 30 percent threshold for defining a high poverty area would be an accurate

measure. In particular, an entity commented that the proposed regulation would help to relieve some of the burden of meeting income eligibility requirements on youth.

However, another commenter wrote that the proposed 30 percent threshold would be unreasonable, and requested additional clarification regarding the calculation methods of contiguous tracts in determining high poverty areas. Specifically, this commenter asked the Department whether it would measure high poverty thresholds for a contiguous tract using an average of the contiguous tracts, or just whether a contiguous tract meets the threshold.

Citing data from the American Community Survey, another commenter suggested that there are actually few census tracts that would meet the 30 percent poverty threshold. This commenter further stated that census data, particularly for low-income neighborhoods, often includes a large margin of error. This commenter recommended that the Department modify the definition of high poverty area to reflect actual geographic concentrations of OSY better.

A few commenters suggested that the definition of high poverty area should not be higher than 20 percent of the population meeting the low-income threshold. Other commenters recommended that the proposed high poverty area definition be lowered from 30 percent of the population to 25 percent.

Citing statistics a commenter said that in Maine, there are no areas in which the 30 percent poverty threshold would be met, one commenter recommended that the Department lower the low-income threshold from 30 percent in order to accommodate more rural and less densely populated States.

One commenter recommended that the regulations be modified to state that if any measure of poverty in a census tract exceeds 30 percent, the census tract should be considered a

high poverty census tract, stating that in some cases the overall high poverty may be under 30 percent but certain measures within the overall tract could be over 30 percent.

Two commenters recommended that the Department allow States to define their own poverty area thresholds between 20 and 40 percent that is consistent with the State's demographics. Another commenter recommended that the Department allow Local WDBs to determine the thresholds for poverty in their local areas.

Another commenter recommended that Local WDBs submit documentation to the Department concerning extenuating circumstances in their area that would cause them to need to lower their low-income threshold.

Department Response: After analyzing the many comments received on the proposed regulation, the Department concluded that a poverty rate of at least 30 percent as set every 5 years using American Community Survey 5-Year data was too high. The regulation text was changed to reflect a poverty rate of at least 25 percent as set every 5 years using American Community Survey 5-Year data. Local areas must decide how to combine census tracts into larger contiguous areas and the weighted average of the poverty rates of the census tracts in each contiguous area to meet the threshold. The Census Bureau defines a "poverty area" as a census tract where at least 20 percent of the residents are poor. Therefore, the term "high poverty" must be greater than 20 percent; the Department concluded that 25 percent was the most appropriate threshold. Because allowing States to define their own poverty threshold would lead to inconsistencies in eligible youth across the country, the Department did not include that recommendation in the Final Rule.

Comments: Citing statistics regarding the high poverty rates in Merced County and all of San Joaquin valley, a commenter recommended that the "area" measured when determining

whether an area is high poverty, be amended from using counties to cities. A different commenter recommended that the Department modify the proposed regulations to include "city" as an additional geographical division that could be used when determining low-income status of an area. Another commenter recommended that any city with more than 20 percent of its census tracts considered "high poverty" should be considered a high poverty area, expressing that poverty areas are not always contiguous and can be separated by land occupied by government buildings, shopping malls, and colleges.

Department Response: Because most cities include multiple neighborhoods and census tracts that can vary greatly in their levels of poverty, the Department decided that using city as the geographical area is too large of an area to use.

Comments: A commenter recommended that the Department should use zip codes to determine low-income levels instead of census tracts, asserting that there are often sub-areas of high poverty within a census tract and that census tracts often do not reflect these concentrated area of high poverty.

Department Response: The Department analyzed the effect of adding city and zip code as an additional geographic division and decided to stay with the proposed set of contiguous census tracts as the Census Bureau defines poverty areas using census tracts. The conclusion will result in a more consistent implementation of the regulation.

Comments: A few commenters suggested that the Department revise the proposed regulations so that the 30 percent poverty threshold is defined using the numbers from the population in an area who are eligible to participate in the program (ages 16 through 24), and not using the percentage from the general population. Two commenters also recommended that high poverty areas be defined by the youth poverty rate of an area, stating that census tract data are

minimally useful for the purpose of determining the level of poverty in an area. Similarly, one commenter asserted that using the American Community Survey 5-Year data for all ages in an area could be limited in its usefulness. This commenter suggested that the data be limited to individuals who are under 18 living in an area. This commenter recommended that the Department clarify whether the American Community Survey data should be limited to youth in an area or whether States have discretion to decide which data to use.

Department Response: While the Department acknowledges the value behind using poverty data that reflect the population the program serves, it concluded that because this measure applies to ISY (14-21) and OSY (16-24), and these age ranges are not currently easily accessible with the American Community Survey, it would not specify that the data need to reflect a specific subpopulation as a requirement in the regulatory text.

Comments: Another respondent sought clarification from the Department regarding the proposed method of defining high poverty areas. Similarly, one commenter stated that the Final Rule would need to be clearer as to how a local area can determine whether or not they are considered a high poverty area. Another commenter asked the Department to clarify how a service provider would document that an individual has met the income eligibility requirements for WIOA youth services by living in a high poverty area. One commenter asked if Local WDBs could use the U.S. Department of Housing and Urban Development (HUD) Web site to determine if an area is high poverty.

Department Response: The Department recognizes that several commenters want directions and tools on how a local area could determine whether they are considered a high poverty area. The Department will provide technical assistance to youth service providers, making it easier to calculate if an area qualifies as a high poverty area for WIOA purposes.

Comments: Several commenters recommended that the regulations include a variety of measures to determine whether an area is "high poverty." Specifically, some of these commenters recommended that the Department revise the NPRM to include additional high poverty area proxies to capture low-income youth such as living in areas contiguous to high poverty areas, living in public housing, or living in an area where over a certain percent of the student population is eligible for free or reduced price lunches. An entity recommended using additional low-income proxies for high poverty area, sharing that the current proposed language would exclude individuals from participation in these services based on their zip code.

One commenter suggested that school district borders be used to define areas of high poverty instead of State or county borders, asserting that this would decrease economic disparity between communities.

Another commenter recommended that the Department use the most current data available to determine high poverty areas. This commenter suggested using data from other sources instead of solely relying on data from the American Community Survey, and recommended also using data from Empowerment Zones and other partner agency information systems.

Department Response: The Department considered all of the alternative measures suggested and decided to use the proposed calculation method, with a slight adjustment to 25 percent from 30 percent poverty rate in order to keep the calculation relatively straightforward, easy to understand, and not burdensome to document or implement.

Comments: Another commenter stated that the proposed method of classifying high poverty areas is not consistent with WIOA's intent of serving the neediest youth, asserting that eligibility should be based on individual needs instead.

Department Response: The Department appreciates the concern regarding serving the neediest youth. WIOA sec. 129(a)(2) includes the phrase "high poverty area," which the Department interpreted to mean a geographic area and not an individual determination.

Comments: Finally, a commenter suggested that the Department revise proposed § 681.260 to make it more precise and eliminate ambiguity in the term "tribal area."

Department Response: The Department accepted the commenter's suggestion and replaced, "Indian Reservation, tribal land, or Native Alaskan Village" with "an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other tribal land as defined by the Secretary in guidance" in the Final Rule.

Section 681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?

This section explains that WIOA sec. 3(36) defines a low-income individual to include an individual who receives (or is eligible to receive) a free or reduced price lunch under the Richard B. Russell National School Lunch Act.

Comments: A number of commenters expressed support for the proposed language's acceptance of eligibility for free or reduced price lunch as a substitute for WIOA youth income eligibility requirements criteria.

One commenter asked the Department whether an OSY with a sibling receiving free or reduced lunches would be considered eligible under the proposed regulations. Similarly, another commenter requested clarification from the Department regarding whether an OSY high school graduate could use their family's participation in the National School Lunch Program as

fulfillment of their low-income requirements. Yet another commenter recommended that a youth who lives in a household where his or her family member(s) receive or are eligible to receive free or reduced price lunch should automatically also be eligible for WIOA youth services.

Department Response: The Department analyzed the requests to use family member's eligibility to receive free or reduced price lunch as a proxy allowing a youth not enrolled in school to automatically meet low-income eligibility criteria for WIOA youth services. The Department did not change the Final Rule because WIOA states "an individual must receive or is eligible to receive a free or reduce-priced lunch" and youth must be enrolled in school to be eligible for Richard B. Russell National School Lunch Act. Furthermore, low-income is not an eligibility requirement for significant portions of the OSY program.

Comments: A few commenters requested clarification from the Department as to whether in a city or a town in which 100 percent of students are eligible for free or reduced lunches, any student who lives in the area would be considered low-income automatically and therefore, eligible for WIOA youth services, and only would need to prove his or her residency. Further, these commenters requested clarification from the Department regarding whether an individual who attends a school that qualifies for a Community Eligibility Provision (CEP) under the Healthy, Hunger-Free Kids Act of 2010 would be considered low-income for WIOA youth program eligibility purposes. Another commenter also discussed the requirements of the CEP and asked how a school district's participation in a CEP would affect the low-income eligibility of youth for WIOA services.

Department Response: The Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111-296, December 13, 2010, 124 Stat. 3183) amends the Richard B. Russell National School Lunch Act

which includes the CEP, but does not replace it. The Department found that many cities, towns, and schools that participate in the CEP have relatively low poverty rates as compared to the WIOA determined high poverty area. As a result of this research, the Department decided not to change the Final Rule to include the CEP.

Section 681.280 Is a youth with a disability eligible for youth services under the Workforce Innovation and Opportunity Act if his or her family income exceeds the income eligibility criteria?

This section reiterates the WIOA provision that, for an ISY with a disability, income level for eligibility purposes is based on his/her own income rather than his/her family's income. For OSY with a disability, income is not an eligibility criterion.

Comments: Two commenters expressed support for this provision, noting that it would eliminate barriers for individuals with disabilities for accessing necessary support services.

Another commenter stated that there was an inconsistency between proposed §§ 681.250 and 681.280. Specifically, the commenter said that § 681.250 indicates that the low-income requirement would not apply to OSY with disabilities. However, § 681.280 states that for an individual with a disability, the income level for eligibility purposes would be based on the person's individual income as opposed to his or her family's income. This commenter recommended that the regulatory text be rewritten to clarify that the low-income requirement for individuals with disabilities would be applicable only to ISY and not OSY.

Department Response: The Department concurs that the proposed regulation did not factor in the OSY eligibility criteria. To address the commenter's concern, the final regulation includes the following line, "Furthermore, only ISY with a disability must be low income. OSY with a disability are not required to be low income."

Section 681.290 How does the Department define the "basic skills deficient" criterion in this part?

This section reiterates the basic skills deficient criterion that is part of the eligibility criteria for both OSY and ISY, for purposes of title I of WIOA. The section also provides that local programs must use valid and reliable assessment instruments and provide reasonable accommodations to youth with disabilities in the assessment process in making this determination.

Comments: A commenter recommended that the Department revise the phrase provided in § 681.290(a)(2), "(2) Are unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society. (WIOA sec. 3(5))."

Department Response: The Department declines to revise this language because it comes directly from the statutory language of WIOA.

Comments: A commenter recommended that the Department include language in § 681.290(b), which governs the State WDBs' policies to determine if a youth is basic skills deficient, to require the use of age and/or developmentally appropriate criteria. Another commenter recommended that the Department clarify that local areas must state in the local plan how they will assess individuals, and that States should establish State policies for how to define basic skills deficient.

Department Response: The Department addressed these comments in State planning guidance, TEGL No. 14-15 ("Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plan"), which can be found at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.

Comments: One commenter requested clarification regarding the § 681.290(c) requirement that in assessing basic skills, local programs must use assessment instruments that are valid and appropriate for the target population. One commenter expressed its support for the explicit inclusion of "valid and reliable assessment instruments" and "reasonable accommodations" for individuals with disabilities, saying that this language would create the opportunity for State and Local WDBs to put metrics-driven services and supports into place. This commenter recommended, however, that the § 681.290 language be further modified to provide State and Local WDBs with guidance on how to connect youth with disabilities with the resources they need if they are deemed skills deficient. A number of commenters asked about the types of basic skills assessments that are allowable.

Department Response: The Department will provide guidance or technical assistance on ways to help youth with disabilities access the resources they need.

Comments: A commenter recommended that the Department revise § 681.290(c) to include assessment instruments that are valid and appropriate for the target population and must provide reasonable accommodation in the assessment process, if necessary, for people with disabilities."

Department Response: The Department concluded that local programs need flexibility to use assessments they choose as long as they are valid and appropriate. Requiring assessments only approved by the Department of Education's National Reporting System would be overly burdensome for local youth programs. No change has been made to the regulatory text in response to the comment.

Comments: A commenter suggested that the language of this section be amended to provide further guidance if a youth with a disability is unable to demonstrate basic skills, and

(that) language should be included that will guide State and Local WDBs as they work to meet the needs of youth who are basic skills deficient. The commenter suggested specific procedures should be put into place to connect skills deficient youth with disabilities with the training and resources they need in order to succeed.

Department Response: The Department acknowledges the concerns about serving basic skills deficient youth, including those with disabilities, and will provide guidance and technical assistance to address these concerns. No change is made to the regulatory text in response to this comment.

Comments: Another commenter suggested that local programs should be able to use the Individual Education Program (IEP) to determine individuals' basic skills, because it is a summary of their reading, writing, and math skills. Finally, a commenter recommended that the Department remove the basic skills deficient criteria for the time being, noting that all other program requirements are beginning in July 2015.

Department Response: Regarding the use of an IEP, the Department will issue further guidance describing the use of previously conducted assessments. In addition, the Department cannot remove the basic skills deficient criteria because the criteria are set forth in the statutory language of WIOA. No changes were made to the regulatory text in response to these comments.

Section 681.300 How does the Department define the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion in this part for OSY?

The Department added this section in the Final Rule to be more clearly consistent with the "requires additional assistance" eligibility criteria in WIOA secs. 129(a)(1)(B)(iv)(VIII) (for

OSY) and 129(a)(1)(C)(iv)(VII) (for ISY). The criterion is slightly different for ISY and OSY, in that the OSY section contains the phrase "to enter or complete an educational program" while the ISY language states "to complete an educational program." Therefore, the Final Rule includes two separate sections for the ISY and OSY "requires additional assistance" criteria. The new § 681.300 is the OSY section, while proposed § 681.300 is now § 681.310, the ISY section. Proposed § 681.310 has also been renumbered to § 681.320.

Section 681.310 How does the Department define the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in this part for ISY?

This section allows States and/or local areas to define the "requires additional assistance …" criterion that is part of the ISY eligibility. It clarifies that if this criterion is not defined at the State level and a local area uses this criterion in its ISY eligibility, the local area must define this criterion in its local plan. The Department received comments on this section as discussed below.

Comments: A number of commenters recommended that the Department provide additional guidance, such as including an acceptable list of possible "additional assistance" in order to set national standards for what "additional assistance" means. Many of these commenters expressed concern about the proposed language being overly broad, with the potential to expand services beyond the high-risk populations envisioned by WIOA. For this reason, these commenters recommended that the educational program that the individual needs should be geared to the achievement of basic skills at the secondary level and that "requiring additional assistance to secure or hold employment" should mean that there are deficits in basic

academic skills (not technical skills, or advanced academic skills) that are needed to secure employment or succeed on the job.

Another commenter recommended that States and/or local areas should have an established definition for an "individual requiring additional assistance to complete an education program or to secure or hold employment" and include a student who is significantly over-aged and under-credited, (i.e., 2 or more years below grade level or off track from high school graduation). One commenter recommended that the Department require State and Local WDBs to establish policy using age and/or developmentally appropriate criteria to determine when a youth requires additional assistance to complete an educational program or to secure and hold employment.

Department Response: The Department understands the need for more specific language to define the "requires additional assistance" criterion and plans, and further guidance on the need for more specific definitions at the State and local level will be issued. No change to the regulatory text, however, was made in response to these comments.

Comments: A few commenters asked about the 5 percent limitation on ISY using the "requires additional assistance" provision.

Department Response: It was an oversight that the Department did not include this new limitation in the NPRM. Therefore, the Final Rule includes § 681.310(b) that describes the 5 percent ISY limitation on the use of the "requires additional assistance" criterion.

Section 681.320 Must youth participants enroll to participate in the youth program?

This section clarifies that there is no self-service concept for the WIOA youth program and every individual receiving services under WIOA youth must meet ISY or OSY eligibility

criteria and formally enroll in the program. It defines enrollment as the collection of information to support an eligibility determination and participation in any 1 of the 14 program elements.

Comments: The Department received a number of comments, as discussed below, recommending the Department clarify the point of participation for a WIOA title I youth program participant.

Department Response: The Department has added § 681.320(b)(2) to clarify that the point of program participation does not begin until after the youth is determined eligible, the youth receives an objective assessment, and the youth participates in 1 of the 14 program elements. In addition, the Department made a minor language change in § 681.320(b) in order to be consistent with language in the performance section of the Final Rule.

Comments: A number of commenters expressed their support for the NPRM's specification that there would be no self-service for WIOA youth and that every individual must enroll formally in the program. These commenters also stated that they support the proposed language's definition of enrollment as the collection of information.

Several commenters expressed concern regarding the burden placed on individuals who have to demonstrate their eligibility through documentation. Some of these commenters requested that the Department clarify and make explicit that the "collection of information" associated with enrollment can be supported with self-attestation, in order to ensure upfront eligibility, especially for high-risk individuals. Although acknowledging the improvements in burden associated with certification of income eligibility brought about by WIOA, many commenters suggested that requiring individuals who are at high risk to prove their status before they receive services that they rely on would be detrimental to those in need. These commenters suggested that the Department use the guidance for self-attestation that was included in the

"Advisory Training and Employment Guidance Letter No. 6-14 Program Year (PY) 2013/Fiscal Year (FY) 2014 Data Validation and Performance Requirements and Associated Timelines." Discussing how self-attestation is defined in this document, these commenters recommended that the Department amend the proposed language to state that the collection of information that triggers enrollment could include self-attestation, and that self-attestation is even preferable to other methods of information collection.

Department Response: The Department does allow self-attestation for the collection of a number of data elements. The Department will provide further guidance on documentation requirements for data elements in the Department's forthcoming data validation guidance.

Comments: Commenters also recommended that the Department modify the proposed regulations to state that an individual is not enrolled in WIOA title I programs with the collection of information, and that local areas are allowed to begin assessment activities and other efforts through the one-stop delivery system. These commenters also recommended the Department apply a consistent definition of point of enrollment across all WIOA titles and recommended that the point of enrollment should be activated with the individual's participation in a program activity, not just their involvement in initial assessment activities.

A commenter recommended that the Department clarify that staff assisted activities such as assisting youth post-exit in transition, navigation, and support are encouraged and do not trigger enrollment for individuals in WIOA youth programs. Another commenter stated that the point at which the Department defines when an individual is enrolled is critical to data collection and validation. This commenter suggested that collecting an individual's data at the time of eligibility verification and at enrollment would be redundant and provide increased opportunity for inconsistent data reporting.

Another commented that the time of enrollment needs to be clarified, as they were concerned that the proposed regulations as they stand would allow the process of taking a WIOA application and determining its eligibility to be categorized as a "basic career service", therefore, counting the individual as enrolled. This commenter recommended that the regulations be amended so that enrollment into WIOA title I services would be the first service provided, after eligibility has already been determined.

Department Response: The Department has clarified in § 681.320(b) of this DOL WIOA Final Rule that the point of participation is after the collection of information to support an eligibility determination, and added in § 681.320(b)(2) that the point of participation occurs after the provision of an objective assessment and participation in any of the 14 WIOA youth program elements. In addition, the Department will ensure consistency in the point of participation across all WIOA titles through the performance section in 20 CFR 677.150(a)(2) (see Joint WIOA Final Rule).

Other Eligibility Issues

Comments: A commenter recommended that the Department explicitly clarify that youth who are eligible to work under Deferred Action for Childhood Arrivals (DACA) also would be eligible for WIOA programs.

Department Response: The Department declines to address DACA in the WIOA Final Rule (due to pending court decisions). The Department issued guidance on DACA in TEGL No. 02-14 ("Eligibility of Deferred Action for Childhood Arrivals Participants for Workforce Investment Act and Wagner-Peyser Act Programs"), which can be found at https://wdr.doleta.gov/directives/attach/TEGL/TEGL_2-14.pdf.

Comments: Two commenters noted that WIOA sec. 132 (b)(1)(B)(v)(I) defines an adult to mean an individual who is not less than age 22 and not more than age 72. The commenters identified that in other instances (title I sec. 3, title II), adults are defined as being 18 and not 22. These commenters requested further clarification from the Department as to whether this age difference was an oversight on the part of the Department.

Department Response: WIOA sec. 132 discusses the allotment formula for States and outlying areas used each program year and refers to the adult age range used in the statutory formula to determine the amount of funds a State or outlying area receives in a given program year. The other references to WIOA titles I and II the commenters cite relate to eligibility age for specific services and is not a Department oversight. No changes have been made to regulatory text in response to these comments.

4. Subpart C – Youth Program Design, Elements, and Parameters

Section 681.400 What is the process used to select eligible youth service providers?

This section clarifies that youth activities may be conducted by the local grant recipient and that when the Local WDB chooses to award grants or contracts to youth service providers, such awards must be made using a competitive procurement process in accordance with WIOA sec. 123.

The Final Rule clarifies that the grant recipient/fiscal agent has the option to provide some or all of the youth workforce investment activities directly themselves rather than entering into a grant or contract to provide the activities. The competitive procurement provision discussed in WIOA sec. 123 is only applicable if the Local WDB chooses to award grants or contracts to youth service providers. The Department encourages Local WDBs to continue to award contracts to youth service providers when local areas have access to experienced and

effective youth service providers. The revision also uses the terminology "youth service providers" consistently to refer to these providers. While this revision represents a significant change in that it provides Local WDBs with flexibility in determining which WIOA youth services to procure, the Department expects Local WDBs to continue to contract with youth service providers to provide the program elements which youth service providers are best positioned to offer. The intent of this flexibility is to allow for Local WDBs to directly provide the WIOA youth program elements that they can most efficiently and cost-effectively provide, such as labor market and employment information and framework services including assessment, intake, supportive services and follow-up services. The Department received a number of comments on this section as discussed below. Based on these comments, the Department has made a significant revision to this section in the Final Rule.

Comments: A number of commenters asked the Department to provide specific guidance as to which WIOA youth services must be competitively procured and when this regulation would take effect. One commenter requested additional clarification from the Department regarding the competitive selection requirement, specifically inquiring as to what the framework required by local areas would be.

In addition, since the proposed regulation stated at § 681.400(b) that competitive selection requirements do not apply to "the design framework services when these services are more appropriately provided by the grant recipient/fiscal agent," a couple of commenters asked the Department to clarify framework services. One of these commenters stated that framework services are described differently in the NPRM preamble discussion and the proposed regulatory text at §§ 681.400(b) and 681.420(a). One commenter asked the Department for clarification as

to whether a county within a local area that is not a fiscal agent could perform framework activities, suggesting that disallowing this would not be cost effective.

Department Response: The Department determined a need for greater clarity about the specific youth services that must be competitively procured. In addition, the concept of framework services in the NPRM was overly complex. The Final Rule clarifies that the competitive procurement requirements in sec. 123 of WIOA apply only if the Local WDB chooses to award grants or contracts to youth service providers to provide some or all of the youth program elements. For example, a Local WDB could choose to procure competitively all youth program elements or it could choose to competitively procure a few of the youth program elements, and provide the remaining program elements themselves. This simplification in the Final Rule eliminates the need for the discussion of framework services in § 681.400(b).

Comments: With regard to proposed § 681.400(a)(3), which would allow a Local WDB to sole source awards if it determines there is an insufficient number of eligible training providers of youth activities in the local area, a commenter asked the Department how a Local WDB would determine that there is an insufficient number of youth providers. Further, this commenter asked if a determination that a local area is "rural"—for example, by using the Census Bureau, Office of Rural Health Policy, or Office of Management and Budget definition—alone provides justification for sole sourcing. Some commenters recommended that the Department expand the proposed § 681.400(a)(3) language to allow for the Local WDB to allow the grant recipient/fiscal agent to deliver the elements when there are no eligible training providers available, as this would be most useful in rural areas.

Department Response: The Final Rule in § 681.400(b)(4) does not address how to determine an insufficient number of eligible youth providers. Rather, the Local WDB should

have a policy that defines what would constitute an insufficient number of eligible youth providers. Based on the changes made in the Final Rule, the grant recipient/fiscal agent will have the flexibility to deliver youth program elements as recommended by the commenter.

Comments: A number of commenters recommended that the Department expand the § 681.400 language to encourage Local WDBs to ensure that the competitive process does not discourage or limit co-enrollment of youth participants in other core or partner programs. One commenter recommended that the youth provider selection process should include suggested quality criteria for Local WDBs and/or States to use when selecting eligible training providers. This commenter also suggested that the Department provide in the regulation examples of public or private entities that have demonstrated effectiveness in providing regionally accredited secondary level educational programs providing entry-level workforce preparation and/or leading to recognized postsecondary education and training activities.

Department Response: The Department agrees that it is important not to discourage co-enrollment and to incorporate quality criteria. The Department concluded that this type of language is more appropriate in guidance. The Department also agrees with the importance of competitively selecting high quality youth service providers, as appropriate, and will address this issue in future guidance.

Comments: A commenter asked whether waivers for providing intake, assessment, development of ISS, case management, and follow-up services are still recognized under the regulation. Finally, one commenter observed that the term “local program” is used throughout subpart C without a clear definition, and recommended that the Department add a definition of “local program” to § 681.400.

Department Response: Because of the revisions to the Final Rule that provide additional flexibility in delivering youth program elements, waivers related to WIOA sec. 123 are no longer necessary. In addition, the Department declines to add a new definition of "local program"; the term "local program" refers to a local workforce area's WIOA title I youth formula-funded program. No changes were made to the final regulation in response to these comments.

Section 681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?

This section describes the new requirement under WIOA that States and local areas must expend a minimum of 75 percent of youth funds on OSY. This section also clarifies the guidelines by which a State that receives a minimum allotment under WIOA sec. 127(b)(1) or under WIOA sec. 132(b)(1) may request an exception to decrease the minimum expenditure percentage to not less than 50 percent.

Comments: Numerous commenters expressed their support for the increase in mandatory minimum OSY expenditure from 30 to 75 percent, asserting that this change along with others would lead to improved outcomes for OSY. One commenter expressed its support for the proposed regulations, but further encouraged the Department to provide guidance as to how programs can transition to help the OSY population now that they are a priority. This commenter cautioned that without such guidance, providers with experience meeting Federal requirements and/or with expertise in hybridized "earn and learn" models could be excluded from the system. In addition to supporting the proposed regulations regarding the 75 percent funding requirement, one commenter expressed support for the Department's attempts to limit opportunities for waivers that would reduce this funding requirement. A few commenters expressed their support of the language that would allow organizations a transition period before

they have to reach the 75 percent OSY funding goal. One of these commenters suggested that allowing for this gradual transition would help public workforce systems to decrease their expenditures on ISY slowly. Another commenter was concerned about the 75 percent requirement because for its State and others with low-dropout rates, reaching the requirement would be unrealistic and would fail to serve many at-risk ISY. This commenter recommended that the requirement be reduced to 40 percent for the first year after implementation and increased to 60 percent at the third year and thereafter.

Department Response: While the Department notes the commenters' concerns about the shift to spending more funds on OSY, the Department issued TEGL No. 23-14 ("WIOA Youth Program Transition Guidance"), which can be found at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm, on March 26, 2015. This guidance discusses transitioning to the minimum 75 percent OSY expenditure requirement that allows a gradual transition in the first WIOA program year. The Department plans to issue additional guidance and technical assistance to help programs serve more OSY.

Comments: A commenter expressed concern that transitioning to the 75 percent OSY requirement would decrease performance outcomes throughout the youth services system because the OSY population is often difficult to retain contact with, especially after they have exited the program. Therefore, this commenter predicted that local areas would enroll a limited number of youth, except that those youth have a relatively high prospect for success, and devote significant resources to tracking and reporting on that limited population. This commenter requested confirmation that the Department would prefer that local areas forgo volume considerations and do everything possible for the few OSY that could meet these expectations.

Department Response: The Department recognizes that OSY may require additional resources for services and expects local programs to provide the necessary resources to ensure the success of OSY. There is no specific expectation on the number of OSY programs must serve, only on the percentage of funds spent on OSY. States and local areas will have the opportunity to set performance targets based on the population they serve.

Comments: Commenting that many ISY are at risk regardless of the fact that they are attending school, a commenter stated that the proposed regulations would not give enough support to areas who want to continue to help serve ISY. Further, this commenter was concerned that some ISY may end up dropping out in order to be eligible for OSY services and assistance and, therefore, suggested that local areas should be able to determine the needs of their own areas and serve those individuals as such.

Department Response: The Department recognizes the concerns about serving fewer ISY. However, the focus in WIOA is on expending additional resources on OSY. Local WDBs do not have the authority under WIOA to determine ISY and OSY expenditure rates based on the needs of their own area. Local areas must spend a minimum of 75 percent of youth funds on OSY, with the exception that local area administrative expenditures are not a part of the 75 percent OSY minimum expenditure calculation.

Comments: Describing the impact the 75 percent OSY minimum expenditure requirement would have on its summer transition program, one commenter opposed the OSY minimum expenditure requirement, stating that it would prevent 15 ISY who have been identified as high-risk from participating in its program due to a lack of funding for ISY.

Department Response: The Department recognizes concerns regarding continuing to serve ISY and issued TEGL No. 23-14 ("WIOA Youth Program Transition Guidance") on

March 26, 2015, which can be found at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm, which addresses transitioning ISY and ensures they can successfully complete the program and are not exited from the program prematurely.

Comments: A number of commenters recommended that the Department provide additional detail about what is required in the analysis of ISY and OSY populations in a local area that would be required as part of the waiver process to reduce the OSY minimum expenditure percentage for States that receive the small State minimum allotment (proposed § 681.410(b)(1)).

Department Response: The Department will provide guidance on what is required when submitting waivers to reduce the required OSY minimum expenditure rate for States that receive the small State minimum allotment.

Section 681.420 How must Local Workforce Development Boards design Workforce Innovation and Opportunity Act youth programs?

This section describes the framework for the WIOA youth program design. This section also describes the requirement that Local WDBs must link to youth-serving agencies and adds local human services agencies to the list that WIA required.

Objective Assessment

Comments: One commenter recommended that the Department clarify that the proposed § 681.420(a)(1) requirement that the youth program design framework services must provide for an individual objective assessment does not require testing to determine an individual's Grade Level Equivalent or Educational Functioning Level unless needed to determine that the participant is basic skills deficient or to document a measurable skill gains for purposes of

measuring performance. Another commenter recommended that the objective assessments and individual services planning process be completed using "strength-based" approaches that focus on the strengths of the individuals instead of their faults.

Department Response: The Department has incorporated language into § 681.420(a)(1) to review youth strengths as part of the assessment process. It is also the intention of the Department to clarify the requirements around the youth program design framework in system guidance.

Individual Service Strategy

Comments: A commenter recommended that a participant's ISS be developed with the individual's needs in mind and not on the time constraints or structure of the provider.

Department Response: The Department has incorporated language into § 681.420(a)(2) to develop the ISS based on the needs of the participant.

Career Pathways

Comments: Several commenters recommended that the Department clarify that the Local WDB may require that youth services be aligned with specific career pathways identified by the Local WDB. Further, these commenters suggested that the regulations should clarify that the requirement under WIOA sec. 3(7)(F) that a career pathway must enable an individual to attain a secondary school diploma or its equivalent, and at least one recognized postsecondary credential, does not limit the ability of local areas to serve youth who have already attained a secondary school diploma or its equivalent.

A number of commenters requested clarification from the Department about the activities that States and Local WDBs must carry out regarding career pathways, and whether they have to establish specific processes and policies concerning career pathways. Additionally, many of

these commenters requested that the Department clarify whether Local WDBs must implement each element outlined in the WIOA definition and stated that WIOA does not indicate whether the identification of career pathways as part of the assessment and individual service strategy would create any additional requirements for local areas or youth service providers. Some of these commenters also recommended that the regulation clarify that the WIOA sec. 3(7)(C) requirement relating to counseling does not create an affirmative requirement for Local WDBs or youth service providers to provide counseling to every individual, but only to the extent that such counseling would be consistent with the objective assessment and the ISS.

One commenter agreed that Local WDBs should foster relationships with secondary and postsecondary education providers regarding the implementation of local career pathway strategies, stating that because of the shift in focus to OSY, Local WDBs should consult with experts that understand youth needs to design effective career pathway strategies.

Department Response: The Department agrees that additional guidance is necessary to describe WIOA requirements for incorporating career pathways into the WIOA title I youth program, although the Department has determined that additional regulatory text on career pathways is not necessary. The Departments of Labor, Education, Health and Human Services in coordination with nine other Federal agencies plan to provide additional guidance and technical assistance on the implementation of career pathways in WIOA.

Follow-up Services

Comments: A couple of commenters expressed concern that proposed § 681.420(a) listed follow-up services as part of the design framework services and proposed § 681.460(a)(9) listed follow-up services as 1 of the 14 program elements because design framework services do not have to be procured, while program elements do. These commenters requested that the

Department clarify that youth program operators have the flexibility to include follow-up services in the design framework or as a youth program element.

Department Response: The Department clarified the procurement requirements for all program elements, including follow-up services, in § 681.400.

Involvement of the Community

Comments: One commenter requested that the Department clarify the term "actively involved" in the proposed § 681.420(g) requirement that Local WDBs ensure "that parents, youth participants, and other members of the community with experience relating to youth programs are actively involved in both the design and implementation of its youth programs." Another commenter stated that requiring those individuals be "actively involved" is overly prescriptive and not required in legislation. The commenter expressed concern that public meetings allow open access and it would be impossible to ensure engaged participation.

Department Response: The Department agrees with this comment and has deleted the word "actively" from the Final Rule.

Comments: Another commenter recommended that the Department amend § 681.420 to better reflect the diverse range of stakeholders and perspectives of youth with disabilities. Specifically, this commenter recommended that the requirement that specific members of the community be involved with the establishment of program design should include youth with disabilities.

Department Response: The Department has not added additional language based on this comment as § 681.420(c)(6) already specifically names local disability-serving agencies.

Pay-for-Performance

Comments: One commenter asked about the performance and reporting requirements of the pay-for-performance provision, specifically whether the Department will change how States report.

Department Response: The Department plans to issue further guidance about the Pay-for-Performance contract strategies provision of WIOA and the requirements of subpart E of part 683.

Section 681.430 May youth participate in both the Workforce Innovation and Opportunity Act (WIOA) youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the WIOA youth and adult programs?

This section provides that youth may participate in both the WIOA youth program and the adult program at the same time if they are eligible for both and it is appropriate. The section also provides that youth who are eligible under both programs may enroll concurrently in WIOA title I and II programs.

Comments: Several commenters expressed support for the proposed language that clarifies that youth may be co-enrolled in WIOA title I and II programs. However, many of these commenters also recommended that the Department strengthen the language to encourage Local WDBs to incorporate co-enrollment with other core programs as part of the overall youth program design. One of these commenters also stated that co-enrollment would create difficulties in terms of data collection and capacity. Specifically, this commenter said that to move successfully between systems without significant disruption, data collection, and storage must track the individual youth themselves, instead of just the programs they are in. This commenter suggested that additional funding and technical support may be necessary to assist States and local areas in developing comprehensive data systems.

Some commenters also expressed their support of the proposed regulations' encouragement of co-enrollment, especially because of how it could extend more services to OSY. However, these commenters expressed concerns that potential disincentives for co-enrollment exist related to inconsistencies across funding streams in how enrollment, exit, and participation in activities are defined and how performance is measured in programs across the different titles.

Department Response: The Department acknowledges the concerns regarding disincentives for co-enrollment due to data tracking issues and performance measure implications. However, the Department intends to provide additional guidance and technical assistance to support co-enrollment across core programs. No changes were made to the regulatory text to reflect these comments.

Comments: One commenter expressed its support for the proposed regulation's allowance of dual eligibility in WIOA title I and II programs, but recommended that the Department issue additional guidance to Local WDBs about how to coordinate their resources effectively for individuals who could co-enroll in both title I and title II services. Further, this commenter asked the Department for clarification as to whether co-enrolled individuals would need Individual Training Accounts (ITAs) and whether States should have to maintain documentation of providers who have expertise in services under both titles I and II. A few commenters expressed their support for the option of co-enrollment in WIOA title I and II programs, stating that this allowance would be particularly beneficial for youth under the Deferred Action for Childhood Arrivals policy who have not yet received their high school equivalency certificate because their participation in youth services under title I could further instill in them a greater educational work ethic. Further, these commenters recommended that

the Department search for potential methods for how State and Local WDBs could recruit and ensure that they are providing services to eligible immigrants.

Department Response: On November 17, 2015, the Department provided preliminary guidance regarding partnering between WIOA titles I, II, and IV in TEGL No. 08-15 ("Second Title I WIOA Youth Program Transition Guidance"), which can be found at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm. The Department will provide additional technical assistance regarding partnering across the WIOA programs on an on-going basis, including services to eligible immigrants. No changes were made to the regulatory text in response to these comments.

Comments: Another commenter recommended tracking expenditures individually by each program.

Department Response: The Department already does require tracking expenditures by each program, and no changes were made to the regulatory text in response to this comment.

Section 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act (WIOA) youth program or the WIOA adult program?

Individuals aged 18 to 24 are eligible for the WIOA adult and youth programs. This section provides that local youth program needs to determine whether to enroll an 18 to 24 year old in the youth program or adult program based on the individual's career readiness as determined through an assessment of his or her occupational skills, prior work experience, employability, and participant needs.

Comments: A commenter recommended that, given the intent of WIOA, individuals should be able to determine the programs in which they will participate. However, this

commenter further recommended that the Department modify the proposed language to give guidance to States in terms of how to present materials on program choice to individuals and ensure that the materials presented would be understood by a wide variety of individuals, including those with disabilities.

Another comment stated that determining in which program an 18 to 24 year old should enroll would impose a burden on local areas to establish processes to ensure that services are provided to an individual in the appropriate program.

A commenter suggested that, in cases of eligibility for co-enrollment in WIOA title I and II activities, it would not be suitable for an 18 to 24 year-old youth to be enrolled in the adult program without first undergoing an assessment to determine whether the adult program would be appropriate for meeting his or her needs.

Department Response: The Department does not intend to require local WDBs to establish specific processes to ensure that individuals are served in the appropriate program. Rather the Department wants to emphasize that youth may be served by either program depending on the young adult's individual needs, knowledge, skills, and interests. Local WDBs need a process in place to assist in determining the appropriate program for participants between the ages of 18 and 24.

Based upon the comments received, the Department updated the Final Rule and removed the word "objective" from in front of assessment to indicate that a formal evaluation is not needed and the Department removed the reference to WIOA sec. 129(c)(1)(A).

Section 681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?

The Department has continually provided guidance and direction that youth programs serve participants for the amount of time necessary to ensure they are successfully prepared to enter postsecondary education and/or unsubsidized employment. While there is no minimum or maximum time a youth can participate in the WIOA youth program, programs must link program participation to a participant's ISS and not the timing of youth service provider contracts or program years.

Comments: Some commenters expressed their support for the proposed regulations' allowance to serve youth until their needs have been met, stating that this would alleviate stress on participants from having to deal with time constraints.

A few of these commenters also stated, however, concerns about the use of the word "must." These commenters recommended that the language be amended to say, "Local youth programs must provide service to a youth participating in their individual service strategy in good faith for the amount of time necessary to ensure successful preparation to enter postsecondary education, registered apprenticeships, and/or unsubsidized employment."

In addition to allowing an individual to remain enrolled in WIOA youth services until he or she completes his or her plan of service, a commenter recommended that youth may remain enrolled in their services regardless of whether they are experiencing a period of inactivity in a program, as long as they are active in their career counseling services.

Another commenter stated that the proposed regulations would not allow individuals who do not abide by the rules of their program to discontinue services and re-enroll in the program as long as they were within the age requirement. This commenter recommended that the Department revise this regulation to focus on the needs of individuals who must temporarily suspend their services for legitimate reasons.

Department Response: The Department recognizes that at times youth face obstacles that make it hard for them to commit to a program, however the services that all youth receive should still align with their ISS. The program should review the ISS with the youth and determine if the program has the appropriate services available for the young adult. Additionally a youth may remain in the program for as long as he or she is receiving at least one program element, other than follow-up services. Therefore, because WIOA sec. 129(c)(2)(M) includes career counseling services, the scenario described above with a youth only participating in career counseling would be acceptable under the Final Rule. No change has been made in the regulatory text in response to these comments.

Comments: Two commenters requested additional clarification from the Department about how they would measure and explicitly define "successful preparation to enter postsecondary education and/or unsubsidized employment." One of these commenters further recommended that they not measure successful preparation by an individual's actual entry into either postsecondary education or unsubsidized employment, stating that there may be outside, uncontrollable factors that are preventing them from engaging in those activities, other than their level of readiness.

Department Response: The required reported outcomes for individuals entering postsecondary education and/or unsubsidized employment do not differ from the other WIOA youth program performance indicators. Additional information on required performance indicators is found in 20 CFR part 677 (see Joint WIOA Final Rule).

Section 681.460 What services must local programs offer to youth participants?

This section lists the 14 program elements, including 5 new youth program elements in WIOA sec. 129(c)(2) that were not included under WIA. These new elements are (1) education

offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster; (2) financial literacy education; (3) entrepreneurial skills training; (4) services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and (5) activities that help youth prepare for and transition to postsecondary education and training. In addition, WIOA revised some of the WIA program elements. For example, the element on tutoring, study skills training, and instruction leading to the completion of secondary school, including dropout prevention strategies, has been revised to provide that the dropout prevention (and recovery) strategies must be evidence-based and to make clear that the completion of secondary school can be accomplished by attainment of a secondary school diploma or its recognized equivalent, including a certificate of attendance or similar document for individuals with disabilities.

WIOA also combines the two WIA elements of summer youth employment programs and work experiences so that summer youth employment programs become one item in a list of work experiences and adds pre-apprenticeship programs to the list of work experiences. Finally, WIOA expands the description of the occupational skill training element to provide for priority consideration for training programs that lead to recognized postsecondary credentials that are aligned with in-demand industry sectors or occupations if the programs meet WIOA's quality criteria. This change is consistent with WIOA's increased emphasis on credential attainment. The section clarifies that while local WIOA youth programs must make all 14 program elements available to WIOA youth participants, local programs have the discretion to determine which elements to provide to a participant based on the participant's assessment and ISS.

The Department received many comments, which are discussed below, on provisions within § 681.460.

Comments: A commenter asked for clarification from the Department regarding the reasons for WIOA's increase in the number of required program elements that a local area must be able to provide. Another entity commented that not all of the 14 proposed program elements are available in every local area, citing mentorship programs as a primary example.

Another commenter stated that local areas should be allowed to choose which of the 14 program elements to provide, reasoning that local areas will have the best insight into what is needed for the individuals in their particular area.

Department Response: The Department understands that in some local areas it takes effort to identify quality providers for all program elements; however, WIOA explicitly requires these 14 elements for youth programs. While all 14 program elements must be available in a local area, every youth does not have to receive every element. For instance, only youth that have mentoring included on their ISS need to receive the program element.

The Department acknowledges that in some areas mentoring is particularly challenging and has changed § 681.490 to allow case managers to serve as adult mentors.

Comments: Another commenter recommended that the Department clarify that youth programs may bring in multiple public/private partners and evidence-based programs that support the attainment of a secondary school diploma or its recognized equivalent, entry into postsecondary education, and career readiness for participants.

Department Response: The Department agrees that partnering with other organizations to provide some program elements can be valuable and has added § 681.460(c), that reads, "When

available, the Department encourages local programs to partner with existing local, State, or national entities that can provide program element(s) at no cost to the local youth program."

Comments: One commenter said that services offered to an individual must be in the area where the youth live because too often programs' inability to relieve transportation challenges has resulted in program non-completion. The commenter suggested that the Department include language regarding the need for State and Local WDBs to support investments in transportation services and program operations beyond non-traditional hours of operation.

Department Response: The Department recognizes the need for program operation during non-traditional hours as well as the challenge transportation presents across the country. As described in § 681.570(b) supportive services may include transportation costs. The Department did not change the proposed regulation, though through technical assistance it will emphasize the possibility of using WIOA funds to cover transportation needs.

Comments: Another commenter recommended that the Department clarify that providers must incorporate a number of items in their dropout recovery services (proposed § 681.460(a)(2)), such as credit recovery opportunities leading to postsecondary education; flexible scheduling; various learning models; performance-based assessments; mentoring; and "comprehensive" support service.

Department Response: The Department recognizes the value of dropout recovery services for youth and its success in reconnecting disconnected youth. Because many of the items suggested by the commenter are either WIOA program elements or allowable under other program activities, the Department decided not to change the regulatory text about alternative secondary school services. The Department plans to provide technical assistance on the program elements, including those that contain dropout recovery services.

Comments: One commenter recommended that, in order to clarify that neither the Governor nor the State WDB should impose policies that require a sequence of services, the Department should revise proposed § 681.460(a)(3) to clarify that "academic and occupational education as a component of work experience" may be provided on a concurrent or sequential basis based upon a participant's ISS, stating that local areas should have the flexibility to meet participants' individual needs.

Department Response: The Department concurs that youth may receive academic and occupational education as a component of work experience on a concurrent or sequential basis based upon the ISS. The Department included new language in the Final Rule text of § 681.600(b) that clarifies that the academic and occupational education of work experience may occur on a concurrent or sequential basis.

Section 681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act funds for each of the 14 program elements?

This section clarifies that local WIOA youth programs must make all 14 program elements available to youth participants, but not all services must be funded with WIOA youth funds. Local programs may leverage partner resources to provide program elements that are available in the local area. If a local program does not fund an activity with WIOA title I youth funds, the local area must have an agreement in place with the partner to offer the program element and ensure that the activity is connected and coordinated with the WIOA youth program if enrolled youth participate in the program element.

Comments: A few commenters suggested the proposed language would require that local programs that are not using WIOA funds to fund an activity establish agreements with the partner with which they are engaging in the activity. These commenters stated that a referral

should be sufficient in this case, adding that if services outside of WIOA funding streams are present in the community, an agreement would be unnecessary and is overly regulative.

Department Response: While the Department does not require a local youth service provider to pay for all program elements, the Department does require the program elements provided to a youth to align with the goals the youth set forth in the ISS. Case managers must update the ISS on an on-going basis and document, among other items, the services provided and participant's progress, activities completed, benchmarks reached, and any other accomplishments. Case managers must document this information regardless of who provides the element. Therefore, the Department did not change the proposed regulation; the information needed for the ISS necessitates an agreement between the partner organization and the program.

Comments: A couple of commenters asked for clarification regarding the proposed regulations' requirement for the creation of agreements between youth services providers and partner organizations outside of WIOA funding. Specifically, these commenters asked for clarification from the Department about what "monitor" means in this language, and when this requirement would be necessary.

Department Response: The Department notes that the term "monitor" came from the NPRM preamble and was not a proposed requirement. It appeared in the following context, "By closely connected and coordinated, the Department means that case managers must contact and monitor the provider of the non-WIOA-funded activity to ensure the activity is of high quality and beneficial to the youth participant." The case manager must check on the provider of the non-WIOA-funded activity and make sure the youth participant gets quality services that match the program, element requirements.

Comments: A commenter recommended that the Department issue guidance on performance requirements and a reporting process for each of the required youth program elements to help local areas and States in the creation of their plans.

Department Response: The Department is including guidance and specifics on the performance requirements and reporting through the ICR process, which was done for 20 CFR part 677 (see Joint WIOA Final Rule). The Department is providing additional information regarding the required reporting of data elements, including each of the 14 youth program elements through that process. More information is also available in the Joint WIOA Final Rule discussion of 20 CFR part 677.

Section 681.480 What is a pre-apprenticeship program?

A pre-apprenticeship is a program or set of strategies designed to prepare individuals to enter and succeed in a registered apprenticeship program and has a documented partnership with at least one, if not more, registered apprenticeship program(s).

Comments: A couple of commenters requested clarification regarding what constitutes a partnership for the purposes of this section, asking further whether it is direct entry into a partnership or whether a form of collaboration would be sufficient for these purposes. Other commenters sought clarification regarding pre-apprenticeship and performance indicators.

Department Response: The Department further edited the pre-apprenticeship regulation to provide a more detailed and consistent explanation of the components of pre-apprenticeship programs as described throughout this Final Rule. The type of required reported outcomes for individuals engaging in pre-apprenticeship programs do not differ from the other WIOA youth program performance indicators. Additional information on required performance indicators is found in 20 CFR part 677 (see Joint WIOA Final Rule).

Section 681.490 What is adult mentoring?

This section describes the adult mentoring program element. The Department received many comments on proposed § 681.490 and made changes to the Final Rule as discussed below.

Comments: A number of commenters recommended that the Department provide flexibility for States in how the mentoring programs are arranged and length of time participants receive mentoring. Some of these commenters reasoned that adult mentoring is difficult for small States to establish because mentoring services with which to partner are not widely available and because of limited funds. With regard to the language that would require the inclusion of a mentor other than the individual's case manager (proposed § 681.490(a)(3)), a commenter suggested that a case manager should be suitable for consideration as an individual's mentor if he or she is providing the guidance and support that would be required of a mentor. This commenter explained that in rural areas, mentoring programs are rare and oversubscribed if they exist, so the WIOA case manager is, in fact, the chief adult mentor for the youth.

In addition, several commenters did not like the proposed minimum 12-month requirement for adult mentoring (proposed § 681.490(a)(1)), recommending that the length of mentoring should instead be evaluated and defined on a case-by-case basis and determined by the individual, his or her mentor, and his or her case manager. One commenter said that the timeframe for adult mentoring is better suited for local control to allow for direct assessment of participant needs. Another commenter stated that the language in this section should be no more prescriptive than the WIOA statute.

Department Response: Under WIA, most local areas were able to secure qualified mentors, other than case managers, for youth participants. Nonetheless, the Department acknowledges that in a few areas of the country finding mentors may present a burden to a

program. While the Department strongly prefers that case managers not serve as mentors, it changed the final regulation deleting proposed § 681.490(a)(3), "include a mentor who is an adult other than the assigned youth case manager". The Final Rule allows case managers to serve as mentors in areas where adult mentors are sparse. Because WIOA defines the length of time required for mentoring as not less than 12 months, no changes were made in the regulatory text.

Comments: Another commenter suggested that local areas study evidence-based models that they may implement when designing their mentorship programs. Suggesting that the purpose of adult mentoring should be clarified to indicate expected results of the mentor relationship and guide the types of activities and engagement that should result. A commenter recommended that the Department revise § 681.490 to clarify that adult mentoring should result in effectively engaging students in high-quality, career relevant instructions and establishing clear connections between work-based learning and classroom experiences.

Department Response: The Department supports the use of evidence-based models. The Department anticipates that the expected outcomes of a mentoring relationship will connect to the goals set forth in the individual participant's ISS. Therefore, mentoring results will vary by participant.

Citing their use of "advocates" in lieu of mentorship programs to engage with youth, one commenter recommended that the Department amend proposed § 681.490 to include that mentorship services may include activities such as providing transportation or transportation assistance, aid in attaining work experience opportunities, court advocacy, foster care support, tutoring help, fostering of community relationships, and engagement with family.

Department Response: The Department affirms activities such as providing transportation, aid in attaining work experience opportunities, court advocacy, foster care support, tutoring help, fostering of community relationships, and engagement with family care. However, other WIOA youth program elements cover several of these activities. While mentors may help participants attain their goals, the additional suggested activities above go beyond the basic WIOA adult mentoring requirements. No changes were made in the regulatory text in response these comments.

Section 681.500 What is financial literacy education?

This section describes the financial literacy program element, new under WIOA. The Department received many comments on the new program element. Several of the comments described below resulted in changes to the Final Rule text.

Comments: A few commenters expressed their support for the proposed regulations' description of the elements of financial literacy education. In particular, one expressed its support particularly for the inclusion of identity theft education.

Some commenters stated that as the proposed language as written, it appears as though all of the elements listed are requirements that must be present within the financial literacy program element itself. These commenters recommended that the § 681.500 introductory language be amended to State, "The financial literacy education program element may include activities which…." Similarly, another commenter asked the Department to clarify that the list of activities for financial literacy education (proposed § 681.500) and entrepreneurial skills training (proposed § 681.560) are illustrative and that each individual topic is not required for every participant. Other commenters expressed their support for the proposed language's flexibility regarding the activities related to financial literacy education, and that the list included in the

proposed regulations is not required, but provides guidance. Alternatively, one commenter recommended that the Department eliminate the requirements of proposed § 681.500(g) and (h), stating that these proposed requirements are overly prescriptive and limit flexibility.

Department Response: The Department understands the commenters' concern that providing all of the financial literacy sub-elements to every participant that receives this program element may be overly prescriptive. The Department anticipates each item will be available in locations implementing a robust financial literacy program. However, the Department did not intend for every youth to receive each sub-element. Instead, every youth, based on his/her individual needs, would receive many of the items included in this regulation. The actual services delivered may vary by program participant. As a result, the Department accepts the proposed language change and replaced "must" with "may" in the Final Rule.

Comments: One commenter recommended the addition of an element to the list in proposed § 681.500 to assist individuals about the impact that employment has on their receipt of public benefits. This commenter reasoned that educating individuals of this impact may lessen the fear they may have of losing their Medicaid or other public benefits if they are competitively employed. Another commenter recommended that § 681.500 should specifically state that for youth who are receiving disability Social Security benefits, their financial literacy education must include benefits planning and work incentives counseling from a qualified provider.

Department Response: The Department concurs with the suggested addition and added § 681.500(g), "Support activities that address the particular financial literacy needs of youth with disabilities, including connecting them to benefits planning and work incentives counseling;" to the Final Rule text.

Comments: One commenter shared that this proposed program element requirement would place a burden on local areas related to identifying a financial literacy program that includes an identity theft component.

Department Response: By changing "must" to "may" at the beginning of § 681.500, the Department addresses this commenter's concern about finding a local entity that addresses identity theft.

Comments: Several commenters provided suggestions on how to implement the element. In response to the Department's request for comments on how to achieve the goal of equipping workers with the knowledge and skills they need to achieve long-term financial stability, one commenter recommended that the Department survey programs that have been funded and implemented by companies and their foundations in the financial services sector. Another commenter responded that many banks have an effective financial literary curriculum and recommended that the Department foster partnerships with banks that would be willing to provide the curriculum for free to local organizations.

Another commenter recommended that financial literacy education be implemented in an online or in-person classroom setting where retirement requirements, banking, debt, lease, and mortgage information are covered. This commenter also suggested that these programs must result in the issuance of certification of completion and should be developed by a recognized financial planning authority, but not an entity with investment products on the market.

Department Response: The Department has found that a number of local and national entities want to help make this element relevant to youth and a success. Many financial literacy tools and curriculums are readily available for use and include formats that engage youth. The Department has begun to provide technical assistance on financial literacy element and has

engaged with many Federal financial agencies about supporting the public workforce system in implementing this program element.

Comments: Citing a 2014 Consumer Financial Protection Bureau report that described the components necessary for successful youth employment programs, one commenter recommended that the Department amend the language in this section from referring to "financial literacy education" to using the term "financial capability services," reasoning that the latter term would align more closely with the WIOA requirement because it focuses on knowledge, skills, and access. Further, this commenter recommended that the Department use the definition provided by the President's Council on Financial Capability to define financial capability services ("the capacity based on knowledge, skills and access, to manage financial resources effectively"). This commenter also recommended that the Department ensure it is connecting youth employment programs with resources that highlight best practices and financial institutions that could be key partners. Regarding the measuring of financial capability outcomes for youth programs, this commenter suggested that the Departments of Labor and Education provide youth programs with resources and guidance to ensure they are able to effectively track clients' progress and outcomes and that workforce organizations also may need additional tools and resources to improve the financial education services they offer. Given the varied outcomes associated with the § 681.500 list of allowable financial literacy education activities, the commenter encouraged States and localities to collect outcome data as related to their provided service.

Department Response: The Department decided that a name change from "financial literacy education" to the term "financial capability services" will confuse youth programs and did not change the regulatory text. The Department continues to work with the Consumer

Financial Protection Bureau to help local areas implement this new WIOA requirement with the goal of connecting youth employment programs with resources, best practices, and financial institutions that can become workforce partners. The Department captures information about youth participating in this program element as described in WIOA State Plan ICR and uses the same youth WIOA performance indicators discussed in 20 CFR part 677 (see Joint WIOA Final Rule). The Departments note that the Governor also has the authority to identify, in their Unified or Combined State Plan, additional performance accountability indicators.

Comments: A few commenters recommended that the Department grant local areas the role of determining the necessary elements for financial literacy education programs. Similarly, a commenter recommended that the Department grant States the jurisdiction to create their own policies regarding financial literacy education.

Department Response: With the change in the final regulation from "must" to "may" at § 681.500, local areas may determine the necessary elements for financial literacy education programs. The Department analyzed the suggestion to give States the jurisdiction to create their own policies regarding financial literacy education and concluded that with the above regulation text change, it was not needed.

Comments: Finally, a commenter requested clarification from the Department concerning the difference between personal financial literacy and entrepreneurial financial literacy. Further, this commenter suggested that youth would be best served by learning financial literacy through practice rather than pure instruction.

Department Response: The Department concurs that a hands-on approach to financial literacy is best and entrepreneurial financial literacy is one way to provide a practical financial

literacy application. The Department, along with other Federal partners, will provide further technical assistance around this element.

Section 681.510 What is comprehensive guidance and counseling?

Comprehensive guidance and counseling provides individualized counseling to participants. This includes drug and alcohol abuse counseling, mental health counseling, and referral to partner programs, as appropriate. (WIOA sec. 129(c)(2)(J).) When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service.

Comments: Citing the activities that YouthBuild offers about counseling services, a commenter stated the importance of counseling and its beneficial impact on youth's success. Another commenter requested clarification from the Department as to the credentials and training that would be required for guidance counselors under the proposed regulations.

Department Response: The Department acknowledges that accessing counseling services impacts the success of many youth who receive program services. The Department understands that counselors' education and experience will vary depending on the type of guidance and counseling offered and did not address it in the final regulation.

Comments: Citing the proposed language that would require that local youth programs "when referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service," a commenter said that coordination with multiple organizations would be unnecessary and that a referral should be sufficient in and of itself. Along the same line, a commenter asked for clarification concerning the requirement that

youth service providers collaborate with the outside services they use for counseling in order to ensure the continuity of service for individuals. This commenter requested that the Department provide additional guidance for how service providers should interpret these requirements.

Department Response: The Department views a referral as one part of the comprehensive guidance and counseling element; the local service provider must coordinate with the organization to which the referral was made in order to ensure youth receive comprehensive services. The Department plans to provide additional technical assistance on comprehensive guidance and counseling. No changes were made to the regulatory text in response to this comment

Comments: A commenter asked for guidance from the Department about whether comprehensive guidance and counseling encompasses academic counseling as is stated in § 681.510, suggesting that it is not included in the language in § 681.460.

Department Response: The Department considered this input and agreed with the commenter that the proposed regulation duplicated counseling types found in other program elements. As a result, the Department removed "career and academic counseling" from the comprehensive guidance and counseling element.

Section 681.530 What are positive social and civic behaviors?

While WIA included positive social behaviors as part of the description of leadership development opportunities, WIOA adds "civic behaviors" to the description of the leadership development program element. This section provides examples of positive social and civic behaviors.

Comments: Citing the list of positive social and civic behaviors that YouthBuild programs are based on, a commenter expressed their support over the proposed list of behaviors

and recommend that WIOA youth services programs incorporate their list into the proposed regulations. On the other hand, citing the language listing some of the indicators of positive social and civic behaviors, a commenter stated that only paragraph (i), "positive job attitudes and work skills," is measurable and relevant to the goal of workforce training. This commenter suggested that the other listed potential indicators of these behaviors are irrelevant, and that paragraphs (h) and (j) could be considered inappropriate.

Department Response: Comprehensive in nature, the WIOA youth program provides a wide array of supports and services. The Department finds the sub-elements in positive social and civic behaviors relevant and connected to the workplace traits employers seek. It recognizes that the list is not all-inclusive and other personal attributes contribute to positive social and civic behavior. The Department did not add additional items to the final regulation. Noting the strong objection to proposed paragraphs (h) and (j), the Department did delete proposed paragraphs (h) ("Postponing parenting and responsible parenting, including child support education") and (j) ("Keeping informed in community affairs and current events") from the final regulation text.

Comments: A commenter suggested that the behaviors in this section would be difficult to measure, which may result in the measurement through default indicators such as the individual didn't get arrested or isn't a youth parent.

Department Response: The Department appreciates the commenters concerns about the difficulty of measuring positive social and civic behaviors. From the Department's perspective these behaviors contribute to characteristics that businesses seek in their employees. No change is made in the regulatory text in response to this comment.

Section 681.540 What is occupational skills training?

This section provides a definition for the occupational skills training program element. WIOA sec. 129(c)(2)(D) further sharpens the focus on occupational skills training by requiring local areas to give priority consideration for training programs that lead to recognized postsecondary credentials that align with in-demand industries or occupations in the local area.

Comments: Commenters expressed concern that the regulations in the section are too prescriptive, stating that the attainment of postsecondary credentials or other credential training would be inappropriate for some individuals. Further, this commenter suggested that as they are written, the proposed regulations would not allow for training that would be a step towards a postsecondary degree but does not in and of itself result in one. Similarly, a couple of commenters expressed their support for the proposed regulations' emphasis on occupational skills training, but stated their concern with the language that requires that all occupational skills training result in a postsecondary level education. The commenters suggested that requiring postsecondary education would not be appropriate for everyone, and recommended that instead, the regulations allow for individuals to result in one of the three options instead of all three. This commenter further recommended that the language, "…result in the opportunity to obtain a recognized postsecondary credential, or a certificate of job readiness, or an industry credential," be added to the section.

Department Response: The Department notes the concerns around occupational skills training needing to result in attainment of a recognized postsecondary credential. The Department has changed this language in the Final Rule to state that occupational skills training must lead to the attainment of a recognized postsecondary credential.

Comments: One commenter recommended that the Department clarify that service providers should put into effect activities that include work experience to prepare for employment that leads to self-sufficiency, a sequenced series of work-based learning opportunities, a college and career ready curriculum, dual enrollment, and supplemental instruction.

This commenter also recommended that the implementation of these activities should result in collaboration between WIOA youth service providers, Local WDBs, and educational institutions.

Department Response: The Department concluded that these recommendations are more appropriate for technical assistance; as such, no changes were made in the regulatory text in response to these comments. The Department will provide guidance and technical assistance on all program elements, including occupational skills training.

Comments: A commenter recommended that the Department modify the proposed text to state, "…and result in attainment of a recognized postsecondary credential, job readiness certificate, or industry credential," suggesting that this language would still encourage individuals to participate in experiences that will help them to gain certifications and credentials, but gives them flexibility they may need to demonstrate success, depending on their choice of field.

Department Response: The Department modified Final Rule text, as discussed above, regarding the attainment of a recognized postsecondary credential. An "industry credential" is encompassed in the term "recognized postsecondary credential." A job readiness certificate relates to foundational work readiness skills and does not result from occupational skills training.

Therefore, the Department did not incorporate language referring to a job readiness certificate in the regulatory text.

Comments: Another commenter requested that the Department include entry-level career preparation training services that are taught or led by regionally accredited secondary-level education programs.

Department Response: The Department determined that career preparation services are not a type of occupational skills training and did not make a change in the regulatory text in response to this comment.

Section 681.550 Are Individual Training Accounts permitted for youth participants?

This section allows ITAs for OSY aged 16 to 24.

The Department received a number of comments about ITAs that resulted in a final regulation change discussed below.

Comments: A number of commenters expressed their support for the allowance of OSY aged 18-24 to use ITAs in the proposed regulations. Many commenters suggested that the allowance of these ITAs is important for youth aged 18-24, as they may be receiving services from multiple WIOA title funding streams. A few commenters expressed their support for the use of ITAs for both ISY and OSY. Further, stating that it would reduce the burden of duplicative administrative work, a few commenters recommended that the proposed regulations be amended to allow ITAs for youth aged 18-24.

A commenter offered that ITAs be expanded to include OSY 16-24 instead of 18-24. This commenter said that individuals who drop out of high school at 16 and have received their high school equivalency, are left dislocated until they reach the age of 18 and can then pursue an

ITA, on-the-job training, or a career; therefore this commenter said that lowering the age limit to 16 would allow these youth to remain engaged.

A commenter requested clarification from the Department regarding whether or not OSY with ITAs would have to use the State permitted Eligible Training Provider List (ETPL) under these proposed regulations.

Two commenters requested clarification from the Department regarding ITAs for OSY. A commenter stated that the proposed regulations indicate that only OSY would be allowed to use ITAs, but that the regulations also include occupational skills training as one of the 14 required youth program elements. This commenter asked the Department to explain what the difference would be in using an ITA or occupational skills services for an ISY who has graduated from high school and wants to pursue a postsecondary education. This commenter further requested guidance from the Department concerning how providers could provide occupational skills training service to all WIOA eligible youth, regardless of whether they are ISY or OSY.

Stating that ITAs can help to close the gap between Federal contracting requirements and individuals with disabilities, a commenter recommended that this section be modified to encourage State and Local WDBs to connect Federal contracts with youth with disabilities and use ITAs for meeting employer requirements.

Department Response: The Department analyzed the comments received and expanded the ITA language to allow all OSY, ages 16-24, access to ITAs. Upon reflection of the above comments, the Department concluded the final regulation change made policy and administrative sense by expanding training options, increasing program flexibility, enhancing customer choice, and reducing paperwork for all OSY. When using youth funds for ITAs, the Eligible Training

Provider List (ETPL) must be used. Accessing the ETPL allows the program to avoid further procurement processes.

The Department did not expand ITAs to ISY. However, ISY ages 18 or older may access ITAs through the adult program.

Finally, the Department did not change the regulatory text to encourage State and Local WDBs to connect Federal contracts with youth with disabilities because the request is outside the scope of ITAs. The Department will provide further guidance on youth ITAs and related topics.

Section 681.560 What is entrepreneurial skills training and how is it taught?

This section discusses entrepreneurial skills training, a new program element under WIOA. The Department received a number of comments on the proposed entrepreneurial skills training regulation which resulted in a minor word change in the final regulation as explained below.

Comments: Two commenters expressed their support over the proposed examples of entrepreneurial skills training activity options. In contrast, a number of commenters stated that the Department should not be dogmatic in determining specific methods and processes for how entrepreneurial skills would be taught under the proposed regulations.

Department Response: The Department did not intend to be limiting in the list of ways to develop entrepreneurial skills. To emphasize that this list is not all-inclusive, the Department added the word "may" to the final regulation at § 681.560(a).

Comments: Several commenters provided thoughts on other skills to develop under this program element as discussed in the next several paragraphs.

One commenter shared its support of the inclusion of entrepreneurial skills training, citing the programs it has created in its State and programs that engage with small business

centers, suggesting that the Department should use such services and programs for teaching these skills. Another commenter recommended that the Department use Junior Achievement and other organizations in their entrepreneurial skills training services, and stated that the Department also should include presentations and training sessions from local entrepreneurs in their skills training programs.

Similarly, a commenter expressed their support of the inclusion of entrepreneurial skills training in the proposed regulations. This commenter further cited: experiences that provide individuals with the knowledge of how to start their own business, the creation of a business plan, education on applying for loans and grants for business operations, and experiences related to running a business day-to-day, as potential activities used to teach individuals entrepreneurial skills.

A commenter recommended that healthy relationship skills classes be included in the entrepreneurial training program, stating that building strong and healthy relationships are a key component to being a successful entrepreneur.

In addition, a commenter recommended that Local WDBs use experiential learning programs to teach individuals entrepreneurial skills, stating that using hands-on experiences is most effective for training individuals. Further, this commenter specifically recommended that entrepreneurial skills training include the following: education assessment and pathway identification; leadership development activities; and soft skills training based on industry demand.

A commenter expressed its support over the inclusion of these skills training, and recommended that it include the development of business plans and lessons on the various ways an entrepreneur can obtain start-up funding.

Department Response: The Department acknowledges the many suggestions about how to local area may provide entrepreneurial skills training in a meaningful, relevant way to youth. The Department will provide technical assistance on this new element.

Comments: A commenter recommended that the Department amend the proposed language so that "enterprise development" is removed as a skill that would be included in this entrepreneurial training, and be replaced with "crowd-funding," sharing that crowd sourced funding would be a more viable option if a youth individual were trying to build a business as he or she would be unlikely to secure a loan.

Department Response: While the Department did not change the regulatory text, the Department agrees with suggestion to include skills such as "crowd-funding" that may be more relevant for the youth population and will address them in future technical assistance.

Comments: A commenter wondered about the reliability of wages for participants in these programs as well as how participants' wages would be tracked, and requested clarification from the Department regarding these issues.

Department Response: The Department notes that the performance indicators for youth engaged in this program element remain the same as the youth performance indicators explained in the joint regulation at 20 CFR part 677 (see Joint WIOA Final Rule).

Comments: A commenter requested clarification from the Department about the definition of entrepreneurial skills training and what the requirements are around certification at the program's completion. Similarly, a commenter recommended that the skills and techniques involved with entrepreneurial skills training should be in line with local postsecondary school curriculums and standards.

Department Response: Postsecondary institutions and other training providers that develop entrepreneurial programs are best positioned to identify standards upon which certificates could be awarded. No changes were made in the regulatory text in response to this comment.

Comments: Another commenter asked the Department if entrepreneurial skills training would only be provided to older youth.

Department Response: Entrepreneurial skills training, similar to the other youth program elements, is available to youth regardless of age and must align with their ISS goals.

Section 681.570 What are supportive services for youth?

This section lists examples of supportive services for youth. The Department received a few comments on proposed §§ 681.570 and 680.900, which discusses supportive services in the context of adult programs. The Department chose to align these regulations which resulted in the addition of "Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes"; and "Payments and fees for employment and training-related applications, tests, and certifications," to the regulation at § 681.570(k) through (l).

Comments: One commenter recommended that the Department include groceries, on-site meals, hygiene products, clothing, and items for postsecondary education courses in the definition of supportive services. Another commenter recommended that transportation be provided to individuals in these programs, and that the transportation services available should include transportation to one-stop centers. This commenter stated that in some areas the one-stop center may be miles away from where the youth providers are located, and reaching these one-stop centers to receive necessary services may be difficult for disengaged or homeless youth.

This commenter also recommended that food services (other than food banks and soup kitchens) and subsidized services for document attainment be provided as support services for youth.

One commenter recommended that healthy relationship skills should be included in the workforce development training programs for disconnected youth, including supportive services. This commenter reasoned that relationship skills help participants build crucial interpersonal skills that are valued by employers and specifically mentioned skills including communications, problem solving, conflict resolution, reliability, and teamwork. The commenter also stated that learning healthy relationship skills can help participants prevent unplanned pregnancy and therefore avoid dropping out of school due to pregnancy. A commenter recommended that the Department align supportive services across the youth, adult, and dislocated worker programs. Another commenter strongly supported the inclusion of legal aid services in the Department's list of examples of supportive services in § 680.900, noting that legal aid can uniquely address certain barriers to employment, including access to driver's licenses, expunging criminal records, and resolving issues with debt, credit, and housing.

Department Response: The Department analyzed the suggested additions to supportive services and decided, as noted above, to add three new paragraphs (h), (k), and (l) to the Final Rule. The Department determined that some suggested items such as tutoring, apprenticeship programs, work-place interpersonal skills, work-related hygiene products and clothing attire, and addiction may be encompassed by other program elements. Assistance with transportation is allowable under supportive service. As discussed above, the Department has included legal aid services under the list of supportive services in § 680.900 for the adult and dislocated worker programs; we made a corresponding change to the list of supportive services allowable for the youth program in § 681.570 for the same reason as for the addition to § 680.900 and to align the

list of supportive services across programs. Groceries and on-site meals for program participants are beyond the scope of WIOA.

Comments: Citing the language about supportive services in this section, a commenter requested clarification from the Department concerning whether needs related payments are allowed for youth aged 18-24 in WIOA youth services.

Department Response: Yes, the Department affirms that needs related payments are allowed for youth ages 18-24 enrolled in WIOA youth services.

Section 681.580 What are follow-up services for youth?

This proposed section discusses the importance of follow-up services and lists examples of follow-up services for youth.

The Department received a number of comments on this section as discussed below.

Comments: A commenter expressed its support of the proposed regulations in this section and another commenter expressed support citing all of the benefits of follow-up services. Citing the benefits and purposes behind follow-up services, another commenter agreed that follow-up services can be extremely beneficial to youth and help to ensure that they focus on and accomplish their long-term goals. Another commenter expressed their support of the follow-up requirements, but recommended that the Department create and distribute guidance to States regarding how they should document an individual who is unresponsive under the proposed regulations.

A couple of commenters expressed concern over the requirements for follow-up services, suggesting that often when youth no longer access services, they no longer communicate with their providers, regardless of the efforts of the case manager. Therefore, these commenters recommended that States' youth follow-up activities be evaluated on the quality of follow up

services provided to engaged youth and not be viewed negatively when follow up does not happen. Further, these commenters recommended that States be allowed to establish policies that when a provider has exhausted all options in an attempt to engage a youth individual in follow-up services with no results, he or she may end follow-up activities. Likewise, one commenter recommended that in instances where the service provider attempts to reach the individual with no contact made for 90 days, he or she should be able to receive an exemption or waiver for needing to provide follow-up services for that individual.

A number of commenters expressed concern with the proposed regulations, suggesting that the language concerning follow-up services should give more flexibility and account for those individuals who have moved and provided no contact information. These commenters recommended that in situations such as those stated above, follow-up contact attempts should end, and the attempts to make contact should be documented. One of these commenters also suggested that if multiple attempts at contact are made with no response, the provider should not be punished for being unable to contact the individual. Further, some of these commenters recommended that the regulations be modified to reduce the 12-month minimum to 6 months. Another commenter stated that follow-up services should allow for decreasing concentration for follow-up contact with individuals after 6 months after end of enrollment in the program. Further, this commenter stated that text messaging and contact through social media should be considered contact for the purposed of follow-up services. Another commenter recommended the Department not be overly prescriptive with its follow-up services requirements.

Department Response: The Department recognizes the concerns that some youth may not be responsive to attempted contacts for follow-up, and other youth may be difficult to locate making it impossible to provide follow-up services for such individuals. Based on the comments

received, the Department has added language to the regulatory text to § 681.580(c) clarifying that follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted. This alleviates the concern expressed by many commenters about youth who are not able to be located or who refuse follow-up. Local programs should have policies in place to establish when a participant cannot be located or contacted. The Department did not incorporate the recommendation to reduce follow-up to 6 months as WIOA sec. 129(c)(2)(I) requires follow-up services for not less than 12 months. The Department will issue further guidance on follow-up services.

Comments: One commenter recommended that the Department create guidance that would allow local areas to establish orientations for youth participants that would inform them of the follow-up services and recommended that the Department provide incentives for an individual's participation in follow-up services. Stating that WIOA does not list all of the youth services offerings as being available for follow-up services, one commenter recommended that all WIOA program services be available for any individual in their follow-up services. Another commenter recommended that follow-up services should begin while an individual is still enrolled in the program, suggesting that follow-up services include supportive and other services that could ensure a participant's success after the program. One commenter noted that the follow-up services listed in this section are significantly more intensive than under WIA and more closely resemble active programming and recommended guidance on managing the transition from active programming to follow-up services, particularly under the proposed definition of "exit" in 20 CFR 677.150 (see Joint WIOA Final Rule).

Department Response: At § 681.580(b), the Department clarified which specific program elements may be provided during follow-up. The Department plans to issue further guidance on follow-up services; it will clarify that follow-up services do not trigger re-enrollment in the WIOA youth program.

Comments: Another commenter recommended that the follow-up services provided be concentrated on individuals gaining employment or postsecondary education. A couple of commenters also recommended that the Department clarify that incentive payments and supportive services would be allowed to be provided to youth during the period of follow-up services. Further, a commenter stated that in order to complete follow-up services as they are currently written, youth providers would need to be given additional funding.

Department Response: The Department clarifies in the regulatory text that supportive services are allowed to be provided during follow-up. Incentive payments are covered in § 681.640.

Comments: One commenter recommended adding the following language to this section, "Follow-up plans should be set by youth and their case manager allowing the youth to have an active voice in setting such plans. Follow-up plans for youth should be re-assessed and flexible and may include…," saying that this language would encourage case managers to educate the youth they are responsible for as to the benefit of follow-up services and allow youth to become more engaged with his or her services. This commenter also recommended that youth be able to opt out of their follow-up services due to relocation without negatively impacting the performance scores of their provider.

One commenter recommended that the language that states that follow-up services must be "provided" by youth programs should be amended to say that they must be "offered." Finally,

one commenter recommended that during the required 12-month follow-up period, multiple employees be allowed to administer follow-up services.

Department Response: As discussed above, the Department has amended regulatory text to state that follow-up services must be offered to all participants and added language to address participant relocation.

Section 681.590 What is the work experience priority and how will local youth programs track the work experience priority?

The section discusses the 20 percent minimum expenditure requirement on the work experience program element in WIOA sec. 129(c)(4) and how local WIOA youth programs track program funds spent on work experiences and report such expenditures as part of the local WIOA youth financial reporting.

The Department received a few comments on this section as discussed below.

Comments: Multiple commenters expressed their support for this section. One commenter requested that the Department clarify in the proposed regulations that career pathways must lead to a postsecondary credential, and that the requirements for these credentials will be aligned with the current State college and workplace readiness standards in place for each specific State. Another commenter expressed their support for the proposed regulations' emphasis on work experiences; however, this commenter further recommended that the Department clarify in the regulations that youth service providers are strongly encouraged to "coordinate work experiences with employers participating in industry or sector partnerships developed and implemented in the local area."

Department Response: The Department agrees that career pathways in coordination with employers are important. The Department will continue to emphasize employer engagement in

career pathways in future guidance or technical assistance. Please see TEN 17-15, building upon its "Career Pathways Toolkit: A Guide for System Development" (2015) found at https://wdr.doleta.gov/directives/attach/TEN/TEN_17-15_Attachment_Acc.pdf.

Comments: A number of commenters expressed their concerns regarding whether the proposed 20 percent work experience expenditure requirement would include leveraged resources. These commenters stated the requirement would negatively impact the support they receive from non-WIOA funding streams and the proposed language would require them to spend their WIOA funds first on work-based experience programs, which could be detrimental to their ability to attract private funds. Thus, the commenters recommended that the proposed regulations be amended to allow waivers that would allow Local WDBs to count non-WIOA funds towards the 20 percent work experience expenditure requirement. Similarly, a few commenters recommended that the 20 percent work experience requirement be extended to include other funding sources, instead of relying only on WIOA funds to meet this requirement. Some of these commenters further stated that staff who are engaged in creating these strategies, as well as implementing them, should also be included in the minimum 20 percent expenditure requirement, while another commenters asked the Department to clarify if staffing or administrative costs count toward the expenditure requirement. Likewise, one commenter recommended that the academic component of the work experience requirements can be included in the 20 percent expenditure requirement. Another commenter recommended that the proposed regulations be amended so that the minimum 20 percent work experience expenditure requirement also includes the administrative and recruitment costs spent in order to place an individual in his or her work experience. Conversely, a commenter suggested that staffing costs should not be an allowable expenditure in the minimum 20 percent work experience expenditure requirement; rather, funds should be focused on direct participant costs.

Similarly, the Department received very few comments on § 681.610. One commenter noted that § 681.610 clearly states to not include administration in this calculation which should be made consistent with § 681.590 instead of in a separate section of the regulations. Another commenter recommended that the term "incentives payments" be added to this section in order to ensure consistency. Stating that in many cases local areas utilize funding from a variety of funding sources, a few commenters recommended that Local WDBs should be able to use these funds for the purpose of the costs included in work experiences such as wages for individuals and training, and that these funds should be included in the work experience minimum expenditure requirement.

Department Response: The Department recognizes that it is important to clarify further the types of expenditures that count toward the work experience expenditure rate. The Department issued TEGL No. 08-15 ("Second Title I WIOA Youth Program Transition Guidance") in November 2015, which can be downloaded at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm. The TEGL discussed the types of costs that count toward the work experience expenditure requirement. The Department has added § 681.590(b) that describes the types of expenditures that count toward the work experience minimum expenditure requirement and how to calculate the minimum expenditure requirement. Leveraged resources cannot count toward the expenditure requirement; WIOA sec. 129(c)(4) clearly states that the expenditure requirement is based on WIOA youth funds allocated to the local area. Because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

Comments: A commenter recommended that the Department allow a transition period for local areas to move funding to comply with the minimum 20 percent expenditure requirement. Another commenter expressed their support of the proposed emphasis on work experience, but recommended that the language be strengthened to emphasize the importance of connecting youth with disabilities to work experiences.

Department Response: The Department did not provide for a transition period for the minimum expenditure requirement as part of its guidance. The Department agrees on the importance of connecting youth with disabilities to work experience opportunities and will emphasize it in future guidance or technical assistance.

Section 681.600 What are work experiences?

The section defines the work experience program element and includes the four work experience categories listed in WIOA sec. 129(c)(2)(C). The Department received a few comments on this section as discussed below.

Comments: A commenter expressed its support for this section, especially due to its inclusion of on-the-job training eservices. Another commenter expressed its support for the proposed language in this section, especially that the inclusion of both academic work experience and occupation training are important for an individual's success. A commenter expressed its support of the inclusion of a variety of activities that could be included as work experience in the proposed regulations, and one commenter expressed its support over the allowance of on-the-job training as an appropriate work experience.

A number of commenters requested clarification from the Department concerning the requirement that work experiences have to include academic and occupational education experiences, whether those education experiences can be provided by the individual's employer,

and whether the education experience has to be provided in the individual's workplace. One of these commenters further recommended that these experiences be allowed to take place outside of the traditional workplace and could be provided by an educational provider other than the employer. A few commenters recommended that the language stating, "Work experience must include academic and occupational education" be amended to state, "work experiences must not deter from a participant's academic and occupational education goals. Ensuring all youth receive academic and occupational education is at the forefront of the goals of WIOA," suggesting that the current language's use of the words "and" and "must" may dissuade individuals from participating as they are at high risk and are concerned about feeding their families. A commenter requested clarification from the Department as to whom the occupational and academic training experiences must be provided by and recommended that the regulations allow for the employer to provide these training experiences. Further, this commenter recommended that if these training and educational experiences incur any costs, that they be included in the minimum 20 percent work experience expenditure requirement.

Department Response: Based on comments requesting clarification on the academic and occupational education component of work experiences, the Department has added language to the Final Rule at § 681.600(b) clarifying that the educational component may occur concurrently or sequentially with the work experience, and that the academic and occupational education may occur inside or outside the work site. The Department does not have any requirement about who provides the academic and occupational education, and such education may be provided by the employer. States and local areas have the flexibility to decide who provides the education. Because WIOA states this program element as "paid and unpaid work experiences that have as a component academic and occupational education," the Department does not have the flexibility

to amend the regulatory text to the suggested "work experiences must not deter from a participant's academic and occupational education."

Comments: A commenter recommended that the Department remove the following language from the section, "work experience may be paid or unpaid, as appropriate." The commenter further recommended that the Department should clarify that youth will be protected under the Fair Labor Standards Act and wage and hour laws.

Department Response: WIOA sec. 129(c)(2)(C) states that work experiences may be paid or unpaid. The Final Rule contains language regarding the Fair Labor Standards Act at § 680.180.

Comments: One commenter recommended that the Department clarify skills needs and how to assess skill mismatches. This commenter recommended more updates to the O*NET system and State/local work on job vacancies, analysis of "real time" labor market information, better projections data, new/emerging occupations, and wage record research on use of occupational title enhancements.

Department Response: The Department agrees with the importance of using labor market information to plan work experiences and will continue to encourage its use in future guidance and technical assistance.

Section 681.610 Does the Workforce Innovation and Opportunity Act require Local Workforce Development Boards to offer summer employment opportunities in the local youth program?

This section discusses that while summer employment opportunities are an allowable activity and a type of work experience that counts toward the work experience priority, they are not a required program element as they previously were under WIA. Note that this provision was proposed as § 681.620. However, as noted above, because the Department has incorporated

the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

The Department did not receive any comments on this section. No changes were made to the regulatory text.

Section 681.620 How are summer employment opportunities administered?

This section discusses how summer employment opportunities are administered. Note that this provision was proposed as § 681.630. However, as noted above, because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

The Department received only one comment on this section. The commenter stated that in rural areas it would be more cost effective for a case manager to arrange work experiences for youth than for the provider to arrange a work experience through the procurement process. This commenter asked for further clarification from the Department regarding whether or not a case manager would arrange a work experience during the school year.

Department Response: As discussed in § 681.400, the Final Rule clarifies that Local WDBs have the option of competitively procuring youth service providers or providing services directly. This additional flexibility will allow case managers to arrange work experiences directly. This section includes language changes to be consistent with the changes in § 681.400, and to make it clearer that the requirements of § 681.400 apply to the selection of youth service providers who administer the work experience program element in a local area.

Section 681.630 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?

This section describes the new program element at WIOA sec. 129(c)(2)(E): "education offered concurrently and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster." The Department notes that this provision was proposed as § 681.640. However, because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

The Department received a few comments on this section as discussed below.

Comments: A few commenters expressed their support for the proposed language, particularly that the simultaneous offering of education service and workforce training can help individuals to gain skills at a much faster pace than if they were engaged in these activities separately. One commenter expressed its support with this proposed language and recommended that the Departments collaborate to ensure that the language in the WIOA title II regulation in 34 CFR 463.37 is aligned with the title I regulation in § 681.630.

One commenter requested clarification from the Department regarding the definitional language in this section. This commenter further stated that the definitions for this program element and the work experience program element need to be amended to provide more distinction between the two if they are meant to be separate.

Another commenter recommended that the Department provide specific examples of "a high-quality, integrated education and training model that requires integrated education and training to occur concurrently and contextually with workforce preparation activities and

workforce training." This commenter further recommended a number of such examples. This commenter also suggested that the involvement of youth providers in these activities should help to create relationships between the providers and CBOs.

A commenter suggested the Department include a statement that these educational programs include entry-level workforce preparation and/or preparation for recognized postsecondary education and training activities.

Department Response: The Department plans to provide future guidance on all of the WIOA youth program elements, including the education program element defined in this section. The Department will incorporate in the guidance some examples of high-quality integrated education and training models and ensure consistency with the language in 34 CFR 463.37. While the Department did not incorporate any suggested additions to the regulatory text, it has made minor language changes to this section to make the section clearer.

Section 681.640 Are incentive payments to youth participants permitted?

This section clarifies that incentives under the WIOA youth program are permitted. The Department has included the reference to the Uniform Guidance at 2 CFR part 200 to emphasize that while incentive payments are allowable under WIOA, the incentives must be in compliance with the requirements in 2 CFR part 200. For example, Federal funds may not be spent on entertainment costs. Therefore, incentives may not include entertainment, such as movie or sporting event tickets or gift cards to movie theaters or other venues whose sole purpose is entertainment. Additionally, there are requirements related to internal controls to safeguard cash, which also apply to safeguarding of gift cards, which are essentially cash. As noted above, because the Department has incorporated the language from proposed § 681.610 into § 681.590,

the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

Comments: A couple of commenters expressed support for the allowance of incentive payments for youth, citing the effect they can have on low-income and homeless individuals in WIOA youth services programs as well as the positive effect incentive payments have on YouthBuild programs.

One commenter requested clarification about whether incentive payments would be allowed for activities other than just training and work experiences, and for short-term youth programs. Further, this commenter recommended that the Department give local areas flexibility in the creation of their own policies for providing incentives to youth. Another commenter recommended that the Department allow incentive payments for youth engaging in the literacy and numeracy post-tests for Program Year 2015.

A commenter expressed support of the inclusion of incentive programs and support services for individuals in the WIOA youth program, stating that the eligibility determination process is often difficult for youth as they sometimes struggle to obtain documentation, especially those who have experienced loss or abuse of their identity documentation in the past. Therefore, this commenter recommended providing incentives to youth for maintaining their documentation or attempting to obtain their documentation. Further, this commenter suggested that the Department should provide incentives to youth for providing word-of-mouth marketing to their peers about the WIOA youth services available, as incentives for referrals and recruitments could be very beneficial to the Department's efforts to reach youth.

One commenter expressed concern with this section due to its allowance for incentive payments only under the circumstances of work experience and training activities. This

commenter suggested that incentive payments should be granted for achievements such as employment placement and retention, or improvements marked by testing. This commenter recommended that the incentive payments should be granted in those circumstances and not on the basis of engaging in training activities and work experiences. Similarly, a couple of commenters expressed concern with the proposed regulation's allowance of incentives for activities only related to training and work experiences, and recommended that the language regarding incentive payments not be amended from its original form in WIA and suggesting that incentives are needed to reach and engage youth.

Department Response: While the Department recognizes the importance of incentives as motivators for various activities such as recruitment, submitting eligibility documentation, and participation in the program, the Department concluded that incentives must be connected to recognition of achievement of milestones in the program tied to work experience or training. Such incentives for achievement could include improvements marked by testing or other successful outcomes. While WIOA funds cannot be used for incentives for recruitment and eligibility documentation, local areas may leverage private funds for such incentives.

Comments: Another commenter recommended that the Department amend the proposed regulations to allow for incentive payment for ISY who graduate from a regular high school, suggesting the current language is inconsistent in its provision of incentives to students who receive their high school equivalency or GED certificates, but not to those who receive a traditional high school diploma. Further, this commenter recommended allowing for the provision of incentive payment for youth who participate or complete leadership activities, suggesting that not offering incentives for leadership activities will infringe upon the provider's ability to engage youth.

Department Response: There is no specific language in the regulatory text limiting incentive payments to students who receive their high school equivalency. Incentive payments may be provided to both ISY and OSY as long as they comply with the regulations stated in this section.

Comments: One commenter recommended that the Department amend the language at the start of this section in order to make it more encouraging. Specifically, this commenter recommended that the section read, "Incentive programs are crucial to keeping homeless and disconnected youth engaged in programs and should be provided to youth participants for recognition."

Department Response: The Department agrees that incentives can be a critical tool to keep youth participants engaged in the program. However, no changes were made to the regulatory text in response to this comment.

Comments: Another commenter recommended that a definition of incentive payments should be added to this section to retain consistency throughout the proposed regulations.

Department Response: The Department concluded that the existing regulatory text adequately defines incentive payments. No further definition is necessary in the Final Rule. The Department did make minor edits to the first paragraph of the regulatory text to clarify this section.

Section 681.650 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

This section discusses the requirement in WIOA sec. 129(c)(3)(C) for the involvement of parents, participants, and community members in the design and implementation of the WIOA youth program and provides examples of the type of involvement that would be beneficial. The

Department also has included in this proposed section the requirement in WIOA sec. 129(c)(8) that Local WDBs also must make opportunities available to successful participants to volunteer to help other participants as mentors or tutors, or in other activities. The Department notes that this provision was proposed as § 681.660. However, as noted above, because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

Comments: The Department received a few comments on the proposed regulation. One commenter suggested that the language in this section be strengthened to show the importance of including individuals with disabilities in the design and implementation of these programs, stating that their involvement is vital.

One commenter suggested that making opportunities available to youth peer volunteers be removed, and be replaced with language that would make the service an option for Local WDBs to choose to make, suggesting that the supervision and background investigation needed for volunteers to provide services to youth would be potentially too costly for WDBs and therefore shouldn't be a requirement. Another commenter requested clarification from the Department concerning the extent to which the population and community of an area must be involved in the creation of these programs and services and the type of involvement that is required of them, suggesting that requiring the community to be involved is contradictory to the intent of WIOA, which abolished the requirement of youth councils.

Department Response: No changes were made in the regulatory text in response to these comments. The Department values the input of individuals with disabilities. Nothing in the proposed regulation precludes them from getting involved in the design and implementation of a

local youth program. The populations identified in the regulation (parents, youth, and other members of the community) come directly from WIOA sec. 129(c)(3)(C), which clearly states the intent to have them involved in the design and implementation of the programs. The Department understands that this might seem to contradict the law's approach to youth councils; however, this requirement does not have the time commitment and obligatory structures that were required of WIA's youth councils. The Department will provide additional guidance and technical assistance on involvement in youth program design and implementation.

5. Subpart D – One-Stop Center Services to Youth

Section 681.700 What is the connection between the youth program and the one-stop delivery system?

This section describes the WIOA youth program's required role in the one-stop delivery system, and includes examples of the connections between the youth program and the one-stop delivery system.

Comments: Several commenters expressed their support for these provisions and their focus on collaboration across programs and the requirement of WIOA youth programs to serve as a one-stop partner. A number of commenters expressed their support for the regulations' encouragement of partnerships between WIOA youth programs and one-stop centers, suggesting that under WIA the one-stop delivery system was not encouraging of youth engagement. These commenters further recommended that the Department encourage training of one-stop operator staff for effectively serving youth. Similarly, one commenter suggested that this proposed language would require either equipping and training staff at one-stop centers with information on serving youth, or colocation of WIOA youth service providers at one-stop centers.

Department Response: The Department does encourage training of one-stop operator staff and added language to the Final Rule at § 681.700(c) encouraging one-stop center staff be trained to build their capacity in serving youth.

Section 681.710 Do Local Workforce Development Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

This section clarifies that Local WDBs may provide services to youth through one-stop centers even if the youth are not eligible for the WIOA youth program.

The Department received a few comments on this section as discussed below.

Comments: One commenter expressed their support of the proposed regulation's requirement that one-stop centers provide services for individuals who are ineligible for WIOA youth programs, suggesting that providing these services would allow for youth to receive services they need while still working to obtain documentation that would make them eligible for WIOA youth services.

A few commenters requested clarification regarding whether WIOA youth program funding would be allowed to support these services at one-stop centers without enrollment and whether Local WDBs would provide youth services if they are ineligible for WIOA title I youth services, and if so, which program would be funded through the provision of those services. These commenters further recommended that the Department give States the authority to use WIOA funding for the purposes of supporting workforce market information and career awareness education to ISY, as is indicated in this section under the proposed regulations. Similarly, one commenter requested clarification from the Department about whether WIOA youth funds could be used to provide support for services if the support is for materials, general information, or relationships with local businesses. This commenter further recommended that

the Department allow States to use WIOA youth funds to support general labor market information to promote career awareness for ISY, reasoning that providing this information would help to prepare these ISY for their transition out of school and into their career and/or postsecondary school.

Department Response: While providing labor market information and career awareness are allowable uses of WIOA youth funds, WIOA youth funds may be used to provide services only to eligible youth enrolled in the WIOA youth program. As described in this section, one-stop centers may provide basic labor exchange services such as the ones suggested under the Wagner-Peyser Act to any youth.

Comments: Suggesting that often times individuals who are not eligible for WIOA youth services fall within the eligibility of WIOA adult services, a number of commenters recommended that Local WDBs be required to ensure that youth aged 18-24 have access to one-stop center services and are not simply referred to WIOA youth services instead.

Department Response: The Department agrees that youth aged 18-24 should have access to one-stop center services. The Department has concluded that this recommendation does not necessitate any changes to the Final Rule language and instead, will incorporate this recommendation in future guidance or technical assistance. The Final Rule adopts the provision as proposed.

F. Part 682 – Statewide Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

WIOA provides a reservation of funds from the adult, dislocated worker and youth programs to be undertaken by States, for statewide activities. States have both required and

allowable activities to be undertaken on a statewide basis for adults, dislocated workers and youth. These funds support States to innovate, continually improve their comprehensive workforce programs, oversee a public workforce system that meets the needs of job seekers, workers and employers, and contribute to building a body of evidence to improve the effectiveness of services under WIOA. WIOA designates the percentage of funds that may be devoted to these activities from annual allotments to the States—up to 15 percent must be reserved from youth, adult, and dislocated worker funding streams, and up to an additional 25 percent of dislocated worker funds must be reserved for statewide rapid response activities. The up to 15 percent funds from the 3 funding streams may be expended on employment and training activities without regard to the source of the funding. For example, funds reserved from the adult funding stream may be used to carry out statewide youth activities and vice versa.

2. Subpart A – General Description

This subpart describes what is encompassed by the term "statewide employment and training activities." It explains that States have both required and allowable activities to be undertaken on a statewide basis for adults, dislocated workers and youth. States have significant flexibility in the development of policies and strategies for the use of their statewide funds.

Section 682.110 How are statewide employment and training activities funded?

The Governor has authority to use up to 15 percent of the adult, dislocated worker, and youth funds allocated to the State for statewide activities. The regulation provides that the adult, dislocated worker and youth 15 percent funds may be combined for use on required or allowed statewide activities regardless of the funding source. These activities are funded in the same manner as they were under WIA.

Comments: Several commenters expressed concern regarding the appropriation-based restriction of 10 percent availability for the required and allowable statewide activities. These commenters recommended that funding be increased to a level that covers the costs of the required activities and, at a minimum, that statewide funds be fully funded at the 15 percent level. In addition, the commenters recommended that the Department provide a waiver process for States on required activities if the full appropriation is not made available. Several of these commenters also suggested that the required State activities would necessitate resources in excess of Federal funding, and the program therefore could be considered an unfunded mandate. Lastly, one commenter expressed confusion about whether subrecipients may incur costs for administrative functions, as set forth in § 683.215, with statewide activities funds.

Department Response: The allowable percentage of funding for statewide activities is governed by the authorizations and appropriations established by Congress, not by the Department. Furthermore, the regulation contains no unfunded mandates as defined in 2 U.S.C. 658(b). Waivers are covered at §§ 679.600 through 679.620, for waivers to States or local areas in a State, and at §§ 684.900 through 684.920, for waivers relating to Indian and Native American programs. Waivers are considered on an individual basis and granted as appropriate, with such conditions as the Department may require. Subrecipients may incur costs for administrative functions consistent with the administrative cost limitation provisions at §§ 683.205 and 683.215. No changes have been made to the regulatory text as a result of these comments.

3. Subpart B – Required and Allowable Statewide Employment and Training Activities

This subpart first discusses required statewide activities. WIOA continues the activities that were required under WIA, but adds several additional required activities, such as assistance to State entities and agencies described in the State Plan, alignment of data systems, regional planning, and implementation of industry or sector partnerships. Required statewide activities under WIA and continued under WIOA include: dissemination of information regarding outreach to businesses, dissemination of information on the performance and cost of attendance for programs offered by ETPs, and conducting evaluations.

This subpart also discusses allowable statewide activities. The Department provides States with a significant amount of flexibility in how these funds may be used for statewide activities. States can test and develop promising strategies. The regulation at § 682.210 is not designed to be an exhaustive list, but more illustrative of the types of allowable statewide activities that may be provided with these funds.

Section 682.200 What are required statewide employment and training activities?

Comments: One commenter asked for a definition of "non-traditional training" services and for the statutory basis for the requirement that the ETPL include providers of nontraditional training services. This commenter further stated that § 682.200(b)(5) would require collection and dissemination of cost of attendance information for youth and for on-the-job and other training programs that is exempted from the ETP requirements (WIOA sec. 122(h)), and asked what the statutory authorization was for this requirement. Finally, this commenter asserted that there was a conflict over proposed requirements for these WIOA sec. 122(h) programs/data between proposed §§ 682.200 and 680.340.

Department Response: Nontraditional training is defined as training activities leading to employment in occupations or fields of work in which individuals of one gender comprise less

than 25 percent of the individuals so employed. The statutory basis for this definition is found in the definition of nontraditional employment at WIOA sec. 3(37). The statutory requirement for disseminating information regarding the State list of eligible training providers of training services (including those providing non-traditional training services) is found at WIOA sec. 134(a)(2)(B)(v)(I). The Department has revised § 682.200(b)(5) for consistency with §§ 680.490 and 680.530, which specify the reporting requirements for certain providers of training services, such as providers of OJT.

Comments: The commenter stated that there might be a conflict between proposed §§ 682.200 and 680.350 and referred to the title of § 680.350 as "What is meant by 'provision of additional assistance' in the Workforce Innovation and Opportunity Act?"

Department Response: There was no section numbered § 680.350 in the NPRM, and there is no conflict between the requirements of §§ 682.200 and 682.350. However, the commenter may have been referring to the requirement of § 680.340, specifically paragraph (b), which states that the Local WDBs must make available to customers the State list of eligible training providers required in WIOA sec. 122(e), including local area information on work based training providers under WIOA sec. 122(h). This could be read to conflict with § 682.200(b), which includes disseminating the list of ETPs and information identifying other eligible training providers of training as a required statewide activity. There are two sections of WIOA that cover the dissemination of the list of ETPs, secs. 134(a)(2)(B)(v) and 134(c)(3)(F)(ii). The first requires the State to disseminate the list. The latter requires that Local WDBs make the list available through the one-stop centers. Operationally, States are tasked with maintaining the list and disseminating it to the Local WDBs. The task of the Local WDBs is to make sure that this

information is readily available through the one-stop delivery system. No changes have been made to the regulatory text as a result of these comments.

Comments: Two commenters also questioned the proposed § 682.200(b)(2) requirement to disseminate information identifying eligible training providers of work-based training, reasoning that disclosing information about employers could negatively impact the working relationships that case managers and business specialists have developed. Further, these commenters stated that if the Governor does not require collection of performance information from these training providers, it is not necessary to provide information about such providers to the public. A separate commenter expressed concern that the performance reporting requirements could result in disclosure of personally-identifiable information.

Department Response: WIOA sec. 122(h) exempts providers of on-the-job training and other employer-based training from the requirements at WIOA sec. 122(a)-(f). However, the identity of employers that access WIOA funds for employer-based training, as well as any performance information required by the State under WIOA sec. 122(h)(2), may not be kept from the public and is disclosable. This statutory disclosure requirement under WIOA sec. 122(h)(2), which applies to recipients of funds to provide training services, promotes full transparency, reduces instances of conflict of interest, and ensures compliance with the sunshine provisions of WIOA. Performance report made available to the pubic requirements do not include any information that could be considered personally identifiable. There are no names, addresses, dates of birth or Social Security numbers. WIOA sec. 122(d)(4) prohibits disclosure of personally identifiable information without prior written consent of the parent or student. All other comments and responses involving eligible training providers are found at subpart D,

§§ 680.400 through 680.530. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that § 682.200(b) specify that information about physical and programmatic accessibility for individuals with disabilities (proposed § 682.200(b)(7)) be made available in accessible formats.

Department Response: The requirement to make this information available in accessible formats is already required under the Americans with Disabilities Act and other provisions of WIOA. Therefore, no changes were made as a result of this comment.

Comments: Regarding proposed § 682.200(d), commenters asserted that conducting evaluations is not the best use of limited State funds and recommended that it be an allowable statewide activity or reserved for the Federal government.

Department Response: WIOA provides that evaluation is a required activity. Evaluation as a statewide activity is further discussed under § 682.220. The Department notes that there was a small edit to § 682.200(d) moving the statutory reference to the end of the regulatory text. However, no changes have been made to the regulatory text as a result of this comment.

Comments: One commenter recommended that the Department require that the one-stop delivery system receive technical assistance to help women entering apprenticeship and pre-apprenticeship programs, and recommended that § 682.200(f) be expanded to require technical assistance delivery to all front line and managerial staff at one-stop centers and to provide information on the economic benefits of nontraditional careers to one-stop participants.

Department Response: The Department has determined that there are sufficient references and requirements throughout WIOA and this Rule that provide an improved linkage to apprenticeship and pre-apprenticeship programs and that this specific requirement is not needed.

Furthermore, § 682.210(e) already allows for the implementation of programs to increase the number of individuals training for and placed in nontraditional employment. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that § 682.200(f) specifically include individuals with disabilities in its statement of the requirement that States assist in local staff training to provide opportunities for individuals with barriers to employment. Also with regard to § 682.200(f), this commenter recommended that States should examine Federal contractors doing business in their States, as doing so is particularly important for job seekers with disabilities because of the regulations implementing sec. 503 of the Rehabilitation Act of 1973, as amended, at 41 CFR part 60-741.

Department Response: Individuals with disabilities are a target population of WIOA. The Department has determined that the reference to barriers to employment sufficiently includes individuals with disabilities based on the statutory definition contained in WIOA sec. 3(24)(D). With regard to States examining Federal contractors doing business in their area, they must follow the regulations governing the Rehabilitation Act of 1973, as amended. No changes have been made to the regulatory text as a result of these comments.

Comments: Regarding proposed § 682.200(g), several commenters recommended that the Department clarify how States are required to "assist" local areas. One commenter requested clarification of what it means to assist local areas in regional planning and service delivery, and whether this includes financial assistance.

Department Response: States must "assist" local areas through a variety of methods. This will include the provision of technical assistance, compliance assistance, strategic planning initiatives, or other activities designed to improve or enhance the workforce development system

at the local level. The Department declines to define explicitly "assist" further. Doing so might limit the types of technical assistance and other efforts that a State may seek to provide. With regard to the provision of financial assistance, yes, an allowable use of statewide activities funds under § 682.200 could include financial assistance related to regional planning efforts.

Comments: Regarding proposed § 682.200(h), a commenter recommended that the Departments issue additional guidance on implementation of the industry or sector partnerships that are a required activity at the State and local levels. This commenter also expressed concerns that the NPRMs provided little guidance on how States and local areas can meet their statutory requirements with respect to industry or sector partnerships. This commenter predicted that limited instruction may lead to confusion and delayed implementation among stakeholders. A separate commenter recommended an emphasis on the needs of and opportunities for immigrant and Limited English Proficient workers and business owners.

Department Response: The Department is committed to the successful implementation of industry and sector partnerships throughout the nation's workforce development system. To accomplish this, significant technical assistance activities will occur in this area. The Department has strategically chosen not to further define the requirements around industry and sector partnerships in regulations as effective models and solutions are likely will evolve over time. Instead, the Department's efforts will be focused on the collection and dissemination of promising practices from States and local areas that have already developed successful models. The Department has determined that rather than a lack of instruction leading to confusion or delay, a lack of a more rigid definition will provide for the highest level of innovation possible. Additional guidance may be issued on this topic in the future. In addition, the Department will support various technical assistance efforts focusing on industry and sector partnerships based on

successful models from around the nation. Furthermore, there is no need to place additional emphasis on immigrant and Limited English Proficient populations since these individuals would generally be included in the definition of those with barriers to employment, whose needs are already emphasized throughout WIOA. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that § 682.200(k) clarify that providing "additional assistance" to local areas with a high concentration of eligible youth may include creation of a central coordinating body or use of a "qualified intermediary" defined as an entity with a demonstrated expertise in building partnerships. The commenter stated that qualified intermediaries serve an important role by streamlining services and filling gaps in support and services. Further, this commenter recommended that the Department clarify that "additional assistance" includes supporting development of credit transfers and articulation agreements between local education agencies (LEAs) and institutions of higher education within the State. The commenter reasoned that these programs bridge the connection between academics and career preparation, as well as between secondary and postsecondary school education.

Department Response: WIOA allows States to engage in any of the activities described by the commenter, as the provision of additional assistance under § 682.200(k). The regulation requires States to assist local areas with high concentrations of eligible youth. The assistance needed is likely to vary from local to local. This assistance might be provided in the areas of program design, partnering, resource sharing, and other areas. Providing a definitive list of assistance or specific examples might be limiting. Instead, the Department will continue its focus on technical assistance and regular guidance in the area of youth services. No changes have been made to the regulatory text as a result of these comments.

Comments: One commenter requested that the Department develop a common intake at the Federal level that covers all required partners and test it for customer satisfaction. Similarly, another commenter asked if States would be developing and disseminating common intake procedures and related items, including registration processes, across core and partner programs.

Department Response: Given the variety of State and local workforce development systems, a single, Federally mandated common intake process is not feasible. However, the Department remains committed to working with the Federal partners to limit the duplication of effort among and between core and partner programs relative to service design and eligibility requirements. The States are best positioned to develop common intake procedures through the State WDB. No changes have been made to the regulatory text as a result of these comments.

Section 682.210 What are allowable statewide employment and training activities?

In addition to the required statewide activities, States are provided with significant flexibility to innovate within the public workforce system with various allowable statewide employment and training activities. These allowable activities are vital to ensuring a high quality public workforce system, and can be used to ensure continuous improvement throughout the system. This regulation is not designed to be an exhaustive list, but more illustrative of the types of allowable statewide activities that may be provided with these funds. The Department has made a clarifying edit at the beginning of § 682.210.

Comments: A commenter expressed support for proposed § 682.210(c) because it emphasizes the State's role in developing and implementing strategies for serving individuals with barriers to employment and encourages States to partner with other agencies to coordinate services among one-stop partners. This commenter asserted that Governors have a vital role in coordinating different funding sources for training to enable effective service delivery. Another

commenter supported the flexibility in § 682.210 for the types of statewide activities that States can implement using the Governor's Reserve. However, this commenter recommended that the Department amend this section or provide additional guidance to encourage States to consider programs that will help align core WIOA title I programs with one another and with title II programs (e.g., career pathway programs and technology access programs). A separate commenter also expressed support for the Departments to issue guidance on the alignment of WIOA title I and title II services directed to immigrant and Limited English Proficiency individuals, and additionally in support of formal guidance affirming that all individuals with work authorization, including immigrant youth with Deferred Action for Childhood Arrivals (DACA) status, are eligible to participate in title I programs.

Department Response: The Department agrees that the Governors have a vital role in coordinating the different funding sources for training available in their State. Furthermore, the Department has concluded that this role extends well beyond WIOA and should include the coordination of all funding sources (Federal, State, foundations, etc.) available within the State. Additional guidance will be issued by the Department, outside of the regulations, to help Governors strengthen alignment of all programs contained under WIOA and all those related to workforce development. Based on the planning requirements at the State, regional and local level already contained in this regulation, the Department has determined that a change to this section is not warranted. Nothing in this statute or regulations prohibits States from acting independently to align the programs covered under WIOA or outside of it. WIOA and the implementing regulations provide only the minimum of what States must do to be compliant. WIOA and regulations should be seen as a starting point for further alignment of the workforce development, economic development, and educational systems within a State. With regard to

youth with DACA status, the Department will consider issuing guidance as necessary. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that § 682.210 specify how activities can target individuals with disabilities wherever possible (e.g., in paragraphs (c), (k), (m), and (n)(2)). Further, this commenter recommended that the Final Rule specifically identify State programs relating to intellectual and developmental disabilities, Statewide Independent Living Councils, and centers for independent living so that they are not overlooked in program coordination. In regard to developing strategies to serve individuals with barriers to employment as permitted by proposed § 682.210(c), this commenter detailed several core areas for States to focus their partnership building efforts, including supporting businesses in their efforts to employ individuals with disabilities, building capacity of front line staff to implement evidence-based practices in serving employees with disabilities and the employers who hire them, and preparing youth with disabilities for careers that use their full potential.

Department Response: The Department agrees that coordination between and among the organizations listed by the commenter and the State and local workforce development systems are essential to improving services to individuals with disabilities. However, the Department has concluded that there is no need to list these organizations specifically in the regulatory text, and that each State and local area is uniquely positioned to determine which of these organizations and programs are included in their planning processes and service delivery models. However, the Department notes that WIOA sec. 3(24) defines "individual with a barrier to employment" to include "individuals with disabilities," and reminds the public that the emphasis throughout WIOA and this regulation on including, and tailoring services to meet the needs of, individuals with barriers to employment encompasses an emphasis on including, and tailoring services to

meet the needs of, individuals with disabilities and other barriers to employment. By extension: the regulatory text at § 682.210(c), (k), and (m) should be understood to include programs carried out by local areas for individuals with disabilities. The Department also agrees that WIOA requires training for front-line staff and the identification and dissemination of promising practices on all areas of workforce development, including the provision of services to individuals with disabilities, including youth. [WIOA secs. 107(d)(11)(B), 108(b)(6)(C), and 134(a)(2)(B)(i)(IV).] No changes have been made to the regulatory text as a result of these comments.

Comments: Regarding the NPRM preamble discussion of § 682.210(d) and (e), a commenter requested that the Department clarify the term "real-time labor market analysis," commenting that real-time LMI is a commonly used term that often refers to current data but that the term has a lot of associations that are not well-defined in terms of data items, levels, and area of detail.

Department Response: Traditional labor market information (LMI) is based on data gathered through Federal and State surveys and administrative data. These surveys typically utilize rigorous sampling criteria and careful sampling frames. Traditional LMI provides significant insight into labor market trends and indicators, but the process of gathering the data is time-consuming and results in unavoidable lag-time for publication. Real-time labor market analysis, also referred to as real-time LMI, utilizes online job postings that are aggregated daily. Given the ever-increasing use of technology in the LMI field, the Department has determined not to define the term "real-time labor market analysis." The Department has supported previous evaluations and research products on real-time labor market analysis all of which are available online through the Web site of the Employment and Training Administration at www.doleta.gov

and through the Workforce GPS platform at www.workforcegps.org. No changes have been made to the regulatory text as a result of these comments.

Comments: Two commenters supported including NFJP grantees among entities with access to Governors' 15 percent set-aside funds for statewide activities.

Department Response: NFJP grantees are awarded funds through various grant programs. Furthermore, there is no restriction on additional partnerships that States can make with NFJP grantees under the statewide activities section. The Department has concluded that a special reference to NFJP grantees is not warranted and no changes have been made as a result of these comments.

Comments: A commenter suggested that statewide activities funds should be accessible to a labor/management training fund of which the employer is a contributing member, and that apprenticeships should be an approved expense for incumbent worker training.

Department Response: The regulation does not restrict the States from engaging in the activities described by the commenter related to labor/management training funds and apprenticeship. The types of programs and partnerships that a State chooses to enter into are best left to the individual State WDBs to meet the specific workforce needs in their State. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that Governors be authorized to approve automatically public higher education schools as eligible training providers under WIOA, in a similar manner to the authority for automatic approval of apprenticeship programs. The commenter further urged that such approval should cover all programs of study and that the school not be subject to initial or subsequent designation.

Department Response: WIOA does not provide the authority for this type of automatic designation, so no changes have been made as a result of this comment.

Section 682.220 What are States' responsibilities in regard to evaluations?

Comments: The Department received a number of comments on the proposed regulations in § 682.220, concerning State responsibilities on evaluations under WIOA sec. 116(e) and the required use of State set-aside funds under WIOA sec. 129(b)(1)(A) and sec. 134(a)(2)(B)(vi) to conduct evaluations. Several commenters were supportive of provisions in this section, with one commenter expressing optimism about the possibility of States conducting longer-term impact studies of Vocational Rehabilitation. Another commenter supported the development of evaluations "to explore innovations surrounding integrated systems, coordinated services, career pathways, and multiple forms of engagement with businesses." However, many comments were critical of the requirements that States conduct evaluations using the State set-aside funds and provide data for Federal evaluations.

Regarding States' conducting their own evaluations, commenters cited a lack of sufficient funds from the Governors' set-aside as well as a lack of staff capacity. One commenter stated that the requirement "ignores the funding reality" and, along with other commenters, emphasized the many competing requirements for which set-aside funds must be used–a problem noted to be particularly acute in States with a small amount of set-aside funds. The commenters also noted that many States lack staff with requisite knowledge and skills to conduct an evaluation and cannot afford to use consultants. Three commenters noted that, with the exception of evaluations conducted and published by a few States, there is no "established broad-based record of State knowledge of research principles sufficient to effectively manage an evaluation agenda under WIOA." To remedy this situation, commenters suggested that States receive dedicated funding

and Federal support to build their evaluation infrastructure and that the Department waive or suspend the requirement to conduct evaluations until States have sufficient funding and skills, and that the Department should assume primary responsibility for conducting evaluations. Another commenter suggested that conducting evaluations should be an allowable not a required statewide activity.

Department Response: The Department acknowledges that States must balance many priorities in their use of the set-aside, including multiple required activities. The lack of sufficient funds (in the set-aside or from a dedicated funding stream of some kind) to conduct evaluations, as well as lack of staff capacity or, in some cases, lack of available or reliable data, will constrain many States' ability to conduct evaluations. However, WIOA sec. 129(b)(1)(A) and sec. 134(a)(2)(B)(vi) require States to use funds reserved by the Governor for statewide activities to conduct evaluations. Further, the Department has determined that State-conducted evaluations have the potential to be of great practical value to States, including informing service delivery strategies, improving performance, and meeting other requirements under WIOA. For example, evaluation could be used to assist State WDBs in systematically identify promising or proven practices, as required under § 679.130(e), or for analyzing data on the quality, effectiveness, and/or assist the State to prepare its strategic planning process under 20 CFR 676.105 (see Joint WIOA Final Rule). It could further be used for exploring, with other State agencies, how well integration and coordination of services and data systems is proceeding. Therefore, the regulations retain the requirement that States conduct evaluations.

Given the problems identified by commenters, the Department sees the development of States' capacity to conduct evaluation projects as a long-range and iterative process, which the Department intends to aid through various forms of technical assistance and guidance. An

initial, primary goal is to enhance capacity by building knowledge among State staff regarding various methodologies, approaches for enlisting expertise, and the potential role of evaluations and research in meeting State goals and priorities. Further, the regulations at § 682.220(e) and (f) identify areas for State discretion in the methodology, duration and funding of evaluations, all of which may assist States to target their investment in a manner appropriate to the funding available to the State. The paragraphs describe flexibilities that States may use to leverage other funding, and to conduct such evaluation over multiple program years.

Despite flexibilities as to the types of evaluation, methodologies, phases, duration, and funding sources, some States may still be unable to fulfill the requirement to conduct evaluations and seek a waiver. Such a waiver request, like others submitted to the Department in regard to statutory provisions of WIOA, will be reviewed on a case-by-case basis, in light of the requirements of and will be subject to any appropriate conditions and limitations of the Secretary's waiver authority and procedures found at WIOA sec. 189(i)(3), and consistent with §§ 679.610 and 679.620. No changes have been made to the regulatory text as a result of these comments.

Comments: Several commenters objected to annual submission of evaluation reports, which they felt too excessive, given the requirements for annual submission of performance reports. One commenter suggested that States should instead make available to the public and to State and Local WDBs evaluation and research reports prepared by Federal evaluators with State-specific comments, in line with suggestions that evaluation be primarily a responsibility for the Federal government.

Department Response: While WIOA sec. 116(e)(3) requires the State to annually prepare, submit, and make available to the public reports containing the results of evaluations

conducted using State set-aside funds, the Department recognizes that evaluations may be lengthy and not end neatly within a program year. For this reason, the regulation has been revised to clarify that the reports are to be prepared, submitted to State and Local WDBs, and made available to the public when results become available. The revision to the regulation at § 682.220(c) is described in more detail below. Also, since States retain the responsibility to disseminate reports on State-conducted evaluation, the Department declines to adopt the suggestion that States only distribute Federal evaluations with State comments.

Comments: Several commenters were critical of the regulation to implement the requirements in sec. 116(e) that States cooperate to the extent practicable in evaluations conducted by the Departments of Labor and Education (under WIOA secs. 169 and 242 and relevant sections of the Rehabilitation Act of 1973) by providing data, responding to surveys, allowing timely site visits, and informing the Secretary in writing if such cooperation was not practicable. A few commenters asserted that quantitative data was already available because the data elements and narrative reports provided to the Department and the other Federal agencies should provide an ample source of statistical data for evaluators without interrupting individual States with data requests. The commenters indicated that States' responsibilities regarding evaluations and research are only "to allow on-site observation and in limited circumstances provide supplemental qualitative data." Another commenter felt that the regulations were "adversarial" and would result in minimum levels of cooperation from States. The commenter stated that the regulation did not define the term "to the extent practicable," but noted that in the UI regulation, it is defined as non-interference "with the administration of State UC law." The commenter also stated that the Department's "intrusion into State evaluation activities is by its

very nature ‘interference’ with non-UI State agency functions, since it is carried out pursuant to “adversarial rules” and for this reason, needed to be withdrawn.

Department Response: The Department notes that the regulation at § 682.220(d) implements a statutory requirement under WIOA sec. 116(e)(4) requiring State cooperation, to the extent practicable, in Federal evaluations. WIOA sec. 116(e)(4) specifically identifies such cooperation as including the provision of data and survey responses, and allowing site visits in a timely manner. As noted in the preamble to the NPRM, this requirements in WIOA sec. 116(e)(4) recognize the vital role of States in providing various forms of quantitative and qualitative data and information for Federal evaluations that are not available at the Federal level. In order to conduct evaluations, individuals need to be tracked over time periods that do not align well with quarterly performance reporting. Depending on the research questions an evaluation is addressing, data on the same individuals or cohorts of individuals may be needed for timeframes within the same quarter or across multiple quarters, neither of which is feasible to track or match within the performance reporting structure of WIOA. High quality evaluations also involve the collection of data on control or comparison groups of individuals, so supplemental data may be needed to account for this. Frequently, individual level earnings information is critical for evaluations. Data, survey responses, and site visit information are often needed to understand, for example, participant characteristics, services, systems, labor market outcomes, the role of decision-makers, implementation issues, and the quality of the customer experience. In response to the commenters’ suggestions, the Department notes that States may, in response to data requests for a Department of Labor or a Department of Education evaluation, identify other data already provided to the Federal government and of possible use in

the evaluation, and the Departments will work with the State to determine if the other data are suitable. However, no change to the regulatory text has been made in response to the comments.

Further, the Department disagrees with the characterization of these regulations, which implement a statutory requirement by requiring cooperation to the extent practicable, as adversarial or as interference. The Department also declines to further define "to the extent practicable" in the regulation. Rather, if a State determines that timely cooperation in data provision is not practicable, the State may proceed according to § 682.220(d)(3) and identify in writing the reasons it is not practicable, and cooperate with the Department to develop a plan or strategy to mitigate or overcome the problems preventing timely provision of data, survey responses and site visits, as statutorily required. The requirement at § 682.220(d)(3) was intended to afford a relatively easy method for communicating with the Department and allowing for an amicable resolution of any problems. No changes have been made to the regulatory text as a result of these comments.

Comments: Several comments were received regarding promoting specific evaluation and research projects to be conducted at the State level under sec. 116(e) or at the Federal level under sec. 169 (which sets forth the Department's role in evaluation and research and authorizes a wide array of studies). One commenter recommended that the regulations require States to focus evaluations on services to individuals with disabilities under WIOA title I and that customer feedback be developed from this population be developed to determine if programs are truly responding to their needs.

Department Response: The Department notes that while these proposed specific evaluation and research projects are permissible and desirable, WIOA sec. 116(e) allows States to determine the content of any evaluation. The Department will not reduce the States'

flexibility by requiring particular evaluation or research projects. No changes have been made to the regulatory text as a result of these comments.

While the Department did not promulgate regulations for WIOA sec. 169, the Department is addressing comments relating to Departmental evaluation and other research activity, since it is similar to the evaluation functions required of States under WIOA sec. 116 (e). There are no changes to the regulatory text as a result of these comments. The comments and the Department's response are as follows.

Comments: Several commenters expressed support for the requirement under WIOA sec. 169(b)(4)(I) that the Department conduct a multi-State project to develop capacity for, implement, and build upon career advancement models and practices for low-wage health care providers and providers of early education and child care.

Department Response: The Department notes that it has conducted and is currently engaged in research and evaluation projects related to career pathways programs in health care and child care occupations. Separately, the Department notes that developing and implementing career pathways is a function of State WDBs and Local WDBs under WIOA sec. 101(d)(3)(B) and sec. 107(d)(5)and has been promoted by ETA in guidance and various forms of technical assistance to the public workforce system.

Comments: Another commenter suggested that the regulations state that the Department undertake research into women's representation in nontraditional jobs covering and the means by which barriers to women's employment in these occupations can be removed. The commenter also suggested that guidance eventually be issued on the content of such studies and offered example of topics that could be covered in them, such one-stop capacity, training, and policies in regard to nontraditional careers for women.

Department Response: The Department notes that it is currently conducting a research project, under prior legislative authority, on employment in nontraditional occupations in order to identify, and evaluate evidence-based strategies to increase opportunities for traditionally under-represented groups.

For the convenience of the reader in understanding the totality of the regulation at § 682.220 and the changes made in the section, each part is discussed sequentially below. The revisions entailed reorganizing portions of the section to clarify the requirements and flexibilities for States, all in response to comments and to ensure conformity with statute.

In particular, the revisions reflect the distinction between the requirement that States conduct evaluations of title I core program activities (as per WIOA secs. 129(b)(1)(A) and 134(a)(2)(B)(vi)) and the permissible ability of States to conduct research and demonstration projects as an allowable statewide activity under WIOA secs. 129(b)(2)(A) and 134(a)(3)(A)(ix) Accordingly, the title of this section has been revised as "What are States' responsibilities in regard to evaluations?," with the concluding phrase "and research" removed. Likewise, the phrases "evaluations and research projects" and "evaluations and other research" have been consistently revised throughout this section to refer only to "evaluations." These revisions ensure that the requirements of § 682.220, including the coordination and reporting requirements, apply only to evaluations conducted as a required statewide activity. It should be noted that these the provisions of § 682.220 do not apply to research and demonstration projects conducted as an allowable statewide activity

The Department made a number of revisions to the regulatory text to clearly identify certain options that States may, but are not required to, use in fulfilling the statutory requirement to conduct evaluations as a statewide activity. Some of these options were identified in the

NPRM, while others have been developed in response to comments received. In order to distinguish between regulatory requirements and regulatory flexibilities, this section has been reorganized so that these options are now stated in revised § 682.220(e) and in the new § 682.220(f).

Section 682.220(a)

Section 682.220(a) describes the requirement under WIOA sec. 134(a)(2)(B)(vi) for States to use funds reserved by the Governor for statewide activities to conduct evaluations of activities under the WIOA title I core programs, according to the provisions of sec. 116(e). The paragraph has been revised to state that the purpose of evaluations is "to promote continuous improvement, research and test innovative services and strategies, and achieve high levels of performance and outcomes." The first and third purposes—promoting continuous improvement, and achieving high levels of performance and outcomes—reflect the statutory requirement of WIOA sec. 116(e)(1). The second purpose, as proposed by the Department in the NPRM, was to test innovative services and strategies. It has been revised to reflect the reality that rigorous tests of such services and strategies often are preceded or accompanied by related forms of research. This section has also been renumbered from § 682.220(a)(1) to § 682.220(a).

The paragraph proposed as § 682.220(a)(2) has been deleted. This paragraph was deleted to avoid any confusion about research and demonstration projects conducted as an allowable statewide activity, to which the provisions of § 682.220 do not apply. Also, § 682.220(a)(3), regarding the use of funds other than the Governor's Reserve, has been revised and relocated to a new § 682.220(f), as discussed below.

Section 682.220(b)

The regulations under § 682.220(b) describe a number of requirements for evaluation under the State Set-aside. The language at § 682.220(b) was revised from that in the NPRM to remove the reference to "research projects" and thus to clarify that the requirements are statutorily required only for evaluations. In addition, the Department made a technical revision to replace the reference to evaluations "funded in whole or in part with WIOA title I funds" with a reference to evaluations "conducted under paragraph (a)." The language was revised to clarify that the requirements in paragraph (b) apply to evaluations conducted pursuant to paragraph (a).

Paragraph (b)(1) of this section implements the statutory requirement for States to coordinate and design evaluations in conjunction with State and Local WDBs and with other agencies responsible for core programs, as set forth in WIOA sec. 116(e)(2). Paragraph (b)(2) implements the requirement for States to include, where appropriate, analysis of customer feedback and outcome and process measures in the statewide workforce development system, as set forth in WIOA sec. 116(e)(2). Where the Department requires specific information related to these requirements, it will do so through the ICR process. Paragraph (b)(3) implements the requirement for States, in conducting evaluations, to use designs that employ the most rigorous analytical and statistical measures such as the use of control groups, as set forth in WIOA sec. 116(e)(2). The regulation clarifies that these approaches should be used when appropriate and feasible, thus indicating they are not intended as a "one-size-fits-all" checklist of requirements for every evaluation project. Paragraph (b)(4) implements the statutory requirement set forth in WIOA sec. 116(e)(1) for States, to the extent feasible, to coordinate the State's evaluations with those provided by the Secretary of Labor and the Secretary of Education under the particular statutes as cited. These paragraphs are adopted as proposed.

Section 682.220(c)

Section 682.220(c) implements the statutory requirement for States to annually prepare, submit, and make available reports containing the results of the evaluations the States conduct, as set forth in WIOA sec. 116(e)(3). The Department has made two revisions to this section. First, as noted above, in response to comments received, the Departments has clarified that States must prepare, submit to the State and Local WDBs, and disseminate to the public results from these evaluations "as available." The Department recognizes that when evaluations are conducted over multiple program years, as permitted in revised paragraph (e)(3), results may not be available in every program year. Evaluation reports must be made publically available during the program year the final report is finalized. In light of the options States have in terms of the components and time needed for evaluations as clarified in § 682.220(e)(3), evaluations may extend into multiple program years. Second, the Department has revised this section to remove any reference to "other research" to avoid any confusion with research as an allowable statewide activity, for which the reporting requirements are not statutorily required under WIOA. However, the Department, in recognition of the benefits of disseminating research, strongly encourages States to make publicly available the reports emanating from such other research that States conduct.

Section 682.220(d)

Section 682.220(d) implements the statutory requirement for States to cooperate, to the extent practicable, in evaluations and related research projects conducted by the Secretaries of Labor and Education. The Department has made minor revisions, for the sake of clarity, to three aspects of this section. First, the Department has removed the reference to the "agents" of the "Secretaries of Labor and Education" because a reference to the Secretaries always implicitly includes their agents, such as sub-agencies, contractors, or grantees. Second, the Department has

replaced the reference to "sec. 116(e)(4) of WIOA" with a reference to the "laws cited in paragraph (b)(4) of this section." This revision is non-substantive as the laws cited in paragraph (b)(4) of this section are those noted under sec. 116(e)(4) of WIOA, intended to simplify the language of the regulation.

Paragraph (d)(1) of this section describes the particular data, information, and assistance that States must timely provide in cooperation with evaluations and related research projects conducted by the Secretary of Labor and Secretary of Education. Paragraph (d)(2) describes the requirement for the States to encourage cooperation in data provision by one-stop partners at the local level. Paragraph (d)(3) describes the requirement for the Governor to provide written notification to the Secretary if it is not practicable for the State to timely provide the data described in paragraph (d)(1).

No comments were received regarding these paragraphs. However, paragraph (d)(2) has been revised to correct an erroneous reference to paragraph (f)(1)(a)-(c) to the appropriate citation to paragraphs (d)(1)(i)-(iv). These paragraphs are adopted as proposed, with the described revision.

Section 682.220(e)

Section 682.220(e) has been revised to identify allowable flexibilities in the types of studies, phases, and time frames that are available to States in fulfilling their obligation to conduct evaluations, all in response to the concerns expressed in the comments about this requirement.

Paragraph (e)(1) of § 682.220 clarifies that under WIOA sec. 116(e)(1) States, while required to use set-aside funds to evaluate activities under title I core programs, are permitted to conduct evaluations that jointly examine activities under title I and those under other core

programs, so long as such evaluations are developed and designed in coordination with the relevant State agencies responsible for core programs under § 682.220(b)(1). Examples of evaluations of activities under multiple core programs include studies of referral processes, systems integration, or infrastructure cost sharing among the core programs.

Paragraph (e)(2) provides a new flexibility to permit States to conduct evaluations similar to those authorized for, or conducted by, the Departments of Labor and Education under the laws cited in § 682.220(b)(4), and cites as examples "process and outcome studies, pilot and demonstration projects that have an evaluative component, analyses of programmatic data, impact and benefit-cost analyses, and use of rigorous designs to test the efficacy of various interventions."

Paragraph (e)(3) was added to clarify flexibilities for States to conduct evaluations over multiple program years, involving multiple phases "such as a literature or evidence review, feasibility study, planning, research, coordination, design, data collection, and analysis, and report preparation, clearance, and dissemination." As noted above, the Department has added these flexibilities for States since, based on its own experiences in conducting evaluations, which have often entailed many such components and extended over multiple years.

Section 682.220(f)

Section 682.220(f) describes allowable flexibilities for the States in funding evaluations in the use of funds from sources other than the State set-aside. Section 682.220(f)(1) permits States to use funds from any WIOA title I through IV core program to conduct evaluations, as determined through the coordinative processes associated with paragraph (b)(1). This paragraph was, for the sake of clarity, relocated from § 682.220(a)(3) of the NPRM. Further, consistent with the decisions discussed above, the reference to "other research" was removed. The

Department also revised the paragraph to clarify that States may use funds from any WIOA title I through IV core program (per WIOA sec. 116(e)(1)); the NPRM had referred to only title II through IV core programs. This revision clarifies that, while States must conduct evaluations using State set-aside funds under WIOA secs. 129(b)(1)(A) and 134(a)(2)(B)(vi)), they may additionally use available funds from other core programs for such evaluations. This flexibility may be of particular interest to States planning evaluations that jointly study WIOA title I core program and other core program activities (a flexibility identified in § 682.220(e)(1) above).

Section 682.220(f)(2) permits States to use or combine funds, consistent with Federal and State law, regulation and guidance, from other public or private sources, to conduct evaluations relating to activities under the WIOA title I through IV core programs. Such projects may include those funded by the Department of Labor and other Federal agencies, among other sources. This section was initially located at § 682.220(e) of the NPRM. In response to concerns expressed by commenters, the Department has revised this section slightly by adding language to clarify that these additional public or private funding sources can include Department of Labor or other Federal agencies' grants, cooperative agreements and contracts. The Department has also revised this section, consistent with the decisions discussed above, to remove the reference to "research, and other demonstration projects."

4. Subpart C – Rapid Response Activities

Introduction

This subpart discusses the important role that rapid response plays in providing customer-focused services to both dislocated workers and employers, ensuring immediate access to affected workers to help them quickly re-enter the workforce. The regulations reflect the lessons learned from the innovations by, and best practices of, various rapid response programs around the country in planning for and meeting the challenges posed by events precipitating substantial

increases in the number of unemployed individuals in States, regions, and local areas. The regulations provide a comprehensive framework for operating successful rapid response programs in a way that promotes innovation and maintains flexibility to enable States to manage successfully economic transitions.

The Department is making a technical correction to § 682.300(a). Proposed § 682.300(a) made reference to rapid response being discussed in §§ 682.310 through 682.370. The reference to § 682.310 is corrected to reflect § 682.300. This technical correction makes it clear that the regulatory text in § 682.300 also is intended to be included in the description of rapid response.

The remaining analysis that follows provides the Department's response to public comments received on the proposed part 682 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

Section 682.300 What is rapid response, and what is its purpose?

Section 682.300 describes rapid response, which promotes economic development and vitality and delivers critically important solutions to workers and businesses in transition.

Comments: The Department received comments on other areas of part 682, subpart C relating directly to rapid response, (e.g., comments received on § 682.330(i) regarding Trade Adjustment Assistance (TAA) and a comment regarding Worker Adjustment and Retraining

Notification (WARN), both discussed later in this preamble). The nature of some of these comments led the Department to conclude that clarifying information is needed regarding the circumstances under which rapid response must be delivered as well as the term "mass layoff."

Department Response: In order to provide this clarification, the Department made the following revisions to § 682.300 and other sections of subpart C : (1) The Department made a correction to the regulatory text in several places by adding the word "mass" to the text in §§ 682.330(j) and 682.350 to align the regulatory text with the statutory language in WIOA sec. 134(a)(2)(A)(i)(II), which refers to "mass layoffs," whereas the proposed regulatory text only referred to "layoffs"; (2) The Department has added new sections to the regulatory text to clarify the circumstances under which rapid response must be delivered (§ 682.302) and to reflect the definition of the term "mass layoff" for purposes of rapid response (§ 682.305); and (3) The text at § 682.300(a)(1) has been revised to include a reference to new section, § 682.302. As a result of the addition of § 682.302, paragraphs (i) and (ii) of § 682.300(a)(1) were deleted and incorporated into § 682.302, since these items are more relevant to that section. The Department also notes that the text that was previously at § 682.300(a)(1)(i) and incorporated into § 682.302 at § 682.302(a) has been revised. Where the previous text referred to "announcement of a closure or a layoff," the new text refers to "announcement or notification of a permanent closure, regardless of the number of workers affected." The Department has determined that these revisions more clearly relay its intent that Rapid Response services are required to be delivered in the case of a permanent closure and irrespective of whether information about the layoff is received via an announcement or other notification method. The revision also makes it clear that there is no numerical threshold for delivering rapid response in these instances. Rapid Response is required, regardless of the number of workers affected by the closure. Additional information

regarding the circumstances under which rapid response must be delivered, are further explained in the preamble discussion in § 682.302 below.

Section 682.302 Under what circumstances must rapid response services be delivered?

This section explains the circumstances that trigger the delivery of rapid response.

As previously noted in the preamble discussion on § 682.300, the Department received comments that led the Department to add § 682.302 in order to clarify the circumstances under which rapid response must be delivered. Rapid Response must be provided when one or more of the following circumstances occur:

a) Announcement or notification of a permanent closure:

An announcement or notification of a permanent closure of a facility, store, enterprise, or plant, regardless of the number of workers affected;

b) Announcement or notification of a mass layoff as defined in § 682.305 and discussed in that section of this preamble;

c) A mass job dislocation resulting from a disaster:

Any natural or other disaster event, as defined by state or local emergency management policies, that results in job loss for a number of workers sufficient to meet a state's definition for mass layoff (see the discussion under number 4 below), or causing 50 or more workers to become dislocated. The Department encourages States to consider appropriate roles and responsibilities for rapid response activities following a natural or other disaster event and establish these roles and responsibilities as part of any emergency management plans that are developed;

d) The filing of a TAA petition:

This is required in accordance with the requirement in sec. 221(a)(2)(A) of the Trade Act, which requires that the Governor ensure that rapid response services are delivered to all workers who

are covered by the petition for TAA. Additionally, please see the discussion below in response to comments on § 682.330(i).

Although the regulatory text now reflects the circumstances that require delivery of Rapid Response and the Final Rule preamble clarifies the circumstances under which rapid response must be provided, the Department is not suggesting that these are the only instances for which States and local workforce areas may provide rapid response. Instead, the Department strongly encourages States or their designated entities to deliver rapid response services to as many workers and companies as possible and to adopt policies that maximize the opportunities for rapid response services to be provided in a manner that best supports the businesses and workers in their communities.

Section 682.305 How does the Department define the term "mass layoff" for the purposes of rapid response?

This section explains the definition of the term "mass layoff" for the purposes of rapid response.

As previously noted in the preamble discussion on § 682.300, the Department received comments that led the Department to define the term "mass layoff" for purposes of Rapid Response.

A mass layoff will have occurred for the purposes of rapid response when at least one of the following conditions have been met:

- A mass layoff, as defined by the State; however, under no circumstances may a State's definition of mass layoff exceed a minimum threshold of 50 workers. For example, in its definition, the State cannot set the minimum threshold of laid off workers at 75, but it can be set to as few as 1. The definition may be based upon factors such as the size of

the company that is impacted, the percentage of workers impacted by a layoff, the income level of the employees, and other relevant factors;

- Where a State has not defined a minimum threshold for mass layoff, any layoff affecting 50 or more workers; or,
- Upon receipt of a WARN Act notice (see discussion in § 682.320 below in response to a comment on this subpart), regardless of the number of workers affected by the layoff announced.

Additionally, the Department notes that the definition of "mass layoff" discussed in this subpart and included in the new regulatory text at § 682.305, differs from the definition used in part 687, National Dislocated Worker Grants, which also refers to the term "mass layoff." For Rapid Response, the Department allows States more flexibility in defining mass layoffs. Rapid Response services encompass strategies and activities that States can provide to assist workers affected by layoffs and closures as described at § 682.300 (including information about available employment and training programs), and the Department encourages States to do so, regardless of the number of workers affected. In contrast, the DWG program is aimed at significant events that cannot reasonably be expected to be accommodated within the ongoing operations of the formula-funded dislocated worker program. Accordingly, for the purposes of the DWG program, the Department separately defines "mass layoff" as those affecting 50 or more workers from one employer in the same area. Additional details can be found in part 687.

Section 682.310 Who is responsible for carrying out rapid response activities?

Section 682.310 clarifies that the State or an entity designated by the State is responsible for carrying out rapid response activities.

The Department would like to clarify the intent in § 682.310(a). The regulatory text indicates that rapid response must be carried out by the State or by another entity designated by the State. The State or entity designated by the State must coordinate, communicate, and work with Local WDBs, CEOs, and other stakeholders as appropriate. The Department included "other stakeholders" because it has determined that the intent of the law is to ensure coordination with all relevant parties so rapid response services can be delivered effectively. Paragraph (b) of § 682.310 reinforces the requirement that regardless of whether a State designates a non-State entity or entities to carry out rapid response, the State must establish and maintain a rapid response unit to oversee this program.

Section 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?

This section describes a comprehensive approach to layoff aversion, designed to prevent or minimize the duration of unemployment.

Comments: The Department received a few comments requesting some additional changes be made to the text of the NPRM.

One commenter requested an addition to § 682.320(b)(2) to insert language that States should work with both business and labor organizations in those instances where a collective bargaining agreement is in place and consult with unions in cases where no such agreement exists. The commenter also requested that language on partnering or contracting with labor organizations be added to § 682.320(b)(7). Lastly, the commenter recommended an additional provision that included language about working with labor organizations.

Department Response: Paragraph (b)(2) includes the following as an allowable layoff aversion activity: "ongoing engagement, partnership, and relationship-building activities with

businesses in the community, in order to create an environment for successful layoff aversion efforts and to enable the provision of assistance to dislocated workers in obtaining reemployment as soon as possible." Developing strong relationships with businesses is critical in layoff aversion, and the Department has concluded the proposed regulatory text best supports the intent of this paragraph by maintaining its sole focus on the business partnership, since businesses are often the most critical players in helping avert layoffs. However, developing relationships with unions is important as well, and language to this effect can be found at § 682.330(h) which requires that States develop partnerships with a variety of organizations, including unions, as appropriate, in order to exchange information among these partners so that rapid response is provided as early as possible. Information relating to the customization of layoff aversion activities is specifically highlighted in the regulation requiring these partnerships. No changes were made to the regulatory text in response to these comments.

Comments: One commenter suggested that allowable layoff aversion activities be organized into "core" and "complementary" activities. Core activities would be those that the commenter considers to be "true business disruption turn-around services," and complementary would be those "that are important, but would not avert closure…in an emergency business disruption."

Department Response: The Department concluded that making distinctions between types of layoff aversion activities does not meaningfully impact the ability of States or local workforce areas to conduct layoff aversion activities, and operators of rapid response programs are best suited to determine how they organize or manage their layoff aversion activities in accordance with the requirements. As a result, the Department has determined that the proposed regulatory text permits State and local rapid response operators the flexibility to meet these

requirements based on the specific needs of the companies and workers being served and the particular characteristics of each event. The categories suggested by the commenter imply that some activities listed are more important than others. The Department has concluded that any allowable activities that are designed to prevent or minimize the duration of unemployment are equally important and valuable, and encourages State and local rapid response teams to develop strategies that maximize the ability to deploy the appropriate layoff aversion solutions for the challenges they face. No changes were made to the regulatory text in response to this comment.

Comments: A few commenters requested that the Department add language to § 682.320 that requires States to describe their layoff aversion strategies in their Combined State Plan or Unified State Plan.

Department Response: The Department does not agree that this language should be added to the regulatory text. Instead, the joint planning guidelines issued by the Secretaries of Labor and Education in March 2016 in TEGL No. 14-15, provides the overall content requirements for the WIOA Unified or Combined State Plans. The guidance is in TEGL No. 14-15, released March 2016, entitled "Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans" and may be found at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm. No changes were made to the regulatory text in response to these comments.

Comments: One commenter requested that language regarding the WARN Act be included in § 682.320 or § 682.330 since WARN notification is an "automatic trigger" to conduct rapid response.

Department Response: The Department agrees that the receipt of a WARN notice is a trigger for rapid response as indicated previously and is clarifying that the issuance of a WARN

notification, regardless of the number of workers affected by the layoff announced, generates the requirement to deliver rapid response. WARN Act notice is required generally for plant closures and mass layoffs as defined in the WARN Act or under State laws expanding the scope of notice requirements, and, thus, a WARN layoff meets the Department's general requirements for mass layoffs and this is reflected in § 682.305. Because WARN notification is covered in this section, no change is being made to the text at § 682.320 or § 682.330 to include WARN notice language.

In § 682.320(b)(4), incumbent worker training is identified as one of the allowable layoff aversion activities. Although no comments were received with regard to this text, the Department has determined that a correction to the regulatory text at § 682.320(b)(4) to insert the word "funding" is needed in order to align the regulatory text with another section of the regulations (§ 680.800(b)) and to clarify that the Department intended rapid response funds to be used to pay for this training to help ensure workers have the skills needed to conduct the work of the employer and that businesses are able to build a skilled workforce commensurate to their needs. An additional correction is made to the regulatory text to make it clear that any incumbent worker training program conducted with rapid response funding must be tied to a broader layoff aversion strategy or must be intended for the purpose of preventing workers from losing their jobs. Incumbent worker training is a critical layoff aversion approach and our intent is to allow rapid response funds to pay for these activities in order to help ensure that rapid response meets its primary goal, which is to prevent or minimize the duration of unemployment.

In order to demonstrate that the funds are being used as part of a layoff aversion strategy or activity, States must develop policies and procedures with respect to the use of rapid response funds for incumbent worker training, including the circumstances under which using rapid

response funds for incumbent worker training would be applicable. As with all incumbent worker training funds, however, the use of rapid response resources to provide incumbent worker training as part of layoff aversion must be above and beyond the normal training offered by businesses to their employees. Rapid response resources must not supplant private funds in these situations.

Section 682.330 What rapid response activities are required?

This section describes the required rapid response activities.

Comments: One commenter requested that the introductory sentence in the regulatory text at § 682.330 be changed from "Rapid response activities must include" to "Rapid response services that must be made available include." The commenter explained that the reason for this request is due to the fact that the State cannot be compelled to deliver services if businesses refuse them.

Department Response: The Department understands that businesses might not always be open to participating in the rapid response process; however, the proposed regulatory text reflects a requirement that was also in effect under WIA and shows the significant responsibility that States have to ensure that rapid response staff establish relationships and develop the skills needed to be able to work with businesses that will enable successful delivery of rapid response services. No changes in regulatory text were made in response to these comments. However, the Department recognizes that businesses are under no obligation to allow or help ensure the smooth delivery of rapid response services, and this can present a significant challenge for rapid response staff. Therefore, the Department determined that States which make all reasonable efforts to deliver services to affected workers, will be determined to have met the requirements of this section. However, the Department considers reasonable efforts to include more than just

cursory attempts. For example, if a business refuses to allow services to be delivered on site or during business hours, rapid response teams should make every effort to ensure worker access to rapid response services at off-site locations and during convenient hours. As previously noted, the requirement that Rapid Response services include services to businesses existed under WIA and during the administration of that law the Department never found a State who had made all reasonable efforts to deliver services to be out of compliance.

Comments: One commenter remarked that the language at § 682.330(i) gives the impression that rapid response must be provided in parallel to Trade Adjustment Assistance (TAA), and this is often not the sequence. The commenter stated that these services are usually decoupled and that rapid response may occur prior to TAA application.

Department Response: The provision at § 682.330(i) is consistent with the requirement in the Trade Act and is included in this regulation to help ensure that this requirement is met. The regulatory text requires that, as appropriate, rapid response services be provided to trade-impacted workers for whom petitions have been filed. Rapid response operators, of course, may assist in coordinating with State TAA staff, local one-stop staff, employers, workers, or unions in filing a petition for TAA on behalf of a worker group negatively impacted by foreign trade. Thus, a delay between petition filing and petition certification will occur, and as petitions may be filed up to 1 year after a worker separation, there may be delays between a worker separation, a petition filing, and the petition certification. The regulatory text is not meant to imply that rapid response services may only be provided once the Trade petition has been filed. Like other workers impacted by layoffs, rapid response services may be provided upon notification of layoffs consistent with State or local procedure. A worker may receive rapid response services prior to the TAA petition filing and re-delivery of rapid response services may or may not be

appropriate, depending on the individual circumstances or timing of the events. Additionally, the content of information provided to the worker group through rapid response may change due to the circumstances or timing of the event, or additional information, such as a TAA Orientation, may occur after petition certification. No changes were made to the regulatory text in response to this comment.

Comments: The Department received several comments on the provision at § 682.330(g)(3) regarding the tracking of information related to rapid response activities. The commenters expressed that it is difficult to track rapid response activities and funds separately.

One commenter opined that this level of detail should not be included as a requirement.

Department Response: The Department expects that its programs must be evidence-based, whenever possible, and rapid response is no different. Capturing and tracking performance and outcome data and information is critical for continuous improvement, for identifying promising practices, and for reporting, and this tracking is required to be done for rapid response activities, as appropriate. No changes were made to the regulatory text in response to this comment.

Comments: Another commenter gave an example of the difficulty involved in tracking rapid response activities. The example provided was visiting with the employer to present affected workers with services. The commenter noted that unless there is a way to track the employees' participation, it would be difficult to determine the outcomes of that activity.

Department Response: The Department does not specify what programmatic data and information States must capture and track; States are best suited to determine what they capture and track based upon the specific circumstances in each State. But, States are required to report to ETA some programmatic information (in accordance with § 682.360, further explained in the

preamble) and report expenditure information, through the ETA 9130 form. Both of these requirements remain consistent from requirements under WIA. However, given the nature of some rapid response activities, the Department agrees that tracking outcome and performance data for all rapid response activities might prove difficult in some instances and the Department will provide, as necessary, guidance or technical assistance to support States with this requirement. No changes were made to the regulatory text in response to this comment.

Regarding the requirement at § 682.330(j) to provide additional assistance to local areas, although no comments were received about this text, the Department wishes to clarify the connection between WIOA and the regulatory text. WIOA refers to events "that precipitate substantial increases in the number of unemployed individuals" as the trigger for potential additional assistance. In the regulatory text, the Department has interpreted this to mean that additional assistance may be provided "when such events exceed the capacity of the local area to respond with existing resources" to address situations such as significant increases in unemployment that have resulted in, or have the potential to cause, a significant impact on the local area's resources. Therefore, additional assistance also may be used to support responses to major dislocation events, to provide layoff aversion efforts, and other allowable activities when these activities exceed the capacity of a local area's formula resources.

Finally, the Department is making several corrections to the regulatory text that includes an edit to § 682.330(e), to delete the reference to WIOA secs. 101(38) and 134(a)(2)(A). Because the paragraph is specifically referencing national dislocated worker grants, it now cites only to the part governing those grants, to be more clear. Also, an edit to § 682.330(h) was made by inserting the word "and" between § 682.330(h)(1) and (2) to reflect that both are expected benefits of developing and maintaining partnerships described at § 682.330(h).

Section 682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?

Section 682.360 requires the reporting of rapid response information on the WIOA individual record.

Comments: The Department received several comments on the issue of reporting. One commenter requested that States and locals be given the opportunity to respond to proposed data collection requirements before they are enacted.

Department Response: The Department solicited feedback on proposed data collection requirements through the ICR process governed by the Paperwork Reduction Act (see 80 FR 43474 (July 22, 2015) and 80 FR 52798 (Sept. 1, 2015)) to ensure that those impacted by collection requirements would have an opportunity to comment on them. Should additional performance data reporting elements be required for rapid response, the Department will work with States and local areas to ensure that reporting burdens are minimized while still meeting program reporting goals. Any additional reporting requirements would be subject to public comment through the ICR process. No changes were made to the regulatory text in response to this comment.

Comments: Another commenter requested that the services required to be captured match the WIASRD.

Department Response: Much of what was collected and reported under WIA will continue under WIOA. States will be required to collect and report in accordance with sec. 116 of WIOA and 20 CFR part 677 (see Joint WIOA Final Rule). In order to provide clarity on the performance data reporting expectations for rapid response, the Department has revised the text at § 682.360. The former text required States to report the receipt of rapid response services of

individuals enrolled as dislocated workers on the WIOA individual record," whereas the text in the Final Rule clarifies that States are required to report the receipt of rapid response services for those individuals who have an existing WIOA individual record or for whom a WIOA individual record is created under programs that report through this mechanism. The new text also clarifies the population to be reported by revising the text from "individuals enrolled as dislocated workers on the WIOA individual record" to "individuals served under programs reporting through the WIOA individual record." These changes account for and align with the performance definitions for participant and reportable individual located at 20 CFR 677.150(a) and (b), provide consistency with the language on the reports, and also place a parameter to more clearly align with those programs that are required to fulfill reporting requirements under 20 CFR part 677 (see Joint WIOA Final Rule). The Department notes that § 682.360 does not independently require the creation of a WIOA individual record for individuals on account of their receipt of rapid response, layoff aversion, or other services under subpart C of this part; rather, § 682.360 requires that where a WIOA individual record exists for an individual served under programs reporting through the WIOA individual record, States must also report information regarding the receipt of services under subpart C. The Department has also added paragraph (b) to § 682.360, which relays that States are required to comply with these reporting requirements, as explained in the Department's guidance. The DOL Performance ICR contains further specifications regarding the collection and reporting of receipt of services under subpart C of this part.

Comments: A few commenters noted that there are difficulties involved with reporting rapid response activities through the WIOA individual record because rapid response services are not necessarily individualized. The commenters stated that the rapid response services are

primarily employer and worksite based and that this information is collected retroactively at best and not likely to produce an accurate report.

Department Response: While the Department understands the challenges of using the individual record to report data on rapid response activities, which are often group-based rather than individualized, there are various methods by which rapid response operators may identify and report on individuals who receive rapid response services. The Department will provide States with technical assistance on this topic as needed. Additionally, the Department recognizes the challenges associated with retroactive collection of information from employers or worksites on rapid response activities and services; the importance of valid and reliable collection is an area that was established as a priority under WIA and continues to be under WIOA. The Department will continue to work across programs to identify best practices and effective means of collecting data and ensuring valid, accurate, and reliable reporting. No changes were made to the regulatory text in response to these comments.

Section 682.370 What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?

Section 682.370 describes the statewide activities for which rapid response funds that are unobligated after the first program year for which the funds were allotted may be used.

Comments: The Department received a few questions from a commenter regarding this section. The commenter asked whether the term "unspent" (used in § 682.370 of the NPRM) means unobligated or unexpended.

Department Response: The Department agrees that using the term unspent was confusing and, as a result, has changed the regulatory text to use the term "unobligated" to reflect the

provision in WIOA at sec. 134(a)(2)(A)(ii) in order to avoid confusion. The regulatory text was further changed to more closely align with the statutory text, providing a clearer explanation that the Governor may use these unobligated funds to carry out statewide activities as described in both §§ 682.200 and 682.210. For consistency with the WIOA provision, the section header has also been changed and now reads "What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?"

Comments: The commenter also requested to know whether the provision at § 682.370 required governors to use unobligated rapid response funds for statewide activities, and whether statewide activities are only for "15 percent funds."

Department Response: To address the first question, the use of unobligated funds by the Governor for statewide activities is allowed, but is not a requirement. The Governor is not required to use the unobligated rapid response funds to carry out statewide activities, but has the option of doing so. In response to the commenter's second comment, the Final Rule text clarifies that the statewide activities for which the funds may be used include the required statewide activities described at § 682.200 and the allowable statewide activities described at § 682.210, which are often referred to informally as the 15 percent funds.

G. Part 683 – Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act

This part establishes the administrative provisions for the programs authorized under title I of WIOA. Some of the provisions are also applicable to grants provided under the Wagner-Peyser Act, as indicated in specific sections of this part. The remaining Wagner-Peyser Act administrative rules are located in 20 CFR part 658. The Department notes that administrative

provisions for Job Corps (subtitle C of title I of WIOA) contracts are addressed separately in 20 CFR part 686. The analysis that follows provides the Department's response to public comments received on the proposed regulations for Administrative Provisions Under Title I of WIOA. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. The Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below. Lastly, the terms "performance measure" and "performance accountability measure" have been replaced throughout with "performance indicator" and references to the implementing regulations for WIOA sec. 188 at 29 CFR part 37 have been updated to refer to 29 CFR part 38 per the Department's recent nondiscrimination rulemaking.

1. Subpart A – Funding and Closeout

Section 683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?

Section 683.100 describes the statutory requirements for the Department's release of formula funds under title I of WIOA and the Wagner-Peyser Act.

Comments: A commenter requested clarification on whether there is consideration for agencies that are not one-stop operators to operate after June 30, 2016, because their agency received "WIA" (Workforce Investment Act) funds from the State and were informed that they can no longer perform direct services.

Department Response: It is unclear from the comment to what agencies and what services the commenter is referring. Because the Department is unable to determine the meaning of the comment, the Department has adopted the provision as proposed. However, for additional information that may be useful, the commenter should see WIOA sec. 107(d)(10), which provides the local Workforce Development Boards' (WDBs) responsibilities in selecting operators and providers. WIOA sec. 107(d)(10) is further discussed in 20 CFR part 679. Additionally, WIOA sec. 122 details requirements for identifying eligible training providers. This section is further addressed in 20 CFR part 680. Finally, the Department provided guidance and instructions on the transition of participants, funds, performance reports, grants, and subrecipient contracts under title I of the Workforce Investment Act of 1998 and under the Wagner-Peyser Act to WIOA. This guidance can be found at TEGL No. 38-14 ("Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act") issued on June 8, 2015; www.doleta.gov/WIOA/.

The Department also received comments concerning the required obligation rate of WIOA funds and the reallotment process. The Department addresses these comments in § 683.135.

No changes were made to regulatory text in response to these comments.

Section 683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

This section recognizes the use of the three funding instruments that conform with the Uniform Guidance: Grant agreements, cooperative agreements, and contracts.

Comments: A few commenters requested the Department provide clarification to paragraph (e)(3) of this part regarding the length of time allowed for each award for research, studies, or multi-State projects under WIOA sec. 169.

Department Response: The Department added additional language in (e)(3) to clarify the timeline and application of competitive reevaluation. Awards made under WIOA sec. 169 that do not fall under the exceptions at (e)(3)(ii) or (e)(3)(iii) will require a competitive reevaluation after a 3 year period. This practice is generally consistent with the practices at other major Federal grantmaking agencies. Through this competitive reevaluation, the Department will ensure that the awardee would be competitive should the award be recompeted. The actual details of the competitive reevaluation process may vary by award. However, competitive reevaluations generally will consist of an examination of whether the awardee is meeting its performance goals and financial reporting obligations. The Department will not require competitive reevaluation for the types of awards described in (e)(3)(ii) and (e)(3)(iii) because pursuant to the provisions of WIOA sec. 169(b)(6)(A), awards that meet these requirements do not need to be competitively evaluated when initially awarded. However, the regulation includes criteria that must be met for these types of awards to avoid the competitive reevaluation requirement. The Department notes that there will be a transition period while the Department puts in place the processes and procedures for competitive reevaluation described in this Final Rule.

Additionally, the Department clarified where the language in § 683.105 applies to grants, contracts, and cooperative agreements.

Comments: A commenter requested the Department provide clarification on whether local areas can utilize only funding to serve customers in their jurisdictions or if the State can set policy to allow a broader use of funds.

Department Response: WIOA does not prohibit or require local residency for an individual to receive services from a local area. Instead, whether a local area can serve individuals living outside their local area boundaries depends on State law and policy. Because the comment does not request a change to the language, no changes were made in the regulatory text.

Aside from the changes discussed above, the Final Rule adopts the remainder of the section as proposed with a technical edit to § 683.105(e)(4) to correct language that was inadvertently retained from the WIA regulations and make this regulation more reflective of the statutory language at sec. 169(b)(6)(D) of WIOA, and additional technical edits for clarity to § 683.105(f).

Section 683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This section describes the period of performance for different types of WIOA title I and Wagner-Peyser Act grant awards.

Comments: The Department received several comments requesting clarification concerning § 683.110. One commenter requested clarification regarding the period of time in which funds are available to carry out a Pay-for-Performance contract strategy.

Department Response: As provided in WIOA sec. 189(g)(2)(D) and discussed in § 683.530, funds used for a WIOA Pay-for-Performance contract strategy are available until expended. Because WIOA sec. 189(g)(2)(D) and § 683.530 provide the period of availability for

funds used for WIOA Pay-for-Performance contract strategies, no changes were made in the regulatory text. The Department expects to provide future guidance on carrying out WIOA Pay-for-Performance contract strategies.

Comments: Several commenters discussed the applicability of § 683.110 to the National Farmworker Jobs Program (NFJP) grant recipients. Specifically the commenters recommended that the Department be consistent across programs when considering modifications to allow carryover of funding and not add restrictions for National Farmworker Jobs Program (NFJP) grant recipients. One commenter recommended that NFJP grant recipients have the same performance standard stringency as others and be offered in § 683.110(e) the carryover provisions that approximate available expenditure allowances by States in § 683.110(b), and that NFJP have the same flexibility as the Governor to adjust on-the-job training (OJT) employer reimbursement levels from 50 to 75 percent.

Department Response: The Department addresses the issues concerning the NFJP program in the preamble discussion in part 685.

Comments: The Department also received comments concerning the applicability of § 683.110 for title II programs and State Adult Education and Family Literacy Act (AEFLA) agencies.

Department Response: The provisions found in § 683.110 are applicable to funds authorized under title I of WIOA and the Wagner-Peyser Act. The Department refers the commenters to the Department of Education's regulations for Programs and Activities Authorized by the Adult Education and Family Literacy Act at 34 CFR parts 462 and 463.for additional information regarding AAFLA and title II programs. Because § 683.110 only applies

to WIOA title I and Wagner-Peyser Act funds, this DOL WIOA Final Rule adopts the provision as proposed.

The Department received no comments on the remaining provisions of § 683.110, and the Final Rule adopts the section as proposed with technical corrections. The Department has corrected the reference in § 683.110(c)(1)(ii) so that it refers to the provision governing the availability of funds used for WIOA Pay-for-Performance contract strategies, and it clarifies that this provision is referring specifically to WIOA Pay-for-Performance contract strategies, as defined in sec. 3 of WIOA and in subpart E of this part. The Department notes that the term "used" in § 683.110(c)(1)(ii) refers to the reservation and use of funds mentioned in WIOA secs. 129(c)(1)(D) and 134(d)(1)(A)(ii). Additionally, the Department has corrected § 683.110(f) so that it refers to award documents instead of terms and conditions of award.

Section 683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?

This section describes the timeframe and formula factors a Governor must employ when allocating fund to local areas under secs.128 and 133. It also specifies the steps a Governor must take when issuing allocations, including consulting with Local WDBs and elected official prior to issuing the allocation.

Comments: The Department received a comment in support of this section. The Department also received several comments concerning the applicability of § 683.120 to title II programs and State AEFLA agencies.

Department Response: The provisions found in § 683.120 are applicable to funds authorized under title I of WIOA and the Wagner-Peyser Act. The Department refers the commenters to 34 CFR parts 462 and 463 for additional information regarding AEFLA and title

II programs. Because § 683.120 does not apply to title II and AEFLA agencies, the Final Rule adopts the provision as proposed, with a technical amendment to § 683.120(a) to correct list format and an additional technical amendment to § 683.120(b) clarifying the application of WIOA secs. 129(b) and 134(a).

Section 683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?

This section addresses the minimum funding thresholds for States funded under title I, subtitle B of WIOA.

Comments: The Department received several comments regarding § 683.125. A few comments raised concerns about the application of a fiscal year basis versus a program year basis for the minimum funding provisions. Another comment raised a concern on the application of the minimum funding thresholds in local areas that have been impacted by geographical boundary changes.

Two commenters stated that § 683.125(a) should take effect Oct. 1, 2015, for fiscal year (FY) 2016. These commenters stated that the proposed regulations are silent on whether § 683.125(a) refers to program year (PY) or FY, but that the Department through TEGL No. 29-14 ("Workforce Innovation and Opportunity Act (WIOA) Adult, Dislocated Worker and Youth Activities Program Allotments for Program Year (PY) 2015; Final PY 2015 Allotments for the Wagner-Peyser Act Employment Service (ES) Program Allotments; and Workforce Information Grants to States Allotments for PY 2015") has specified that this section refers to PY 2016.

Department Response: The Department's fiscal year monies are distributed to grant recipients on a program year basis, as described in §§ 683.100 and 683.125. The youth and adult minimum funding provisions existed under WIA. The minimum funding provisions under the

WIOA statute go into effect when the FY 2016 funds become available on July 1, 2016, consistent with TEGL No. 29-14 (see http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm). However, the Department agrees that the language proposed for § 683.125 was confusing and has made changes to clarify the relationship between the fiscal year appropriations and the program year availability in relation to the minimum funding provisions.

Comments: A commenter also recommended that local areas that change boundaries should still be eligible for the minimum percentage provisions for the adult, dislocated worker, and youth programs.

Department Response: The Department agrees that this was a gap in the language of the proposed regulation and has added § 683.125(c) to address this issue. States may use WIOA minimum funding procedures even where the geographical boundaries of some or all local areas are different from the previous allocation. For example, this can be done for the PY 2016 WIOA allotment by (1) taking the amount allocated to WIOA local areas; (2) calculating the amount each local area would have received using the PY 2015 and PY 2015 WIA allocations (WIA proxy amounts); and (3) calculating 90 percent of the average WIA proxy amounts for each local area. Under either the permitted WIA hold harmless or the WIOA minimum funding (hold harmless) provision, the amount needed to provide the increased allocation(s) to the affected local areas is to be obtained by ratably reducing the allocations to the other local areas.

Section 683.130 Does a Local Workforce Development Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?

This section provides flexibility to local WDBs to provide services in the areas of greatest need by allowing fund transfers of up to 100 percent of a program year allocation between the local adult and the local dislocated worker allocations.

Comments: The Department received several comments regarding § 683.130. Some commenters were concerned with the Governor's approval of the transfer request and whether the Governor would complete the request timely or would unreasonably deny a request.

Department Response: The Department agrees that additional language ensuring that requests are timely and reasonably evaluated would be beneficial. Consequently, the Department has adopted new regulatory text for § 683.130 to address the comments regarding the grounds or criteria a Governor must consider when approving or denying a request for transfer. The modified text requires the Governor to establish written policy that provides the criteria the Governor will utilize for approving a request to transfer adult or dislocated worker employment and training activity funds.

Comments: Another commenter expressed concern that the flexibility in § 683.130 could lead to local areas transferring 100 percent of funding away from title I adult programs and could result in drastic reduction in services to those who need them most. This commenter recommended a waiver requirement as a prerequisite to gaining funding transfer flexibility between adult and dislocated worker programs.

Department Response: The Department considered the comments and determined that a transfer of 100 percent of funds out of one program to another may drastically reduce services to that program. This recommendation is inconsistent with the statutory language for two reasons. First, sec. 133(b)(4) of WIOA explicitly states that 100 percent of the allocated adult and dislocated funds can be transferred. Second, WIOA states that the Governor is responsible for

approving transfers between the adult and dislocated worker funds, which makes an additional waiver requirement inappropriate. With the exception of the previous paragraph, the regulatory text is unchanged.

Comments: Other commenters expressed concern regarding the performance of local areas and sought clarification whether performance indicator targets would be rescinded if 100 percent of funds were transferred from one program to the other.

Department Response: As addressed in 20 CFR part 677 Performance Accountability (see Joint WIOA Final Rule), the negotiated levels of performance for the primary indicators remain in effect and a local area must consider how it will meet adjusted levels of performance for the primary indicators before requesting such transfer. If the local area transfers 100 percent of a certain type of funding, it would still be responsible for meeting the adjusted levels of performance for any participants that it is required to serve. The Department also reiterates that when funds are transferred from one program to another, the transferred funds adopt the identity of the new fund source and are bound by all of the requirements of that source. The concerns of this commenter are addressed in part 680. No change was made in the regulatory text for part 683 in response to these comments.

Section 683.135 What reallotment procedures does the Secretary use?

This section implements secs. 127(c) and 132(c) of WIOA, and explains the Department's process for recapture and reallotment of formula funds awarded to the States under title I.

Comments: The Department received several comments requesting general clarification regarding the Department's procedure for recapturing and realloting WIOA funds. Additionally, the Department also received comments asking whether rapid response funds are considered

obligated and whether the amounts allocated to the local areas must be reported as obligated on the ETA 9130 form.

Department Response: Upon reviewing the proposed language, the Department concluded that the proposed language was ambiguous because it (1) implied that certain interagency transfers and amounts allocated by the States to the local areas under secs. 128(b) and 133(b) of WIOA were not obligations under 2 CFR 200.71; and (2) inaccurately stated that certain obligations needed to be reported on the DOL financial form. Consequently, the Department has revised the language at § 683.135(c).

The Department has simplified the language at § 683.135(c) so that it simply states that the "term 'obligation' is defined at 2 CFR 200.71." This change was made because comments revealed that the specific inclusion of the items in (c)(1) and (c)(2) of the NPRM led readers to question why other obligations were not included in this list. This change is meant to clarify that everything that qualifies as an obligation under 2 CFR 200.71, including rapid response obligations under sec. 133(a)(2) of WIOA and the transfers and allocations referenced in paragraphs (c)(1) and (c)(2) of the proposed regulation, should be counted for the purposes of the reallotment calculation in § 683.135(a).

In addition to simplifying § 683.135(c), the Department added § 683.135(d), which states that obligations must be reported on Department financial forms unless otherwise noted in guidance. Evaluation of the proposed language done in response to questions about whether amounts allocated to local areas must be included on the ETA 9130 form revealed that not all obligations for the purposes of reallotment calculation in § 683.135(a) need to be reported on the 9130 form. The Department has clarified the regulation so that it says all obligations must be

reported on Department financial forms unless subsequent guidance from the Department includes instructions to the contrary.

Section 683.140 What reallocation procedures must the Governors use?

This section describes procedures for reallocating youth, adult, and dislocated worker funds among local areas in the State, in accordance with secs. 128(c) and 133(c) of WIOA.

Comments: The Department received a comment requesting clarification on who makes the funding reallocation decision and what is the maximum time frame for decision-making.

Department Response: WIOA secs. 128(c) and 133(c) provides that the Governor, after consultation with the State WDB, may reallocate to eligible local areas youth, adult, and dislocated worker funds. Section 683.140(a) mirrors the statutory language and provides that the Governor may reallocate local funds after consulting with the State WDB. Because WIOA identifies the reallocation decision-maker as the Governor, no change was made in the regulatory text in response to this comment.

Section 683.140(b) and (c) provide that the reallocation determination occurs for the prior program year after an evaluation of all local areas' obligation rates has occurred. However, there is no required timeframe for a Governor to make a decision as the regulation maintains the Governor's flexibility and responsibility to make reallocation decisions regarding the WIOA grant funds. No change was made to the regulatory text.

Section 683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under Workforce Innovation and Opportunity Act title I, subtitle D?

This section includes requirements mandated by the Uniform Guidance.

Comments: The Department received several comments requesting a clarification of "merit review."

Department Response: Section 683.145(a) includes the requirements mandated by the Uniform Guidance at 2 CFR 200.204 that the Department utilize a merit review process when awarding competitive awards. 2 CFR 200.204 states that the process for merit review will be described in the funding opportunity announcement. The Department has determined that because the process necessary for ensuring a fair merit review may vary by competition, additional description of "merit review" is not appropriate for this regulation. No change was made to the regulatory text in response to these comments.

Section 683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This section addresses closeout, which is an important component to complete the grant lifecycle. This section paraphrases the Uniform Administrative requirement sections on closeout and post-closeout adjustments (2 CFR 200.343-344).

Comments: The Department received a comment requesting clarification of the period of time that the Federal government can disallow costs and for which the grant recipient remains liable for a Federal debt after grant closeout.

Department Response: Because WIOA of limitations for collection of a Federal debt depends on many variables not appropriate to regulate, no changes were made to the regulatory text in response to this comment.

2. Subpart B – Administrative Rules, Costs, and Limitations

Section 683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This section describes the application of Uniform Guidance and the corresponding exceptions authorized by the Department at 2 CFR part 2900 for all grant recipients and sub recipients, including for-profit organizations and foreign entities.

Comments: One commenter requested that an appeal process should be required when the State (pass-through entity) implements requirements outside the Federal guidelines in 2 CFR part 200.

Department Response: The Department has decided not to require an appeals process when pass-through entities implement requirements outside the Federal guidelines in the Uniform Guidance at 2 CFR part 200. This is consistent with 2 CFR part 200, which provides necessary flexibility to States by extending special considerations when administering grant funds. The Department determined that requiring an appeals process when a pass-through entity implements requirements not included in 2 CFR part 200 would be unduly burdensome and counter to the effective administration of the grants. The commenter should note that § 683.600 offers protections for subrecipients if a requirement imposed by a pass-through entity violates the requirements of title I of WIOA. Consequently, because the Department has determined that the proposed appeals process would not support the effective administration of the grants and adequate protections are already in place, no change was made in the regulatory text.

Comments: One commenter requested an explanation of the addition method in § 683.200(c)(6).

Department Response: The Department has determined that the description in § 683.200(c)(6) and reference to 2 CFR 200.307 adequately describes the addition method for the purposes of the regulation and that any additional description of the method would be better

suited to guidance and technical assistance. No change was made to the regulatory text in response to comments.

Comments: One commenter requested clarification on how a State should determine compliance with the Buy American provisions. The same commenter also asked whether State oversight and monitoring responsibilities under § 683.200 include programmatic monitoring of local areas or simply financial monitoring and oversight, and if the latter, where programmatic monitoring expenses should be charged. Several commenters asked for clarification regarding the applicability of the section to title II funds, specifically to the requirement to use the addition method and the Buy American Act.

Department Response: Upon reviewing the commenter's request, the Department determined that the proposed language about "American-made equipment and products" was confusing. Consequently, the Department replaced this language with a reference to the relevant section of the Buy American Act. Additionally, the Department directs the commenter to § 683.410 of this part which addresses the issue concerning the classification of costs as either programmatic or administrative for purposes of WIOA. Section 683.200 describes the application of the Uniform Guidance and the corresponding exceptions authorized by the Department at 2 CFR part 2900 for all title I WIOA and Wagner-Peyser Act grant recipients and subrecipients, including for-profit organizations and foreign entities. The Department also directs the commenter to § 683.215(b)(2), which provides that monitoring and oversight activities related to administrative functions are defined as administrative. Because these issues are addressed elsewhere, no change was made to the regulatory text in response to this comment.

The Buy-American requirements apply to funds made available under title I, title II, or under the Wagner-Peyser Act. However, § 683.200(f) only applies to funds authorized under

title I of WIOA and the Wagner-Peyser Act; no change was made in the regulatory text in response to this comment.

Section 683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?

This section specifies the statutory administrative cost limitations of title I grant funds.

Comments: The Department received a comment requesting clarification on whether it is allowable to combine the 10 percent administrative cost limitation in § 683.205 for all three WIOA programs into one pool as long as the administrative costs for all three combined do not exceed the pooled amount.

Department Response: Section 683.205(a)(2) mirrors the language in WIOA secs. 128(b)(4) and 134(a)(3) and provides flexibility to States and local areas by allowing administrative funds from the three WIOA formula funding streams awarded under title I, subtitle B of WIOA to be pooled and used together for administrative costs for any of the three programs at the State and locals' discretion. The statutory and regulatory language clearly state that local areas may pool funds for administrative costs. No changes were made to regulatory text in response to this comment.

Section 683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?

This section defines the functions and activities that constitute administration in accordance with sec. 3(1) of WIOA, and therefore are subject to the administrative cost limitations discussed in § 683.205.

Comments: In issuing the NPRM, the Department requested comments on whether the Department should issue the proposed administrative costs list as a regulation or as a general

description or guidance, whether the list should be stable or subject to periodic review, and whether indirect costs should be programmatic or administrative.

The Department received numerous and varied responses regarding its solicitation. The majority of the comments received concerned whether the regulation should use a static list to define administrative costs or whether the regulation should include a more flexible definition, with a majority of the comments stating a preference to maintain a static list to define administrative costs.

Department Response: The Department reviewed and analyzed the comments received and decided to maintain a list of administrative functions in a defined, succinct list instead of adopting a more flexible definition because it agreed with commenters that it ensures consistency and clarity in the treatment of the expenditures for WIOA title I grant funded activities. No change was made in the regulatory text in response these comments.

Comments: Additionally, commenters also responded to the inquiry as to whether the Department should treat indirect costs as administrative or programmatic costs with many commenters suggesting that costs should be charged to administration or program depending on activity and function.

Department Response: After reviewing the comments, the Department concluded that charging of direct and indirect costs as administrative or programmatic depending on the function is consistent with statute. This results in an accurate classification of costs and is consistent with the Uniform Guidance at 2 CFR part 200. Consequently, indirect costs will be charged as administrative or program costs depending on activity and function. The proposed language was consistent with this conclusion. No changes were made to the regulatory text in response to these comments.

Comments: Several commenters suggested that the language in § 683.215(a) was an expansion from WIA and should not apply to one-stop operators.

Department Response: Section 683.215(a) provides that administrative costs are those expenditures incurred by State and Local Development WDBs, Regions, direct grant recipients, local grant subrecipients, local fiscal agents, and one-stop operators for the overall management of the WIOA system and are listed among the functions enumerated in the list in § 683.215(b). This definition is substantially the same as it was in WIA. The entities listed in § 683.215(a) are the same entities, with the exception of Regions, that are explicitly included in the definition of administrative costs in sec. 3(1) of WIOA. WIOA clearly requires the inclusion of one-stop operators, no change was made in the regulatory text in response to these comments.

Comments: Commenters suggested deleting certain language in § 683.215(b)(4) related to which travel costs should be considered administrative costs. Commenters suggested that the Department delete the language referring to overall management of the WIOA system as it was vague and potentially required certain program costs to be counted as administrative costs.

Department Response: Section 683.125(b)(4) defined administrative travel costs as travel costs "incurred for official business in carrying out administrative activities or the overall management of the WIOA system." The Department reviewed the section and determined that it agreed with the commenters. Consequently, the Department modified the language in § 683.215(b)(4). Two changes have also been made to § 683.215(c) from the proposed language.

Comments: The Department received a comment requesting a change to § 683.215(c)(2) so that grant recipients are not required to track personnel expenditures based on documented

distributions of actual time worked or other equitable cost allocation methods because the language is inconsistent with the Uniform Guidance in 2 CFR part 200.

Department Response: The Department agreed with the commenter and removed the language from the Final Rule.

Comments: The Department received several comments concerning § 683.215(c)(4), asking for clarification as to which subgrantees are responsible for tracking administrative costs and are subject to administrative cost limitations; specifically, some commenters were inquiring about the treatment of local grant subrecipients.

Department Response: The Department determined that the proposed language was ambiguous about how costs incurred for the functions and activities of local grant subrecipients, as identified in § 683.215(a), should be categorized. Consequently, the Department modified § 683.215(c)(4) and added language to clarify how the administrative costs of subrecipients listed in § 683.215(a) should be categorized. The added language states that costs of contractors and subrecipients that meet the requirements of (c)(4), other than subrecipients listed in (a), are program costs. The addition of the language in the Final Rule will ensure that the intent of WIOA for the entities responsible for the management of the public workforce system to track their administrative expenses is clear. The change also reflects that incidental administrative costs incurred by a contractor or subgrantee whose intended purpose is to provide identifiable program services do not have to be identified, broken out from other costs incurred under the contract or subaward, and tracked against the administrative cost limitation. Finally, this change does not alter the requirement provided in § 683.215(c)(1) that costs incurred under contracts whose intended purpose is administrative must be charged to the administrative cost category.

Comments: The Department received a request to clarify the guidelines on infrastructure funding. The Department also received several comments concerning the applicability of § 683.215 to title II programs and State AEFLA agencies.

Department Response: The Department notes that infrastructure funding is discussed in 20 CFR part 678 (see Joint WIOA Final Rule). Because another part governs infrastructure funding, no change was made to the regulatory text. The provisions found in § 683.215 are applicable to funds authorized under title I of WIOA. The Department refers the commenters to 34 CFR part 462 and 463 for additional information regarding AEFLA and title II programs. No changes were made to the regulatory text in response to this comment.

Section 683.220 What are the internal control requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This section describes the internal controls that recipients and subrecipients must install and have in place when expending WIOA and Wagner-Peyser Act funds, and is based on 2 CFR 200.303.

Comments: The Department received comments requesting clarification with regard to the internal control requirements of § 683.220. One commenter requested a clear definition of the personally identifiable information (PII) and sensitive information, including documentation allowed for financial and program data and participant-specific verification. Another commenter requested clarification of the "tools and assistance" for improving internal control structure under § 683.220.

Department Response: The Department determined that additional guidance on the definition of PII and available tools and assistance are not appropriate regulatory text because of the detail that would be required and the flexibility that is necessary for these definitions. The

Department previously issued guidance on handling Personally Identifiable Information (PII) which is found in TEGL No. 39-11 ("Guidance on the Handling and Protection of Personally Identifiable Information (PII)"), issued on June 28, 2012 (see http://wdr.doleta.gov/directives/attach/TEGL/TEGL_39_11.pdf).

The Department will provide additional guidance on this issue. No change was made to the regulatory text.

Section 683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

This section addresses the laws governing the determination of eligibility for veterans and their spouses for WIOA funded services with income qualification requirements.

Comments: Two commenters expressed concern about simply referring questions to the Veterans' Employment and Training Service (VETS) without further guidance and recommended that the Department explicitly state the procedures and exceptions in regulations. These commenters also recommended specific training for one-stop operators and one-stop staff.

Department Response: The Department agrees with the commenters that language clarifying procedures and exceptions would be more appropriate to the regulation than the language referring questions to VETS. Consequently, the Department has struck the language referring questions regarding the applicability of 38 U.S.C. 4213 to VETS. In its place, the Department added language that states that a veteran must still meet each program's eligibility criteria to receive services under the respective employment and training program. This same language also appears in part 680 (Adult and Dislocated Worker Activities Under Title I of the WIOA). Changing the language in part 683 compliments what is provided in the regulations for the adult and dislocated worker section and ensures that both sections are congruent with regard

to the Military Pay Disregard for Eligibility Determination. The added language also clarifies that a veteran must meet all eligibility criteria to receive services. Finally, although the Department deleted the language referring questions about the applicability of 38 U.S.C. 4213 to VETS from the text of the regulation, the Department encourages interested parties to reach out to VETS if they have any questions about 38 U.S.C. 4213.

The Department does not agree with the necessity of adding eligibility and income procedures to the regulation because their detailed and technical nature is better suited for guidance developed with the Assistant Secretary for VETS. The Department will consider the request future for training. No change to the regulatory text was made in response to these comments.

Section 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?

This section is based on the requirements in the Uniform Guidance at 2 CF 200.439(b)(3), and states that WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with prior approval of the Secretary.

Comments: A few commenters requested the Department add language to this section to clarify the allowability of WIOA funds for construction.

Department Response: Section 683.235 is written to allow the Secretary to approve the use of title I WIOA funds in the circumstances provided for in WIOA, including, disaster relief projects under WIOA sec. 170(d), YouthBuild programs under WIOA sec. 171(c)(2)(A)(i), grant recipients' responsibilities in meeting obligations to provide physical and programmatic accessibility, reasonable accommodations, and the provision of repairs, renovations, alterations,

and capital improvements of property, as well as for other projects that the Secretary determines necessary to carry out WIOA, as described by under sec. 189(c) of WIOA.

The Department intended to provide the Secretary with the flexibility authorized under WIOA to use funds for construction in any situation where it might be necessary and has determined that it would not be prudent to limit this flexibility by imposing any requirements or exclusive lists of use of funds. No change is made in the regulatory text in response to these comments.

Comments: One commenter suggested that the Department amend this section to impose a requirement that WIOA funding only be allowed if the recipient confirms that all contractors and subcontractors that support a registered apprenticeship program meet the on-the-job training contract requirements of § 680.700, and are deemed "responsible contractors" under E.O. 13673 and the related Federal Acquisition Regulations (FAR).

Department Response: The Department will provide additional guidance on using funds for construction. Because the Department concludes that the detailed nature of the suggested addition is better suited to guidance and technical assistance, no change was made to the regulatory text.

Section 683.240 What are the instructions for using real property with Federal equity?

This section provides rules on State Employment Security Act (SESA) properties, Reed Act-funded properties, and JTPA-funded properties.

Comments: The Department received two comments requesting the Department to give priority to UI and WP when transferring or disposing of real property with Federal equity.

Department Response: The Department does not agree with the commenters' suggestion to establish priority upon transfer or disposition as this would undermine the language in sec.

192(a) of WIOA that allows for the portion of real property that is attributable to the Federal equity to be used to carry out UI, WP, or WIOA activities. The use of the buildings, including the proceeds related to their disposition or transfer, is intended to maximize available resources and provide flexibilities to UI, WP and WIOA programs. However, the Department recognizes that the proposed regulation language did not include guidance as to how proceeds from the disposition of property with a Reed Act equity should be treated. Consequently, the Final Rule contains language that clarifies that when there is a disposition of Reed Act property, that Reed Act equity must be returned to the State's account in the Unemployment Trust Fund.

Section 683.245 Are employment generating activities, or similar activities, allowable under title I of the Workforce Innovation and Opportunity Act?

This section implements sec. 181(e) of WIOA, which restricts the use of WIOA funds for employment generating activities except where the activities are directly related to training for eligible individuals.

Comments: Several commenters requested that the Department define "employment generating activities" to guide relationships with economic development partners that also assist with business outreach and services.

Department Response: Section 683.245 identifies several examples of employer outreach and job development activities that are considered "directly related to training for eligible individuals," including employer outreach and job development activities and therefore, are not prohibited employment generating activities. The list is an illustrative, but not an exhaustive list of examples because the Department does not want to be overly prescriptive, limiting the discretion of grant recipients in making decisions about what is "directly related to training for eligible individuals" in their areas. The Department has determined that additional definition of

"employment generating activities" is not necessary. However, the Department will provide future guidance or technical assistance on this subject.

Comments: Additionally, commenters also recommended that the Department clarify that business services are an allowable activity for WDBs and are chargeable to the program cost category.

Department Response: It is unclear as to what business services activities the commenters are referring. However, the Department has determined that WIOA and regulations provide sufficient guidance about which activities are allowable and whether those activities qualify as program costs. In addition to the guidance found in this section, WIOA sec. 107(d)(4) provides that local WDBs shall conduct business engagement and lead efforts to engage with a diverse range of employers. The employer engagement activities are further defined in § 679.370(e). Furthermore, the determination of whether an activity is administrative or programmatic for purposes of WIOA is discussed in § 683.215. Because WIOA and regulation already provide sufficient clarity, no change was made in the regulatory text.

Section 683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?

This section describes other activities that are expressly prohibited in title I of WIOA, including foreign travel paid for by WIOA formula funds (sec. 181(e) of WIOA), payment of wages of incumbent workers participating in economic development activities (sec. 181(b) of WIOA), contracts with persons falsely labeling products as made in America (sec. 502(c) of WIOA) and others.

Comments: The Department received comments requesting the Department clearly define prohibited economic development activities in § 683.250.

Department Response: The language in § 683.250 mirrors the language in WIOA sec. 181(b)(1) in prohibiting WIOA funds from being used for the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system. The Department determined that additional clarification, because of its technical and detailed nature, is not appropriate for the regulatory text. However, the Department will provide additional guidance on this subject.

No changes were made to the regulatory text in response to these comments.

Section 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?

This section describes the prohibitions on the use of WIOA title I funds to encourage business relocation, including specific timeframes when entities can begin working with such businesses. This section also describes the States' obligation to develop procedures to implement these rules.

Comments: The Department received a comment recommending that the Department add language to § 683.260(b) to indicate that a State's pre-award review criteria must be explained in their Unified or Combined State Plan, which is available for review by all stakeholders.

Department Response: Section 683.260(b) requires States to complete a pre-award review to verify that WIOA funds are not used to encourage or induce a business to relocate from another area if the relocation results in any employee losing his or her job at the original location. Section 683.260(b) permits States to develop the criteria for the pre-review but also requires, in § 683.260(b)(1), that certain elements must be included.

The Department has determined that it is not necessary to require that the pre-award criteria be explained in the State's unified or combined State plan because § 683.260 already

requires the State to create a standardized procedure. The Department will provide additional guidance and technical assistance on this matter. No change was made to the regulatory text.

Comments: The Department also received a comment requesting clarification regarding whether a company that relocates one of its offices to another State is eligible for WIOA funds to train workers that are relocating, as long as funds are used to upgrade skills and not to induce relocation or displace workers, or if this prohibited under § 683.260.

Department Response: The Department has determined that it is not appropriate to address such a detailed and fact-specific scenario in regulatory text. However, the Department will provide additional guidance on this concern. No change was made in the regulatory text in response to this comment.

Section 683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?

This section describes the wage and labor standards that apply to WIOA title I participants, including the requirements under the Federal Fair Labor Standards Act (FLSA) and State and local minimum wage laws.

Comments: Comments requested that the Department define and distinguish which types of work-based learning, including apprenticeship and pre-apprenticeship, are subject to the wage and labor standards in § 683.275.

Department Response: Section 683.275(a) states that it is applicable to individuals in the work-based learning opportunities who are determined to be employed in activities under title I of WIOA. The FLSA, as amended, 29 U.S.C. 201, et seq., applies in determining whether participants are employees who are covered by the FLSA's minimum wage and overtime provisions. The Department plans to provide detailed guidance on when participants must be

considered employees protected under the FLSA. Consequently, the Department has determined that it would not be appropriate to contain additional clarification on this point in the text of the regulation.

Section 683.275(c) applies to work-based learning and employment under title I of WIOA. As described above, whether a particular job triggers these requirements and protections is a fact-specific enquiry. The Department has determined it would not be appropriate to analyze the application of this provision to the two types of jobs submitted by the commenter. Such analysis is better suited for guidance and technical assistance.

Section 683.275(d) applies to all allowances, earnings, and payments to individuals participating in programs under title I of WIOA. Because the application of this provision does not depend on the types of jobs involved, the Department has determined that this provision does not need additional clarification. Consequently, for the reasons described above, the Department adopts the provision as proposed.

The commenter should note that the Department previously issued guidance on the application of the FLSA to work-based training programs. In addition, the Department will provide additional guidance on this section.

No changes were made to the regulatory text in response to these comments.

Section 683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?

This section explains what health and safety standards and workers compensation laws apply to WIOA title I participants.

Comments: The Department received a comment requesting a change in the regulatory text of § 683.280 to specify that the health and safety protections in the regulation are also applicable to student workers.

Department Response: Section 683.280 mirrors the language in WIOA sec. 181(b)(4). WIOA and this regulation provide that the health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under title I of WIOA.

WIOA utilizes the word "participant" throughout the statute and specifically in sec. 181(b)(4). The term "participant" encompasses the student workers referred to by the commenter and the students are covered by health and safety laws to the extent that those laws cover students. Because whether students are covered by the protections at sec. 181(b)(4) and § 683.280 depends the applicable Federal and State laws and regulations and cannot be succinctly summarized, the Department has determined to retain the use of "participant" in this section. No changes were made to the regulatory text in response to this comment.

Section 683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

This section describes the nondiscrimination, equal opportunity, and religious activities requirements that, as defined in WIAO sec. 188 and at 29 CFR part 38, must adhere to when using WIOA title I funds.

Comments: The Department received a comment in support for this provision as well as two comments requesting the Department to provide boilerplate language as technical assistance for the required provision under § 683.285 because it is useful to the States.

Department Response: The Department intends to provide additional guidance and ongoing technical assistance. Additionally, the Department is not modifying the non-discrimination provisions in the section because this subject is covered in much greater detail in the WIOA sec. 188 nondiscrimination regulations at 29 CFR part 38. Finally, the grant agreements issued by the Department, as described in § 683.105, describe the terms and conditions applicable to the award of title I WIOA funds and Wagner–Peyser funds, including the non-discrimination provisions of § 683.285. No changes were made to the regulatory text in response to these comments.

WIOA sec. 188(a)(5) refers to immigrants authorized by the Attorney General to work in the United States. Pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, that authority has been transferred to the Department of Homeland Security. Section 1517 of the Homeland Security Act (codified at 6 U.S.C. 557) provides that reference in any other Federal law to any function transferred by the Homeland Security Act "and exercised on or after the effective date of the Act" shall refer to the official to whom that function is transferred. Consequently, the Final Rule contains a reference to the Secretary of Homeland Security.

Section 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

This section addresses earning profit under WIOA.

Comments: The Department received a comment requesting confirmation that WIOA allows profit for a one-stop operator.

Department Response: The Department has outlined in § 683.295(a)(2) a requirement for grants and other Federal financial assistance awarded under secs. 121(d), 122(a), and 134(b) of WIOA, which allows awardees of Federal financial assistance, such as one-stop operators,

service providers, or ETPs, to earn profit. The pass through entity must follow 2 CFR 200.323 to ensure that the entities' charges are reasonable and fair. No changes were made to the regulatory text in response to this comment.

3. Subpart C – Reporting Requirements

683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

Section 683.300 specifies the reporting requirements for programs funded under WIOA and the deadlines for such reports.

Comments: The Department received comments regarding what data standards and performance indicators the Department should require and how to define and assess the data standards and performance indicators.

Department Response: Section 683.300 does not detail the program performance elements that a grant recipient should report to the Department; these elements are discussed in 20 CFR part 677 (see Joint WIOA Final Rule). The Department will also provide additional guidance on this section and 20 CFR part 677. No changes were made to the regulatory text in response to these comments.

Comments: The Department received several comments on § 683.300 concerning the amount of data collection required under WIOA and the value of the data collected. The commenters suggested that agencies instead share the information they already have and also periodically review the reported data to ensure its value to the program and eliminate any unnecessary reporting of data.

Department Response: The Department's goal is to promote the government's initiative to manage information as an asset to increase operational efficiencies, reduce costs, improve

services, support mission needs, safeguard personal information, and increase public access. The Department intends to use data collected from the financial, performance, and annual reports to empower our public workforce system while providing transparency and accountability to our stakeholders. The Department is not seeking to burden the public workforce system by the data collection. While the Department implements its reporting requirements, it will work to ensure that the reporting is not unnecessarily duplicative while still ensuring that the interest described above is protected. However, the Department has determined that additional detail on reporting requirement implementation is not appropriate for regulation. Consequently, the Final Rule adopts the provision as proposed.

Comments: A comment was received that requested that the Department explicitly clarify that reporting requirements may be waived for libraries when developing lists of ETPs during the first year of WIOA implementation.

Department Response: WIOA sec. 122 details requirements for identifying eligible training providers. This section is further addressed in 20 CFR part 680. The Department did not receive any other comments on this section. The Final Rule adopts the provision as proposed with a technical amendment made to § 683.300(a), because it is unnecessary to clarify that the Department's reporting requirements would be consistent with governing statutes, and a technical amendment to § 683.300(e)(2) and the addition of § 683.300(h), so as to more clearly reflect the requirements in 2 CFR part 200.

4. Subpart D – Oversight and Resolution of Findings

Section 683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

This section defines the roles and areas in which oversight must be conducted by the recipients and subrecipients, including ensuring compliance with relevant rules and developing a monitoring system.

Comments: The Department received several comments in support of this section and explicitly in support of the Department's requirements for recipients and subrecipients to comply with the EEO requirements of WIOA as well as the Assistive Technology Act of 1998. A comment was received recommending that the Department be notified to work with their State Assistive Technology Act Program (ATAP) with regard to physical and programmatic accessibility issues.

Department Response: It is unclear from the comment what notification to the Department the commenter is requesting. No changes were made to the regulatory text in response to the comments regarding ATAP. However, the Department will consider State ATAPs as potential resources while implementing this section.

Comments: A comment received requested clarification on what kind of grant monitoring is proposed under § 683.410 and whether recipients and subrecipients will have access to clear monitoring and oversight standards.

Department Response: Section 683.410(a) requires that each recipient and subrecipient of title I WIOA funds and Wagner-Peyser Act funds conduct regular oversight and monitoring of its WIOA and Wagner-Peyser Act funded programs to ensure compliance with the stated requirements of title I of WIOA, the Wagner- Peyser Act, the Uniform Guidance at 2 CFR part 200, and the Department exceptions to the Uniform Administrative Requirements at 2 CFR part 2900. Section 683.410(b) further requires that Governors are responsible for developing a State monitoring system that meets the requirements set forth in § 683.410(b)(2).

The Department is providing grant recipients the flexibility with designing the monitoring process and procedures to meet the requirements of § 683.410 and does not want to limit this flexibility by imposing a specific monitoring process. However, the Department will continue to provide technical assistance and guidance on this subject.

No changes were made to the regulatory text in response to these comments. Additionally, the Department would like to note that although § 683.410(b)(2)(iii) requires States to have a monitoring system that enables Governors to determine if subrecipients and contractors have demonstrated substantial compliance with Wagner-Peyser Act requirements, violations of Wagner-Peyser Act requirements will be handled pursuant to the authority and processes in the Wagner-Peyser Act, as amended, and the implementing regulations at 20 CFR part 658.

5. Subpart E – Pay-for-Performance Contract Strategies

Section 683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?

This section describes the components of a WIOA Pay-for-Performance contract strategy and describes WIOA Pay-for-Performance contract as a specific type of performance-based contract.

Comments: The Department received several comments regarding § 683.500. Several comments requested clarification as to what was required for a WIOA Pay-for-Performance contract strategy. Some of the comments received inquired as to the meaning of "independently" validating in § 683.500(a)(3) and requested clarification and guidance as to the Department's intended definition of independent. Additionally, commenters questioned the affordability of conducting the feasibility study given the 10 percent funding limitation. Finally, commenters asked the Department to allow local areas to use existing studies instead of commissioning new

studies. Many of the comments received concerned the feasibility study requirements. Some comments requested the elimination of the feasibility study; some comments questioned its affordability; some comments requested the Department prescribe what is contained in the feasibility study, and other comments requested that the Department allow local areas to use existing studies instead of commissioning new studies.

Department Response: The Department decided against prescribing a definition of independent validation in order to retain flexibility. The WIOA Pay-for-Performance contract strategy is one of several innovative strategies WIOA adopts to place a higher emphasis on performance outcomes and provider accountability, drive better results, and incorporate rigorous evaluation and evidence-based practice into the delivery of workforce services. The WIOA Pay-for-Performance contract strategy can benefit local areas, job seekers, and business customers when used to support interventions that either have a high probability of success based on prior evidence or that have potential as a promising innovation; have measurable outcomes supported with authoritative data and strong evaluation methodologies; and are overseen by experienced managers that have flexibility to adjust their approach. As authorized by WIOA, the Department intends to provide local areas with the flexibility needed to implement a WIOA Pay-for-Performance contract strategy that meets the needs and challenges in each local area. The Department will provide additional guidance on this subject to address the scope and minimum requirements of independent validation.

WIOA sec. 3 provides that the WIOA Pay-for-Performance contract strategy is a procurement strategy for funds allocated to local areas for the provision of adult, dislocated worker, or youth training services. WIOA limits the amount of local allocations available for WIOA Pay-for-Performance contract strategies to 10 percent of the local area's allocation

available under secs. 128(b) and 133(b)(2)-(3) of WIOA. WIOA sec. 189(g)(2)(D) specifies that funds used for WIOA Pay-for-Performance contract strategies shall remain available until expended.

The NPRM defined the WIOA Pay-for-Performance contract strategy as having four distinct characteristics, including in § 683.500(a)(2) a feasibility study to determine whether the proposed intervention is suitable for a WIOA Pay-for-Performance contract strategy. The Department required the feasibility study because it determined that, prior to beginning a WIOA Pay-for-Performance contract strategy, a local area needs to conduct an analysis to determine whether a WIOA Pay-for-Performance contract strategy is the right approach. Upon reviewing the comments, the Department retains its conclusion that the feasibility study is necessary. Consequently, the regulatory text retains the feasibility study requirement.

In analyzing the comments received and reviewing the proposed language, the Department concluded that the definition of a WIOA Pay-for-Performance contract strategy and the requirement of a feasibility study as part of the strategy could potentially limit the availability of this innovative strategy because local areas would not have enough funds available under the 10 percent limit to do both the feasibility study and the rest of the WIOA Pay-for-Performance contract strategy.

To address this issue, the Department modified that language in § 683.500(a) and removed the feasibility study requirement from the WIOA Pay-for-Performance contract strategy definition. However, because the Department has determined that a feasibility study is necessary, the Department added a new paragraph (b) in § 683.500 that requires a local area to conduct a feasibility study prior to implementing a WIOA Pay-for-Performance contract strategy. Because the feasibility study is not included in the definition of "WIOA Pay-for-

Performance contract strategy" in the Final Rule, the feasibility study is not subject to the 10 percent limitation.

In addition, the Department decided against prescribing what should be included in a feasibility study in order to retain flexibility. The Department intends to provide local areas with flexibility authorized under WIOA needed to implement a WIOA Pay-for-Performance contract strategy that meets the needs and challenges in each local area. The Department does not want to limit this flexibility by imposing any other requirements or exclusive definitions for WIOA Pay-for-Performance contract strategies. However, the Department will provide additional guidance on this subject to address the scope and minimum requirements of the feasibility study.

The Department decided against prescribing whether local areas can use existing studies for the reasons described in the previous paragraph.

Comments: Other commenters recommended adding a phrase to proposed § 683.500(b) to indicate that a WIOA Pay-for-Performance contract strategy must include a prohibition against a short-term training activity and placement into low-wage job strategy for harder to serve participants.

Department Response: The Department decided against prescribing prohibitions or outcomes for locals who employ the use of a WIOA Pay-for-Performance contract strategy in order to retain the local areas' flexibility authorized under WIOA. However, the Department will provide additional guidance on this subject.

Comments: Commenters also asked for clarification on whether NFJP providers or WIOA title II providers are included in WIOA Pay-for-Performance contracting strategy.

Department Response: WIOA sec. 3(47) is clear that WIOA Pay-for-Performance contract strategies only include strategies for the provision of training services under WIOA secs.

134(c)(3) and 129(c)(2). Neither the NFJP program nor title II are located at sec. 134(c)(3) or 129(c)(2). Because WIOA is clear that NFJP and title II providers are not included in the definition of a WIOA Pay-for-Performance strategy, the Final Rule adopts the provision as proposed. However, as described in the NPRM, a WIOA Pay-for-Performance contracting strategy is only one specific type of a performance-based contract strategy. Neither WIOA nor the Final Rule is meant to foreclose NFJP providers, title II providers, or any other providers from pursuing performance-based contracts or strategies as they are generally understood, and they are encouraged to do so. The strategies are considered WIOA Pay-for-Performance contract strategies only if they fit within the strict requirements of WIOA sec. 3(47) and this subpart.

No changes were made to the regulatory text in response to these comments.

Section 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?

This section defines the requirements associated with a WIOA Pay-for-Performance contract, which would be awarded under a WIOA Pay-for-Performance contract strategy.

Comments: The Department received numerous comments regarding § 683.510 and what is an allowable WIOA Pay-for-Performance contract.

Several comments either equated the WIOA Pay-for-Performance contract strategies in WIOA to a Pay for Success financing strategy (sometimes referred to as social impact bonds) or inquired as to the allowability of a Pay for Success financing model in WIOA, specifically the allowability of social impact bonds. Other comments recommended that the Department specify in greater detail the WIOA Pay-for-Performance contract requirements and that the Department issue requirements for applications.

Department Response: Pay for Success financing models are an available WIOA Pay-for-Performance contract type under § 683.510 as long as the requirements of § 683.500 are met; the Department will issue future guidance. The Department intends to provide local areas with flexibility authorized under WIOA needed to implement a WIOA Pay-for-Performance contract strategy that meets the needs and challenges in each local area. The Department does not want to limit this flexibility by imposing any other requirements or exclusive definitions for WIOA Pay-for-Performance contracts and contract strategies. However, the Department will provide additional guidance on this subject. Because § 683.510 does not prohibit the use of a Pay for Success model and the Department wants to maintain flexibility, the Department has determined that no additions to the proposed text are necessary. No changes were made to the regulatory text.

Comments: A few commenters requested that the Department eliminate the requirement that organizations be eligible service providers to qualify for WIOA Pay-for-Performance contract funding.

Department Response: WIOA sec. 3(47) limits the WIOA Pay-for-Performance contractors to those organizations that are eligible under WIOA secs. 122 or 123. Because this requirement is part of WIOA, the Department cannot eliminate it. No changes to the regulatory text were made in response to these comments.

Comments: One comment requested clarification on what providers are eligible service providers and whether YouthBuild could form a consortium in an area to provide the services.

Department Response: The requirements for Eligible Training providers are discussed in 20 CFR part 680. Because another part governs eligible training providers, the Final Rule adopts the provision as proposed.

Comments: Another comment sought clarification on whether for-profits and not-for-profits are treated the same under this section.

Department Response: Section 683.510(f) provides that local entities may enter into WIOA Pay-for-Performance contracts with training providers that are eligible under WIOA secs. 122 or 123. Because WIOA secs. 122 and 123 state, and § 683.295 further clarifies, that for-profit agencies are eligible to be an eligible training provider, the Department has determined that these provisions do not need additional clarification regarding the treatment of for-profits and non-for-profits agencies. No changes were made in the regulatory text in response to this comment.

Comments: One commenter requested clarification on whether the § 683.510(e) requirement that the primary indicators of performance in sec. 116(b)(2)(A) of WIOA be used for performance outcomes means that these primary indicators of performance are the only indicators that may be utilized.

Department Response: Section 583.510(e) mirrors the language the WIOA sec. 3(47) which states that the performance elements that must be included in any WIOA Pay-for-Performance contract are the primary indicators of performance described in WIOA sec. 116(b)(2)(A). As WIOA requires the elements at sec. 116(b)(2)(A), they are mandatory for all WIOA Pay-for-Performance contracts. The Department will provide additional guidance on whether additional performance outcomes can be used in determining the amount to be paid a service provider under a WIOA Pay-for-Performance contract.

Comments: Another comment stated that WIOA Pay-for-Performance contracts should give priority to innovative interventions that aim to help hard-to-serve participant populations find jobs and careers that lead to family-sustaining wages.

Department Response: The Department intends to provide local areas with flexibility authorized under WIOA that is necessary for the implementation of a WIOA Pay-for-Performance contract strategy that meets the needs and challenges in each local area. For that reason, the Department has decided against adding the proposed priority to the regulation. The Department does not want to limit this flexibility by imposing any other requirements or exclusive definitions for WIOA Pay-for-Performance contracts. However, the Department will provide additional guidance on this subject.

Comments: A commenter recommended replacing "must" in § 683.510(d) with "may only" because the use of WIOA Pay-for-Performance contracts for adult training services or youth activities is optional under WIOA.

Department Response: The Department is maintaining the language as proposed because although the WIOA Pay-for-Performance contracts strategy is optional under WIOA, if it is implemented, it must be used to provide the services as described in § 683.510(d).

Comments: Commenters urged the Department to clarify the use of the bonus payments as described in § 683.510(h).

Department Response: The Department has determined that the inclusion of incentive payments in this provision confused the Department's description of bonuses. Consequently, the Department has removed references to incentive payments from this provision. Because the Department has determined that any additional clarification would result in an amount of detail not appropriate to this regulation, the Final Rule adopts the remainder of paragraph (h) as proposed.

Comments: Another comment suggested that requiring independent validations from an independent evaluator without providing adequate funding would force local areas to cut

services. This commenter recommended that the Department contract for nationwide local area evaluation and rotate areas every year that are evaluated.

Department Response: As discussed in the preamble to § 683.500, the parameters of independent validation will be addressed in future guidance. However, the local areas will have flexibility in entering into strategies to validate independently the outcomes achieved under the WIOA Pay-for-Performance contracts, which should allow local areas to manage the cost of this external validation while maximizing the benefits Pay-for-Performance can yield. Independent validation must meet the statutory requirement of ensuring the performance outcomes were achieved, thus ensuring the integrity of the payments. No changes were made to the regulatory text in response to this comment.

Section 683.520 What funds can be used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

This section restates the WIOA requirements that funds allocated under secs. 133(b)(2) and (3) of WIOA can be used for WIOA Pay-for-Performance contract strategies providing adult and dislocated worker training, and funds allocated under sec. 128(b) of WIOA can be used for WIOA Pay-for-Performance contract strategies providing youth activities.

Comments: The Department received several comments requesting clarification regarding § 683.520.

One commenter requested clarification concerning the WIOA Pay-for-Performance contract strategy limits and performance-based contracting. This same commenter requested clarification of on what expenses are included in the 10 percent limit for WIOA Pay-for-Performance contract strategies.

Department Response: Ten percent of the local adult, dislocated, and youth funds allocated under WIOA secs. 128(b) and 133(b)(2)-(3) are available for WIOA Pay-for-Performance contract strategies, as described in § 683.520. However, these caps only are applicable to WIOA Pay-for-Performance contract strategies, as discussed in this subpart, and do not impact a local area utilizing performance-based contracting. Under WIA, many Workforce Investment Boards (Workforce Development Boards (WDBs) under WIOA) utilized elements of performance-based contracts with training providers. These contracts incorporated performance outcomes that contractors were required to meet to obtain payment. However, these contracts did not contain required elements of a WIOA Pay-for-Performance contract strategy articulated in this subpart.

Performance-based contracts are still an available option for local areas and there is no limit on the use of funds for typical performance-based contracts, as defined in the Federal Acquisition Regulations (FAR). Contracts that are not executed under the WIOA Pay-For-Performance contracting authority may continue to include performance incentives, either positive or negative or both, in compliance with the Federal Acquisition Regulations. However, funds used for performance-based contracts that do not qualify as Pay-For-Performance contracts do not remain available until expended under WIOA sec. 189(g)(2)(D). The Department does encourage local areas to refocus these traditional performance-based contracts to place an emphasis on the contractor achieving outcomes like participants obtaining and retaining good jobs, rather than outputs like the number of people served.

The Department has determined additional clarification on what is included in the 10 percent limit is not necessary because the regulation already contains this information. The 10 percent limit applies to WIOA Pay-for-Performance contract strategies, a term that is defined in

§ 683.500(a). Because the regulation already describes what expenses are included in the 10 percent limit, the Final Rule adopts the provision as proposed.

Comments: Another commenter requested clarification as to whether Individual Training Accounts (ITA) are viewed as typical performance-based contracts and, thus, there is no limit on use of funds for them under § 683.520.

Department Response: ITAs are defined in § 680.300 and are payment agreements established on behalf of an individual participant with a training provider for the provision of training services. ITAs are not contracts entered into by a local area for the provision of services to multiple people for the provision of all of the performance outcomes in sec. 116(b)(2)(A) of WIOA; therefore they do not meet the requirements of this subpart.

Comments: A commenter requested clarification on whether the 10 percent limitation in § 683.520 references allotment of funds at the local level.

Department Response: The Final Rule makes changes to § 683.520(b) to replace the word "expended" with "reserved and used," to be more consistent with WIOA secs. 129(c)(1)(D) and 134(d)(1)(A)(iii). Section 683.520(b) provides that no more than 10 percent of the total local adult and dislocated worker allocations can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. Section 683.520(b) further provides that no more than 10 percent of the local youth allocation can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in sec. 129(c)(2) of WIOA. Sections 129(c)(1)(D) and 134(d)(1)(A)(iii) of WIOA make clear that this limitation applies to funds allocated to the local areas. Therefore, the regulation as proposed is clear that the 10 percent limits apply to allocations at the local level. The Final Rule adopts the

remainder of § 683.520(b) as proposed, with technical corrections to better align it with secs. 129(c)(1)(D) and 134(d)(1)(A)(iii) of WIOA. The Department will issue guidance to explain these new practices in § 683.520.

Section 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

This section discusses how long funds used for WIOA Pay-for-Performance contract strategies are available.

Comments: The Department received several comments requesting that the Department clarify the length of time funds are available for Pay-for-Performance contract strategies.

Department Response: WIOA sec. 189(g)(2)(D) specifies that funds used for WIOA Pay-for-Performance contract strategies are available until expended. This is meant to allow local areas to structure contracts that include time-intensive service delivery strategies and/or to structure payments based on outcomes that may take longer to achieve, measure, and validate than the typical 2-year funding availability of local area funds. Funds that are obligated but not expended due to a contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. The Department will issue guidance to explain these new practices. WIOA and regulation sufficiently describe the length of time funds are available for WIOA Pay-for-Performance contract strategies. No changes were made to the regulatory text in response to these comments.

Section 683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

This section describes both allowable and required State activities related to WIOA Pay-for-Performance contract strategies.

Comments: Commenters requested clarification if WIOA Pay-for-Performance contracts would need to be reported under a new line item on the Summary of Expenditures Report, or if this is tracked during the procurement process.

Department Response: This information is being issued under separate Paperwork Reduction Act ICRs. Additionally, the Department expects to put performance and implementation requirements in place in the future and will issue guidance to explain these new practices. Because the Department is still analyzing how to implement the reporting requirements, no changes were made to the regulatory text.

Comments: Another commenter urged the Department to align the regulations at § 683.540 with WIOA and Congressional intent in order to make clear that the Governor's statewide reserve is an acceptable funding source for Pay-for-Performance core end-payments—which the commenter defines as the success payments at the end of a Pay-for-Success contract.

Department Response: This comment raises two potential issues: (1) the use of Governor's Reserve funds to pay for State performance-based contract strategies that do not fit within the strict requirements of WIOA "Pay-for-Performance contract strategies" as defined in WIOA sec. 3(47) and this subpart and (2) the use of Governor's Reserve funds to support WIOA Pay-for-Performance contract strategies.

This part of the regulation does not limit the ability of the State to use the statewide reserve funds to carry out various kinds of performance-based contracts, as defined in the Federal Acquisition Regulations (FAR). Rather, this part of the regulation addresses how Governor's reserve funds may be used to support WIOA Pay-for-Performance contract

strategies, a term defined in sec. 3(47) of WIOA and § 683.500. State and local funds may be used to support performance-based contracting, including projects that involve "core-end payments" so long as these funds are used consistently with any restrictions and requirements that might govern those funding sources. However, grantees should note that unlike the 10 percent of local funds identified in WIOA secs. 129(c)(1)(D) and 134(d)(1)(A)(iii) as being available for WIOA Pay-for-Performance contract strategies, funds used for other types of performance-based contracting do not have the potential extended period of availability identified in WIOA sec. 189(g)(2)(D) as applying to the 10 percent of funds described in WIOA secs. 129(c)(1)(D) and 134(d)(1)(A)(iii).

In response to the issue of the use of Governor's Reserve funds to support WIOA Pay-for-Performance contract strategies, the Department has added a paragraph (a)(3) to clarify that the items listed in § 683.540(a) are not an exhaustive list of ways in which Governor's Reserve funds can be used to support WIOA Pay-for-Performance contract strategies. As the addition explains, Governor's Reserve funds can be used for other activities supporting WIOA Pay-for-Performance contract strategies if those uses otherwise comply with limitations that govern the use of those funds.

For example, as provided in § 683.540(a), Governors may provide technical assistance to local areas, including assistance with structuring WIOA Pay-for-Performance contract strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance. This technical assistance can help local areas move forward in using this contract strategy. Additionally, the State may either conduct evaluations of such strategies and/or provide technical assistance to locals regarding the importance of evaluation of WIOA

Pay-for-Performance contract strategies. The State and local areas may conduct their own evaluations of the WIOA Pay-for-Performance contracts, or procure an independent evaluator.

Governor's Reserve funds used to support Pay-for-Performance contract strategies, like Governor's Reserve funds used for other types of performance-based contracting, do not have the potential extended period of availability identified in WIOA sec. 189(g)(2)(D). The Department will issue additional guidance on how these funds may be used to support WIOA Pay-for-Performance contract strategies, including utilizing the Governor's Reserve for "core-end payments," in compliance with the law. No other changes were made to the regulatory text in response to these comments.

6. Subpart F – Grievance procedures, Complaints, and State Appeals Processes

Section 683.600 What local area, State, and direct recipient grievance procedures must be established?

This section requires local areas, States, outlying areas, and direct grant recipients of WIOA title I funds to establish and maintain a procedure for grievances and complaints, including appeals as appropriate, and describes what the procedure must include, as required by WIOA sec. 181(c)(1).

Comments: The Department received a comment in support of the regulation as proposed and another comment requesting clarification whether Local WDBs or CEOs are considered "other interested parties affected" by the recipient's WIOA programs under § 683.600.

Department Response: Local WDBs and CEOs are among the parties that qualify as "other interested parties." The Department has determined that no additional changes to the regulatory text are necessary to clarify that the broad term "other interested parties" includes

Local WDBs and CEOs. No changes were made to the regulatory text in response to this comment.

7. Subpart G – Sanctions, Corrective Actions, and Waiver of Liability

Section 683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?

This section describes the procedures and circumstances under which the Department will impose sanctions or take corrective actions, as described in WIOA sec. 184(b) and (e), against States, local areas, and grant recipients and subrecipients.

Comments: The Department received several comments on § 683.700 that cited a reference to the "amount that would be reserved by the Governor" and stated that this is currently the Governor's 5 percent set-aside, then asked for clarification of what portion of funds are subject to the 5 percent reduction and if this amount is affected by failure to meet performance standards under Vocational Rehabilitation. The commenters also requested clarification as to which programs the 5 percent reduction affected.

Department Response: Section 683.700 clarifies that the procedures described at 20 CFR part 677 will be used to impose a sanction or corrective action for a violation of WIOA sec. 116 (see Joint WIOA Final Rule). The cited language in the comment is not in § 683.700 and appears to reference sanctions for a violation of WIOA sec. 116 and the procedures established in 20 CFR part 677. The preamble to 20 CFR part 677 addresses issues concerning performance and any applicable sanctions related to WIOA sec. 116. Because these comments do not appear to relate to this section, no changes were made to the regulatory text in response to these comments.

Section 683.710 Who is responsible for funds provided under title I and the Wagner-Peyser Act?

This section identifies the recipient as the responsible party for title I and Wagner-Peyser Act funds.

Comments: The Department received a comment requesting clarification as to § 683.710's application to planning regions. Specifically, the commenter requested clarification as to what protections exist if one service area in a region has a corrective action plan in place.

Department Response: Section 683.710(a) provides that the recipient of funds is responsible for all funds under its grant award. Section 683.710(b) further provides that where a planning region includes two separate units of local government, the chief elected official (CEO) of each unit of local government is the responsible party and that the individual jurisdictional liability must be established in a written agreement between the CEOs. The regulation as proposed clearly states that the potential liability of any unit of general local government in a planning region is dependent on what the CEOs agree to in the written agreement required under § 683.710(b)(2). No changes were made to the regulatory text in response to these comments.

Section 683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

This section requires the Governor to take corrective action and impose sanctions on a local area if it fails to comply with the requirements described in this section.

Comments: The Department received a comment requesting a change to § 683.720(a)(2) to add language that prior to imposing sanctions, the Governor should find a substantial violation and that the local area has failed to take corrective action. The commenter suggested that the additional language would align to § 683.720(a)(2) with WIOA sec. 184(b)(1).

Department Response: The Department analyzed the comment as well as all of the language in WIOA sec. 184 and determined that § 683.720(a)(2) is consistent with WIOA sec.

184. WIOA sec. 184(a)(5) provides that if a Governor determines that a local area is not in compliance with the uniform administrative requirements, the Governor must require corrective action to secure prompt compliance with the requirements and impose the sanctions found at WIOA sec. 184(b). WIOA sec. 184(a)(5) requires corrective action regardless of whether the violation of the Uniform Administrative Requirements is substantial. In contrast, WIOA sec. 184(b) only requires action by the Governor for violations of title I of WIOA if those violations are substantial. WIOA clearly requires corrective action for violations of the Uniform Administrative Requirements even if those violations are not substantial. No changes were made to the regulatory text in response to this comment.

Comments: The Department received a comment requesting a change in § 683.720(c)(1) to add language stating that if the Secretary finds that a Governor has failed to meet the requirements in § 683.720(c)(1), then the Secretary must take the action required in § 683.700(b) consistent with procedures established in § 683.440.

Department Response: The Department determined that adding the language in § 683.720(c)(1) is not necessary as § 683.700 adequately outlines the necessary actions the Secretary should take if a Governor fails to take actions against a local area and includes the requirement that the Grant Officer use the procedures outlined in § 683.440 (except in certain circumstances not applicable to violations of WIOA sec. 184(a)). No changes were made to the regulatory text in response to this comment.

Section 683.730 When can the Secretary waive the imposition of sanctions?

This section permits a recipient to request a waiver of liability, and describes the factors the Grant Officer will consider when determining whether to grant the request.

Comments: The Department received comments regarding § 683.730. The comments requested the Department fix a clerical error in § 683.730(b)(1) by removing the word "is" after the word "waiver" to better clarify the meaning of the provision.

Department Response: The Department agrees about the need to make a non-substantive textual edit to § 683.730(b)(1) and has made the suggested change.

The Department received no comments on the remaining provisions in § 683.730, and has adopted each as proposed.

H. Part 684 – Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

This part of the Final Rule governs the Indian and Native American Programs authorized under sec. 166 of WIOA. This Final Rule section-by-section discussion details the Department's responses to public comments on the proposed part 684 regulations. The analysis that follows provides the Department's response to public comments received on proposed part 684 regulations. If a section is not addressed below, it is because the public comments submitted did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside of the scope of the regulation and the Department offers no response. Lastly, the Department has made a number on non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

In this part, one conforming edit was made throughout to replace the term, "performance measures" with the term "performance indicators."

2. Subpart A – Purposes and Policies

Section 684.110 How must Indian and Native American programs be administered?

Comments: Multiple commenters recommended that § 684.110 include language that would require the Department to utilize staff with a particular competence in Federal policies that have tribal implications and address the government-to-government relationship between the United States and Indian tribes.

Department Response: The Department agrees with the commenter that it is in the best interest of the INA program to utilize employees that have a particular competence in INA employment and training programs. The Department makes every effort to ensure staff are fully competent in the relevant field to administer all of the Department's programs, including the INA program authorized by sec. 166 of WIOA. As part of this effort, the Department actively recruits experienced and knowledgeable staff, including through recruitment of individuals eligible for Indian hiring preference for positions within the Division of Indian and Native American Programs. This effort also targets those who have experience in working with Indian tribes and communities in the development and administration of INA employment and training programs.

The Department seeks to hire competent individuals for all of its programs and has determined that it is not appropriate to include a competency requirement in regulation for just the INA program. No changes to the regulatory text were made in response to these comments.

Section 684.120 What obligation does the Department have to consult with the Indian and Native American program grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?

Comments: A commenter expressed concern about whether the WIOA primary indicators of performance had been developed with input from the INA communities and the Native American Employment and Training Council (NAETC) and whether the new WIOA indicators removed the requirement of consultation. This commenter further stated that the NAETC has been working to develop realistic performance goals and suggested that INA programs should not be evaluated on national standards that cannot be attained in Native communities.

Department Response: Per secs. 166(h) and 166(i)(2) of WIOA and §§ 684.120, 684.460, 684.620, and 684.940, the Department is required to consult with NAETC and INA communities. The Department conducted town hall meetings, tribal consultations, and listening sessions with the NAETC and INA communities and will continue to ensure that INA programs and the NAETC be consulted. No changes to the regulatory text were made in response to this comment.

Comments: The comment also references the requirement that INA program grantees report on the primary indicators of performance described in sec. 116(b)(2)(A) of WIOA.

Department Response: As described in sec. 116(b)(2)(A) of WIOA, the performance indicators are mandated by WIOA. The Department does not have the authority to change the statutorily required performance indicators in WIOA. However, it fully intends to continue meaningful discussions and consultation with the NAETC as well as with INA program grantees and other stakeholders in the implementation of the indicators, including the establishment of targets and levels of performance for each indicator as well as the potential for waivers.

Section 684.130 What definitions apply to terms used in this part?

Comments: Regarding the "high-poverty area" definition's reference to the American Community Survey (ACS) 5-year data, one commenter said that this is misstated because the

Department has not initiated using the ACS 5-year data as it has not replaced the Census 2000 tab with more recent required data.

Another commenter stated that ACS raises questions about the reliability of data for the Indian population, asserting that State Data Centers and Census Information Centers nationwide express concerns for the high margin of error in small populations and small geographic areas. Stating that changes were made in 2011 to improve the data and that the full effect of these improvements will not be known until 2017, this commenter urged the Department to allow tribes to use their own census statistics in the interim until reliable data are available.

Multiple commenters also proposed a different definition of "high-poverty area" that uses specific terms as defined by the U.S. Census Bureau: "a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the US Census Bureau), Alaska Native Village or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or country." In addition, these commenters recommended that in the Native American supplemental youth services program, the definition of "high-poverty area" should relate specifically to poverty rates for the Native American population as that is the target population for this program.

Department Response: As of the date of these Final Rules, the Department is using special tabulations from the Census Bureau for the INA funding formulas described at §§ 684.270(b) and 684.440(a). As stated by the commenter, these special tabulations are based on 2000 decennial census data and have not been updated with ACS 5-year data; however, the special tabulations for the formula are a different calculation than the one for determining high-poverty. The calculation for determining high-poverty can be obtained by INA program grantees using ACS 5-year data from the Census Bureau's Web site.

Comments: A commenter raised concerns regarding the use of ACS 5-year data in determining the poverty rate for a given census tract.

Department Response: The Department recognizes there will be margins of error inherent to the ACS 5-year data and that the margin of error is likely to be greater for census tracts with smaller sub-populations, such as Native Americans living in rural and remote reservation areas. The ACS 5-year data are administered by the U.S. Census Bureau and is subject to a uniform methodology for collecting population and poverty data for all census tracts throughout the United States. Conversely, allowing tribes to use their own census statistics does not provide for such uniformity, as the method that one tribe uses to count individuals could be different than how another tribe counts individuals. Because the methodology for counting individuals must be the same across all of the United States to ensure fairness, and because the U.S. Census Bureau is the only source that can provide such uniformity, the Final Rule continues to reference ACS 5-year data.

Regarding the remainder of the definition of "high-poverty area," the Department agrees with the commenter and has adopted more precise U.S. Census Bureau language. The Department also has added language that permits the Secretary to identify other areas that an applicant can use to calculate the poverty rate, which allows flexibility in case the areas change for which ACS5-Year data are available.

The Department also agrees that INA program grantees should be able to look to the poverty rate of INA individuals when determining if an area is "high-poverty." The Department recognizes that it is possible for the overall poverty rate in a census tract to be below the 25 percent poverty threshold for the general population while the poverty rate among the INA sub-population in that same census tract is greater than 25 percent. Consequently, the Department

added language to the definition of high-poverty area permitting INA program grantees to claim "high-poverty" status for a particular area if the poverty rate of the INA population is at least 25 percent; however, the Department has retained language that allows an area to be considered high-poverty where 25 percent or more of the general population is in poverty. The Final Rule retains this language in order to allow INA program grantees the flexibility of selecting the methodology that is more advantageous for its participants. Therefore, grantees may calculate the poverty rate using the following two methodologies: (1) the number of low-income individuals in a census tract divided by the total number of individuals in the same census tract; or (2) the number of low-income INA individuals in a census tract divided by the total number INA individuals in the same census tract.

While no comments were received on this section about the 30 percent threshold used in determining high poverty, the Department received many comments about the 30 percent threshold in a similar section of the regulation (§ 681.260). As a result of the numerous comments on § 681.260 and the analysis of the comments, the Department determined that a poverty rate of at least 30 percent was too high, and the Final Rule requires a poverty rate of at least 25 percent. Consequently, the Department has changed the percentage requirement for this section to be consistent with § 681.260.

The Department also made clarifying edits to § 684.130 to the meaning of and Indian-Controlled Organization.

3. Subpart B – Service Delivery Systems Applicable to Section 166 Programs

Section 684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

Comments: A commenter requested that the Department eliminate or lower the $100,000 threshold in proposed § 684.200(a)(2). This commenter stated that the proposed threshold would eliminate 36 small, long-time grantees and would leave many rural people unserved on their reservations. The commenter also questioned the reasoning behind allowing tribes participating in the consolidation program under Pub. L. 102-447 to receive funding under sec. 166 for less than $100,000 but greater than $20,000 but not afford a similar exception for INA program grantees that are not participating in Pub. L. 102-447 but receive funds from multiple sources.

Department Response: The Department has determined that grants of less than $100,000 are not sufficient to operate an employment and training grant effectively. The Department has made an exception for certain incumbent grantees whose funding was less than $100,000, because the Department recognizes that many of these entities are well-established in the community and have been operating an employment and training program for many years. Because incumbent grantees can continue to operate grants even if those grants are for less than $100,000, the Department has determined that implementation of this provision as proposed would not eliminate the 36 incumbent grantees to which the commenter refers.

As for allowing tribes that participate in the Pub. L. 102-477 program to have a lower funding threshold than grants administered through the Department, the Department reached this decision because Pub. L. 102-477 allows for Federal employment and training related funds to be consolidated into one grant. This consolidation results in administrative savings that make smaller grant amounts administratively manageable. Therefore, while the WIOA portion of the consolidated grant can be as low as $20,000, all Federal resources combined under the plan must total at least $100,000. Because the Department has determined that § 684.200(a)(2) would not eliminate the 36 incumbent grantees and because tribes participating in Pub. L. 102-477 also

have the same $100,000 Federal funding threshold under a consolidated grant, no changes have been made to regulatory text except for re-numbering and non-substantive edits to paragraphs (c), (d), and (g) for clarity.

Section 684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?

Comments: As part of a Council resolution submitted as a public comment, the NAETC wrote "the NAETC agrees and recommends that 4 year eligibility of American Indian, Alaska Native and Native Hawaiian grantees may be designated for such periods, except as the Secretary may choose to waive competition for select grantees who have performed satisfactorily."

Department Response: The NAETC's resolution suggests that the Secretary may choose to waive competition for select INA program grantees that have performed satisfactorily. Although that authority existed under sec. 166(c)(2) of WIA, WIOA removed that provision. Accordingly, sec. 166(c) requires a grant competition to be held every 4 years for all grantee service areas, and § 684.220 is consistent with sec. 166(c) of WIOA. No changes to the regulatory text were made in response to this comment.

4. Subpart C – Services to Customers

Section 684.310 What are Indian and Native American program grantee allowable activities?

Comments: A commenter indicated that the allowable activities reference to 20 CFR 678.430 could not be found.

Department Response: The Department has determined that the reference to 20 CFR 678.430 was correct. Proposed regulations for WIOA were issued in two separate NPRMs in the Federal Register. One NPRM includes proposed rules for Department of Labor programs only;

this NPRM included regulations for the INA program. The other NPRM provides proposed joint rules for the Department of Education and the Department of Labor. Language referenced at 20 CFR 678.430 was published in the Joint WIOA NPRM (80 FR 20574, Apr. 16, 2015). No changes to the regulatory text were made in response to this comment.

Section 684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?

Comments: A commenter requested that the Department expand on the language that the Department will provide technical assistance and training (TAT) to "assist INA program grantees to improve program performance and improve the quality of services to the target population(s), as resources permit." Specifically, this commenter asked for clarification regarding available resources to provide such TAT and asked how the "quality of services" would be defined—specifically and culturally appropriate—within Indian country.

Department Response: The Department has decided to retain the regulatory text as proposed to preserve flexibility if additional resources become available. The Department notes that the regulatory text identifies two resources that can be used for TAT: (1) funds reserved under § 684.270(e) and (2) unawarded funds under § 684.260.

Comments: The commenter also asked about the definition of "quality of services."

Department Response: Quality services can take many forms such as high quality career and guidance counseling, helping individuals with job search and job placement assistance, mentoring, financial support for quality training and education, and providing the necessary supportive services to help individuals overcome barriers, etc. The Department notes that grantees are required to describe the quality of services that will meet their customers' needs in their 4-year strategic plan and provides guidance on the content of that plan. The Department

then monitors grantees to ensure they are providing the quality services reflected in their plan, provides rigorous technical assistance to improve quality in the course of these reviews and ongoing, and disseminates best practices that exemplify quality services.

5. Subpart D – Supplemental Youth Services

Section 684.410 What entities are eligible to receive supplemental youth services funding?

Comments: Multiple commenters opposed the exclusion of Federally recognized tribes that do not have a land base, commenting that this limitation fails to recognize the unique history of California Indians and would adversely impact the Federally recognized tribal communities that do not yet have land in trust but have been eligible for funding and have received services under prior workforce legislation. Explaining some of the land history of California tribes, a commenter suggested that Federally recognized tribes without a land base in California should not be prevented from receiving funding or offering supplemental youth services to their members and asserted that the exclusion of the California tribal communities within the service area would have discriminatory effects on Federally recognized tribes without a land base in California.

Department Response: Upon review of the comments, the Department has included new language similar to the regulatory language that was in effect under WIA. The Department notes that, currently, recipients of youth funding are limited to entities with a land base per the formula that The Department has established with the input of the NAETC pursuant to the requirements of § 684.440. The youth funding formula is based on demographic data from the U.S. Census Bureau using the geographic boundaries of American Indian reservations, Oklahoma Tribal Statistical Areas (OTSAs), Alaska Native Village Statistical Areas (ANVSAs), Alaska Native Regional Corporations (ANRCs), and the State of Hawaii. During the conversion process from

the 1990 census to the to the 2000 census under WIA, the Department consulted with the NAETC's census workgroup on the youth funding formula. The 2000 census workgroup made no recommendations to change this methodology. Therefore, the methodology of awarding youth grants continues to be based on American Indian reservations, OTSAs, ANVSAs, ANRCs, and the State of Hawaii. Finally, INA program grantees should note that even if they are not required to have land base to receive youth supplemental funds, sec. 166(d)(2)(A)(ii) still limits participants in INA youth programs to "youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii."

Section 684.430 What individuals are eligible to receive supplemental youth services?

Comments: A commenter supported the increase in age from 21 to 24 and asked whether additional funding will be considered to best serve this population that has been defined by the Department as most in need and having barriers to employment.

Department Response: Program funding is ultimately determined by Congress through annual funding appropriations for Federal employment and training programs. Consequently, there is not necessarily a relationship between an increase in the number of individuals eligible for a program and an increase in funding. No changes to the regulatory text were made in response to this comment.

Section 684.460 What performance indicators are applicable to the supplemental youth services program?

Comments: Several commenters expressed concerns with the performance accountability indicators applicable to the Native American supplemental youth services program. These concerns fall into three categories: 1) concerns about the feasibility of implementing the performance indicators given the limited amount of funding available for the youth supplemental

program, 2) concerns about the applicability of the youth performance indicators given that most tribes use INA youth funds operate a summer employment program only, and 3) specific concerns about regulation language. Several commenters suggested that the Department retain the WIA performance measures or waive the WIOA performance indicators.

Multiple commenters raised concerns about expense and feasibility of data collection for the performance indicators, particularly that the current performance reporting system used by INA program grantees (Bear Tracks) is not adequate for the proposed performance requirements and would be costly to upgrade. Specifically, a commenter asserted that the total update cost may exceed $1 million, stating that the current Microsoft Access platform does not allow the Department to obtain real-time data across the INA grant community because it is not Web-based. This commenter also asserted that training would be necessary for INA program grantees on a nationwide basis on the new performance reporting system.

Multiple commenters stated that, given the disparity in funding between the INA youth grants and the State grants, it is not reasonable or practical to require the same level of service and effort in collecting performance data given the small median size of grants. A commenter stated that the INA youth program currently does not have the ability to do wage matching through the Wage Record Interchange System (WRIS). This commenter expressed concern regarding the burden on INA program staff over following up with participants to determine the "unsubsidized employment" aspect of certain performance indicators.

A commenter expressed concern that maintaining current regression models for the INA program grantees that factor in local economic conditions is an additional cost that must be considered.

A commenter said that such programs are not conducive to meeting several of the State performance indicators, stating that most INA program grantees only operate summer employment programs for high school-aged youth,. Because the INA program is not a core program, a commenter suggested that the "effectiveness in serving employers" performance indicator should not apply to INA programs, citing WIOA sec. 116(b)(2)(A)(iv).

A commenter proposed that the Department allow the INA program to modify the definitions for the indicators to better fit a summer employment program that primarily serves high school-aged youth that return to high school in the fall and that the regulations or ETA policy clarify that the indicators cannot be used to determine INA program grantee performance. This commenter suggested that while the Department develops performance indicators for the INA youth programs in consultation with the INA program grantee community and the NAETC, the Department should establish a waiver process under which INA program grantees would continue to use the current Tribal Supplemental Youth Services performance indicators and goals under WIA as part of the 4-year strategic plan.

Commenter concerns about other specific regulation language included: Multiple commenters asked for more specificity on what is considered an "education or training" activity and whether high school is considered an "education" activity. Another commenter expressed opposition to proposed § 684.460(b), which would require the Secretary, in consultation with the NAETC, to develop additional performance indicators (in addition to the primary indicators of performance). A commenter encouraged the expansion of the median earnings performance measure in § 684.460(a) to include consideration of a participant's economic self-sufficiency level or economic security level in addition to median earnings. Another commenter stated that

the reference in § 684.620(a)(6) to WIOA sec. 116(b)(2)(A)(iv) is incorrect. Instead, the reference should be to sec. 116(b)(2)(A)(i)(VI).

Department Response: The Department held two tribal and grantee consultations on WIOA in which stakeholders raised concerns with the youth performance indicators similar to the concerns expressed in these comments. The Department recognizes that there are significant challenges in implementing the youth performance indicators at sec. 116(b)(2)(A)(ii) of WIOA. While the Department cannot change statutory requirements such as performance indicators, consideration has been given to how youth performance indicators can be implemented in a way that is realistic and feasible for INA program grantees while also maintaining the requirements in WIOA.

Because WIOA requires the use of the performance indicators at WIOA sec. 116(b)(2)(A) for the recipients of funds under WIOA sec. 166, including the youth performance indicators at 116(b)(2)(A)(ii), no changes have been made to the regulatory text in response to these comments.. However, the Department notes that recipients of youth funds under sec. 166 of WIOA may request a waiver of the youth indicators of performance pursuant to waiver procedures that will be established under sec. 166(i)(3) of WIOA. The waiver procedures established pursuant to sec. 166(i)(3) of WIOA generally will be consistent with, but not identical to, the waiver requirements under sec. 189(i)(3)(B) of WIOA. The Department will consult with the NAETC before developing guidance on the waiver process. The Department anticipates that this guidance will include youth performance indicators that may be substituted for the performance indicators identified at WIOA sec. 116(b)(2)(A). Finally, the Department also envisions that waivers to the youth performance indicators will be requested at the beginning of a 4-year grant award cycle, in the 4-year strategic plan and will waive youth

performance indicators for the duration of the 4-year grant cycle plan. Through this process, the Department anticipates that recipients of youth INA funding can establish performance indicators that address both the grantees' feasibility and applicability concerns.

Comments: Commenters' requested more specificity on what is considered an "education or training" activity and whether high school is considered an "education" activity.

Department Response: The Department will provide clarification on this and other performance-related terms in guidance. Finally, the Department also will work with the NAETC to update the INA programs' current MIS system or develop a new MIS system to collect the data necessary (including wage records) to report on the outcomes of the INA youth indicators, (as well as the outcomes of INA adult performance indicators).

Comments: Commenters expressed concerns about establishing a statistical regression model.

Departments Response: The Department acknowledges the commenters concerns about the cost of maintaining a statistical regression model. The cost of developing a statistical adjustment model is the responsibility of the Department and the Department continues to seek ways to develop accurate and fair statistical adjustment models that are cost effective and maintainable. As the Department continues to implement WIOA and refine the application of the model for sec. 166 grantees the Department will provide additional information.

As for the concern about the applicability of the performance indicator regarding effectiveness of serving employers under § 684.460(a)(6), the Department has determined that WIOA sec. 166(h) requires the use of all performance indicators under WIOA sec. 116(b)(2)(A), including the indicator on effectiveness in serving employers at sec. 116(b)(2)(A)(i)(VI). That WIOA sec. 116(b)(2)(A)(iv) references the core programs does not limit the applicability of the

indicator on the effectiveness in serving employers to the core programs. Because WIOA clearly requires the application of the indicator on effectiveness of serving employers for recipients of funds under sec. 166, no changes have been made to the regulatory text.

Regarding the incorrect reference in § 684.620(a)(6), the Department has examined the reference to sec. 116(b)(2)(A)(iv) in § 684.460(a)(6) and has determined that the reference is correct.

Concerning the opposition to § 684.460(b), which requires the development of performance indicators that are in addition to the primary indicators of performance, this is a statutory requirement and cannot be altered here.. However, as part of a waiver request, the Department envisions that these additional indicators which will be developed in consultation with the NAETC, may be used in lieu of the primary indicators of performance specified at §§ 684.460(a)(1)-(6) and 684.620(a)(1)–(6). Please see further discussion of the adult performance indicators in the preamble corresponding to § 684.620.

Comments: A commenter encouraged the Department to expand the median earnings performance indicator at § 684.460(a)(3), to include a participant's economic self-sufficiency level or economic security level.

Department Response: The Department determined that there is not an accurate way of converting a self-sufficiency/economic security level into an average earnings amount. No changes have been made to regulatory text in response to these comments.

6. Subpart F – Accountability for Services and Expenditures

Section 684.620 What performance indicators are in place for the Indian and Native American program?

Comments: The comments on the performance indicators in § 684.620 raise many of the same issues as the comments on the youth performance indicators in § 684.460. For example, many commenters expressed concerns about the cost of implementing the performance indicators and suggested that the Department should develop performance indicators with the help of INA program grantees. Additionally, commenters noted challenges with the proposed use of reporting following the State reporting mechanisms and urged the Department to negotiate with and assist INA program grantees in developing a culturally amenable system of reporting that does not impede grantees ability to prioritize services to participants.

Another commenter expressed concerns that the proposed performance indicators would require a significant re-design (or replacement) of the current performance reporting system used by INA program grantees (Bear Tracks).

A commenter noted that more than one-third of the WIOA sec. 166 INA program grantees are allocated less than $100,000. The commenter expressed concerns that WIOA increases the reporting burden for WIOA sec. 166 programs by using a more complex set of indicators and expressed concern for the statistical regression model.

A commenter suggested that INA programs should have their own performance indicators that they help to develop and another commenter suggested that a waiver provision for performance is necessary.

Additionally, a commenter suggested that the Department may have violated E.O. 13175's requirements to consult with tribal officials in the development of Federal policy that has tribal implications. This commenter reasoned that the WIOA-mandated primary indicators of performance removes the step of consultation with WIOA sec. 166 INA programs and the

NAETC to develop performance indicators in accordance with the purpose and intent of WIOA sec. 166.

A commenter also expressed concern that WIOA could be construed to require greater reporting requirement of INA program grantees than States and municipalities. This commenter requested that the regulations clarify that tribes and tribal organizations do not have any greater reporting requirements than States or local governments.

Finally, a commenter suggested that § 684.620(a)(6) contains an incorrect reference.

Department Response: The Department continues to seek an appropriate balance of being accountable for Federal funds through tracking and reporting outcomes while not over-burdening the recipients of Federal funds with undue reporting costs and other administrative requirements. Maintaining such a balance between performance accountability and burden will be important to WIOA implemented.

The performance indicators at § 684.620 implement six statutorily required performance indicators and also require the Department (in consultation with the NAETC) to develop an additional set of performance indicators and standards that are applicable to the INA program. To the extent that a commenter requested that the Department clarifies in the regulations that sec. 166 recipients do not have reporting requirements in addition to those of recipients of State adult, youth and dislocated worker funds, the Department notes that such a clarification would be contrary to the statutory language of WIOA. Section 166(h)(1)(A) of WIOA requires that a set of performance indicators be developed "in addition" to the performance indicators described in sec. 116(b)(2)(A). Therefore, WIOA requires that INA program grantees be subject to additional performance indicators.

However, to the extent that commenters are asking for the Department to waive performance indicators for the INA adult program, the Department recognizes that there are challenges in applying the indicators to the INA program. As discussed in the preamble to § 684.460, the Department is considering a waiver policy for the youth program for these indicators pursuant to the waiver process at § 684.910. The Department recognizes that WIOA provides broad waiver authority for the INA program; however, WIOA sought to hold programs accountable for performance by requiring common performance indicators to compare across programs. Any waivers for the adult program will be considered on a case-by-case basis to account for the needs and circumstances of individual grantees.

The Department also recognizes that updates will need to be made to the information collection and reporting software known as Bear Tracks and understands that an investment may need to be made in the software to move it from a Microsoft Access platform to a web-based platform. Training also will need to be provided to grantees on the new performance indicators and the new updates to the software. In addition, baseline data will need to be established before target levels for performance can be established. The Department is providing technical assistance and guidance to support grantees in transitioning to the new performance indicators under WIOA.

Additionally, as noted in the response to § 684.620, the Department has taken the commenters concerns about establishing a statistical regression model under consideration. As the Department continues to implement WIOA and refine the application of the model for sec. 166 grantees, the Department will provide additional information.

Additionally, a commenter proposed that § 684.620(a)(6) contains an incorrect reference. The Department has reviewed the provision and determined that the reference is correct.

The Department also will ensure compliance with the requirements of the Privacy Act. Because the Department is already bound by the requirements of the Privacy Act, the Department has determined that it is not necessary to add language to the regulation confirming this requirement. No changes to the regulatory text were made in response to these comments.

As for the comments on E.O. 13175, the Department notes that E.O. 13175 requires each Federal agency to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. The primary indicators of performance are required by WIOA and are not the result of a policy or regulation implemented by the Department. Therefore, the Department did not violate E.O. 13175 or the consultation requirement at sec. 166(i)(2). Please see the DOL WIOA NPRM preamble and the introductory text at the beginning of the preambles for the Joint and DOL WIOA Final Rules for additional discussion of the steps taken to fulfill the Department's consultation requirements. In its implementation of the primary indicators of performance, the Department will continue to comply with the requirements of E.O. 13175 by ensuring input by tribal officials and the NAETC, which represents Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations.

7. Subpart I – Miscellaneous Program Provisions

Section 684.910 What information is required in a waiver request?

No public comments were received for this section; however, the Department has made changes to this regulation in response to comments on §§ 684.460 and 684.620 to clarify that the requirements for submitting a waiver under sec. 166(i)(3) are not identical to the waiver requirements under sec. 189(i)(3)(B) of WIOA. Instead, they generally follow the requirements

under sec. 189(i)(3)(B). The Department will address this issue further in overall guidance on the 4-year strategic plan.

Section 684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Comments: A commenter urged the Department to issue Requests for Proposal (RFPs) as soon as possible to implement WIOA sec. 166(k), which authorizes additional funding for competitive grants "to entities with demonstrated experience and expertise in developing and implementing programs for the unique populations who reside in Alaska and Hawaii … to improve job training and workforce investment activities for such unique populations." As part of this competitive RFP process, this commenter urged the Department to prioritize the expertise and cultural sensitivity of tribes, tribal organizations, and Native Hawaiian-serving organizations, particularly any WIOA sec. 166 grantees. The commenter asserted that such a preference priority would ensure that the entities with the greatest experience and success in addressing employment and training issues in Alaska Native and Hawaiian populations would drive the programs.

Department Response: The Department plans to issue a Funding Opportunity Announcement (FOA) in PY 2016 (beginning July 1, 2016) to award grant funding to entities in accordance with WIOA sec. 166(k). The Department will consider establishing a priority under advisement when creating the FOA.

I. Part 685 – National Farmworker Jobs Programs Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

The purpose of part 685 is to implement WIOA sec. 167, which authorizes migrant and seasonal farmworker (MSFW) programs. MSFW programs include career services and training, housing assistance, youth services, and related assistance to eligible MSFWs. In drafting these regulations, the Department consulted with States and MSFW groups during stakeholder consultation sessions conducted in August and September 2014, as required by WIOA sec. 167(f).

The Department received numerous comments on part 685. Many commenters supported the Department's focus on serving MSFW youth and the broad definition of "dependents," who can be served through the program. General concerns raised regarding part 685 included how the Department treats the NFJP operationally and administratively compared to other WIOA programs, and the need for additional emphasis on co-enrollment opportunities for NFJP participants with other WIOA authorized programs, including the dislocated worker program.

Based on the comments received, the Department made the following significant changes to part 685 as proposed:

- The Final Rule permits an NFJP grantee some flexibility to increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant, provided that such reimbursement rates are consistent with the rates set by the Governor in the State or Local WDB(s) in the Local Area(s) which the grantee operates in accordance with WIOA sec. 134(c)(3)(H)(i);
- The Final Rule revises § 685.360(d) to clarify that NFJP-funded permanent housing development activities that benefit eligible MSFWs do not require individual eligibility determinations;

- The Final Rule clarifies in § 685.360 that development of on-farm housing located on property owned and operated by an agricultural employer is an allowable activity; and
- In response to commenters' concerns regarding the negative impact that would result on performance indicator calculations by including individuals who receive only certain minimal "related assistance" services which do not require a significant investment of staff time and resources, the Department has added language to § 685.400 that puts the NFJP program in alignment with other WIOA authorized programs regarding performance accountability.

The analyses that follows provides the Department's response to public comments received on the proposed INA program regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

2. General Comments on NFJP

The Department received a number of comments on NFJP addressing the following issues: administration of the NFJP, co-enrollment of participants, portable eligibility and a national records system, uniform program branding, treatment of NFJP as compared to other WIOA programs, and one-stop infrastructure payments.

<u>Administration of the NFJP</u>

Several commenters expressed concerns regarding the administration of the NFJP. One NFJP grantee commented on the lack of consistency it has experienced when interacting with Federal representatives from different regions and said there is often a disconnect in regulatory interpretation among these representatives. To address this confusion, the commenter suggested that multi-regional grantees should be assigned only one Federal Project Officer based on the grantee's primary location. Multiple commenters stated that the Department should not allow grant officers to place additional administrative or operational restrictions on NFJP grantees.

The Department has not revised part 685 in response to these comments. The Department is committed to ensuring that grantees are treated consistently across regions. The Department's national office coordinates with all Employment and Training Administration (ETA) regional offices to identify program issues and technical assistance needs, and coordinates guidance with Federal Project Officers (FPO) on a regular and ongoing basis. A regulatory fix is not required to ensure uniformity.

Co-enrollment

Comments: Several commenters requested the Department emphasize the importance of co-enrollment opportunities across programs. One commenter remarked that they would like co-enrolled farmworkers to receive training and cost support from other Department programs for which they are eligible, in addition to NFJP. Another commenter said that one-stop centers should increase co-enrollment opportunities for NFJP-enrolled farmworkers, and asserted that grantees often are not able to provide these opportunities and resources. Similarly, a few commenters suggested that one-stop centers should provide services to unemployed farmworkers instead of automatically referring them to NFJP services, and urged adult, youth, and dislocated workers programs to open their services to farmworkers.

Department Response: The Department strongly encourages service delivery alignment across the one-stop delivery system and other workforce partner programs to ensure that services are tailored to meet each individual's needs. As described further in 20 CFR part 678 (see Joint WIOA Final Rule), to better align service delivery and coordination between the one-stop delivery system and other workforce partner programs, the Department encourages NFJP grantees and other title I programs to develop specific language in the memoranda of understanding (MOUs) with Local Workforce Development Boards (also referred to as Local WDBs) and other partners addressing co-enrollment. The MOU may describe how co-enrollments will be accomplished to meet the needs of participants best, address operational issues such as eligibility determination and documentation, co-case management, specific services provided by each partner, and coordinated fiscal and performance tracking. Additionally, 20 CFR 678.500 (see Joint WIOA Final Rule) provides a detailed description of what must be included in the required MOU between the Local WDBs and required one-stop partners. No change has been to the regulatory text here in response to these comments.

Portable Eligibility and a National Records System

Comments: Two commenters stated that if NFJP grantees had a unified, Department-supported data collection system, not only would it be easier to help farmworkers qualify for service, but it also would establish a more unified national presence for the NFJP and ensure continuity of services and eligibility across regions. One commenter remarked that issues of confidentiality and privacy should be considered during the creation of a common eligibility system.

Department Response: The Department agrees that an integrated performance reporting system would assist farmworkers to qualify for service, and facilitate co-enrollment and

assessment of WIOA performance across States and programs. Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template and the Departments will seek public comment on the reporting templates through the Paperwork Reduction Act (PRA) process. Aligning reports and performance definitions will create a performance accountability system that is easier to understand and assess the effectiveness of all service providers in achieving positive outcomes for individuals served across WIOA programs.

The regulations also established an integrated, individual record system.

Comments: Elaborating on continuity of services and emphasizing the inherent migratory nature of farmwork, some commenters urged the Department to establish a clear mechanism that ensures that grantees' performance will not be negatively affected when farmworkers leave or transfer to another grantee or State, and a few commenters stated that farmworkers, especially migratory farmworkers, should be allowed to transfer services easily if they move to a new State. Some commenters suggested creating a uniform branding so that farmworkers can locate services in different States more easily.

Department Response: The Department acknowledges that providing a continuity of program services to migrant farmworker populations moving from State to State may be challenging, and tracking participants and reporting on grantee performance indicator outcomes may be difficult in cases where an NFJP participant has moved to another State.

The Department is continually looking to improve performance reporting policies and systems, and is interested in additional feedback on assistance the Department can provide for establishing mechanisms to track the eligible MSFWs they serve in the NFJP and reporting program outcomes.

Uniform Program Branding

Commenters suggested creating a uniform branding so that farmworkers can locate services in different States more easily,

Department Response: The term NFJP provides nationwide uniformity across employment and training grants and housing grants while providing flexibility for grantees to tailor their outreach efforts to the unique needs of the farmworker communities they serve. The use of one-stop center brand for one-stop centers nationwide will also help farmworkers find services. The Department encourages grantees in one State or service area to consider establishing memoranda of understanding (MOUs) with partner grantees in other States or service areas, or a joint MOU with multiple grantees, to ensure continuity of program services to participants, and support outcome tracking as participants move from State to State.

Treatment of NFJP as Compared to Other WIOA Programs

Comments: Many commenters expressed concern that farmworkers are considered a niche population and, thus, do not have the same access to the public workforce system as do other workers, and further commented that there should not be more restrictions on MSFWs or the NFJP system than there are on the main workforce development system. Discussing equalization of treatment of NFJP with other WIOA programs, some commenters expressed concern that the Department allows carryover funds for grantees of adult, youth, and dislocated workers but not for NFJP grantees, and one commenter suggested that the Department allow line item budget variance with no more restrictions than those placed on the mainline public workforce system. Two commenters remarked that because the NFJP grant period is 4 years under WIOA, the Department should stop treating NFJP grants as one-time discretionary grants. And finally, one commenter, commenting on proposed § 685.430 (grantee program plan modifications) stated that NFJP grantees should be allowed to spend out the grant over the entire

period of performance, using oldest funds first, just as States are permitted to do in proposed § 683.110 (period of performance of WIOA title I and Wagner-Peyser Act funds.)

Department Response: The NFJP is authorized under sec. 167 of WIOA, and is not included as a core formula program as defined in WIOA sec. 3(12). Therefore, the NFJP does not have the all of the same requirements, obligations, and flexibilities as States or core programs. As described in § 683.110(e) "funds awarded by the Department under WIOA sec. 167 are available for expenditure for the period identified in the grant award document, which will not exceed 4 years," which is consistent with other National Programs authorized under WIOA title I, subtitle D. NFJP grantees currently have the ability to use carry over funds through the current grant cycle which ends June 30, 2016, and the Department will continue to establish guidelines for the use of carry-over funds through the grant award documents as described in § 683.110(e).

Comments: Some commenters mentioned the 1974 Judge Richey Court Order when discussing their arguments for providing farmworkers with equal access to system services. Multiple commenters urged the Department to allow farmworkers to be eligible for the dislocated worker program, and some of those commenters stated that the dislocated worker program should not be considered an exclusively "mainline" resource. Commenters remarked that many farmworkers are unlikely to return to agricultural work because of inconsistent employment, seasonal layoff, and low income, and commented that these conditions should make farmworkers eligible for dislocated worker services.

Department Response: The Department is committed to ensuring that farmworkers have equal access to the public workforce system via the State Monitor Advocate System established in the 1974 Judge Richey Court Order. Farmworkers qualify to receive career services as a

dislocated worker in adult and dislocated worker program if they meet the definition of "dislocated worker" at WIOA sec. 3(15). However, as described in § 680.130, Governors and Local WDBs have discretion to establish policies and procedures for one-stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIOA sec. 3(15), and this flexibility may result in interstate differences in who may qualify for dislocated worker services. No changes have been made to regulatory text in response to these comments.

Comments: Several commenters opposed NFJP grantees' lack of access to Unemployment Insurance (UI) records. Commenters stated that allowing NFJP grantees to access UI records as other programs do would decrease the amount of time and resources that staff expends to find the necessary wage record information.

Department Response: Part 603 (confidentiality and disclosure of State Unemployment Compensation (UC) information) of the Final Rule permits State agencies to disclose confidential UC information, including UI wage information, to "public officials," defined at § 603.2(d) (UC program definitions), under limited circumstances. These limitations are in place to ensure that confidential UC information including personally identifiable information, such as Social Security numbers, are appropriately safeguarded. Any NFJP grantees that are included in the § 603.2(d) definition of public official may request UI wage information from State agencies. NFJP grantees who are not included in the definition of public official have indirect access to UI wage records through a common reporting information system (CRIS) administered by the Department. The Department anticipates providing extensive guidance on part 603 throughout the implementation of WIOA.

One-Stop Infrastructure Payments

Comments: Multiple commenters urged the elimination of the one-stop delivery system proposed infrastructure payments described in 20 CFR 678.700 (one-stop infrastructure costs) (see Joint WIOA Final Rule), and some remarked that the NFJP should be exempt from this requirement because NFJP grantees often operate in satellite locations in rural areas where the communities face transportation barriers. Several commenters stated that, if deemed necessary, infrastructure payments should be no greater than the value received by NFJP programs, and some commenters suggested that in-kind contributions should be an acceptable payment option towards infrastructure costs. One commenter suggested that NFJP grantees should continue to be required partners on State and Local WDBs if the NFJP is required to contribute to the one-stop infrastructure costs.

Department Response: As described in WIOA sec. 121(b)(1)(B), NFJP grantees are a required one-stop partner, and as such, must contribute to the infrastructure funding of one-stop operations in the local workforce areas in which they operate. The Department does not require that NFJP grantees be in every affiliate one-stop center (described in 20 CFR 678.310 (what is an affiliated site and what must be provided there) of this Final Rule); however, all one-stop partners must provide access to their programs and activities through the comprehensive one-stops described in 20 CFR 678.305 (one-stop centers and what they must provide), as defined in 20 CFR 678.305(d), and therefore should be contributing their proportionate share to the one-stop infrastructure costs based on the relative benefit received by the program in these centers (see Joint WIOA Final Rule). Regarding the suggestion that in-kind contributions be an acceptable payment option towards infrastructure costs; 20 CFR 678.700 (one-stop infrastructure costs) describes infrastructure costs, shared costs, and in-kind contributions, and includes the non-personnel costs necessary for the general operation of the one-stop center. In-kind

contributions may be used to cover additional costs relating to the operation of the one-stop delivery system as described in 20 CFR 678.760 (funding of one-stop partner's shared costs). Regarding the suggestion that NFJP grantees should continue to be required partners on State and Local WDBs if the NFJP is required to contribute to the one-stop infrastructure costs, under WIOA sec. 101(b) and sec. 107(b), NFJP grantees are no longer required members of State or Local WDBs, and the Department does not have the authority to require their membership. No changes have been made to the regulatory text here in response to these comments.

3. Subpart A – Purposes and Definitions

This subpart describes the general purpose and definitions relevant to MSFW programs authorized under WIOA sec. 167, the role of the Department in providing technical assistance and training to grantees, and the regulations applicable to grantees.

Section 685.110 What definitions apply to this program?

Proposed § 685.110 provided definitions of terms relevant to the implementation and operation of workforce investment activities authorized for MSFWs and their dependents under WIOA.

The Department received comments on several definitions in this section and these comments are discussed below. All other definitions in § 685.110 did not receive substantive comments; therefore, they are not discussed below.

The definition of family included in § 685.110 did not receive any comments: however, it is important to note that this definition is specific to this part. The term is included for the sole purpose of reporting NFJP housing assistance grantee indicators of performance as described in § 685.400 (indicators of performance for the NFJP), and differs from the definition of family found at § 675.300 (applicable definitions for WIOA title I regulations). The definition of family

found at § 675.300 applies to the regulations in 20 CFR parts 675 through 688. For example, if an NFJP grantee is using "family income" to determine if an MSFW qualifies as "low income" as defined in WIOA sec. 3(36), the definition of family at found at § 675.300 should be utilized.

Additionally, the Department added the term "supportive services" as defined by WIOA sec. 3(59) to the list of defined terms provided in § 685.110 to clarify how the term is used in the preamble to part 685 and specifically in §§ 685.330, 685.420, 685.440, and 685.510.

Eligibility Determination Period

Comments: Proposed § 685.110 defined eligibility determination period as ''any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW.'' The definition was adopted from the first clause of WIOA sec. 167(i)(3)(A)(i), which defines ''eligible seasonal farmworker.''

Numerous commenters suggested that the definition of eligibility determination period should include an exception to the consecutive 12-month period in situations when a farmworker has been hospitalized or incarcerated during the 24-month period preceding the date of the application. In those cases in which a farmworker has been hospitalized or incarcerated during the most recent 24-month period, one commenter recommended that the Department extend the qualifying 24-month period to include the balance of the time the farmworker was unable to work.

Department Response: "Eligibility determination period" is defined by statute as any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW. The definition was adopted from the first clause of WIOA sec. 167(i)(3)(A)(i), which defines ''eligible seasonal farmworker.''

Eligible Seasonal Farmworker

Comments: Proposed § 685.110 defined Eligible Seasonal Farmworker as a low-income individual who for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment; and faces multiple barriers to economic self-sufficiency; and dependents of the seasonal farmworker as described in WIOA sec. 167(i)(3).

One commenter asked the Department to provide a definition of chronic unemployment/ underemployment as that term is used in the definition of "eligible seasonal farmworker." This commenter also requested clarification as to whether the condition of chronic unemployment/underemployment applies to the individual or to an industry.

Department Response: These terms as used in WIOA sec. 167(i)(3)(A)(i) refers to the nature of the agricultural or fish farming labor force as a whole and whether it experiences either chronic unemployment or underemployment. In the past, the Department has issued additional guidance explaining NFJP participant eligibility and will continue to issue such guidance under WIOA.

Emergency Assistance

Comments: Proposed § 685.110 defined Emergency Assistance as a form of ''related assistance'' and means assistance that addresses the immediate needs of eligible MSFWs and their dependents, provided by grantees. An applicant's self-certification is accepted as sufficient documentation of eligibility.

One commenter, while agreeing with the acceptance of self-certification, suggested that the Department reinforce self-certification rather than increase documentation standards when developing any TEGL on data validation.

Department Response: The Department will address WIOA data validation requirements in future guidance. Additionally, the Department clarified the definition for "Emergency Assistance" by adding language that mirrors the statute and the definition for "Related Assistance."

National Farmworker Jobs Program (NFJP)

Comments: Some commenters suggested that the program's name be changed to the "National Farmworker Opportunity Program" so that the program's name is consistent with the Workforce Innovation and Opportunity Act, and to acknowledge the NFJP program's origins via the Economic Opportunity Act of 1964.

Department Response: The term NFJP was initially developed in 1999 by the Secretary's MSFW Advisory Committee to distinguish the NFJP from the other workforce investment grants and activities funded under WIA sec. 167, such as the farmworker housing assistance grants; however, since that time the NFJP has come to be the accepted term for both employment and training grants and housing grants. Rebranding the program in the initial years of WIOA could create confusion for the MSFW populations the program serves who have come to know the program as the NFJP. No changes have been made to the regulatory text in response to these comments.

Section 685.140 What Workforce Innovation and Opportunity Act (WIOA) regulations apply to the programs authorized under WIOA?

The Department did not receive any comments on this section; however, because the list of applicable regulations is not meant to be exhaustive, and to avoid any inference otherwise, the Department revised § 685.140 in the Final Rule to make clear that the list is not all-encompassing.

4. Subpart B – The Service Delivery System for the National Farmworker Jobs Program

This subpart describes the service delivery system for the MSFW programs authorized by WIOA sec. 167 including who is eligible to receive grants and the role of the NFJP in the one-stop delivery system. Termination of grantee designation is explained. This subpart also discusses the appropriation of WIOA sec. 167 funds and establishes that a percentage of the total funds appropriated each year for WIOA sec. 167 activities will be used for housing assistance grants.

Section 685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

Proposed § 685.200 set forth the three characteristics required of an entity in order to be eligible to receive NFJP grants. Paragraph (a) stated that an eligible entity must have an understanding of the problems of eligible MSFWs. Paragraph (b) required eligible entities to have a familiarity with the agricultural industries and the labor market needs of the proposed service area. Paragraph (c) stated that an eligible entity must have the ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities, including youth workforce investment activities, and related assistance for eligible MSFWs.

Comments: The Department received numerous comments regarding the eligibility requirement set forth in proposed paragraph (c) of this section. In particular, these commenters recommended that this requirement should take into account the relative youth farmworker population in each State.

Department Response: The Department agrees that the relative youth MSFW population in each State should be accounted for when considering an applicant's ability to demonstrate a

capacity to administer and deliver effectively a diversified program of workforce investment activities. This issue is more appropriately addressed through the NFJP funding allocation formula. Currently funds for NFJP career services and training grantees are dispersed based on the funding formula the Department published in the Federal Register on May 19, 1999. Job Training and Partnership Act: Migrant and Seasonal Farmworker Programs; Final Allocation Formula, 64 FR 27390. The Department intends to revise this funding formula through a public comment process and plans to address this and other issues.

Section 685.210 How does an eligible entity become a grantee?

Proposed § 685.210 described the process by which an entity may become a grantee under this part and explained that an applicant whose application for funding has been denied in whole or in part may request an administrative review per § 683.800 of this title.

Comments: The Department received one comment suggesting that this section include measures of accountability for purposes of selecting a grantee.

Department Response: Measures of accountability for purposes of selecting a grantee will be described in the Funding Opportunity Announcement (FOA) for NFJP grantees following the process described in this section. No changes have been made to the regulatory text in response to this comment.

Section 685.220 What is the role of the grantee in the one-stop delivery system?

Proposed § 685.220 described the role of the grantee in the one-stop delivery system and provided that in those Local WDBs where the grantee operates the NFJP, as described in its grant agreement, the grantee is a required one-stop partner, and is subject to the provisions relating to such partners described in 20 CFR part 678 (description of the one-stop delivery system under title I of the Workforce Innovation and Opportunity Act) of this title (see Joint

WIOA Final Rule). Consistent with those provisions, the grantee and Local Workforce Development Board must develop and enter into an MOU which meets the requirements of 20 CFR 678.500 of this title (regarding what must be included in the Memorandum of Understanding) and sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop delivery system to eligible MSFWs (see Joint WIOA Final Rule).

Comments: The Department received several comments concerning this section. Some commenters acknowledged the importance of establishing roles and responsibilities through MOUs and urged the Department to provide additional guidance on the specific requirements of an MOU between the NFJP grantees and key partners, such as the Local WDB or State Monitor Advocates (SMAs). One of these commenters reasoned that because Local WDBs do not always understand or fully appreciate the needs of the farmworker population, they do not aggressively ensure that community and partner agencies provide meaningful services, suggesting that the creation and implementation of MOUs would help.

Department Response: 20 CFR part 678, subpart C (Memorandum of Understanding for the One-Stop Delivery System) provides information regarding the required MOU(s) that must be established between Local WDBs and required one-stop partners (see Joint WIOA Final Rule). 20 CFR 678.500 describes what must be included in the MOU executed between the Local WDB and the one-stop partners relating to the operation of the one-stop delivery system in the Local Area, and 20 CFR 678.510 describes the collaborative and good-faith approach Local WDBs and partners are expected to use to negotiate MOUs, including fully and repeatedly engaging partners, transparently sharing information, and maintaining a shared focus on the needs of the customer. The Department intends to issue additional guidance regarding the

development of MOUs between Local WDBs and required one-stop partners as well as between NFJP grantees and State Monitor Advocates.

Comments: Regarding the NFJP grantee serving as a required one-stop partner, two commenters stated that the decision to colocate services can be beneficial but grantees need to consider the financial viability of colocation. If it is more beneficial to locate NFJP programs outside of a one-stop center, these commenters maintained that grantees should be given the flexibility to do so, and that grantees can still develop a close partnership with the one-stop delivery system without necessarily being colocated. Another commenter remarked that traditionally there has been a cost increase associated with operating NFJP services in conjunction with a one-stop delivery system, leaving less funding available for training programs and participant services.

Department Response: 20 CFR 678.305 (see Joint WIOA Final Rule) provides a description of the services that must be provided in a one-stop center, including access to partner programs and activities carried out by required one-stop partners. One-stop partner program services may be provided through the one-stop center either by: (1) having partner program staff physically present at the one-stop center to provide information to customers about the programs, services, and activities available through partner programs; or (2) providing direct linkage through technology to program staff who can provide meaningful information or services. NFJP grantees, in collaboration with Local WDBs, must determine on a case-by-case basis, whether colocation, or another form of direct linkage, is the most effective approach in the local workforce area in which they operate. A description of what the Department means by direct linkage is found at 20 CFR 678.305(d)(3) (see Joint WIOA Final Rule).

Section 685.230 Can a grantee's designation be terminated?

Proposed § 685.230 explained that a grantee may be terminated for cause by the Department in emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program, or by the Department's Grant Officer, if the recipient materially fails to comply with the terms and conditions of the award.

Comments: The Department received one comment requesting that the Department define the "emergency circumstances" under which the Department may terminate a NFJP grantee's designation for cause in proposed § 685.230.

Department Response: The term emergency circumstances may cover a variety of contingencies that are too broad to include specifically in a definition; no changes have been made to regulatory text in response to this comment. When emergency circumstances arise in which the Department deems it necessary to protect the integrity of Federal funds or to ensure the proper operation of the program, the Department would undertake further investigation and thoroughly document the circumstance before termination for cause would be considered. Under WIOA sec. 184(e), any grantee so terminated would be provided with written notice and an opportunity for a hearing within 30 days after the termination.

Section 685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

Proposed § 685.240 established that in accordance with WIOA sec. 167(h), of the funds appropriated each year for MSFW programs, at least 99 percent must be allocated to service areas, based on the distribution of the eligible MSFW population determined under a formula established by the Secretary. This provision further provided that a percentage of funds allocated for State service areas would be set aside for housing grants and that up to 1 percent of the

appropriated funds would be used for discretionary purposes, such as technical assistance to eligible entities and other activities prescribed by the Secretary.

Comments: One commenter asked if there would be a minimum amount or a designated percent of funds allocated for housing grants.

Department Response: The annual percentage of housing grant funds is determined through the Federal budgeting process and final funding for housing grants is determined by the Fiscal Year Appropriations Act, and may vary from year to year. In the two program years prior to the release of this Final Rule the total percent of funds allocated to housing grants was approximately 6.74 percent of the total annual NFJP funding. This percentage may change from year to year based on the needs of the program and the annual budget enacted by Congress; therefore, the Department has not established a minimum amount or designated percentage of funds allocated for housing grants in the regulatory text.

Comments: One commenter also stated the Department should recognize that grantees were not specifically authorized to serve eligible farmworker youth, and no resources were provided to do so.

Department Response: Grantees are authorized to serve eligible farmworker youth. WIOA sec. 167(d) specifically states that funds made available through WIOA secs. 167 and 127(a)(1) must be used for workforce investment activities (including youth workforce investment activities) and related assistance for eligible MSFWs and eligible farmworker youth are therefore included.

5. Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

This subpart describes the responsibilities of grantees, and workforce investment activities available to eligible MSFWs, including career services and training, housing assistance, youth services, and related assistance.

Section 685.340 What career services may grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.340 established in paragraph (a) that eligible MSFWs must be provided the career services described in WIOA secs. 167(d) and 134(c)(2), and 20 CFR part 680. Proposed paragraph (b) stated that the grantees must provide other career services identified in the grantee's approved program plan. The Department also included language in paragraph (c) to clarify that while career services must be made available through the one-stop delivery system, grantees also may provide these types of services through other sources outside the one-stop delivery system. Examples include non-profit organizations or educational institutions. Finally, paragraph (d) required that the delivery of career services to eligible MSFWs by the grantee and through the one-stop delivery system must be discussed in the required MOU between the Local Workforce Development Board and the grantee.

Comments: A number of commenters recommended that the Department delete proposed paragraph (c). Commenters noted that NFJP grantees, as required one-stop partners, are required to provide services through the one-stop delivery system as described in statute, regulation, and required MOUs and therefore, this particular provision is not necessary.

Department Response: The Department is revising § 685.340 in response to these comments. The Department agrees that proposed paragraph (c) of this section is not required in the context of describing what career services grantees may provide to eligible MSFWs. Accordingly, the paragraph has been struck from § 685.340 and the remaining paragraph has

been re-lettered from (d) to (c). A full description of the roles and responsibilities of NFJP grantees, as required one-stop partners, is found at 20 CFR 678.420 (see Joint WIOA Final Rule).

In addition, the Department has revised the title of this section and paragraphs (a) and (b) of § 685.340 in the Final Rule by replacing the term "must" with "may" to make the titles in §§ 685.340 through 685.380 consistent, and to clarify that the Department does not require NFJP grantees to make all the services described in this section available to participants. Rather, the 4-year program plan described in § 685.420 must indicate the specific career services that will be made available to all participants and provided based on the individual needs of each participant.

Section 685.350 What training services may grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.350 identified the training services that grantees provide to eligible MSFWs. Paragraph (a) established that the training activities provided by grantees are those in WIOA secs. 167(d) and 134(c)(3)(D), and 20 CFR part 680 (Adult and Dislocated Worker Activities Under Title I of WIOA). These activities include, but are not limited to, occupational-skills training and OJT. The Department also emphasized that eligible MSFWs are not required to receive career services prior to receiving training services, as described in WIOA sec. 134(c)(3)(iii). This section also reinforced the intent of WIOA and stated in paragraph (b) that training services be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate, consistent with WIOA sec. 134(c)(3)(G)(iii). The Department also established in paragraph (c) that training activities must encourage the attainment of recognized postsecondary credentials as defined in § 685.110 (which refers to WIOA sec. 3(52)), when appropriate for an eligible

MSFW. This requirement is in alignment with WIOA secs. 116(b)(2)(A)(i)(IV) and 116(b)(2)(A)(ii)(III), which include ‘‘the percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma,’’ as a primary indicator of performance for both the adult and youth programs.

Comments: Numerous commenters remarked that training services should be linked with careers that are “in-demand,” but suggested that the regulation provide for the flexibility to consider customer needs, choices, and circumstances, so that individuals may be placed in careers that will help them gain economic stability, even if the career is not defined as “in-demand.” Several commenters also noted that the requirement in proposed § 685.350(b) that training services "must be directly linked to an in-demand industry sector or occupation in the service area" may be unintentionally limiting.

Department Response: This section reinforces the intent of WIOA that training services be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate, consistent with WIOA sec. 134(c)(3)(G)(iii). WIOA sec. 3(23) broadly defines “in-demand industry sector” and maintains flexibility.

NFJP grantees may determine that a sector or occupation is in-demand in the context of where the grantee operates its NFJP program, and this may be at the State, regional or local service area level. Additionally, activities designed to assist eligible MSFWs establish a work history, demonstrate success in the workplace, and develop the skills that lead to entry into and retention in unsubsidized employment do not need to be in an in-demand industry sector or occupation in the service area where the NFJP operates. Examples of these types of activities may include, but are not limited to, career services such as internships and work experiences and

transitional jobs as defined in WIOA sec. 134(d)(5) which provide time-limited work experiences that are subsidized and are in the public, private, or nonprofit sectors.

Comments: One commenter also suggested that emerging careers should be considered when determining training options for NFJP participants.

Department Response: The Department agrees that emerging careers should be taken into consideration when establishing participant training options consistent with the § 685.350. The Department encourages training in emerging sectors when the sector or occupation is in-demand in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate.

Comments: A number of commenters asserted that NFJP grantees should have the flexibility to provide up to a 75 percent reimbursement rate to employers for on-the-job training (OJT) as Governors and Local Workforce Development Boards do under WIOA sec. 134(c)(3)(H)) . A few commenters stated that many programs work with competitive employers who will favor the workforce programs that provide them the greatest benefit. As explained by one commenter, because NFJP is not always operated by a State or Local WDB, NFJP grantees who are not a State agency or Local WDB need this flexibility to use the same reimbursement rate that Governors and Local Workforce Development Boards use in the Local Area(s) in which they operate, otherwise they will be unable to compete for OJT placements in high-demand fields within the same communities.

Department Response: The Department is revising § 685.350 in response to these comments. The Department continues to encourage grantees to use work-based learning as an effective service strategy to assist job seekers in entering and advancing along a career pathway, including OJT and registered apprenticeship, among others. Under WIOA, grantees may always

reimburse employers for the extraordinary costs of training by up to 50 percent of the wage rate of the participant for OJT (WIOA sec. 3(44)). The Department maintains that grantees must be working in collaboration, rather than competition, with the State and Local Workforce Development Boards when meeting the needs of participants, but acknowledges that the flexibility offered Governors and Local Workforce Boards (WIOA sec. 134(c)(3)(H)) to account for factors such as the characteristics of the participants; the size of the employer; the quality of employer-provided training and advancement opportunities; and other factors, may encourage the participation of employers who may otherwise be deterred from working with MSFW populations. To address commenters' concerns regarding the OJT employer reimbursement rate the Department adds paragraphs § 685.350(a)(1) and (2), which provide NFJP grantees the flexibility to increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant under certain conditions, provided that such reimbursement is being provided consistent with the reimbursement rates used under WIOA sec. 134(c)(3)(H)(i) (use of funds for employment and training activities) for the Local Area(s) in which the grantee operates its program.

In addition, the Department has revised the title of this section and § 685.350(a) in the Final Rule by replacing the term "must" with "may" to make the titles in §§ 685.340 through 685.380 consistent, and to clarify that the Department does not require NFJP grantees to make all the services described in this section available to participants. Rather, the 4-year program plan described in § 685.420 must indicate the specific training services that will be made available to all participants and provided based on the individual needs of each participant.

Section 685.360 What housing services may grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.360 required in paragraph (a) that housing grantees must provide housing services to eligible MSFWs and in paragraph (b) that career services and training grantees may provide housing services to eligible MSFWs as described in their program plan. The proposed section established in paragraph (c) the definitions of permanent housing and temporary housing services that are available to eligible MSFWs and provided examples of each type of housing services in paragraphs (d) for permanent housing and (e) for temporary housing. In paragraph (f), the proposed section stated that housing services may be provided only when the services are required to meet the needs of eligible MSFWs to occupy a unit of housing for reasons related to seeking employment, retaining employment, or engaging in training.

Comments: Several commenters remarked that permanent housing requirements should differ from temporary housing requirements because of the timing of the services delivered. These commenters stated that many of the eligible housing services for permanent housing take place before an MSFW is identified for occupancy and therefore if Department funds are not used to support the on-going management of the project, there is no way for the NFJP grantee to ensure that only NFJP-eligible MSFWs would benefit from the eventual housing services. In addition, commenters noted that other funding sources complement NFJP resources, including United States Department of Agriculture (USDA) 514/516 Farm Labor Housing funds. Because providers of these funds have slightly different eligibility criteria for farmworker tenants, the commenters warned that it would be difficult to ensure that all MSFWs on a property are NFJP-eligible. Accordingly, these commenters recommended revising the language in proposed § 685.360 to accommodate these realities and allow for more flexibility with regard to eligibility for permanent housing services, by stating, for instance, that permanent housing units developed with NFJP funds be available to low-income MSFWs per the eligibility criteria of the primary

provider(s) of capital funding, rather than limiting primary housing services to eligible MSFWs exclusively. These commenters also suggested adding language to limit emergency housing assistance payments or vouchers (both temporary housing services) to eligible MSFWs only, and to make permanent housing units developed with NFJP funds available to low-income MSFWs per the eligibility criteria of the primary provider(s) of capital funding.

Department Response: The Department is revising § 685.360 in response to these comments. The Department acknowledges the difficulty of supporting permanent farmworker housing development and renovation projects and ensuring that eligible MSFWs receive the benefits of these projects after they are completed. These projects may occur over multiple years and include funding from a variety of Federal and non-Federal sources such as USDA and United States Department of Housing and Urban Development (HUD). To address commenters concerns and recognize the distinction between permanent and temporary housing services the Department has revised the text set forth in proposed § 685.360(d) to read: "Permanent housing developed with NFJP funds must be promoted and made widely available to eligible MSFWs, but occupancy is not restricted to eligible MSFWs. Temporary housing services must be provided only to eligible MSFWs." As a result of this revision, the following sentence has been added to § 685.400(c): "Additionally, grantees providing permanent housing development activities will use the total number of individuals served and the total number of families served as indicators of performance" to capture permanent housing development outcomes. The Department also provided operating guidance for NFJP Grantees, including a clarification on housing assistance services, through TEGL No. 35-14 ("Operating Guidance for National Farmworker Jobs Program (NFJP) Employment and Training and Housing Grantees"), dated June 13, 2016, and will provide additional technical assistance and guidance as needed.

Comments: Additionally, some commenters suggested that the definition of housing assistance should account for the different types of assistance available and the times at which the services are provided. These commenters said that either the word eligible should be removed from the definition or the differences between the two primary types of housing assistance under § 685.360 should be clarified. The commenters offered two definitions of housing assistance: "Housing assistance means housing-related services provided to MSFWs" or "Housing assistance means emergency housing assistance payments or vouchers provided to meet the needs of eligible MSFWs and/or development of permanent housing units available to low-income MSFWs."

Department Response: The Department is revising § 685.110 in response to these comments. The Department has updated the definition of housing assistance found in § 685.110 as follows: "Housing assistance means housing services which contribute to safe and sanitary temporary and permanent housing constructed, supplied, or maintained with NFJP funding."

Comments: Two commenters expressed concern that some areas may not have local non-profit organizations willing to operate on-farm housing, which may prevent the development or improvement of critically needed on-farm housing in areas where there are no local non-profit organizations willing to serve in this capacity. The specific paragraph referred to by two commenters is § 685.360(e) of the NPRM, which describes allowable temporary housing services. The commenters suggest that grantees should be permitted to use program funds to provide matching grants for on-farm housing improvement or development to be owned by the farm operator and suggest criteria for providing grants for on-farm housing improvement or development to be owned by the farm operator including a requirement that the farm operator

provide at least 51 percent of project funds and that housing must pass inspections for 3 to 5 years and continue to be occupied by farmworkers.

Department Response: The Department is revising § 685.360 in response to these comments. The section provides examples rather than an exhaustive list of allowable housing activities. The example of temporary housing services provided at proposed § 685.360(e) ("off-farm housing operated independently of employer interest or on-farm housing operated by a nonprofit") does not preclude a grantee from providing funds to agricultural employers for on-farm housing improvement or developments owned by an agricultural employer. To clarify that grantees may provide funding for on-farm housing improvement or development owned by the agricultural employer, the language (now found at § 685.360(c)(2)(i)) has been revised as follows: "Types of temporary housing may include...off-farm housing operated independently of employer interest in, or control of, the housing; or on-farm housing located on property owned by an agricultural employer and operated by an entity such as an agricultural employer or a nonprofit organization . . .." Furthermore, to clarify that the list of examples is not meant to be exhaustive, the following additional language has been added to the end of paragraph 685.360(c)(2)(i): "and other housing types that provide short-term, seasonal, or temporary housing opportunities in temporary structures." Paragraph (i) to § 685.360(c)(1) has been revised to indicate that permanent housing services may include dormitory, modular structures, manufactured housing, or mobile units placed on permanent foundations and supplied with appropriate utilities, and other infrastructures that provide short-term, seasonal housing opportunities in permanent structures. This list includes the types of housing that would likely be made available through on-farm housing improvements or development and that would benefit eligible MSFWs. The Department has determined that it is not necessary to formalize

criteria in the Final Rule restricting when grantees may provide funds to agricultural employers for on-farm housing improvement or developments owned by the employer and will provide additional guidance and technical assistance. The Department has revised § 685.360 "What housing services may grantees provide to eligible migrant and seasonal farmworkers?" by removing "tents and yurts" to be consistent with the Federal housing standards established in 20 CFR part 654 and 29 CFR 1910.10.

Additionally, the Department has added paragraph (e) to clarify that except as provided in (f), NFJP funds used for housing assistance must ensure the provision of safe and sanitary, temporary and permanent housing that meets the Federal housing standards at 20 CFR part 654 (ETA housing for farmworkers) or 29 CFR 1910.10 (OSHA housing standards); and paragraph (f) which clarifies that when NFJP grantees provide temporary housing assistance that allows the participant to select the housing, including vouchers and cash payments for rent, lease, and utilities, NFJP grantees are not required to ensure that such housing meets the Federal housing standards at 20 CFR part 654 or 29 CFR 1910.10.

Section 685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14–24?

Proposed § 685.370 outlined the services grantees may provide to eligible MSFW youth. In paragraph (a), the proposed regulation described the services that grantees may provide to eligible MSFW youth participants aged 14–24 based on an evaluation and assessment of their needs. These services include the career and training services described in §§ 685.340 through 685.350; youth workforce investment activities specified in WIOA sec. 129; life skills activities that encourage development of self and interpersonal skills; and community service projects. Paragraph (b) provided that other activities that conform to the use of funds for youth activities

described in 20 CFR part 681 (youth activities under title I of WIOA) may also be provided to eligible MSFW youth. Finally, in paragraph (c) the proposed regulation stated that grantees may provide these services to any eligible MSFW youth, regardless of the participant's eligibility for WIOA title I youth activities as described in WIOA sec. 129(a).

Comments: Some commenters expressed overall support for serving farmworker youth, and remarked that a lesson learned from the previously funded NFJP youth program was to focus on early intervention. One commenter requested clarification on which service components may be provided to adults versus youth participants in light of the provisions in proposed § 681.430 (concurrent youth participation in the WIOA youth and adult programs and how local program operators will track concurrent enrollment) and § 681.590 (how local WIOA youth programs will track the work experience priority), and on how financial and performance reporting should be tracked, in particular when a participant is enrolled in both youth and adult services. This commenter noted that youth services are not currently considered in NFJP reporting. Additionally, the commenter urged the Department to allow service areas to tailor their short-term service options to meet the needs of local migrant youth.

Department Response: A description of services that can be provided to adult NFJP participants is found in §§ 685.340 through 685.360 of the Final Rule. Youth services that can be provided through the NFJP are described in this section, and all services provided to adult NFJP participants, may also be provided to eligible MSFW youth. Sections 681.430 and 681.590 regarding certain WIOA youth formula requirements are not applicable to NFJP grantees. The NFJP is a National Program authorized under sec. 167 of WIOA and grantees may enroll participants as either a MSFW adult or a MSFW youth participant as described in § 685.320, but not in both categories. Regarding financial reporting, NFJP grantees that provide

employment and training services (career services, training, youth services, and related assistance) administer a single grant award for each State they serve, and all expenses associated with the grant are tracked and reported together. As noted by a commenter, current NFJP reporting systems do not consider youth elements; the Department will be updating reporting systems to track youth measures as required in statutory language.

Comments: One commenter suggested that funds be specifically allocated to farmworker youth services, instead of requiring providers to compete for funds that are already limited.

Department Response: The Department does not have the statutory authority to allocate specific NFJP youth funds except as described in § 685.500 of the Final Rule.

Section 685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Proposed § 685.390 established that eligible MSFWs may receive related assistance services when the need for the related assistance is identified and documented by the grantee. A statement by the eligible MSFW may be included as documentation.

Comments: One commenter asked the Department to clarify whether States would have the authority to determine the process for identifying an MSFWs need for related assistance. This commenter also asked the Department to clarify whether MSFWs must be co-enrolled to receive related assistance.

Department Response: Under WIOA sec. 167(a), every 4 years NFJP grantees are procured through a competitive process to carry out NFJP activities and are responsible for determining when eligible MSFWs may receive related assistance services. If a State agency responds to an NFJP FOA and is selected as a grantee, they would be able to determine the process to identify related assistance needs. With regard to the comment addressing co-

enrollment, farmworkers do not need to be co-enrolled with other programs to receive related assistance services, but must be eligible to receive NFJP services as described in § 685.320.

6. Subpart D – Performance Accountability, Planning, and Waiver Provisions

This subpart describes indicators of performance for grantees, required planning documents, and the information required in program plans required under WIOA sec. 167. The subpart also explains waiver provisions and clarifies how grant costs are classified under WIOA sec. 167.

Section 685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?

Proposed § 685.400 described the indicators of performance that apply to grantees. Paragraph (a) stated that grantees providing career services and training are to use the indicators of performance common to the adult and youth programs, described in WIOA sec. 116(b)(2)(A), as required by WIOA sec. 167(c)(2)(C). In paragraph (b), the proposed regulation explained that for grantees providing career services and training, the Department will reach agreement on the levels of performance for each of the primary indicators of performance described in WIOA sec. 116(b)(2)(A), taking into account economic conditions, characteristics of the individuals served, and other appropriate factors, and using, to the extent practicable, the statistical adjustment model under WIOA sec. 116(b)(3)(A)(viii). The levels agreed to will be the levels of performance incorporated in the program plan, as required in WIOA sec. 167(c)(3). As for grantees providing housing services only, proposed paragraph (c) required that such grantees are to use the total number of eligible MSFWs served and the total number of eligible MSFW families served as indicators of performance. In proposed paragraph (d) the regulation advised that the Department may develop additional performance indicators with appropriate levels of

performance for evaluating programs that serve eligible MSFWs and which reflect the State service area economy, local demographics of eligible MSFWs, and other appropriate factors. Finally, proposed paragraph (e) permitted grantees to develop additional performance indicators and include them in the program plan or in periodic performance reports.

Comments: Some commenters raised concerns that enrollment and co-enrollment of disadvantaged farmworkers could be jeopardized by performance standards, performance contracts, recognized credentials, and Ability-to-Benefit regulations because of partners' concerns that their performance indicators would decrease when farmworkers participate. These commenters stated that the models used to determine expected performance for WIOA title I programs (adult, youth, and dislocated workers) should be adjusted to consider the barriers MSFWs face, and that the NFJP in each service area should be subject to these adjusted performance standards.

Department Response: Establishing viable performance standards are crucial to program and fiscal accountability, evaluation of program effectiveness, and continuous quality improvement. The Department will negotiate performance goals for NFJP grantees providing career services and training based on several factors, including previous performance, economic conditions, characteristics of the individuals served, and other appropriate factors that are supported with data, as described in § 685.400(b).

Comments: A few commenters suggested that NFJP negotiated performance standards should not be more stringent than those established for the Local Areas in which the NFJP is operated.

Department Response: State title I formula programs differ from those of the NFJP program in the diversity of job seekers served, the types of services offered, and the number of

individuals served annually; therefore, the Department does not support the suggestion that NFJP grantees should have the same performance levels as those of the local areas in which they operate. The Department will provide additional information on the WIOA performance accountability system and primary indicators of performance for NFJP grantees.

Comments: Some commenters expressed concern about the inclusion of credential attainment in the new performance indicators for NFJP, as rural areas often lack credentialing programs. These commenters warned that, as written, the credential attainment indicator may deter service providers from targeting the rural MSFW population. Another commenter urged the Department to encourage but not require the attainment of credentials.

Department Response: WIOA sec. 167(c)(2)(C) requires that the NFJP utilize the primary indicators of performance described in WIOA sec. 116(b)(2)(A), including postsecondary credential attainment and high school completion, therefore the Department cannot waive this measure for NFJP grantees. Some commenters warned that, as written, the postsecondary credential attainment indicator may deter service providers from targeting rural MSFW populations. However, as specified in § 685.350(c), NFJP training activities must encourage the attainment of recognized postsecondary credentials as defined in § 685.110 when appropriate for an eligible MSFW, but it is not required that all training provided to NFJP participants lead to a postsecondary credential. Therefore lack of credentialing programs in a given service area should not be a deterrent to providing needed training to eligible MSFWs.

Comments: Many commenters noted that WIOA authorizes related assistance services for eligible MSFWs. One commenter added that related assistance provides support for farmworkers allowing them to stabilize and find agricultural work as they move within the harvest season, but rarely results in more than short term seasonal placements. Many

commenters expressed concerns that including individuals who only receive related assistance services in performance indicator calculations would undermine the ability of grantees to provide these needed authorized services, and would contribute to negative results from the performance indicator evaluation system.

Department Response: The Department is revising paragraph (b) of § 685.400 in response to these comments. The Department acknowledges that related assistance is an important component of workforce services that assist eligible MSFWs retain or stabilize their agricultural employment. The term "related assistance" encompasses a range of services and activities, which require varying levels of involvement by NFJP grantees and their staff. In particular, § 685.110 defines "emergency assistance" as a form of related assistance that addresses the immediate needs of eligible MSFWs and their dependents, provided by grantees. Emergency assistance may include the provision of necessary items, like garments of clothing. While providing clothing to a farmworker in need provides a significant benefit to the farmworker, it does not require a significant investment of grantees' resources. Therefore, the Department has determined that including individuals who receive emergency assistance or other short-term related assistance that does not involve a more extended intervention, in the performance calculations would not necessarily measure the success of a grantee in providing WIOA services to eligible MSFWs. For example, the Department does not consider pesticide and worker safety training to be the kind of related assistance that requires the individual to be included in the performance metrics. The Department may request information regarding the number of individuals who received types of related assistance that are not included in the performance indicators.

In order to clarify how individuals who only receive short term related assistance, such as emergency assistance, will be tracked and included in performance under WIOA, the Department has added the following language to § 685.400(b): "For the purposes of performance reporting, eligible MSFWs who receive any career services, youth services, training, or certain related assistance are considered participants as defined in 20 CFR 677.150 of this chapter and must be included in performance calculations for the indicators of performance. Eligible MSFWs who receive only those services identified in 20 CFR 677.150(a)(3)(ii) or (iii) of this chapter are not included in performance calculations for the indicators of performance described in WIOA sec. 116(b)(2)(A)." The Department uses the term "certain related assistance" to indicate that individuals that received forms of related assistance that require a more significant involvement by the grantees' staff, may be included in the performance metrics. In particular, as set forth in § 685.380, the related assistance includes those activities identified in WIOA sec. 167(d), which include school dropout prevention and recovery activities, self-employment and related business or micro-enterprise development or education, and customized occupational career and technical education. To the extent such forms of related assistance require a more significant involvement by the grantees' staff, and are forms of related assistance related to education, training, career, or employment outcomes, these forms of related assistance will be included in performance calculations for the indicators of performance. The Department provides specific directions regarding the forms of related assistance to be included in performance indicators through guidance. Including all NFJP participants who receive career services, youth services, training, or certain related assistance that involves a significant investment of a grantee's staff time in performance calculations also allows the Department to evaluate fully the effectiveness of the services provided to farmworkers through the NFJP.

Finally, in order to align this provision with 20 CFR 677.150(a)'s definition of participant, the Department notes that § 685.400(b) excludes individuals who only receive the services identified in 20 CFR 677.150(a)(3)(ii) (accessing the self-service system) or (iii) (information services or activities) (see Joint WIOA Final Rule). The Department does not agree with the assertion that the inclusion of eligible MSFWs who receive related assistance that involves more than a minimal amount of staff assistance in performance calculations for the indicators of performance would undermine the ability of grantees to provide these services, but rather, that NFJP grantees will now be evaluated for the related assistance they provide that is appropriately measured by the performance indicators.

Section 685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?

Proposed § 685.460 described the regulatory and/or statutory waiver provisions that apply to NFJP Programs, WIOA sec. 167. Paragraph (a) stated that the statutory waiver provision at WIOA sec. 189(i) and discussed in § 679.600 (the general statutory and regulatory waiver authority in WIOA) does not apply to WIOA sec. 167. Paragraph (b) established that grantees may request a waiver of any regulatory provisions only when such regulatory provisions are (1) not required by WIOA; (2) not related to wage and labor standards, non-displacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and (3) not related to the basic purposes of WIOA, described in 20 CFR 675.100.

Comments: Several commenters expressed support for the continuation of a supposed selective service waiver process for male farmworkers who were unaware of the Selective

Service registration requirement. One of these commenters reasoned that it can take up to 30 days to receive a response from Selective Service, which is a challenge for farmworkers who must regularly travel during short intervals to support themselves and their family. Another commenter stated that as a consequence of MSFW males not registering for Selective Service, many are denied services that are needed to assist them on their way to other employment. A different commenter suggested that the Department automatically waive male farmworkers who are past the age of military participation, especially if they were not born or educated in the United States.

Department Response: The Department cannot waive this WIOA statutory requirement. WIOA sec. 189(h) requires that each individual participating in any program or activity established under title I of WIOA , or receiving any assistance or benefit under title I of WIOA, has not violated sec. 3 of the Military Selective Service Act (50 U.S.C. App. 453) by not presenting and submitting to registration. Allowing a selective service waiver would be inconsistent with WIOA sec. 189(h).

7. Subpart E – Supplemental Youth Workforce Investment Activity Funding Under Workforce Innovation and Opportunity Act Sec. 127(a)(1)

This subpart describes the purpose of supplemental youth workforce investment activity funding that may become available under WIOA sec. 127(a)(1). Included is a description of how the funds may become available, and what requirements apply to grants funded by WIOA sec. 127(a)(1).

Section 685.500 What is supplemental youth workforce investment activity funding?

Proposed § 685.500 described that if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount

must be used to provide workforce investment activities for eligible MSFW youth under NFJP Programs, WIOA sec. 167.

Comments: One commenter asked the Department to clarify whether or not there are requirements or restrictions if the State is providing over 4 percent.

Department Response: The Department is revising § 685.500 in response to this comment. There are no requirements or restrictions to States if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year. This section of the Final Rule describes that if this funding threshold is met in any fiscal year under WIOA, the Department must make 4 percent of the excess amount available exclusively for workforce investment activities for eligible MSFW youth under WIOA sec. 167. To accomplish this, as described in § 685.520 (the application process for obtaining a grant funded by the WIOA), the Department will issue separate FOAs) for grants funded by WIOA sec. 127(a)(1). The selection of grantees will be made in accordance with the procedures described in § 685.210, except that the Department reserves the right to provide priority to applicants that are WIOA sec. 167 grantees. To clarify this requirement the term "by the Department" has been inserted in the provision as follows: "Pursuant to WIOA sec. 127(a)(1), if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used by the Department to provide workforce investment activities for eligible MSFW youth under WIOA sec. 167."

J. Part 686 – The Job Corps Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

This part establishes regulations for the Job Corps program, authorized in title I, subtitle C of WIOA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to site selection, protection, and maintenance of Job Corps facilities; funding and selection of center operators and service providers; recruitment, eligibility, screening, selection and assignment, and enrollment of Job Corps students; Job Corps program activities and center operations; student support; career transition services and graduate services; community connections; and administrative and management requirements. The regulations incorporate the requirements of title I, subtitle C of WIOA and describe how the Job Corps program is operated in order to deliver relevant academic and career technical training (CTT) that leads to meaningful employment or postsecondary education. The regulations also serve to explain clearly the requirements necessitated by the unique residential environment of a Job Corps center. The major changes from the existing regulations reflect WIOA's effort to enhance the Job Corps program, provide access to high quality training and education, create incentives for strong contractor performance, and promote accountability and transparency.

The analysis that follows provides the Department's response to public comments received on the proposed Job Corps regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not address that specific section and the Department made no changes to the regulatory text. Further, the Department received a number of comments on this part which were outside the scope of the regulation and therefore the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not all discussed in the analysis below.

2. Subpart A – Scope and Purpose

This subpart contains regulatory provisions that describe the Job Corps program, its purpose, the role of its Director, and applicable definitions. All references in this part to the Secretary issuing guidelines, procedures or standards means that they will be issued by the National Job Corps Director. This subpart also describes the Policy and Requirements Handbook (PRH), which provides the operating policies and procedures governing day-to-day activities of the Job Corps program. The subpart describes the scope and purpose of the program, along with the responsibilities of its National Director. It promotes accountability and transparency by making readers aware of exactly what the Job Corps program plans to achieve and the procedures for doing so, as well as the role its leadership plays in its operation.

The analysis that follows provides the Department's response to public comments received on the proposed Job Corps regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not address that specific section and no changes were made to the regulatory text.

Section 686.110 What is the Job Corps program?

This section generally describes the Job Corps program as administered by the Department.

Comments: One commenter noted that formally teaching healthy relationship skills would satisfy the intensive social education described in the NPRM preamble discussion of proposed § 686.110.

Department Response: The Department acknowledges the importance of teaching healthy relationship skills to Job Corps' students and notes that such skills are currently provided in the Job Corps program. Section 686.110, as drafted, reflects the increased focus in sec. 141 of

WIOA on connecting young people to the labor force by providing them with intensive social, academic, career and technical education, and service-learning opportunities. No changes to regulatory text were made in response to this comment.

Section 686.120 What definitions apply to this part?

This section explains the definitions applicable to this Final Rule. The Department received comments on several of the definitions.

Comments: One commenter expressed support that the definition of an "individual with a disability" aligns with the definition in sec. 3 of the Americans with Disabilities Act (ADA) because it provides ease of use for the WIOA programs and recommended that it be maintained and applied throughout WIOA.

Several commenters remarked that "participant" is appropriately defined as graduates, enrollees, and former enrollees who have completed the Career Preparation Period (CPP) or who have been on center for 60 days. These commenters also stated that Job Corps is likely to modify the requirements of the CPP to be more flexible as part of its modernization of the PRH and expressed concerns about creating incentives to extend CPP in order to prevent certain students from being included in the performance pools.

Department Response: The definition of participant not only includes graduates and those enrollees and former enrollees who have completed the CPP, but also those who have remained in the program for 60 days or more, regardless of whether they have completed their CPP. Thus there is little incentive to extend the CPP simply for the purposes of trying to manipulate participant counts. No change to regulatory text was made in response to these comments.

The same commenters noted that there is no mention of Zero Tolerance (ZT) Level 1 separations and whether these students will continue to be defined as participants or former

enrollees following their mandatory dismissal from the program. These commenters stated that all ZT Level 1 separations, regardless of length of stay, should be excluded from the definition of participant because it is critical for Job Corps to maintain a safe environment for its students and staff. The commenters explained that counting Level 1 ZT separators as participants for performance measurement counterintuitively penalizes centers and the program for taking actions that are necessary and mandated by WIOA to ensure the safety of students and holds Job Corps to a different standard than other training programs, making it difficult to compare Job Corps' performance fairly to that of other programs.

Department Response: WIOA's performance accountability system was designed so that WIOA programs would be held accountable to the same primary indicators of performance. In order to implement Congress' intent, the term "participant," as it applies to the Job Corps program, is designed to align with the definition of participant in 20 CFR 677.150 (see Joint WIOA Final Rule), ensuring that the performance of the Job Corps program could be accurately compared with the performance of the other title I programs. The Department acknowledges the commenters' concern regarding not penalizing Job Corps centers for maintaining safe environments and enforcing the program's zero tolerance policy. However, compliance with and enforcement of the zero tolerance policy is required as part of the operation of a Job Corps center by every Job Corps' operator. Any positive or negative effect the zero tolerance policy may have on the performance of a center under the primary indicators of performance does not change the requirement. In 20 CFR part 677 (see Joint WIOA Final Rule) and this part, the intent of the definition of participant is to capture all individuals that are engaged in, and receiving services from, the relevant program, regardless of when, and under what circumstances, they exit from the program. Adopting the commenters' proposal would eliminate

the conformance in the definitions of participant in both parts. Any exclusion from the definition of participant in regard to Job Corps for the purpose of calculating performance under the metrics described in § 686.1010 is provided in the annual performance guidance described in § 686.1000, and will be consistent with any applicable policies and guidance issued by the Employment and Training Administration. Accordingly, no change was made to the regulatory text in response to these comments.

Comments: One commenter noted that knives of any length should be prohibited, not just those with blades longer than 2 inches as defined in "unauthorized goods," noting that knives of any blade length are dangerous.

Department Response: The Department concurs with this commenter and has revised the definition of "unauthorized goods" in the regulatory text at § 686.120 to include all knives.

Section 686.130 What is the role of the Job Corps Director?

Comments: Several commenters noted that Job Corps' authorities are currently split among three offices (the Office of Job Corps, the Office of Contracts Management, and the Office of Financial Administration), which has effectively separated procurement, contracting, and budget authority from the Job Corps Director, despite the fact that guidelines and standards related to these authorities provide that they are the responsibility of the Job Corps Director. The commenters proposed that the Department clarify the regulation to state that the Job Corps Director retains the authority to set guidelines and standards related to secs. 147 and 159(a) of WIOA. One additional commenter echoed this proposal, noting that it would help Job Corps realize program management efficiencies.

Department Response: The Department has concluded that the delegation of functions in regard to the Job Corps is more appropriately addressed in administrative orders as is done with

other Department of Labor functions and therefore § 686.130 is being deleted from the regulation.

3. Subpart B – Site Selection and Protection and Maintenance of Facilities

This subpart describes how sites for Job Corps centers are selected, the handling of capital improvements and new construction on Job Corps centers, and responsibilities for facility protection and maintenance. The Secretary must approve the location and size of all Job Corps centers, and establish procedures for requesting, approving, and initiating capital improvement and new construction on Job Corps centers, which serves to strengthen and enhance the program as a whole. The requirements in this subpart are not significantly different from the corresponding requirements in the WIA Job Corps regulations at 20 CFR part 686, subpart B, and no comments were received on this subpart

4. Subpart C – Funding and Selection of Center Operators and Service Providers

This subpart implements new requirements of WIOA with regard to the operators of high-performing centers, the length of contractual agreements to operate Job Corps centers, and how entities are selected to receive funding to operate Job Corps centers and to provide outreach, admissions, and career transition support services. In addition to adding to the list of considerations currently used in selecting Job Corps center operators and service providers, WIOA emphasizes competition to increase the performance and quality of the Job Corps program. WIOA also provides that an entity, in its role as incumbent operator of a center deemed to be high performing, may compete in any competitive selection process carried out for an award to operate that center, even in cases where the selection of the operator is set aside for small businesses as required by the Federal Acquisition Regulation. This serves to ensure continued access to high quality training and education for Job Corps students. WIOA also

provides that a center operations contract cannot exceed 2 years, with three 1-year options to renew. This codifies current Job Corps practice. Furthermore, WIOA precludes the Secretary from exercising an option to renew a center operations contract for an additional 1-year period if certain criteria are not met, with limited exceptions. All of these new and expanded provisions follow WIOA's theme of enhancing the Job Corps program and providing access to high quality training and education by ensuring Job Corps centers are staffed with high quality service providers.

Section 686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

Comments: A commenter recommended that the regulations clarify that an "entity" eligible to become a contractor must be a corporation, LLC, or other similar corporate structure, not just an individual. The commenter also suggested that the business as a whole, not just the individuals or principals of the entity, should have the requested experience.

Department Response: WIOA clearly identifies the entities eligible to operate or provide services to a Job Corps center. To further limit those entities would be inconsistent with WIOA sec. 147(a)(1)(A). Accordingly, no change was made to the regulatory text in response to these comments.

Section 686.310 How are entities selected to receive funding to operate centers?

This section describes how entities are selected to receive funding to operate Job Corps centers. WIOA contains new provisions intended to strengthen the Job Corps contracting process by requiring specific criteria that emphasize quality, performance, and accountability to be addressed as part of the selection process for center operators. The Department invited comment on how to best embed this focus.

Comments: One commenter was concerned that the proposed framework for developing RFPs will result in conflicts of interest, stating that a workforce council that was established by the incumbent contractor should not have a say in the development of an RFP. The commenter stated that the regulations should clarify the topics on which the Local WDB and Governor may be consulted since either or both may have a relationship with the incumbent operator or other bidding contractors that could influence their responses.

Department Response: The selection process for operators and service providers, and the roles of the Local WDB and the Governor in that process, are clearly laid out in WIOA sec. 147(a)(2)(A). Limiting the topics on which the Local WDB or Governor may be consulted is inconsistent with this section of WIOA. Note that while WIOA does require consultations with various parties, the final content of the solicitation is at the discretion of the Department. No changes were made to the regulatory text in response to this comment.

Comments: One commenter stated that robust application of the selection criteria is particularly important in the context of small-business set-asides under the Federal Acquisition Regulation (FAR). The comment stated that the Department frequently applies the FAR's small business set-aside provision in a way that circumvents statutory selection criteria by setting aside a Job Corps contract whenever there are two or more small businesses expected to apply, without regard to the qualifications of those businesses,. The commenter stated this has led to a significant decline in the quality of some centers, particularly where highly qualified and successful operators have been displaced by substantially less-qualified small businesses. The commenter recommended that the Department clearly specify in the regulations that contracting officers must apply the statutory selection criteria at each step of the contracting process, including when determining whether to engage in small business set-asides, to ensure that only

fully qualified entities are selected to operate Job Corps Centers. Further, the commenter suggested that the regulations emphasize that contracting officers must exercise their discretion under the FAR to cancel set-asides wherever doing so would be in the best interest of the program and its users and provide protection to incumbent operators at centers that routinely place in the top 10-15 centers.

However, another commenter said that, as required by the FAR, the Department should operate within the law to promote participation by small businesses in the Job Corps contracting arena. The commenter stated that it is incumbent upon the Department to apply the requirements of the FAR as they relate to sources sought and small business set asides in order to avoid creating monopolies that limit competition and result in cost inefficiencies and lower quality and performance.

Department Response: The selection factors it considers in the sources sought process are a matter of program administration and are not statutorily required. The Department will include the statutory selection criteria in the sources sought process as it deems them to be applicable. In conducting its procurement actions, the Department complies with all applicable statutes and regulations, including the Competition in Contracting Act, the Small Business Act, and the FAR. This legal framework limits the Department's ability to provide any exception to these processes beyond what is provided in WIOA. The Department cannot do what is proposed and no changes were made to the regulatory text.

Comments: Several commenters noted that the RFP process must be timely; transparent, with the evaluation process clearly articulated; objective; and focused on proven past performance in delivering student outcomes to measurably differentiate between entities. Another stated that the best way to embed a focus on quality, performance, and accountability in

the selection process is to ensure that the procurement process is under the full control of the National Office of Job Corps, and that past performance be based upon Job Corps-specific student outcomes. The commenter also suggested that procurement proposals be evaluated by Job Corps' staff with technical knowledge of the Job Corps program.

Multiple commenters suggested making all stakeholders involved in the procurement process, including procurement staff and decision-makers, accountable for student outcomes. These commenters noted that for the procurement process to be mission-focused, all procurement personnel must know and understand the Job Corps mission and its indicators of success.

Department Response: The majority of the comments that were submitted relate to the agency's internal organizational structure and personnel policies and actions, which the Department declines to address in this regulation. Further, the Department will consider past performance during the procurement process consistent with WIOA sec. 147(a).

Comments: Some commenters specifically expressed concerns that the proposed regulations will allow bidders with inadequate experience in achieving high student outcomes to apply to operate Job Corps facilities. Other commenters recommended that the entire procurement, evaluation, and award process be overhauled so the primary criterion for evaluation in a procurement process focus on the past effectiveness of the offeror. These commenters recommended the use of adjectival ratings (e.g., excellent, very good, good) in each section of the proposal, with a rubric to define the adjectives.

Department Response: In order to ensure flexibility in the operation of the Job Corps program, no changes will be made to the language in this part. Furthermore, the Department makes Job Corps award decisions based on the established criteria stated in the solicitation,

many of which are statutory or decided on a best value basis. The best value approach allows the Department to consider the stated evaluation factors, which include various elements, such as technical approach, past performance and proposed price.

Comments: Multiple commenters stated that the questions asked in the RFPs often have no direct relevance to the Job Corps center for which the solicitation is being conducted. They also recommended that the Department include language in the RFPs specifying how the combined records of a prime contractor and their subcontractors will be weighed and considered. One commenter noted that the Department should not only better define the applicable selection criteria, but it also should provide clear guidance concerning the points during the selection process that the criteria should be applied. This would create a more transparent framework and allow would-be center operators to understand the process better. In addition, the commenter believed the public could hold contracting officers accountable for their operator choices.

Department Response: In order to ensure flexibility in the operation of the Job Corps program, no changes will be made to the language in this part. The Department issues guidance regarding the procurement process through the Job Corps' PRH and other guidance issued by the Secretary.

Comments: One commenter noted that offerors should have demonstrated experience and partnerships with State and local workforce boards, one-stop centers, employer organizations and labor organizations.

Department Response: The Department notes that § 686.310(c)(3) requires proposals to address the degree to which the offeror demonstrates these relationships.

Comments: Commenters also addressed the criteria in proposed § 686.310(c)(4) requiring that an offeror's past performance relating to operating or providing activities to a Job Corps

center, including information included in any reports developed by the Department of Labor's Office of the Inspector General (OIG), be considered during the evaluation process. Two commenters recommended that if a center is randomly selected as part of an audit and the audit reveals a systemic issue that impacts all centers regardless of operator, the offeror should not be viewed unfavorably during the procurement process. Another commenter suggested that the Department use multiple past performance indicators based on student outcomes beyond information about an offeror in Department of Labor Office of Inspector General (OIG) reports. The commenter recommended that past performance incorporate a contractor's past Job Corps performance as measured by the Outcome Measurement System; the Department's automated Contractor Past Effectiveness Report; the proposed annual Operator Performance Assessment; and the Contractor Performance Assessment Reports (developed for each Job Corps contract).

Department Response: The requirement at § 686.310(c)(4) is a statutory requirement at sec. 147(a)(2)(B)(i)(IV) of WIOA that describes the use of OIG reports on the offeror's demonstrated effectiveness and cannot be changed. Further, the Department's use of non-statutory criteria in the selection process is policy related and no changes were made to this regulatory text.

Comments: In response to proposed § 686.310(c)(5) and the Department's request for comments on how to assess potential offerors' past records in assisting at-risk youth to connect to the workforce, multiple commenters proposed that Job Corps use the Automated Past Effectiveness score issued to each contractor based on the Outcome Measurement System (OMS) report card. The commenters suggested that this assessment method ensured a consistent and understandable approach for evaluating an offeror's record in assisting at-risk youth, and recommended that this system, or a similar system, be implemented to ensure consistency and

fairness. They also suggested that the Department include language specifying how the combined records of a prime contractor and its subcontractor(s) will be weighed and considered with respect to this provision.

Several commenters recommended that to assess and differentiate past performance in assisting at-risk youth to connect to the workforce, the Department should conduct a review of both the interim and final contract performance assessment reports (CPARs) of an entity, if available, or other comparable information. One commenter also recommended that technical assistance in the area of connecting at-risk youth to the workforce be required.

One commenter noted that the nature of the Job Corps program necessitates specialized experience that only can be obtained through experience in operating Job Corps or similar centers.

Another commenter stated that the Department should require and evaluate at least 3 years of third-party validated outcomes related to Job Corps' primary indicators of performance. The commenter noted that 3 years is suggested because 3 years of performance is used in this section of WIOA to evaluate and define high-performance among operators.

A commenter recommended that the regulations call for entities to provide reports from objective sources to demonstrate performance results. The commenter stated that data collected solely by the offeror that cannot be independently verified should never be accepted as evidence of performance ability. For offerors with previous Job Corps experience, the commenter recommended that sources including the OMS, OBS, Student Satisfaction Survey, and Management Performance Outcome (MPO) be used to demonstrate performance results; for those offerors with no direct Job Corps experience, documentation from the funder, Common Measures outcomes, or third-party reports of the entity's previous success in meeting its

contractual obligations and achieving results should be submitted to support the entity's ability to operate the center.

Department Response: The Department continues to explore the most effective and reliable sources of information in assessing effectiveness and past performance in the operator selection process This requires flexibility to meet the changing needs of the Job Corps program and no changes have been made to the regulatory text. The criteria for effectiveness and past performance will be included in each solicitation.

Comments: In response to the Department's request for additional selection factors, multiple commenters noted that to ensure that potential Job Corps center operators are high-quality providers with documented outcomes and proven performance, the qualification requirements should be further refined and offered various additional selection factors to include in the solicitation.

Department Response: Consistent with applicable procurement statutes and regulations the Department does not want to unduly restrict competition, and needs to maintain the flexibility to adjust its requirements for the changing needs of the Job Corps program and for each center when necessary to do so. No changes have been made to regulatory text in response to these comments.

Comments: Several commenters noted that the delivery of quality services to students is dependent on hiring and maintaining qualified staff, and recommended that the procurement process include an evaluation that compares the costs proposed by an offeror to those identified in a market analysis.

Department Response: The procurement process already includes an evaluation of these factors. In order to ensure flexibility in the operation of the Job Corps program, no changes will be made to the language in this part.

Section 686.320 What if a current center operator is deemed to be an operator of a high-performing center?

This section describes the criteria that an incumbent operator must meet in order to be considered the operator of a high performing center. If an entity is deemed to be the operator of a high-performing center, the entity is permitted to compete in any competitive selection process carried out for an award to operate that center, including those set aside for small businesses as required by the FAR.

Comments: One commenter recommended that the language of § 686.320(a) be amended so that it cannot be interpreted as allowing a high-performing incumbent operator to bid on an 8(a) set-aside procurement even if it is not in the Small Business Administration's (SBA's) 8(a) business development program. The commenter specifically recommended that the Department change the wording in § 686.320(a) from "…that operator will be allowed to compete in *any competitive selection process carried out for an award to operate that center*" to "…that operator will be allowed to compete in *full and open competitions, as well as procurements that are set aside for small business*." The commenter also recommended that the Department clarify that when a large business is awarded a contract set aside for small businesses, it cannot count toward the procuring agency's small business contracting goals.

Department Response: Section 147(b)(1) permits a high-performing incumbent operator to compete in any competitive procurement process for the operation of that center. This includes competitive procurements set aside for participants in the SBA's 8(a) business

development program. Making the change suggested by the commenter would be inconsistent with the statutory requirement. As written, WIOA allows a high performing incumbent operator to bid on a competitive 8(a) set-aside procurement regardless of whether it is part of the SBA's 8(a) business development program. The Department has also determined it is not necessary to clarify the language regarding large businesses receiving a contract set aside for small business.

Comments: One commenter stated that the standard for high performing centers in proposed § 686.320(b) is currently unattainable, while several other commenters asserted that no center currently meets the standard. One commenter stated that the language is confusing and recommended that it be simplified, adding that high performing centers be those in the top 30 percent "overall" on the OMS report at the time of procurement solicitation. Another commenter stated that the criteria for determining a high-performing contractor must be clear and use objective performance criteria.

Department Response: The high performing criteria are established by statute; therefore, to be considered a high performing center under this section, an incumbent operator must meet the standards identified. No changes have been made to the regulatory text in response to these comments.

Comments: Several commenters stated that not all centers have a career transition services (CTS) contract attached to the center; as such, these centers do not have complete control over their short- and long-term placement outcomes. These commenters recommended that the Department ascertain whether it is possible through statistical methods to isolate the impact of operators on the primary indicators of performance from those of their CTS contractor.

Department Response: The Department acknowledges that not every center has a CTS contract attached to it, nor does WIOA require that the CTS contracts be included as part of the

center operations contract. Sec. 159(c)(1) of WIOA and § 686.1050 of these regulations require the Department to establish expected levels of performance for each center and the method for calculating those levels via annual guidance issued by the Department. The Department has concluded that to maintain the necessary flexibility in the annual performance guidance for the Job Corps program the commenters' suggestion is best considered as part of the yearly process of establishing the expected levels of performance and no changes to the regulatory text have been made in response to these comments.

Section 686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?

Comments: Commenters requested the Department to clarify the conditions that trigger the denial of an option year, specifically how the average of 50 percent or higher of the expected level of performance for each of the six primary indicators will be calculated.

Department Response: The Department provided a detailed description of the circumstances under which it will exercise an option in § 686.330(c). The Department also identified a circumstance under which an option year will not be exercised in § 686.330(d); however, there may be other circumstances under which an option year may not be exercised. Regarding the question of how the average of the expected levels of performance will be calculated, the Department has determined that, pursuant to sec. 147(g)(1) of WIOA, it will average the most recent 2 years of data, consistent with § 686.330(e), for each of the six primary indicators of performance. The Department will consider the standard outlined in § 686.330(d)(2) met if the average on each of the six primary indicators for performance is below 50 percent. No changes have been made to the regulatory text in response to these comments.

Comments: Several commenters noted that because it takes an average of 2 full years to improve the performance of a center, the first option year should always be granted to an operator taking over a low performing center so that any decision regarding renewal is based solely on the performance of the new operator and not the previous operator.

Relatedly, regarding the availability of information when there has been a change of center operators (§ 686.330(e)), several commenters expressed concern that 6 months is an inadequate amount of time to assume full responsibility for the performance of the previous operator if the center is a low performing center (bottom 20 percent). These commenters noted that in order to improve performance, new operators are required to install new leaders, set up a new management team and strategic plan, hire and train new employees, set up a new behavior management system, develop strong student leaders, establish a positive student culture, and undertake other time consuming tasks in order to successfully improve center performance. The commenters stated that the point at which the performance of the center reflects the performance of the current operator is contingent on vastly different conditions and deficiencies, and noted that if a calendar date must be used to reflect this, it should be no less than 2 years for the new operator of a low performing center and at least 1 year for other operators. One commenter noted that the point at which the performance of a center reflects the performance of the current operator will vary based on numerous conditions, including the shortcomings of the previous operator. As such, the commenter recommended that the length of time should be determined on a case-by-case basis.

Department Response: The Department has considered these comments and agrees that, given that it takes at least a year for a new operator to improve the performance of a center, the possibility exists that a center with a new operator may continue to meet the definition of a low-

performing center despite the change in operator. Accordingly, the Department added a clause to § 686.330(e)(1) to provide that when an operator takes over a center that was previously low performing, the first contractual option year will not be denied based on the performance criteria described in paragraph (d). This will provide the operator time to improve the performance of the center and ensure that the available data accurately reflects the performance of the current operator.

Comments: Several commenters stated that "or" should be changed to "and" in § 686.330(f)(1)(vii) in order to align with WIOA sec. 147(g), noting that the law and the regulations apply different criteria for performance that triggers an option year denial.

Department Response: The Department agrees with the commenters and has made two changes to § 686.330(f). First, paragraph (f)(2) has been reordered and moved to paragraph (f)(1) in order to maintain the same order of criteria as the previous section for ease of reading. In addition, the "or" between (f)(1) and (f)(2) has been changed to an "and" to indicate that in order for an option year to be denied under this provision both criteria must be met.

Comments: Several commenters recommended that the Department define the term "significant improvements" in § 686.330(g)(1) to improve transparency, make expectations clear, and avoid charges of favoritism.

Department Response: The Department has determined that because each performance improvement plan (PIP) is unique and tied to a specific set of factors that pertain to a specific contractual situation, it will not further define the term "significant improvements" here as those improvements will necessarily vary by PIP.

Section 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?

Comments: One commenter stated that the proposed regulation does not adequately implement the rigorous service provider selection criteria prescribed by Congress in WIOA and takes insufficient steps to ensure that Job Corps users will receive the highest quality services and training possible. Another commenter suggested that the Department utilize OMS outcome information when evaluating career transition service (CTS) contract proposals and set up a report to assess students' connection to the workforce after leaving the Job Corps center.

Department Response: The selection criteria described in § 686.340(c) are taken directly from sec. 147(a)(2)(B)(i), which are the criteria required to be used in selecting an outreach and admissions (OA) or career transition services provider (CTS). The Department has included § 686.340(c)(6) to provide flexibility to include additional selection criteria if the Department determines such criteria are necessary to ensure the highest quality service providers. No changes have been made to the regulatory text in response to these comments.

Comments: Another commenter recommended that all CTS contracts be attached to prime Job Corps center contracts because it would provide a cost-effective method to afford accountability to Job Corps results.

Department Response: The Job Corps contracting processes and structure regarding center operations contracts and CTS contracts require flexibility as they are driven by the program's evolving needs. The Department declines to make changes to the regulatory text in response to this comment, and will issue guidance as necessary.

Section 686.350 What conditions apply to the operation of a Civilian Conservation Center?

Comments: Commenters expressed concern regarding proposed § 686.350(e), which allows the Secretary of Labor, in consultation with the Secretary of Agriculture, to select an entity to operate a CCC in accordance with the requirements of § 686.310 if the Secretary of

Labor determines it is appropriate. The commenters recommended that CCCs continue to be managed by the USDA Forest Service. Commenters stated that USDA-operated CCCs should not be able to be replaced by a private for-profit entity; one commenter specifically stated that there is potential for contract centers to misuse resources and that contract centers do not have the additional layer of oversight that CCCs have.

Several commenters opposed § 686.350(f), which provides that the Secretary of Labor has the discretion to close CCCs if the Secretary determines it to be appropriate. Commenters stated that the CCC National Director, the Forest Service Chief, and Secretary of the United States Department of Agriculture (USDA) need to have control and the final say as to the performance and closure of any CCC, as opposed to closure being at the sole discretion of the Secretary of Labor. Some commenters stated that proposed § 686.350(f) gives authority to one person – the Secretary of Labor - to make a unilateral decision that would affect thousands of people. Commenters suggested that there should be a wider range of people involved and time to present a case against closure of any particular center, as the closure of centers have a devastating effect on surrounding communities. Other commenters expressed concern that this proposed regulation would give one agency the ability to make employment decisions about another agency's personnel and would take away the personnel's ability to appeal employment decisions within their own agency. One commenter stated that this proposed provision would damage morale and create uncertainty among the CCC workforce. Another commenter remarked that taxpaying residents of the community where the CCC is located should be involved and/or their opinions be taken into consideration when making decisions regarding CCCs. Still another commenter stated that the proposed language focuses solely on closure. The commenter noted that with no clearly defined, objective assessment system in place that includes

obtainable benchmarks, the language in proposed § 686.350(f) would create an unaccountable system without hope for improvement. The commenter further noted that the valuations made on the data collected by the Department's systems use flawed assumptions within a system biased toward contractors. Some commenters suggested that instead of allowing the Department to close a CCC if it deems appropriate, the regulations should implement the text in WIOA regarding low performing CCCs exactly as written

Department Response: The Department is committed to improving the performance of CCCs by using the numerous tools provided by WIOA, including the procedures outlined in WIOA sec. 159(f)(2) and (f)(4), which are incorporated into the regulations at § 686.1070. However, the Department is constantly working to ensure that its limited resources are used to deliver the best possible results for students. As part of ongoing efforts to ensure its resources are best utilized, the Department may conclude that closing a CCC or selecting an entity to operate it on a competitive basis will allow it to provide the highest quality program to its students more effectively. In order to better serve the nation's youth in acquiring career skills through quality job training and education, the Department must retain all of its options with regard to improving its centers and the program as a whole, including, but not limited to, considering for closure or private operation through a competitive procurement process those Job Corps centers marked with consistent and entrenched poor performance. While § 686.350(f) does provide that the Secretary of Labor has the discretion to close CCCs if determined appropriate, any decision to close a CCC will be made in full accordance with the Department's published closure criteria and the procedural requirements outlined in WIOA. No changes have been made to the regulatory text in response to these comments.

5. Subpart D – Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

This subpart describes who is eligible for Job Corps under WIOA and provides additional factors that are considered in selecting eligible applicants for enrollment. It describes how applicants who meet eligibility and selection requirements are assigned to centers, reflecting WIOA's new requirements that the assignment plan consider the size and enrollment level of a center, including the education, training, and supportive services provided, and the performance of the Job Corps center related to the newly established expected levels of performance. WIOA also amended the assignment plan to provide for assignments at the center closest to home that offers the type of career and technical training selected by the individual rather than just the center closest to home, which improves access to high quality training for Job Corps students. These regulations serve to enhance the Job Corps program overall by ensuring that the individual training and education needs of applicants and enrollees are met in accordance with the requirements of WIOA. They also ensure that applicants and enrollees are provided accurate information about the standards and expectations of the Job Corps program and are fully prepared to be successful.

In addition to changes described below, in § 686.470 the Department has updated the citation to the regulations implementing sec. 188 of WIOA from 29 CFR part 37 to 29 CFR part 38.

Section 686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

Comments: To accomplish its mission to provide disadvantaged youth a path to self-sufficiency, two commenters recommended that admissions counselors have the discretion to

determine whether an applicant's Career and Technical Education needs can best be met through the Job Corps program. The commenters stated that Job Corps centers must provide a safe and supportive environment for young people who have the desire and ability to take advantage of its services, and to do this Job Corps cannot be considered a treatment program or a vocational rehabilitation program. These commenters noted that they favor the direction described by a Department official at the National Job Corps meeting in April 2015, that math, reading, interest, and aptitude assessments were in the offing for admissions counselors to use when making their determinations.

They also suggested that in order to determine whether an applicant is likely to be successful in group situations, admissions counselors must have access to information about the applicant's past performance in schools or other group settings because, if the applicant has a history of fighting or disruptive behavior, it is likely that this behavior will be brought to Job Corps and be even more disruptive in a residential setting, impeding the safety of others. The commenters noted that admissions counselors need access to mental health reports in cases where significant behavior problems could preclude successful interactions in group settings, and need to be on the medical/mental "need to know" list so they can complete a thorough review of the additional factors in determining that Job Corps is the best fit for an applicant.

Department Response: The Department has determined that § 686.410(a) and (b) provide the authority for admissions counselors to consider all available, relevant information in determining whether an applicant is eligible and well suited for Job Corps. More specifically, these two paragraphs provide admissions counselors with the discretion to make the determination, consistent with the process outlined in Job Corps' PRH, that an applicant has the desire and ability to take advantage of the services offered by the Job Corps program and that the

applicant will not create an unsafe learning environment if admitted into the program. Ultimately, retaining the language proposed in the NPRM while providing additional guidance and detail in the PRH provides both the Department and admissions counselors the necessary flexibility and appropriate framework to administer the admissions process. No changes were made to regulatory text in response to these comments.

Comments: Commenters suggested that applicants should be required to participate in a pre-orientation program as part of their eligibility assessment and should, where feasible, visit a Job Corps center in their local area. The commenters noted that a process to document the outcomes of all assessments should be developed, with the explanation of outcomes fully documented. In addition, when a determination is made that Job Corps is not the best program to meet an applicant's needs, a referral to a more suitable program should be made.

Department Response: As discussed above, the PRH provides the detailed procedures governing the admissions process, including procedures for documenting the process and actions that should be taken if an applicant is denied enrollment.

Comments: The Department received several comments about proposed § 686.410(d), which requires that all applicants submit to a background check and that those who have been convicted of a felony consisting of murder, child abuse, or a crime involving rape or sexual assault be found ineligible for participation in Job Corps. Commenters suggested that Job Corps consider what procedures to put in place during the admissions process to ensure that it is not reflexively enrolling students with felony convictions or other violent and serious crimes not explicitly mentioned in WIOA, including attempted murder, robbery, assault/battery, and drug trafficking. The commenters acknowledged that while Job Corps cannot legally exclude these applicants from the program based solely on these convictions, the admissions process should

include clear and universal standards for assessing and determining whether Job Corps will best meet these students' career goals and stated that a residential environment like Job Corps may not be a productive environment for these youth to pursue their career development, particularly the development of 21st century skills, given their past history.

The commenters stated that clear standards and processes must be defined for assessments and determinations related to cases in which a background check reveals that an applicant is on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization. The commenters also suggested that there should be a 6-month waiting period for an applicant after the individual is released from juvenile detention, drug rehab, or an adjudicated group home prior to being enrolled in the program in order to allow the individual to demonstrate successful engagement with the community at-large without court or other oversight and increase the likelihood that the individual can participate successfully in the program without jeopardizing the safety of other students.

One commenter was concerned that this provision would give Job Corps too much discretion with little or no guidance to aid in the decision to admit an individual with a criminal record, and suggested that the Department provide additional guidance to aid Job Corps in determining whether an individual with a criminal history that does not include one of the identified felonies is eligible for participation. Without such guidance, this commenter expressed concern that there would be considerable risk that some applicants would be the victims of unfairness, arbitrariness, and perhaps discrimination.

Department Response: As drafted, § 686.410(a) and (b) provide the authority for admissions counselors to consider all relevant, available information in determining whether an

applicant may be selected for enrollment, including information obtained from background checks and from the applicant. In addition, Job Corps' PRH provides guidance and standards on how to assess the applicant's past behavior in the admissions screening process, including prior felony convictions and all other interaction with the criminal justice system. These factors are designed to identify applicants that can benefit from and succeed in the program and to screen out individuals who are not suited for the program. In making the relevant eligibility determinations, the admissions counselor must follow the guidance and standards in the PRH. No changes were made to the regulatory text in response to these comments.

Section 686.450 How are applicants who meet eligibility and selection criteria assigned to centers?

This section describes how applicants who meet eligibility requirements are assigned to centers. Paragraph (a)(4) of § 686.450 provides that the performance of a Job Corps center with respect to the expected levels of performance should be taken into account when assigning new students to centers.

Comments: Several commenters expressed concern that this would require admissions counselors to give preference to high-performing centers, which would be impossible to implement for Outreach and Admissions (OA) contracts that are attached to and responsible for recruitment for a single Job Corps center, and challenging for OA contracts that are responsible for assignment to multiple centers across a State or region. The commenters questioned how the assignment plan would account for changing performance levels and how this will be reflected in the performance goals specified in OA contracts. The commenters noted that the Department has indicated that one of its requirements to exit a Performance Improvement Plan (PIP) will be to achieve a minimum on-board strength (OBS) threshold, and denying or limiting enrollments to

a center on a PIP could result in that center never meeting these goals despite otherwise improving performance. One commenter questioned how the assignment of students under the requirements of this section would account for changing performance levels since assessments are done on such a long term cycle, stating that experience has shown that it takes on average 2 full years to improve the performance of a low-performing center. The commenter further stated that it often takes 18 to 24 months to recruit, hire, and develop staff, train and cultivate student leaders, change the student culture, and ultimately improve performance. The commenter expressed concern with the perceived conflict of interest that is generated when a single contractor handles OA and career transition services (CTS) functions and is the center operator.

Department Response: Paragraph (a)(4) of § 686.450 mirrors the requirements of WIOA at sec. 145(c)(2)(D). WIOA sec. 145(c) requires that the Secretary develop and implement a plan for assigning enrollees to Job Corps centers based on targets and analysis of specific criteria outlined under sec. 145(c)(1) and (2). The performance analysis requirement under WIOA sec. 145(c)(2)(D) relates to the expected levels of performance for indicators described in sec. 159(c)(1) and whether any actions have been taken with respect to the center under sec. 159(f)(2) and (f)(3). While the Final Rule mirrors the statutory requirements, Job Corps is required under this provision to consult with center operators in analyzing the factors described in WIOA sec. 145(c)(2)(D). The Department has modified § 686.450(a) to clarify that the list of factors identified is non-exclusive. This addition clarifies that all of the challenges can be raised and discussed as part of the required analysis. Finally, on-board strength is not a component of the Performance Improvement Plan and is therefore irrelevant to this provision. Accordingly, no changes were made to the regulatory text in response to these comments.

6. Subpart E – Program Activities and Center Operations

This subpart describes the services and training that a Job Corps center must provide. Job Corps provides residential services in combination with hands-on training and experience aligned with industry standards. While education, training, and job placement are core components of what the program offers, this section of the regulations describes how Job Corps provides a comprehensive service model that also includes life skills, emotional development, personal management, and responsibility. New regulations addressing advanced career training programs are included; such programs provide broader opportunities for higher wages and career advancement.

This subpart also establishes the requirements for a student accountability system and behavior management system. Job Corps' policy for violence, drugs, and unauthorized goods is described. Requirements to ensure students are provided due process in disciplinary actions, to include center fact-finding and review board and appeal procedures are outlined. These systems and requirements serve to enhance the Job Corps program by ensuring that Job Corps centers are safe and secure environments that promote the education and training of students. Approved experimental, research and demonstration projects related to the Job Corps program are authorized in this subpart, which also serves to enhance the program.

In addition to changes described below, in § 686.560 the Department has updated the citations to the regulations implementing sec. 188 of WIOA from 29 CFR part 37 to 29 CFR part 38.

Section 686.500 What services must Job Corps centers provide?

Comments: One commenter recommended that the regulatory text contain a statement that academic instruction includes entry-level workforce preparation and/or preparation for recognized postsecondary education and training.

Department Response: The added detail to academic instruction suggested by the commenter is currently included at § 686.505(b), which describes academic instruction in preparation for postsecondary education and training. Additionally, § 686.505(c) further describes programs that must be provided to students in order to learn workforce preparation skills such as independent learning and living skills, including: job search and career development, interpersonal relations, driver's education, study and critical thinking skills, financial literacy, and other skills specified in program guidance. In addition, after further review of § 686.500, the Department decided to provide additional clarity in the language at § 686.500(a)(1) by changing "(iii) Employability and independent learning and living skills development" to "(iii) Employability and skills training; and (iv) Independent learning and living skills development."

Section 686.505 What types of training must Job Corps centers provide?

This section describes the training that Job Corps centers must provide to students. Commenters stated that Job Corps must continuously seek to improve student academic and technical credential attainment, workforce connectivity, and postsecondary attainment results to put graduates on the road to self-sufficiency.

Comments: The commenters had multiple recommendations that fell under four broad categories: (1) improving academic outcomes; (2) improving technical training and placement outcomes; (3) improving critical thinking, problem solving, decision-making, and other 21st century skills; and (4) cultivating a safe living and learning environment. Commenters recommended that Job Corps develop policies and requirements to, among other things, increase active and personalized learning through the use of digital tools and proper teacher training; expand partnerships with postsecondary institutions and apprenticeships; enhance employer

relationship and in-demand credential attainment; and improve mental health and healthy relationship services and resources available to students.

Department Response: The Department has determined that the requirements in sec. 148 of WIOA and § 686.505 already capture and encompass many of the proposed and valuable suggestions. Additional training requirements and policies related to training will be implemented through updates to the Job Corps PRH. As such, no changes were made to the regulatory text in response to these comments.

Comments: One commenter noted that teaching healthy relationship skills will make students more economically self-sufficient and views them as an essential part of employability, living skills, and interpersonal relationship skills.

Department Response: Healthy relationship and living skills training are included in the list of training activities at § 686.505(c); all of the skills suggested by the commenter may be provided to students under this section.

Comments: One commenter recommended that high school diplomas be regionally accredited and that secondary education programs include entry-level workforce preparation activities that lead to recognized postsecondary credentials in in-demand occupations and should be included in the regulatory text under § 686.505.

Department Response: In order to retain flexibility to adjust to evolutions in accreditation, the Department issues guidance through the Job Corps' PRH.

Section 686.510 Are entities other than Job Corps center operators permitted to provide academic and career technical training?

Comments: Expressing support for proposed § 686.510, a commenter remarked on the importance of allowing unions to provide academic, career, and technical training, pointing out

that unions have successfully transitioned students into apprenticeship programs. The commenter further stated that they are pleased that the NPRM envisions continued Job Corps participation by other entities that are not center operators but that do have a proven record of facilitating the entry of young people into careers that are a pathway to the middle class. Another commenter suggested that the Department revise this section to require that academic education be provided by public or regionally accredited private educational organizations that have demonstrated effectiveness in providing programs that include entry-level workforce preparation and/or postsecondary education and training.

Department Response: The Department agrees that the career technical and academic education of Job Corps students should be provided by entities "with demonstrated effectiveness" and has changed this section to include this requirement. The Department will not limit the entities to the suggested "public or regionally accredited organizations" because all of the entities described in this section are statutorily required, per sec. 148(b) of WIOA, to provide academic instruction. The regulatory text was changed accordingly.

Section 686.515 What are advanced career training programs?

Comments: A few commenters suggested ACT programs should be restored at Job Corps centers that eliminated them or downsized them due to budget cuts, noting that in many cases the programs could be restored with minimal costs. These commenters requested that the Department provide guidance to centers on how to restore their ACT programs or to establish new programs.

Department Response: The Department acknowledges concerns about ACT programs; however, its decision to eliminate or downsize these programs was due to budget cuts and any

decision to restore ACT programs will be based on available funds and will be handled on a case-by-case basis.

Comments: Regarding the § 686.515(c) provision that permits a center to exceed the approved capacity of the program under certain circumstances, two commenters requested that the Department provide clarification on what it means to achieve "satisfactory rate of training and placement in training-related jobs." These commenters recommended that programs that exceed the centers' overall completion and placement-related goals over the preceding program year qualify for expansion without approval from the Department. The commenters also requested clarification as to how or whether center operators qualify if they have been operating the center for less than 2 program years when their performance is likely more reflective of the previous operator.

Department Response: The Department is not making any substantive changes to the language in this part in response to these comments, but has made a minor change to align with the corresponding WIOA provision. The Department acknowledges the suggestion that Job Corps provide guidance regarding what it means to achieve a satisfactory rate of training and placement. The Department's change in the provision at § 686.515(c)(1) revised the text from "participants in such a program have achieved a satisfactory rate of training and placement in training-related jobs" to "participants in such a program have achieved a satisfactory rate of completion and placement in training-related jobs" to align this provision with WIOA sec. 148(c)(3)(A). After consideration, the Department has determined that defining a satisfactory rate of completion and placement, including the relevant data that will be reviewed in making this decision, falls under program administration. In order to ensure flexibility in the operation of the Job Corps program, because the Department continually reviews and revises the

performance management system to effectively manage and best serve Job Corps' needs. Regarding the commenters' question about how or whether center operators qualify if they have been operating the center for less than 2 program years and the recommendation that if completion and placement goals are exceeded for a preceding program year the center should qualify for expansion, the Department acknowledges the commenters' concerns. However, the requirement for additional enrollments in the ACT program, which includes 2 program years of performance data, is statutorily required at WIOA sec. 148(c)(3)(b), regardless of how long an operator has been operating a center. The change to the provision at § 686.515(c)(1) is the only change made to the regulatory text in response to these comments.

Section 686.520 What responsibilities do the center operators have in managing work-based learning?

Comments: Requesting clarification that Job Corps centers should be allowed to act as employers for work-based learning, two commenters recommended that the wording in § 686.520(a) be changed to the following: "The center operator must emphasize and implement work-based learning programs for students through center program activities, career technical skills training, and through arrangements with employers…."

Department Response: The Department is not making any changes to the regulatory text in response to these comments. Paragraph (a) of § 686.520 reads, "The center operator must emphasize and implement work-based learning programs for students through center program activities, including career and technical skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' career technical training." The Department has

determined that the language at § 686.520(a) is identical in meaning to the language suggested by commenters. Under this provision centers may serve as employers for work-based learning. However, per the requirements of this provision, the work-based learning must be under actual working conditions, designed to enhance the employability of the student, and occur in tandem with the student's career technical skills training.

Section 686.530 What residential support services must Job Corps center operators provide?

Comments: A few commenters recommended that the Department add clarifying language on medical services stating that, with the exception of a direct reference to the requirement for Trainee Employee Assistance Program (TEAP) services that related to Job Corps' zero tolerance policy, required medical services, should be limited to comparable services that exist on most college campuses. These commenters further stated that Job Corps, in conjunction with community partners, should be required to educate enrollees regarding insurance access and requirements with respect to the Affordable Care Act and to connect enrollees to the appropriate insurance.

Department Response: Section 686.530, with regard to medical services, states that medical services must be provided through provision or coordination of a wellness program that includes access to basic medical, dental, and mental health services, as described in the PRH, for all students from the date of enrollment until separation from the Job Corps program. Making the changes suggested by the commenters in the regulation would reduce the flexibility quickly to adjust the medical services and other residential support services required to be provided at a center. Accordingly, no changes were made to the regulatory text in response to these comments, but the PRH will continue to be modified as needed.

Comments: Additionally, two commenters urged clarification in § 686.530(g) to ensure that student welfare associations can use fundraisers to secure funds.

Department Response: The Department agrees with the request to include language to § 686.530(g) clarifying that student welfare associations can use fundraisers to secure funds as an activity to support the association in addition to the specific activities listed to raise funds, as described in this section. As such, the section has been edited to include a reference to "and other fundraising activities."

Section 686.545 What is Job Corps' zero tolerance policy?

Comments: A few commenters recommended changing the wording in § 686.545(c) to read as follows: "The zero tolerance policy specifies the offenses that result in the separation of students from the Job Corps. The center director is expressly responsible for determining when there is a violation of this policy."

Department Response: The Department agrees with the commenters and has included new language at § 686.545(c) for clarity, so that the revised paragraph now reads: "The zero tolerance policy specifies the offenses that result in the separation of students from the Job Corps. The center director is expressly responsible for determining when there is a violation of this policy."

Section 686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Comments: Some commenters suggested that Outcome Measurement System (OMS) results should be put on hold for centers implementing pilot and demonstration projects until the project is completed, stating that this worked well with the "Centers for Excellence" pilot.

Department Response: The Department has determined that the decision of whether the OMS results will be placed on hold for centers implementing pilots is best addressed on a case-

by-case basis, as there may be multiple, unique factors to consider in each project at different center locations, requiring flexibility in the operation of the pilot or demonstration project. No changes were made to the regulatory text in response to these comments.

7. Subpart F – Student Support

Subpart F discusses the support services provided to Job Corps enrollees, including transportation to and from Job Corps centers, authorized student leave, allowances and performance bonuses, and student clothing. In addition to being eligible to receive transportation to and from Job Corps centers, students are eligible for other benefits, including basic living allowances to cover personal expenses, in accordance with guidance issued by the Secretary. Students are also provided with a modest clothing allowance to enable them to purchase clothes that are appropriate for the classroom and the workplace. These proposed regulations will again work to strengthen the Job Corps program and provide access to high quality training by ensuring that Job Corps students are placed in the best possible position to prepare them for learning, and that they are rewarded for their success in the program.

No public comments were submitted in response to the NPRM for this subpart.

8. Subpart G – Career Transition and Graduate Services

This subpart discusses career transition and graduate services for Job Corps enrollees. Job Corps focuses on placing program graduates in full time jobs, postsecondary education, advanced training programs, including registered apprenticeship programs, or the Armed Forces. In an effort to further integrate the Job Corps program with the greater public workforce system and align it with the core programs, § 686.820 specifically focuses on how Job Corps will coordinate with other agencies, where emphasis is placed on utilizing the one-stop delivery system to the maximum extent practicable. This subpart also outlines a center's responsibilities

in preparing students for career transition services; the career transition services that are provided for enrollees; who may provide career transition and graduate services, in addition to one-stop centers; and services provided for graduates and former enrollees.

Section 686.760 What services are provided to former enrollees?

Comments: Three commenters noted that Job Corps' reputation is damaged when employers are connected with students who left the program early (for mostly drug, behavioral, or voluntary reasons) without obtaining their academic and technical training credentials and stated that these students are unlikely to advance along a viable career pathway without further education. These commenters proposed that the regulations clarify that the CTS provided to former enrollees be focused primarily on enrolling former enrollees in other education or training programs, which will maximize the resources that can be used to support Job Corps' graduates. The commenters proposed that no additional services should be provided to former enrollees following their placement.

One commenter noted that all young people have access to the services available at one-stop centers and WIOA sponsored youth programs, and recommended that Job Corps' services to former enrollees be limited to documented referrals to one-stop centers or other WIOA programs. The commenter explained that this approach would allow Job Corps to focus resources on assisting committed graduates find employment or enroll in postsecondary or apprenticeship programs or the military. According to this commenter, such an approach also would increase the amount of time devoted to securing better housing, transportation, clothing, and other transition services that students need to attain self-sufficiency. The commenter proposed eliminating services for 90 days and only providing referrals to one-stop centers and other WIOA programs.

Department Response: No change to the regulatory text was made in response to these comments. The statutory language provides the Secretary with discretion to determine what services are appropriate for former enrollees and this provision reiterates that Job Corps has discretion in providing these services. The Department is issuing guidance regarding the provision of services to former enrollees through the PRH.

9. Subpart H – Community Connections

This subpart highlights WIOA's focus on community relationships and further integration with the public workforce system. In both the new contracting provisions in subpart C and in this subpart, there is more emphasis on connections with one-stop centers, Local WDBs, and State and local plans. While WIA's requirement for a Business and Community Liaison has been eliminated, the responsibility for establishing beneficial business and community relationships and networks now lies with the director of each Job Corps center. Moreover, WIOA contains a new requirement that in a single-State local area, a representative of the State WDB must be included on the workforce council. Section 686.810 also states, consistent with sec. 154(b)(2) of WIOA, that the workforce council may include employers from outside the local area that are likely to hire center graduates. The new requirements for the workforce council seek to provide greater access to high quality training for Job Corps students, in part by ensuring that Job Corps is providing training for in-demand industry sectors and occupations.

Section 686.800 How do Job Corps centers and service providers become involved in their local communities?

This section describes the Job Corps center responsibilities regarding the establishment and development of mutually beneficial business and community relationships and networks.

Comments: Two commenters stated that center directors should be involved in the community and in establishing connections to entities described in this section, but noted that without these duties assigned to a specified staff person, it becomes difficult for a center director to maintain these relationships. The commenters recommended that the regulations clarify that the center director will designate a staff member to coordinate these activities, appreciating that the nature of the community (i.e., the time and effort required to establish these relationships will be different in rural vs. urban areas) as well as the size and staffing of the center will influence whether the designee should be a full time Business and Community Liaison (BCL) or whether the duties can be assigned to another person on staff.

Another commenter made a similar statement, noting that while center directors are involved in the community and in establishing connections to the entities described § 686.800, without the assistance of a staff person such as a BCL, it will be difficult for a center director to personally maintain these beneficial community relationships and networks. The commenter proposed that the center director designate a staff member to coordinate these activities.

Department Response: The regulatory language states that each center director must ensure the establishment and development of business and community relationships, but does not specify who must perform the work. Ultimately, assignment of these responsibilities is left to the discretion of each center director. It is acceptable for a center director to delegate this responsibility to a member of their staff provided that they are properly overseeing that staff member's work to ensure that the requirements of this provision are being met. No change was made to the regulatory text in response to these comments.

Section 686.810 What is the makeup of a workforce council and what are its responsibilities?

Comments: One commenter noted that this section requires that the majority of workforce council members be business owners, chief executives (CEOs), or chief operating officers (COOs) of non-governmental employers or other private sector employers. The commenter stated that it is unrealistic to expect that owners, CEOs, and COOs will be the active workforce council participants and noted that they find human resources representatives from major employers often offer the best perspective on employment opportunities and qualifications. The commenter proposed that the regulation be modified to include representatives of employers that are in a position to hire Job Corps students and/or are responsible for training and development of the organization's employees.

Department Response: After considering these comments, the Department agrees with the logic presented by the commenters. The Department has changed paragraph § 686.810(b) to clarify that business owners, CEOs, COOs of non-governmental employers, and other private sector employers may designate the staff person they feel is best suited to represent their entity on the workforce council, provided that the designee meets the requirements in § 686.810(b).

Comments: Several commenters noted that Job Corps is required to draw upon many of the same agencies for individuals to sit on its workforce councils that provide members to the Local WDBs. These commenters recommended that § 679.360 allow, or even encourage, workforce councils to be a subcommittee of the most appropriate regional or Local WDBs, where applicable. The commenters noted that this would eliminate competition for membership and encourage greater collaboration between Job Corps, the Workforce Investment Board (now Workforce Development Board), and the one-stop delivery system. Other commenters further noted that § 686.810(d) requires a center's workforce council to work with all applicable Local WDBs to review labor market information and make recommendations to the Secretary for

career technical training offerings. The commenters recommended that where a workforce council is not affiliated with a regional or Local WDB, it may make sense to designate a regional or Local WDB staff member to sit on the workforce council to facilitate these actions.

Department Response: No change to the regulatory text was made in response to these comments. Each Job Corps center director must establish and develop mutually beneficial business and community relationships and networks with entities, including Local WDBs. Under WIOA sec. 154(b)(2), members of the Local WDB are permitted, though not required, to sit on center workforce councils provided they meet the membership requirements outlined in § 686.810(a) and (b). Section 679.360 implements WIOA sec. 107(b)(4) and establishes the roles and responsibilities of standing committees within the Local WDB structure.

Comments: With respect to § 686.810(d)(2), commenters also recommended that a rapid-response system be developed to change career technical training offerings quickly to meet employer demands as identified and recommended by the workforce council.

Department Response: The Department is not changing § 686.810(d)(2) to include a requirement that a rapid-response system be developed to change career technical training offerings quickly to meet employer demands as identified by the workforce council. Paragraph (d)(2) of § 686.810 states that the workforce council must review all relevant labor market information, including related information in the State Plan or the local plan, to: recommend in-demand industry sectors or occupations in the area in which the center operates; determine employment opportunities in the areas in which enrollees intend to seek employment; determine the skills and education necessary to obtain the identified employment; and recommend to the Secretary the type of career technical training that should be implemented at the center to enable

enrollees to obtain employment opportunities identified. The Department will provide additional guidance on how the workforce council will provide this information.

Comments: One commenter also recommended that Job Corps – whether through a designated center employee or through members of the workforce council – be mandated partners in State, regional, and local sector partnerships as required by 20 CFR 678.435(a) (see Joint WIOA Final Rule) because this could significantly enhance employer partnerships and provide employer-driven recruitment, training, and placement services.

Department Response: The Department strongly encourages sector partnerships that include a variety of industries and career pathways that may be included in a sector strategy. Given the variety of industries and career pathways that may be included in a sector strategy, which includes Job Corps, the Department at 20 CFR 678.435 (see Joint WIOA Final Rule) is not placing regulatory requirements around partnerships.

10. Subpart I – Administrative and Management Provisions

This subpart provides requirements relating to tort claims, Federal Employees Compensation Act (FECA) benefits for students, safety and health, and law enforcement jurisdiction on Job Corps center property. It also addresses whether Job Corp operators and service providers are authorized to pay State or local taxes on gross receipts, and details the financial management responsibilities of center operators and other service providers. The management of student records, as well as procedures applicable to the disclosure of information about Job Corps students and program activities are outlined. Finally, procedures available to resolve complaints and disputes and how Job Corps ensures that complaints or disputes are resolved in a timely fashion are addressed in this subpart. The entirety of this subpart addressing

administrative and management principles that apply to the operation of the Job Corps program serves to promote its accountability and transparency.

No public comments were submitted in response to the NPRM for this subpart. However, in §§ 686.960 and 686.985 the Department has updated the citations to the regulations implementing sec. 188 of WIOA from 29 CFR part 37 to 29 CFR part 38.

11. Subpart J – Performance

This subpart incorporates WIOA-specific requirements related to performance assessment and accountability, as well as requirements for performance improvement plans for Job Corps center operators who fail to meet expected levels of performance. The Job Corps program is now required to report on the primary indicators of performance common to all WIOA programs that provide key outcome information on how many students attained employment or were placed in education or training, their median wages, whether they attained credentials, their measurable skill gains, and the effectiveness in serving employers. The entirety of this proposed subpart serves to promote the accountability, performance, and transparency of the Job Corps program.

Section 686.1000 How is the performance of the Job Corps program assessed?

Comments: Regarding which short-term measures should be retained in the new Outcome Measurement System (OMS), some commenters recommended that HSD/E, literacy and numeracy gains, CTT completion, credential attainment, and HSD/E and CTT combinations be retained. One commenter recommended that all current OMS categories be retained in order to measure student progress and noted that it is important to develop measures to evaluate how much a student has gained from entrance to exit from Job Corps (i.e., growth measures). Commenters stated that maintaining the current 15 OMS measures while adding new measures

would be too cumbersome to manage and would take away from the quality of the programs provided. These commenters noted that Job Corps has been criticized by the Office of Inspector General (OIG) for having too many required performance indicators, the corollary of which is burdensome data collection, verification, and reporting requirements. These commenters suggested that the current emphasis on obtaining an academic credential not be diminished and recommend that Job Corps utilize measures to track the number of credentials being earned, as well as the size of "measurable gains" to reflect students that earn multiple credentials or make significant learning gains.

Department Response: Job Corps' performance will be assessed in accordance with required procedures and standards issued by the Secretary through the national performance management system, which will take into account the performance metrics described in § 686.1000(b). The Department has determined that it will not add any additional performance indicators in this section. In order to effectively operate and evaluate the Job Corps program, performance indicators are regularly examined and necessary changes are made to the performance management system in annual performance guidance. It is important for the performance system to remain malleable and open to change on an annual basis to ensure that the Department is collecting the performance data that most accurately measures the performance of the program. Accordingly, rather than specify specific performance indicators in this section, the Department has decided to incorporate additional performance indicators in the yearly performance guidance described in § 686.1000(b), as necessary.

Comments: Regarding post-center performance indicators, one commenter stated that it will be important for Job Corps to determine how it will reliably obtain employment and wage information because the current survey system will not provide the National Office of Job Corps,

the Department, or Congress with the reliable information they require to determine the efficacy of the program. This commenter also noted that Job Corps does not currently have access to unemployment insurance (UI) or social security information that will provide reliable information. Two other commenters stated that Job Corps should comment on how it intends to ensure that Job Corps has complete access to UI data so that Job Corps can report performance in accordance with the requirements for primary indicators of performance.

Department Response: The Department recognizes the need to transition to the use of administrative data in order to obtain accurate employment and wage data in the most efficient way possible. The Department is working to obtain access to individual UI wage records and other administrative data to meet the requirements under WIOA sec. 159(e). The specific means by which this access will be acquired is under development and is expected to change over time; however, over the next few years the Department will work with other Federal and State agencies, consistent with State UI laws, to gain access to this information. In addition to calculating the performance of participants, access to administrative data will allow the Department to begin collecting valuable information on employment outcomes for enrollees who began receiving services under the Job Corps program but did not remain in the program long enough to meet the definition of participant. As such, flexibility in the process is important and the mechanism for retrieval will not be prescribed by regulation. The annual performance guidance described in § 686.1000 will describe how such records will be accessed and used. While State UI wage record data are one relevant data set, the Department anticipates using a variety of available, reliable data to assess a center's performance under all of the metrics comprising the performance management system.

Section 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

Comments: One commenter noted that this section requires the inclusion of recognized postsecondary credential attainment 1 year after separation as one of the primary indicators of performance for Job Corps centers. The commenter stated that this is confusing as written and difficult, if not impossible, to track and monitor because centers themselves do not track post-center indicators: this is the responsibility of CTS contractors. The commenter suggested that to resolve this issue, along with other issues with tracking performance of Job Corps centers and equating that performance with placement and wages, all CTS contracts be attached to center operating contracts.

Department Response: The regulation mirrors WIOA's primary indicators of performance in WIOA sec. 116(b)(2)(A)(ii), and sec. 159(c)(1) which require that each center's performance be measured under the WIOA primary indicators of performance for youth. As discussed in the preamble to § 686.340, the suggestion that CTS contracts should be attached to center operation contracts is better addressed as a matter of program administration because Job Corps contracting processes and structure regarding center operations contracts and CTS contracts require flexibility as they are driven by the program's needs.

Comments: A commenter suggested that Job Corps use both an employment rate and a retention rate in the new performance management system. The commenter also expressed concern with how Job Corps career transition service (CTS) providers will be able to verify high school diploma, high school equivalency, or postsecondary credential attainment if the student achieves these outcomes after exiting from the center.

Department Response: As noted above, in order to effectively operate and evaluate the Job Corps program, performance indicators are regularly examined and necessary changes are made to the performance management system in the annual performance guidance described in § 686.1000(b).

Regarding how verification of high school diploma, high school equivalency, or postsecondary credential attainment will occur if the student achieves these outcomes after exiting from the center, the specific means by which this information will be collected is under development and may change over time and will not be prescribed by this regulation.

Section 686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?

Comments: Several commenters asked whether, like the performance indicators for centers, there will be other indicators for outreach and admissions. The commenters stated that if there are other indicators, they recommend that total arrivals be retained as a short-term indicator. Further, these commenters recommended that if female arrivals are measured, they should be weighted much lower. The commenters also stated that the placement measures in the current OMS be retained and weighted higher to fulfill the purpose of Job Corps to connect youth to the workforce.

Department Response: As discussed, performance indicators and weights of performance measurements for OMS are not statutorily mandated and require continued flexibility, including the measures to overcome historic trends in enrollment. The Department continually reviews and revises the performance management system to manage effectively and best serve Job Corps' needs. Accordingly, in response to these comments, the Department has added § 686.1020(e) providing that other indicators of performance will be adopted by the Secretary as

necessary. These indicators are outlined in the annual performance guidance issued by the Secretary described in § 686.1000(b), and may change over time to meet program administration needs.

Comments: These commenters also stated that it is important to keep in mind the various constraints in the local market when setting the expected level of performance under § 686.1020(c) for the OA indicator that "measures the maximum attainable percentage of enrollees at the Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at the Job Corps center that reside in the State in which the center is located and in surrounding regions, as compared to the targets established [by the Secretary for the center for each of those measures]" They also stated that these constraints include, but are not limited to: whether the center is in a rural or urban area; what other providers offer similar training; whether the population of 16-24 year olds is projected to grow or shrink over time; and the poverty rate and unemployment rates in the local area. In addition, the commenters noted that it is critical that the expected levels of performance take into account the size of the local area because a national goal superimposed on a sparsely populated local area may cause significant multiplier effects and result in goals that are unattainable under any circumstance.

Department Response: No change was made to this regulatory text in response to these comments; however, the Department has made a change to § 686.450 which addresses these concerns. As described in § 686.450, when developing an assignment plan related to the maximum percentage of students at a center from the State and region in which the center is located the Department is required, in consultation with center operators, to analyze a number of relevant factors. The Department has changed § 686.450(a) to indicate that the list of factors

identified for consideration is non-exclusive; therefore, the constraints identified by these commenters could be discussed as part of the analysis.

Comments: Commenters also stated that regarding [the OA indicator] under § 686.1020(d) that measures the cost per enrollee calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year, that they were unclear how this would be measured since outreach and admissions providers recruit for multiple centers, and questioned how they would be held accountable for cost per enrollee at a particular center and how a goal would be set for this measure. The commenters stated that much more needs to be provided on how this measure will be reported on the new OMS and recommended that instead of adding the cost per enrollee to OMS the cost for each center be included in the Secretary's report to Congress, similar to the cost per graduate that is required to be part of this report. The commenters noted that if the decision is made to add the cost per enrollee to OMS, outreach and admissions contracts should be attached to center contracts so that the center director is held accountable for reasonable costs per enrollee at his/her center.

Department Response: WIOA sec. 159(c)(2) requires that the cost per enrollee as described in WIOA sec. 159(d)(1)(M) be included as a performance indicator for OA providers, and the Department does not have authority to change this statutory measure. Additional detail on reporting cost per enrollee is provided in guidance. Finally, regarding the suggestion that outreach and admissions contracts be attached to center operations contracts, the Department determined that this recommendation is better addressed through procurement and administrative processes.

Comments: Commenters noted that WIOA requires Job Corps to assess whether an applicant's needs and career goals can be best met by Job Corps or another local program, and if Job Corps is not deemed a best fit for the applicant, outreach and admissions counselors must refer and facilitate enrollment in alternative programs. There is currently no provision in the regulations for this to be measured. Commenters also recommended that OMS measure the efficacy of admissions counselors in conducting these assessments, including the rate of referrals and enrollment in other programs. Commenters further stated that the proposed indicators of performance for Job Corps outreach and admissions providers also should include the number of students retained for 30 and 60 days, since a center's performance is negatively impacted when students leave during their first 30 and 60 days, and center OBS is affected during this period due to zero tolerance violations for drugs and violence. The commenters also suggested OMS include goals and measures related to minimizing the number of Medical Separation with Reinstatement Rights (MSWR) terminations and fraudulent enrollments.

Department Response: As discussed above in the preamble to § 686.1000, the Department continually reviews and revises the performance management system to effectively manage and best serve the students' needs. In response to these comments, as noted above, the Department has added § 686.1020(e), providing that additional indicators of performance for outreach and admissions providers will be adopted by the Secretary as necessary. These indicators will be outlined in the annual performance guidance issued by the Secretary described in § 686.1000(b), and may change over time to meet program administration needs.

Section 686.1030 What are the indicators of performance for Job Corps career transition service providers?

Comments: Three commenters noted that because CTS providers are responsible for the same performance indicators as Job Corps centers and also other indicators that measure the type of placement received (the number of graduates who entered the Armed Forces, apprenticeship programs, job training matches, and average wages), they recommend that the Department attach CTS contracts to center contracts to hold the center director accountable to closely link education and training to connecting youth to the workforce and postsecondary education. Another commenter disagreed with this suggestion, stating that it is a blatant attempt on the part of center operators who are large businesses to exclude small businesses that fall under the OA/CTS size standard. Further, this commenter stated that bundling CTS to center contracts cannot be shown to improve placement and associated statistics.

Department Response: As discussed in the preamble to § 686.340, the suggestion that CTS contracts should be attached to center operation contracts is better addressed as a matter of program administration because Job Corps contracting processes and structure regarding center operations contracts and CTS contracts require flexibility as they are driven by the program's needs.

Comments: Commenters recommended that Job Corps include performance indicators for the number of education placements and the number of postsecondary placements in addition to the performance indicators for CTS required by WIOA.

Department Response: As discussed above in the preamble to § 686.1000, the Department continually reviews and revises the performance management system to effectively manage and best serve Job Corps' needs. Accordingly, in response to these comments, the Department has added § 686.1030(h) providing that additional indicators of performance will be adopted by the Secretary as necessary. These indicators will be outlined in the annual

performance guidance issued by the Secretary described in § 686.1000(b), and may change over time to meet program administration needs.

Comments: One commenter stated that they would like clarification on how quarters and the strict 12-month service window, as required under statute, will be established specifically for the purposes of measuring Job Corps outcomes. The commenter stated that the Job Corps system under WIA conflicts with WIOA with respect to CTS timelines and performance measurements, noting that CTS contracts have a 9-month window to place students and that 6 and 12 month placement follow ups are conducted based on the date of placement, not separation. The commenter noted that this creates a Job Corps CTS service window that can extend 18 months after graduation from Job Corps and would like to know whether the service window is changed to 12 months only.

Department Response: As reflected in § 686.740, WIOA sec. 148(d) states that the Secretary shall arrange for the provision of job placement and support services to graduates for up to 12 months after the date of graduation and multiple resources, including one-stop partners, may support the provision of these services. In addition, as noted by the commenter, the indicators of performance indicator the percentage of program participants in education or training activities or unsubsidized employment during both the second and fourth quarters after exit from the program. Regardless of the length or extent of services provided to graduates under WIOA sec. 148(d), the Department is required to track a participant's participation in education/training activities or in unsubsidized employment 6 and 12 months after exit from the program.

Comments: A commenter also asked the Department to clarify whether WIOA and the proposed rules would treat former enrollees and graduates the same in terms of post-center

services provided and the primary indicators of performance. Another commenter suggested that former enrollees and graduates should not be treated the same regarding post-center services provided and performance indicators under WIOA, as is done under WIA.

Department Response: Regarding the commenter's request for clarification on post-center services provided for graduates and former enrollees, WIOA sec. 148(d) states that the Secretary shall arrange for the provision of job placement and support services to graduates for up to 12 months after the date of graduation and multiple resources, including one-stop partners, may support the provision of these services. WIOA sec. 150(c) states that the Secretary may arrange for the provision of up to 3 months of employment services for former enrollees. These provisions are reflected in §§ 686.740 and 686.760, which mirror WIOA requirements for services provided. Further information regarding the services available to graduates and former enrollees is included in the Job Corps PRH. Regarding the commenter's request for clarification on whether WIOA and the proposed rules would treat former enrollees and graduates the same in terms of the primary indicators of performance, former enrollees and graduates are treated the same if they meet the definition of participant, which includes both former enrollees and graduates who have completed their career preparation period and who have remained in the program for at least 60 days.

Section 686.1070 How and when will the Secretary use Performance Improvement Plans?

Comments: Commenters noted that while 90 percent of the expected level of performance is an admirable goal, the percentage "distance traveled" toward improvement (e.g., from 50 to 75 percent versus from 84 to 90 percent) should be taken into consideration when evaluating a center's progress on their PIP. These commenters suggested that although a center

might not have reached 90 percent of the national average, they might have achieved significant improvement under their PIP.

Department Response: As noted in § 686.1070(b), the criteria that must be met before a PIP is completed and the center removed will be included in the plan itself.

Comments: Commenters stated that specific criteria should be established when a PIP under WIOA sec. 159(f)(3) would be initiated so that if a Job Corps center is placed on a PIP, there is a transparent and logical reason for the PIP, expected outcomes, and the length of the PIP.

Department Response: To ensure that the PIP system is responsive to the changing needs of the program, the criteria for PIPs established under WIOA sec. 159(f)(3) for centers that fail to meet criteria established by the Secretary, other than the expected levels of performance required under WIOA sec. 159(f)(2), are included in the Department's PIP system guidance in the PRH. No changes were made to regulatory text in response to these comments.

Comments: One commenter suggested that 3 years of data be used to assess performance before placing a center on a PIP as is done to assess high-performing centers. Several commenters recommended that if a new operator takes over a low performing center, there be a 2-year grace period for that operator to make improvements before the Department considers the center in need of a PIP. Other commenters also recommend that the regulation include a reference to the process by which an operator may appeal its designation of requiring performance improvement based on extenuating circumstances. One commenter recommended that the regulations clearly state that the Regional Offices would be responsible for managing PIPs.

Department Response: WIOA sec. 159(f)(2) specifies that if a Job Corps center fails to meet the expected levels of performance relating to the primary indicators of performance, which are established and measured annually, the Secretary must develop and implement a PIP with action to be taken during a 1-year period. Because WIOA requires the Department to annually establish expected levels of performance and to take action to improve the performance of those centers that fail to meet the expected levels of performance, the Department does not have the authority to wait 3 years to place an underperforming center on a PIP or to provide a new operator a 2-year grace period to make improvements. The Department does not consider a PIP to be punitive in nature. It provides an opportunity for the Department, consistent with the requirements of WIOA, to provide assistance and guidance to centers that are underperforming. Any guidance regarding a center's designation of requiring performance improvement would be provided in the PRH.

Comments: Commenters urged the Department to use a progressive approach that seeks to improve performance at centers with as little disruption to staff, students, and the community as possible.

Department Response: The Department is committed to improving the performance of Job Corps centers and has the authority under WIOA to take the following statutory actions after centers fail to meet the expected levels of performance: providing technical assistance to the center; changing the career and technical education and training offered at the center; changing the management staff of the center; replacing the operator of the center; reducing the capacity of the center; relocating the center; or closing the center. The Department further lays out its approach to taking these actions in the PIP guidance published in the PRH.

K. Part 687 – National Dislocated Worker Grants

1. Introduction

National Dislocated Worker Grants are discretionary awards that temporarily expand service capacity at the State and local levels through time-limited funding assistance in response to significant dislocation events. These grants are governed by sec. 170 of WIOA. The Department received comments in support of part 687 of the NPRM, as well as comments requesting clarification or revisions. Additionally, the Department has made technical and clarifying changes to some of the sections. All changes to the regulatory text, and the Department's responses to the comments received, are explained below.

The Department has made several global changes to this part for clarity and technical accuracy. First, "National Dislocated Worker Grants" will be referred to by the acronym "DWGs" in this part for simplicity.

Second, the Department has determined it is necessary to alter the labels of what the NPRM called "Regular" and "Disaster" DWGs to more accurately describe their purpose and intended use. "Regular" DWGs have been renamed "Employment Recovery" DWGs, and "Disaster" DWGs have been renamed "Disaster Recovery" DWGs.

Third, the term "career services" in § 687.100(a) and (b) is changed to "employment and training activities" to clarify that the use of DWG funds is not limited to only career services. Training and supportive services also may be provided as appropriate and in accordance with the requirements of this part. For the same reason, this change has also been made in other applicable sections in this part (§§ 687.170(a)(1), 687.170(b)(2), 687.180(b)(2), and 687.180(b)(3)) where the NPRM referred to "career services" or "employment-related assistance."

Fourth, the term "temporary employment" at § 687.100(b) has been replaced with the term "disaster relief employment" to better align the text of this part with that of sec. 170 of WIOA. This change also has been made to §§ 687.170(b)(2) and 687.180(b)(2).

Fifth, the Department removed the word "additional" from references to "additional guidance" in §§ 687.150, 687.160, and 687.200(b)(1). This word was unnecessary.

Finally, the Department has made a technical correction to §§ 687.180(b)(1) and 687.200(b)(2) by replacing the phrase "by the State" or "by the States" with a reference to § 687.120(b) to ensure consistency with that provision, which provides that Indian tribal governments and outlying areas are eligible entities for Disaster Recovery DWGs in addition to States.

The analyses that follows provides the Department's response to public comments received on the proposed part 687 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not all discussed in the analysis below.

2. Discussion of Public Comments and Changes to Individual Rules

Section 687.100 What are the types and purposes of National Dislocated Worker Grants (DWGs) under the Workforce Innovation and Opportunity Act?

Four technical corrections have been made to the text of this regulation. First, the section heading is corrected from "National *Disclosed* Worker Grants" to "National *Dislocated* Worker Grants." Second, the word "purposes" is added in the introductory paragraph of § 687.100 to align with the section heading. Third, the Department has removed the word "significant" in § 687.100(a) and replaced it with the phrase "major economic dislocations or other events" in order to be consistent with the header for this section. Finally, the Department has simplified the wording at § 687.100(b) by removing "in certain situations as provided" and replacing it with "in accordance with."

Section 687.110 What are major economic dislocations or other events which may qualify for a National Dislocated Worker Grant?

Comments: The Department received a comment on proposed § 687.110 asking that plant closures be added to the list of qualifying events.

Department Response: WIOA sec. 170(b) lists plant closures as an event for which the Department could authorize DWG funds. The regulation has been revised to include plant closures explicitly in § 687.110(a)(1) and (a)(3). In § 687.110(a)(1), the Department has concluded that a plant closure that results in a mass layoff of 50 or more workers from one employer in the same area is a qualifying event. Under § 687.110(a)(3), the Department may determine that a plant closure affecting fewer than 50 workers is a qualifying event if it significantly affects the designated community, such as what may happen, for example, if a closure occurs in a rural or other area with a small population. Additional requirements are set out in guidance, which will be updated as necessary.

Additionally, the Department notes that the definition of "mass layoffs" in part 687 differs from the definition used in part 682, subpart C, where the Department provides a

definition of "mass layoff" for the purposes of Rapid Response activities. For Rapid Response, the Department allows States more flexibility in defining mass layoffs. Rapid Response services encompass strategies and activities that States can provide to assist workers affected by layoffs and closures as described at § 682.300 (including information about available employment and training programs), and the Department encourages States to do so regardless of the number of workers affected by the layoff.

In contrast, the DWG program is aimed at significant events that cannot reasonably be expected to be accommodated within the ongoing operations of the formula-funded dislocated worker program. Accordingly, for the purposes of the DWG program, the Department separately defines "mass layoff" as those affecting 50 or more workers from one employer in the same area. However, the Secretary may determine other events eligible for an Employment Recovery DWG under § 687.110(a)(5) for layoffs affecting fewer than 50 employees, such as those related to a separate and larger layoff of 50 or more employees. Department guidance provides policy for these circumstances.

Comments: The Department received several comments on data applicants may use to demonstrate "higher-than-average demand" for employment and training activities for certain members of the Armed Forces and their spouses. Under WIOA sec. 170(b)(1)(D)—and § 687.110(a)(4) of the NPRM—this demand must exceed State and local resources to be a qualifying event for DWG funds. In proposing part 687, the Department included examples of what data sources could be used to determine whether a "higher-than-average demand" exists.

Some commenters requested the Department be specific regarding what data it will accept for showing higher-than-average demand. The Department also received several comments on its proposal that it may use Unemployment Compensation for Ex-servicemembers

(UCX) data for defining higher-than-average demand. Commenters were concerned the Department using UCX data would give areas with military bases an unfair advantage in competing for limited resources.

Department Response: The Department has concluded that, given the importance of providing services to transitioning service members and their spouses, it must be flexible in what administrative data sources it allows applicants to use to demonstrate higher-than-average demand. The Department will not provide a specific, proscribed list of what data sources it will accept, but instead set out illustrative examples of allowable data sources in Department guidance.

The Department has concluded that allowing UCX data to demonstrate higher-than-average demand does not provide an unfair advantage to areas with military bases. As stated above, grantees may use other administrative data sources for demonstrating higher-than-average demand. UCX data thus is not the only acceptable source or among a small, closed group of acceptable data sources the Department will use to determine higher-than-average demand for services. Furthermore, potential grantees may apply for a DWG once an eligible event or situation occurs in accordance with § 687.130 without having to compete against other entities for these funds. Most DWGs will be awarded on this basis; thus, the Department has determined its allowance of UCX as one of many administrative data sources that applicants may use to show higher-than-average demand does not create unfair competition for DWG funds. The Department has concluded no changes to the text of § 687.110(a)(4) are necessary in response to these comments.

Comments: Another commenter on § 687.110(a)(4) requested that contractors be included in the higher-than-average threshold because contractor layoff rates are at times higher

than those of the Armed Forces. Section 170(b)(1)(D)(i) of WIOA allows DWGs to be awarded to a State or Local WDB serving an area for which a higher-than-average demand for employment and training activities for certain members of the Armed Forces, or certain spouses of members of the Armed Forces, exists.

Department Response: WIOA sec. 170(b)(D)(i) specifically defines the members of the Armed Forces and spouses who are included in assessing the higher-than average demand; contractors are not included. As a result, contractor layoff rates cannot be considered when determining whether a DWG can be awarded under § 687.110(a)(4). No change is being made to the regulatory text in response to this comment. However, military contractors who have suffered a layoff may be able to be served under other types of DWGs, such as those involving dislocations or events described in § 687.110(a)(1) (mass layoffs of 50 or more workers) or § 687.110 (a)(3) (layoffs significantly increasing the total number of unemployed individuals in a community).

Regarding spouses, as it stated in proposing § 687.110(a)(4), the Department has determined it will not require applicants to determine the specific subset of military spouses included in the higher-than-average demand for services in an area. Sec. 170(b)(1)(D)(i) of WIOA specifically limits the military spouses included in this analysis to "spouses described in sec. 3(15)(E) [of WIOA]." Under sec. 3(15)(E) of WIOA, these are spouses of members of the Armed Forces on active duty who are dislocated specifically because they have experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of the member of the military, or are unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment. To avoid unnecessary burden on applicants, the Final Rule at § 687.110(a)(4) only requires applicants for these DWGs to assess whether

military spouses dislocated under any of the factors in sec. 3(15) of WIOA contribute to the higher-than-average demand for services, specifying that these spouses must be spouses of Armed Forces members on active duty. As stated previously, the Department has determined that this implements the intent of the WIOA provision while avoiding unnecessary administrative hardship.

Comments: Another commenter asked that "Other events, as determined by the Secretary" in § 687.110(a)(5) allow entities to apply for regional or statewide grants to address issues affecting a particular industry or target population.

Department Response: Under WIOA, the Secretary has broad authority to award DWGs for circumstances the Secretary deems appropriate. The Secretary will continue to use this authority to make determinations about the awarding of DWG funds for other events. No change was made to the regulatory text in response to this comment.

Comments: A commenter submitted several comments on what disasters qualify for Disaster Recovery DWGs. Proposed § 687.110(b)(2) stated that qualifying events for a Disaster Recovery DWG include "an emergency or disaster situation of national significance that could result in a potentially large loss of employment, as declared or otherwise recognized by the chief official of a Federal Agency with jurisdiction over the Federal response to the emergency or disaster situation." Previously, under the Workforce Investment Act, only Federal Emergency Management Agency (FEMA) declarations qualified an event for a disaster National Emergency Grant. The commenter requested the Department define what disasters are "of national significance."

Department Response: WIOA sec. 170(a)(1)(B) grants authority to Federal agencies with jurisdiction over the response to an emergency or disaster situation to determine and declare

which disasters or emergencies meet the "national significance" threshold. As such, the Department has determined it will defer to those agencies' expertise, and a declaration of an emergency or disaster situation by such an agency is the threshold for whether a disaster or emergency is one "of national significance."

However, to clarify what disasters qualify for the purpose of applying for Disaster Recovery DWGs, the Department has altered § 687.110(b)(2) to require that any declarations or recognitions of disasters or emergencies be issued in writing.. This change will allow the Department to verify independently the declaration relied upon by eligible entities to request Disaster Recovery DWG funds. The Department is not specifying the form of publication, which could include Web sites or other digital mediums. The regulatory text has been revised by adding "and issued in writing" to § 687.110(b)(2).

Comments: Another comment requested that States be informed of the mechanisms that will be in place to notify them when a Federal agency other than FEMA declares or recognizes a disaster or emergency. The commenter also requested the Department allow the emergency or disaster declarations or recognitions of Governors to qualify a disaster event for DWG funds.

Department Response: The Department encourages applicants to work with Federal and other State agencies so States are quickly notified once a published declaration or recognition is made by the responsible agency.

Additionally, WIOA sec. 170(a)(1)(A) and (B) authorizes DWG funds for disasters or emergencies declared by FEMA or other Federal agencies with jurisdiction over the response. There is no provision in the law for the funds to be provided for disasters or emergencies based on declarations by Governors. As a result, no change was made to the regulatory text in response to this comment.

Comments: Another commenter requested both natural and man-made disasters be major economic dislocations or other events that qualify for a Disaster Recovery DWG.

Department Response: In defining qualifying disasters or emergencies, WIOA sec. 170(a)(1)(A) incorporates by reference the definitions of "emergency" and "major disaster" as defined by the Stafford Act at 42 U.S.C. 5122. According to the Stafford Act, a "major disaster" is

> any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Because WIOA incorporates the Stafford Act's above definition of "major disaster," the Department has determined that, for § 687.110(b)(1), DWG funds may be used for disasters declared by FEMA that are either natural or man-made. The Department has concluded that for consistency, an emergency or disaster situation in § 687.110(b)(2) declared or recognized by Federal agencies with jurisdiction over the Federal response also may be either natural or man-made and this change is reflected in the regulatory text at § 687.110(b)(2).

Other textual and technical corrections, as discussed in the Introduction above, were made to § 687.110.

Section 687.120 Who is eligible to apply for National Dislocated Worker Grants?

Comments: The Department received several comments indicating that National Farmworker Jobs Program (NFJP) grantees should be eligible entities for DWGs. One commenter stated that it would be appropriate to add a phrase in § 687.120 including entities that serve special populations. A few commenters noted that NFJPs have successfully responded to freeze, drought, and floods affecting farmworkers in the past.

Department Response: WIOA sec. 170(b)(1)(B) through (D) identifies eligible entities for qualifying events for disasters, emergencies, or certain higher-than-average demand. The list of entities for these qualifying events is very specific, and the NPRM aligns with this list. WIOA sec. 170(b)(1)(A) and sec. 170(c)(1)(B) identifies those applicants eligible for major economic dislocations. These eligible entities include States, Local WDBs, an entity described in WIOA sec. 166(c), and "any other entity that demonstrates to the Secretary the capability to effectively respond to circumstances relating to particular dislocations." Although NFJPs are not specifically mentioned in the law, they are not excluded, as the law states that other entities may be determined eligible by the Secretary. In order to maintain flexibility and responsiveness, it is not prudent to list all of the possible entities that may be considered eligible applicants. The Department has determined that no changes are necessary to the regulatory text at § 687.120(a). In those instances in which DWGs are awarded to States, Local WDBs or entities described in WIOA sec. 166(c), the Department encourages NFJPs and other entities to coordinate with these recipients as appropriate to help address the need.

A technical correction was made to § 687.120(a)(3) to use the phrase "*Indian and* Native American" to be consistent with part 684 of the Rule. Also, the Department has made a technical correction to § 687.120(b), restructuring the format of the list of eligible applicants for Disaster Recovery DWGs for clarity and alignment with the format used at § 687.120(a).

Section 687.140 What activities are applicants expected to conduct before a National Dislocated Worker Grant application is submitted?

The Department has adopted text that includes technical edits to § 687.140(a) in order to clarify what activities applicants are expected to conduct before submitting an Employment Recovery DWG application. As the Department stated in proposing the regulation, § 687.140(a) requires applicants to identify the needs of the affected workers and their interest in receiving services. Thus, the technical edits made to § 687.140(a)(2) clarify that agencies should use the information gathered through rapid response activities in § 687.140(a)(1) to provide available services as appropriate,—including other rapid response activities.

Comments: The Department received comments on data gathering on available workers required in the application for a Disaster Recovery DWG. Proposed § 687.140(b) requires applicants to conduct a preliminary assessment of the work needed and "put a mechanism in place to reasonably ascertain" whether sufficient eligible individuals are available to conduct the planned work. One commenter agreed that the collection of data, as well as other activities are important, but requested that the Department exercise the flexibility so the application and award process are not delayed. Another commenter stated that the requirement to put a mechanism in place to determine worker availability is unrealistic because it is difficult to identify eligible and willing dislocated workers due to the type of clean-up work and the challenging work environment. The commenter suggested that the problem of inadequate supply to meet a community's demand for recovery workers would be addressed by allowing States to define "long-term unemployed" and that the Department should award funds in increments to allow for a more streamlined process.

Department Response: WIOA sec. 170(d)(2) states that the individuals eligible to receive disaster relief employment include the long-term unemployed. Further, guidance issued for DWGs specifies that long-term unemployed individuals, as defined by the State, are eligible participants. Regarding the commenter's request that funds be issued in increments, the Department typically funds DWGs on an incremental basis and will continue to do so as appropriate.

The Department understands that in the aftermath of significant disasters, acquiring data may be extraordinarily difficult. Still, the Department has determined it is necessary to require a reasonable assessment to ascertain the number of eligible workers available to conduct the planned work. It is critical that grantees make good-faith efforts to gather this data to provide the Department information it needs to ensure the proper amount of funding is awarded to assist the eligible areas.

However, to address the commenter's concern and reflect the Department's flexibility, the Department has removed the "put a mechanism in place" information from the Final Rule at § 687.140(b)(2). The Final Rule instructs awardees to "reasonably ascertain" that there are a sufficient number of eligible individuals available to conduct the work. The Department will take the particular circumstances of a disaster into account during the application review process.

Section 687.150 What are the requirements for submitting applications for National Dislocated Worker Grants?

No substantive comments were received on this section; however, the Department made changes to the Final Rule that provide clarity to allow the Department to appraise the variety of needs and services under the new statute and tailor application requirements accordingly. The Department has added a sentence to this section reflecting that the application requirements may

vary based on the category of DWG. The Department also has qualified the requirement that a project implementation plan be submitted after receiving a DWG award by adding the phrase "unless otherwise specified." The project implementation plan requirement may not apply to all DWGs at all times. Requirements will be noted in grant terms and conditions.

Section 687.160 What is the timeframe for the Department to issue decisions on National Dislocated Worker Grant applications?

Comments: The Department received several comments on this section, which discusses the 45-calendar-day timeframe for the Department to issue final decisions on DWG applications that meet the requirements of this part, and strongly encourages applicants consult with their Regional Offices on all requirements. One comment supported the provision, but the remaining commenters were concerned that the 45-day timeframe is too long for Disaster Recovery DWGs. Commenters also requested a 72-hour timeframe for decisions.

Department Response: The 45-day timeframe is the maximum amount of time the Department has to issue a final decision, not the minimum. The Department typically prioritizes Disaster Recovery DWGs applications for immediate review, and the Department will make every effort to ensure they are processed as quickly as possible. Again, applicants should work with their Regional Offices to ensure submissions are complete. No change was made to regulatory text in response to this comment.

Comments: One commenter asked for clarification on how and to whom the Notice of Obligation (NOO) (now called the Notice of Award (NOA)) will be disseminated.

Department Response: The NOA typically will be disseminated electronically to the entity identified as the applicant on the SF-424. The Department will provide specific technical

assistance and guidance as necessary. No change was made to the regulatory text in response to this comment.

Section 687.170 Who is eligible to be served under National Dislocated Worker Grants?

Comments: The Department received a few comments on this section, which addresses participant eligibility. Two commenters discussed the eligibility of underemployed individuals to be served under Disaster Recovery DWGs. One commenter asked whether the definition of underemployed in § 684.130 applies to DWGs with respect to underemployed self-employed individuals as discussed at WIOA sec. 170(d)(2)(D) and §§ 687.170(b)(1)(iv) and 687.170(b)(2)(iv) of this regulation. This commenter also asked how adding the term "significantly" to "underemployed" impacts the definition of underemployed as it relates to the self-employed at sec. 170(d)(2)(D) of WIOA and other sections of part 687. Another commenter relayed concern that employed individuals whose hours have been significantly reduced could not receive a temporary job under a Disaster Recovery DWG and requested that these individuals be added to the eligibility category. This commenter stated that doing so would align with text of WIOA sec. 170(d)(2)(D) by allowing self-employed individuals who become unemployed or significantly underemployed to be eligible for disaster relief employment.

Department Response: The Department has determined that the definition for self-employed individuals who become unemployed or significantly underemployed as a result of an emergency or disaster does not automatically extend to those who are not self-employed. Regarding the question about § 684.130, the needs to be addressed by Disaster DWG funds also are different than those discussed in part 684, which deals with Indian and Native American program grants. Therefore, the definition of "underemployed" at § 684.130 does not apply to this section. Neither "underemployed" nor "significantly underemployed" are defined in sec. 3

(Definitions) of WIOA or in part 687. The Department has concluded it will remain flexible in determining the needs of underemployed individuals in the wake of a disaster and provide guidance as necessary.

Regarding § 687.170(b)(2), the Department has made a technical correction to remove the words "humanitarian-related" to ensure that the Department does not restrict the disaster relief employment to only humanitarian-related employment and not allow for the possibility of clean-up and repair-related employment. Since it is likely that most individuals who relocate from a disaster area will move to an area that is *not* affected by a disaster, the Department expects disaster relief employment activities to be rare in DWGs awarded for this qualifying event, and relocated individuals likely will participate in only employment and training activities.

Comments: One commenter requested clarification regarding the individuals who relocate to another area from a disaster area as discussed in § 687.170(b)(2). The comment suggested the regulatory text state that these individuals may receive services in both the disaster area and in the area to which they relocate.

Department Response: The Department has added § 687.170(c) to clarify that eligible individuals may receive services from DWG funds in either the State, tribal area, or outlying area affected by a disaster or the State, tribal area, or outlying area to which they relocate as a result of that disaster. Under this provision, a single individual may not be served in both the area affected by a disaster and the area to which they relocated because of the disaster. However, the Department also has included language in § 687.170(c) to account for such a situation, where individuals eligible for services are capable of seeking services in both the State, tribal area, or outlying area in which a disaster occurred and the State, tribal area, or outlying area to which that individual has relocated as a result of that disaster. In these circumstances, the Secretary will

make a determination as to whether individuals may be served with DWG funds in the disaster-affected area as well as the area to which those individuals relocated as a result of that disaster. Departmental guidance will set out requirements under these provisions. As discussed in the Introduction, the Department has made textual changes to this section to make this section and its requirements clearer and in better alignment with WIOA's text. Also, paragraphs 687.170(a)(1)(iii)(C) and (D) have been edited to reflect the correct cross-reference, to paragraph (a)(1)(iii)(B).

Section 687.180 What are the allowable activities under National Dislocated Worker Grants?

The Department has made several technical corrections to this section. First, in § 687.180(a)(1), the term, "employment and training activities" was changed to "employment and training assistance" for consistency with the wording at WIOA sec. 170(b)(1)(A). Second, § 687.180(a)(2) was revised to add "and the terms and conditions of the grant" to make it clear that supportive services, including needs-related payments, also are subject to any restrictions reflected in the terms and conditions of the grant. Third, § 687.180(a)(2)(ii) was revised by inserting the word "guidance" to clarify that the other circumstances would be specified in *guidance* governing DWG application requirements. Fourth, in § 687.180(b) the Department removed the second DWG acronym to eliminate redundancy. Fifth, the word "emergency" was added to § 687.180(b)(1) and (2) to make it clear that these sections cover not only declared disaster areas, but declared emergency areas as well.

Finally, the Department placed the proposed § 687.180(b)(4) into § 687.180(c) in the Final Rule. Unlike the other provisions of § 687.180(b), this provision does not describe Disaster Recovery DWG activities but instead the entities through which DWG funds may be expended to carry out these activities. The Department also simplified this provision by

replacing the phrase “disaster relief, humanitarian assistance, and clean-up projects” with “activities” discussed in § 687.180(b).

Comments: The Department received several comments on this section, which discusses the activities that may be conducted with DWGs. One commenter requested that the Department issue guidance on the required coordination with FEMA. WIOA sec. 170(d)(1)(A) requires funds awarded for disasters be used in coordination with FEMA. The commenter stated that it is more likely that a State would have more immediate access to and communication with their State emergency management agencies than FEMA.

Department Response: Coordination of funding with FEMA is critical in helping ensure funding is used to provide a broad range of assistance while preventing duplication of services. The Department has determined that because each disaster is unique, and responses must be tailored to the disaster; decisions regarding how States, tribal, or outlying areas coordinate with FEMA should be made by entities within affected communities. The Department declines to be prescriptive or proscriptive about grantees’ coordination with FEMA, but expects that grantees will establish appropriate policies and procedures to meet this requirement. The Department supports and strongly encourages grantees’ coordination with State emergency management agencies and other entities participating in the recovery process.

Comments: A commenter requested that the Department solicit input on disaster relief and/or career services authorized under DWGs when a Federal agency other than FEMA declares a disaster or emergency situation.

Department Response: This input was solicited during the comment period on the NPRM, which has since closed. The NPRM provided a list of allowable disaster relief employment activities and also stated that career services could be provided to eligible

individuals. Examples of career services were provided in the Joint WIOA NPRM and are in 20 CFR 678.430.

Comments: Another commenter asked whether subgrantees would be required to report expenditures for career services as a whole.

Department Response: In order to maintain flexibility, the Department will not provide information on such reporting in these regulations, but reserves the right to issue details in guidance. However, guidance on reporting for subgrantees is typically issued by the direct recipient of the funds; the level of detail for subgrantees the commenter requested might not be included in guidance issued by the Department.

Comments: One commenter asked whether the NOA will indicate whether a grant has been authorized for a needs-related payment.

Department Response: In most instances, authorization of needs-related payments likely will be relayed through the grant's Terms and Conditions document. Other forms of communication may be used as necessary.

Section 687.190 How do statutory and regulatory waivers apply to National Dislocated Worker Grants?

Comments: One commenter requested that the waiver process be short and efficient to expedite decision-making.

Department Response: WIOA only allows the Department to waive certain statutory and regulatory requirements of WIOA title I, subtitles A, B, and E; the Department cannot waive any requirements of DWGs set out in sec. 170 of WIOA (which is in subtitle D) or the regulatory requirements of this part. For DWG funds, proposed § 687.190 allowed the use of waivers under

subtitles A, B, and E that the Department already has approved. It delineated two processes for requesting that the Department apply these waivers to a DWG.

For those applying for DWG funds, proposed § 687.190 stated that the application must describe the already-approved waivers the applicant wishes to apply to the project and that the Department will consider the request as part of the application review and decision process. Proposed § 687.190 required grantees seeking utilization of existing waivers to request a grant modification and include the provision to be waived, the operational barrier to be removed, and the effect on the outcome of the project.

In response to the comment, the Department has restructured and revised § 687.190 to clarify and better describe the waiver limitations, and to simplify the basic requirements for requesting to use waivers in DWG projects. The Final Rule at § 687.190(a) articulates that the requirements of WIOA title I, subtitle D cannot be waived, but that already-approved waivers of the requirements under subtitles A, B, and E may be utilized in DWG projects. The Final Rule revises § 687.190(b) to more clearly state that applicants with already-approved waivers under WIOA must describe the waiver in the application and request at the time of application that the specific waiver be applied to the DWG. The Department has simplified the requirements for requesting waiver utilization during the operation of the DWG in § 687.190(c). The grantee must describe the existing waiver in a grant modification and request that the waiver be applied to the project. This removes the proposed § 687.190(b)'s requirement that a grantee describe the provision to be waived, the operational barrier to be removed, and the effect on the outcome of the project. For added clarity, both § 687.190(b) and (c) state that applicants may not use this process to request new waivers. The Department will not consider requests for new waivers as part of the application or modification for a DWG.

Section 687.200 What are the program and administrative requirements that apply to National Dislocated Worker Grants?

Comments: The Department received comments on proposed § 687.200(b)(2), which stated that in extremely limited circumstances, funds available for expenditure from Disaster Recovery DWGs may be used for additional disasters or situations of national significance within the same program year the funds were awarded.

One commenter expressed that the Rule was overly restrictive. The commenter remarked that there was no indication in WIOA's text that the subsequent disaster must occur during the same year of the award, and that the regulation should allow for more flexibility and permit these funds to be used beyond the program year. WIOA sec. 170(d)(4) allows the Secretary to set conditions under which these funds may be used, and the Department has concluded the program year restriction in the NPRM is the best method to help ensure the proper management and distribution of Disaster Recovery DWG funds. The Department made no changes to § 687.200(b)(2) in response to these comments.

Comments: The Department received a few comments concerning the DWG administrative costs addressed in § 687.200(b)(3). One commenter asked whether the administrative cost limit is calculated against the full award amount, the summation of the incremental amounts received, or the amount expended. Another commenter, discussing part 683, advocated for consistency in how the administrative funds are applied in the formula program and the DWG; essentially, the commenter requested that the administrative costs be calculated against the award and not the expenditure amount.

Department Response: The Department has concluded that it will follow this approach, and the administrative cost limit will be calculated against the award and not the expenditure

amount. The Department has included this provision in the Final Rule at § 687.200(b)(3). The Department expects that in most cases, these cost limits will likely be proportionate to those established for the formula funds.

The Department also encourages potential DWG recipients to review their cost per participant to ensure that it is reasonable or falls within normal limits based on the circumstances of the qualifying event and comparable grants that were previously awarded. If the cost per participant falls outside of normal limits, the grantee should submit a justification to explain the costs to reduce delays in the review process. The Department concluded there was no need to alter the text of § 687.200 for this policy.

L. Part 688 – Provisions Governing the YouthBuild Program

1. Introduction

The Department wants to emphasize the connections across all of our youth-serving programs under WIOA, including the WIOA youth formula program and associated boards and youth committees, connections to pre-apprenticeship and registered apprenticeship programs, and Job Corps centers across the country. WIOA is an opportunity to align and coordinate service strategies for these ETA youth training programs, as well as to align with our Federal partners that serve these same customers. WIOA also ensures that these programs are using common performance indicators and standard definitions, which includes aligning the definitions for homeless youth, basic skills deficient, occupational skills training, and supportive services. Additionally, the YouthBuild regulation adopts the six new performance indicators that apply to all youth-serving WIOA programs and aligns YouthBuild with the WIOA youth formula program.

WIOA affirms the Department's commitment to providing high-quality education, training, and employment services for youth and young adults through YouthBuild grants by expanding the occupational skills training offered at local YouthBuild programs. YouthBuild programs can offer occupational skills training in in-demand occupations, such as health care, advanced manufacturing, and IT, as approved by the Secretary and based on the maturity of the program and local labor market information.

In addition to the changes to the program required by WIOA, the Department makes several additional changes to the program, including revisions to the duration of the restrictive covenant clause (as detailed in the preamble at § 688.730), clarifying eligibility criteria for participation, and describing qualifying work sites and minimum criteria for successful exit from the YouthBuild program. Beyond these regulations, the Department will continue to develop guidance and technical assistance to help grantees and the workforce development community operate highly-effective YouthBuild programs. The Department received several comments that expressed general support for the proposed YouthBuild regulations. Comments on specific sections of the NPRM are described in each relevant section below.

The analyses that follows provides the Department's response to public comments received on the part 688 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the

readability and conform the document stylistically that are not discussed in the analysis below analysis below.

2. Subpart A – Purpose and Definitions

Section 688.100 What is YouthBuild?

This section describes the YouthBuild program. YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged youth. The program also benefits the larger community by providing new and rehabilitated affordable housing, thereby decreasing the incidence of homelessness in those communities. The program recruits youth between the ages of 16 and 24 who are school dropouts and are either: a member of a low-income family, a youth in foster care, a youth who is homeless, a youth offender, a youth who is an individual with a disability, a child of an incarcerated parent, or a migrant youth.

Comments: Several commenters advocated that the YouthBuild program be emphasized as one of the Department's strategies to engage disconnected youth, due to the YouthBuild program's high number of court-involved youth. These same commenters emphasized the focus within YouthBuild on a counseling and case management approach in order to support participant success in employment and education and recommended modifying the Department's definition of YouthBuild to read:

> YouthBuild is a workforce development program that provides employment, education, leadership development, service to the community, and training opportunities for disadvantaged youth. The program benefits the larger community by decreasing the incidence of homelessness and addressing issues of disconnection, violence, and lack of opportunities in those communities. YouthBuild also increases the affordable housing stock in these communities.

Department Response: The Department has concluded that the definition of YouthBuild, as provided under § 688.100, is accurate. The description of the YouthBuild

program accurately defines the intent, target population, and anticipated outcomes of the program model. However, given the program's focus on increasing access to affordable housing through building or rehabilitating of low-income properties, the Department has revised the definition of "YouthBuild Program" in § 688.120 to specifically emphasize the inclusion of service to the community, as described in the commenter's proposed definition.

Additionally, the YouthBuild program serves a wide variety of eligible youth, of which court-involved youth are just one population, and programs funded by the Department vary widely in the ratio of court-involved youth they serve. The Department supports the YouthBuild program model as one of several approaches that can provide positive change and expanded opportunity to disadvantaged youth; however, court-involved youth are not the sole population targeted by this program. Therefore, it is not accurate to focus on court-involved youth as a predominant population served. Aside from the addition of service to community as described above, no changes were made to the regulatory text in response to these comments.

Section 688.120 What definitions apply to this part?

Comments: Several commenters recommended revisions to the proposed definitions in the YouthBuild NPRM, while others recommended the inclusion of additional definitions not included in the NPRM. Several commenters also expressed general approval of the definitions, specifically the definition of "Adjusted income" and "Homeless individual" and "Homeless child and youth."

One commenter recommended revising the numbering within the existing definition of "Adjusted income" as the commenter believed it could lead to confusion as

numbered. The commenter further recommended the inclusion of the rationale for the exclusion of earned income, at the discretion of a Housing Development Agency, from adjusted income, as defined.

Department Response: After reviewing the definition of "Adjusted income" as written in the NPRM, the Department realized that the section numbering of the definition was inadvertently mislabeled, which made the numbering appear inconsistent, and created confusion. The definition numbering has been revised in the final text of § 688.120. The exclusion of earned income from the definition of adjusted income is part of the definition of "Adjusted income" in sec. 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)). As sec. 171(b)(1) of WIOA incorporates that definition of "Adjusted income," it cannot be changed by the Department in these regulations.

Comments: One commenter requested that the definition of "Eligible Entity" clarify what counts as an eligible State under WIOA. In particular, the commenter was seeking clarity on how territories and outlying areas qualify as eligible entities under WIOA and asked that the Department clarify the language to permit territories and outlying areas to apply for YouthBuild grants.

Department Response: The definition of "Eligible Entity" as provided in § 688.120 includes "any…entity eligible to provide education or employment training under a Federal program" to be eligible to apply for YouthBuild awards. Territories and outlying areas that meet this part of the definition will be considered eligible entities in this part. The Department has concluded that no further clarity to the definition is necessary.

Comments: One commenter requested the addition of a definition for "Energy-Efficient Improvements" as "all measures recognized by the Weatherization Assistance Program including general heat waste reduction weatherization materials."

Department Response: The Department has concluded that the definition of energy-efficient improvements should be provided through guidance rather than the regulatory process in order to ensure greater flexibility, as this is an emerging industry and standards are still being developed.

Comments: One commenter indicated a misprint in the definition of "Exit" in which the incorrect section of the regulation was cited.

Department Response: The Department has corrected the definition with the correct section reference.

No comments were received regarding the definitions of "Homeless individual" and "Homeless child or youth;" however, these definitions were revised for added clarity to fit the Final Rule text as the definitions for these two terms come from existing legislation. Specifically, the definition of "Homeless individual" comes from sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)) and the definition of "Homeless child or youth" comes from sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)).

Comments: One commenter requested that the definition of "Needs-based payments" be modified to state: "beyond wage[s] or stipends which may be provided by the program," as such payments are not required but only allowed. The commenter expressed concern that needs-based payments should be allowable no matter how funds paid to participants are characterized.

Department Response: Although the preamble section of the NPRM does refer to wages or stipends, the actual definition of "Needs-based payments" under § 688.120 does not refer to wages or stipends. The Department cannot modify the language related to wages and stipends because neither were actually mentioned in the regulatory text of the NPRM and so there is not anything to modify regarding wages and stipends in § 688.120. However, the Department agrees that both wages and stipends are allowable but not required and this will be addressed through guidance.

Comments: One commenter suggested that the definition of "Pre-apprenticeship" should be clarified to ensure that YouthBuild programs continue to be considered pre-apprenticeship programs, even where they do not meet all of the requirements of a qualifying pre-apprenticeship program and are not funded by the Department. The commenter suggested keeping the definition provided in Training and Employment Notice (TEN) 13-12, but allowing for additional flexibility in the TEN 13-12 definition to develop alternative strategies for career pathways for youth where the requirement for registered apprenticeship partnerships or pathways cannot be met.

Department Response: In response to this comment, the Department has revised the definition of pre-apprenticeship in § 688.120 to clarify, consistent with TEN 13-12, "Defining a Quality Pre-Apprenticeship Program and Related Tools and Resources" which can be found at http://wdr.doleta.gov/directives, the YouthBuild programs receiving funding from the Department under this part meet the definition of pre-apprenticeship as described in that section. The Department further edited this definition to provide a more detailed and consistent explanation of the components of a pre-apprenticeship program as described throughout this Final Rule.

However, the Department cannot broadly categorize YouthBuild programs as pre-apprenticeship programs beyond those funded under this part as the Department is not in a position to determine that programs not funded by the Department meet the requirements to be considered a pre-apprenticeship program. However, this does not preclude the Department from subsequently making such a determination on a case-by-case basis.

Comments: One commenter requested the addition of a definition of "Substantive Construction" as construction of affordable housing, major renovations, and/or deconstruction.

Department Response: Substantive construction is defined in TEGL No. 06-15, "Qualifying Work Sites and Construction Projects for YouthBuild Grantees and Their Role in Training," which can be found at http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm. The Department has decided not to include this definition in the regulation to ensure the flexibility necessary to adapt the definition as the industry develops and new certifications emerge.

The Department received no comments on the definition of "Supportive services," but has revised the language in the regulatory text to be consistent with the definition in § 681.570.

Comments: One commenter questioned whether the definition of "Underemployed" in § 684.130 applied to YouthBuild.

Department Response: The definition of "Underemployed" in § 684.130 does not apply to this part.

The Department received no comments on the definition of "youth in foster care," but has revised the language in the regulatory text to be consistent with the definition in § 681.210.

3. Subpart B – Funding and Grant Applications

Section 688.220 How are eligible entities selected to receive grant funds?

Comments: Several commenters expressed concern that YouthBuild programs that outsource core program elements may compromise the youth's experience by having to go to several providers for different components of the program model. Further, there was concern that this can have a detrimental effect on the overall performance outcomes for the program compared to those that offer all core components of the program in-house. One commenter further expressed a fear that an applicant that provides all core components in-house could be penalized in the grant selection process due to the added emphasis on partnerships in this section.

Department Response: The Department recognizes that there are many different permutations of the YouthBuild model, all of which provide the required program components, but which provide such components in many different ways. Emphasizing the importance of partnerships does not diminish the focus on quality service delivery to participants, nor does it require that components be outsourced. This instead represents recognition of the many strong public workforce system partners that contribute to a safety net of services for at-risk youth. Encouraging active partnerships to provide a full array of services necessary to help youth succeed ensures that YouthBuild programs are actively accessing all available community resources so that such resources can stretch further. However, there is no requirement that a program must partner across each of the highlighted areas (education and training providers, employers, the workforce development system, the juvenile and adult justice systems, and faith-

based and community organizations) but rather, where it fills a gap in services or opportunities, such partnerships must be pursued. As such, applicants must be able to demonstrate the ability to develop a comprehensive network of partners to provide services, both in-house and out, to support successful outcomes. This is a core value of the Workforce Innovation and Opportunity Act.

4. Subpart C – Program Requirements

Section 688.300 Who is an eligible participant?

Comments: One commenter expressed concern related to TEGL No. 11-09 ("Expanded Participant Eligibility for the YouthBuild Program"), which allowed YouthBuild programs to expand the definition of a dropout to include youth who had dropped out of school but had subsequently enrolled in a YouthBuild Charter School prior to enrollment in the YouthBuild program, so long as this was part of a sequential service strategy. The commenter stated that they believed this set a precedent for allowing WIOA to enroll participants who meet this criterion as out-of-school youth. Further, the commenter recommended that the definition of out-of-school youth should be applied to those youth attending alternative school.

Department Response: TEGL No. 11-09 was guidance under the Workforce Investment Act (WIA), which included a provision for the sequential service strategy. WIOA expanded the YouthBuild participant eligibility to allow youth who were high school dropouts but had subsequently reenrolled to be eligible for the YouthBuild program. This eligibility expansion rendered the guidance in TEGL No. 11-09, and its related Changes 1 and 2, void. Further, § 681.230 clarifies that youth attending alternative education programs provided under title II of WIOA, YouthBuild, or Job Corps are considered out-of-school youth. No changes were made to the regulatory text in response to this comment.

Section 688.320 What eligible activities may be funded under the YouthBuild program?

Comments: One commenter recommended adding two additional eligible activities that may be funded under YouthBuild:

- Energy-efficient improvements;
- The rehabilitation of housing that is in need of renovation for health and safety reasons.

Department Response: The Department has concluded that there is no prohibition on the above named activities as eligible activities of the YouthBuild program. These two activities fall under the broad categories of work experience and skills training as described in § 688.320. The NPRM does not go into specific detail regarding the types of construction training that are eligible; such detail can be addressed through separate guidance as necessary.

Comments: One commenter expressed concern regarding the "provision of wages, stipends or benefits to participants…" as allowed under § 688.320. The commenter was specifically concerned about the use of wages for YouthBuild participants and the Internal Revenue Service (IRS) provisions that may be triggered. The commenter stated that several recent IRS rulings for local YouthBuild programs had determined that YouthBuild participants are not employees and therefore do not earn wages but stipends. However, as wages are an allowable payment to YouthBuild participants, the commenter requested that the Final Rule further explain the difference between participants who are paid wages and participants who are paid stipends and the additional costs that programs may incur by using a wage payment structure (such as required payment into Medicare or FICA or liability for unemployment expenses, for example), and that the Department urge grantees to avoid using grant funds for the provision of wages.

Department Response: The Department has concluded the provision of wages and stipends are subject to the authority of the Department's Wage and Hour Division and the IRS. YouthBuild programs will continue to be required to reach out to the appropriate Federal office to determine the allowable provision of payments to participants as well as any financial responsibilities that entails. Additionally, the Department will not discourage programs from choosing one method of payment over another as there is a diverse body of YouthBuild program models operating across the country, and while some may find that payment of wages is too onerous, in other organizations there may be benefits to such a payment structure. Additional information to grantees will be provided through guidance.

Comments: One commenter recommended that the Final Rule encourage disconnected youth to be taught healthy relationship skills as part of workforce development training. The commenter expressed the importance of youth developing healthy relationship skills as these can benefit them across a broad spectrum of life areas, including soft skill areas such as communication, conflict resolution, and problem solving. The commenter also referenced the response provided on the WIA YouthBuild Final Rule (77 FR 9112, Feb. 15, 2012), in which the Department concurred with a similar request and indicated that such activities were included under the broad category of "activities designed to develop employment and leadership skills."

Department Response: WIOA has not modified this section of the allowable activities. The Department reiterates the 2012 YouthBuild Final Rule response. The Department agrees that healthy relationships and development of interpersonal skills are important for the disconnected youth served under WIOA. These activities are supported

under § 688.320 as part of the employment and leadership skills development, which has been revised to read: "which may include…peer-centered activities encouraging responsibility, interpersonal skills, and other positive social behaviors."

Section 688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?

Comments: Several commenters recommended using the term "skill area(s)" in lieu of "module" in reference to the description of the construction skills training curriculum in which youth are trained on the work site. The commenters stated that the term "skill area" is broader than a module as a module is a component of a skill area and the term module is likely to be confused with sections of a particular curriculum. These same commenters also requested clarification of whether it is assumed that all projects must include energy-efficient enhancements as it is one of the five goals of the YouthBuild program as described in § 688.110. They further requested that if this cannot be assumed, it be included in the criteria for a qualifying work site. One commenter also recommended including additional fields within the construction industry as additional aspects of qualifying work sites, including those of deconstruction and environmental protection, such as radon testing.

Department Response: The Department has revised § 688.330 to clarify that qualifying work sites must include both multiple modules and skills areas. The Department requires that YouthBuild participants receive quality and comprehensive construction training in a real-life setting on a work site, such that the participant will attain sufficient construction experience to enter into a career pathway after program exit. Therefore, work sites must provide the opportunity for youth to have hands-on training and experience of both breadth and depth in

order to qualify. In TEGL No. 06-15 ("Qualifying Work Sites and Construction Projects for YouthBuild Grantees and Their Role in Training"), found at www.doleta.gov/WIOA/, the Department defines modules as specific training sections within the curriculum of each of the industry-recognized credentials that relate to specific skill areas of construction. These skill areas could include brick masonry, carpentry, painting, or plumbing, as examples.

While it may be allowable for programs to also provide more general rehabilitation work, such as deconstruction, landscaping, screen repair, fence building, etc., if a program offers training in these activities at a work site, the work site will not qualify under this section unless the program also includes experience in two or more modules within two or more skill areas. Any work site that does not include exposure to multiple modules and skill areas will not be considered a qualifying work site. Additional explanation and guidance regarding qualifying work sites is provided in TEGL No. 06-15.

Energy-efficient enhancements are described as part of the fifth YouthBuild goal as it relates to improving the energy efficiency specifically of community and non-profit and public facilities. The Department has concluded that this cannot be interpreted broadly to mean that all work sites must include energy-efficiency enhancements in order to qualify, nor can it interpret this to mean that all community and non-profit and public facilities must include energy-efficiency enhancements. Such enhancements are included as part of the allowable activities, as explained in § 688.320 above, but they are not required for all qualifying work sites, including community and non-profit and public facilities.

The Department defines the fields of deconstruction and environmental protection, such as radon testing and mitigation, as fields outside the immediate construction focus of YouthBuild. None of these fields directly supports the goal of increasing affordable housing so

they are not stand-alone skill areas; however, as with landscaping or painting, these are areas in which youth can receive hands-on work experience as long as it is in conjunction with the broader requirement of qualifying work sites in which hands-on training and experience in two or more modules, each within a different skill area, in a construction skills training program that offers an industry-recognized credential is provided.

Comments: Finally, several commenters sought clarity related to the preamble language of § 688.330 that described the expectation that participants must pass a certain number of modules in order to attain industry-recognized construction certification. The commenters noted that the regulation language for § 688.330 does not require the attainment of a credential or certification.

Department Response: A goal of training should be the attainment of an industry-recognized credential; however, the factors affecting whether a work site qualifies for the purposes of the YouthBuild program, as described in § 688.330, do not include a requirement that participants attain an industry-recognized credential. Qualifying work sites should provide training that supports the hands-on experience participants will need to attain industry-recognized construction credentials, but the attainment of a credential is not a requirement in order for a work site to qualify. No changes were made to the regulatory text in response to these comments.

Section 688.380 What is the role of the YouthBuild grantee in the one-stop delivery system?

Comments: Several commenters expressed concern with the requirement that YouthBuild grantees take all actions required of required partners as described in sec. 121 of WIOA. Specifically, the commenters were concerned with 20 CFR 678.420(b) (see Joint WIOA Final Rule), which states that required partners should:

> "…use a portion of funds made available to the partner's program, to the extent consistent with Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 2900 (requiring, among other things, that costs are allowable, reasonable, necessary, and applicable) to:
>
> (1) Provide applicable career services; and
>
> (2) Work collaboratively with the State and Local WDBs to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions based upon:
>
> (i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner in proportion to the relative benefits;
>
> (ii) Federal cost principles; and
>
> (iii) Any local administrative cost requirements in the Federal law authorizing the partner's program."

The commenters indicated that if this language is interpreted to mean that YouthBuild programs must pay into the one-stop delivery system, it would put an undue burden on small discretionary programs. At the same time, the commenters expressed support for the opportunity to partner with local one-stop programs, particularly around mutual referrals to services, but do not expect this to require a funding relationship.

One commenter expressed support for actively developing partnerships with the one-stop delivery system, which they consider critical for success and beneficial to streamlining services to youth. However, they recommended that the language related to this requirement be strengthened to ensure that both the one-stop operators and YouthBuild program administrators recognize it as a required partnership and meet to develop mutual parameters for the partnerships. Past experience of the commenter demonstrated that YouthBuild programs are sometimes rebuffed when seeking partnership with one-stop operators. The commenter stated that ensuring the requirement is mutual will lead to greater success.

Department Response: As YouthBuild grantees are required partners in the one-stop delivery system, they are responsible for complying with the requirements in sec.

121 of WIOA and 20 CFR part 678 of these regulations (see Joint WIOA Final Rule). While compliance with these requirements may require a financial commitment from the grantee, any costs incurred would be an allowable cost under the grant. Ensuring that YouthBuild programs are required partners with the one-stop delivery system serves to strengthen the safety net for disconnected youth through stronger connection points to recruitment, referral, and provision of services to such youth. The Department will be issuing further guidance regarding the requirements of partnership within the one-stop delivery system separate from the Final Rule. No changes were made to the regulatory text in response to these comments.

5. Subpart D – Performance Indicators

Section 688.400 What are the performance indicators for YouthBuild grants?

Comments: One commenter expressed support for the inclusion of two separate placement measures under WIOA as they felt this would allow them to report on all enrollees, rather than a subset that was initially placed, as with WIA. This commenter further provided a recommendation that the proposed earnings measure should take into account the local minimum wage standards since these can vary greatly by location and, without context, may skew the reporting outcomes. This commenter also expressed concern that the counting of a secondary diploma only when youth are subsequently in employment or in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program will inadvertently devalue the importance of a high school diploma or equivalency degree and discourage programs from the necessary investment that must be made to get good secondary diploma outcomes.

One commenter expressed general concern over the requirement of social security numbers, which will negatively impact the serving of English language learners who will be able to access programs that could lead to citizenship and which further places nearly unattainable accountability and performance standards on adult education programs.

Department Response: Section 171(f) of WIOA applied the common performance indicators applicable to all youth programs authorized under title I of WIOA described in sec. 116(b)(2)(A)(ii) of WIOA to the YouthBuild program. The regulations implementing and describing the youth performance indicators are at 20 CFR 677.155(c) of these regulations (see Joint WIOA Final Rule). Because the comments suggesting changes to the primary indicators of performance are general comments on the primary indicators for youth programs, they have been addressed in the preamble to that 20 CFR 677.155. Further, there is no reference to required collection of social security numbers in part 688. The Department has concluded that this comment is outside the scope of this part.

No changes were made to the regulatory text in response to these comments.

6. Subpart E – Administrative Rules, Costs, and Limitations

Section 688.520 What cost limits apply to the use of YouthBuild program funds?

Comments: One commenter requested clarification regarding the percentage of the grant award that could be used to rehabilitate community facilities, as separate sections of the NPRM showed a discrepancy.

Department Response: The Department has revised the NPRM under § 688.520 to correctly state that the percentage of the grant award that can be expended toward rehabilitation of community facilities is 15 percent, as stated in § 688.550.

Section 688.540 What are considered to be leveraged funds?

Comments: One commenter requested clarification on leveraged funds and whether they can be used to pay for meals for youth. The commenter interpreted leveraged funds to allow the purchase of food because they are separate from the grant funds and required 25 percent match requirement of YouthBuild.

Department Response: Per the NPRM, leveraged funds are funds used for allowable costs under the cost principles. Additional guidance on the definition of and allowable use of leveraged funds is provided through the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" regulation. The Department does not have the ability to predetermine the allowability of specific costs through these regulations. No changes were made to the regulatory text in response to this comment.

Section 688.550 How are the costs associated with real property treated in the YouthBuild program?

Comments: One commenter asked the Department to clarify the definition of costs associated with real property and what such costs constitute.

Department Response: The Department describes the application of real property as it relates to allowable costs in this section. Further, TEGL No. 05-10, "Match and Allowable Construction and Other Capital Asset Costs for the YouthBuild Program," provides additional guidance on the costs associated with real property within the YouthBuild program. No changes were made to the regulatory text in response to this comment.

Section 688.560 What participant costs are allowable under the YouthBuild program?

While the Department did not receive any comments on this section, the final clause of the section has been revised to clarify that the meaning of "sponsored health programs" as those sponsored by employers or the government.

Section 688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

Comments: The Department received many comments related to the Davis-Bacon Act labor standard provisions. Several commenters requested that the Department affirm the "12 unit rule" under the HOME Investment Partnerships (HOME) program and the "8 unit rule" under the Community Development Block Grant (CDBG) program as they relate to the Davis-Bacon Act labor standards. These rules provide exceptions to the requirement that construction workers be paid prevailing wages when working on construction sites funded in whole or in part with Federal funds when the number of units within the project that are funded with Federal funds fall below the unit threshold of the rule. The commenters expressed that, in the past, YouthBuild participants have been able to train on such projects without triggering the prevailing wage requirement and are seeking the Department's affirmation of the allowance of these rules.

One commenter requested that the Department reconsider the YouthBuild Trainee Apprenticeship Program (YB-TAP), which was a formal certification of the YouthBuild program to allow participants to be designated as trainees, rather than employees, on any Davis-Bacon-related project. This designation as a Certified Training Program of the Department of Labor allowed YouthBuild participants to be paid the standard wages or stipends as established by their program during their time on Davis-Bacon work sites, rather than the required prevailing wage. This commenter suggested that, while the YB-TAP was not well-received by many areas of the construction industry, this sentiment may have changed since YB-TAP was dismantled as there is a greater need across the construction industry for qualified employees than previously existed.

One commenter expressed support for the continued recognition in the NPRM that YouthBuild programs are subject to the Davis-Bacon Act standards, including prevailing wage rates, when participants work on projects subject to such standards. Specifically, this commenter stated that the Department has recognized that YouthBuild program participants are not considered trainees and therefore must be paid the prevailing wage rate when on Federally-funded projects. The commenter supports this NPRM as they believe that allowing YouthBuild participants to be paid a lower wage on a Davis-Bacon work site than the prevailing wage would undercut registered apprentices and incumbent workers.

Department Response: Davis-Bacon prevailing wage rate rules are quite complex and cover a number of different statutes within the U.S. Department of Housing and Urban Development (HUD). Within some of these statutes, there are exemptions under which prevailing wage rates do not apply. HOME and CDBG are two HUD program examples cited by commenters for which, if the number of units within the building that have HUD funding assistance are small enough, the prevailing wage rules do not apply and YouthBuild participants may be considered active training participants.

Determining exactly which units of a construction project may be funded with HUD assistance is quite complicated. It does not necessarily mean the construction itself is funded by a HUD project, but instead could mean rental assistance to residents is supplemented by HUD. Due to the complexity of determining the number of units on a construction site that are or are not funded with HUD assistance, the Department is unable to provide further guidance which could be misconstrued to provide approval for exempting YouthBuild participants from Davis-Bacon wage rules.

While the Department supports training YouthBuild participants on HUD-funded projects where viable, a determination of whether YouthBuild participants on such projects must be paid the relevant prevailing wage for that project cannot be made by the Employment and Training Administration (ETA). Rather, HUD consulted extensively with the Department's Wage and Hour Division on this topic so that HUD can address such inquiries. YouthBuild programs that are seeking assistance to determine whether there may be a viable Federally-funded work site on which participants may train without paying participants the prevailing wage under the Davis-Bacon Act should consult with HUD's Labor Standards and Enforcement Regional/Field staff. Contact information for this staff can be found here: http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/laborrelstf.

The YB-TAP was intended to support the training of YouthBuild participants on Federally-funded work sites, in order to provide greater opportunities for youth to work on low-income housing stock that was managed or owned by HUD. However, as discussed in the preamble to the 2012 YouthBuild Final Rule (77 FR 9112, 9126, Feb. 15, 2012), as a result of implementing YB–TAP, the Department found unintended consequences arose that were a concern for YouthBuild programs. Many of the organizations that YouthBuild seeks to partner with saw YB–TAP as being in direct competition because programs were allowed to pay their participants, as trainees, less than the prevailing wage rate. The lower ratio of journeyworkers to trainees approved in the YB–TAP program made it less expensive for a contractor to hire a YouthBuild-sponsored construction crew versus a journeyworker-staffed crew, and the YB–TAP standards, in effect, created a competing program approved by the Department. Accordingly, the Department dismantled YB-TAP. Therefore, while the provisions for trainees who may be paid

less than Davis-Bacon journeyman wage rates remain in effect as part of the Davis-Bacon Act labor standards, they do not apply to a YouthBuild program because there is no YouthBuild program that is a training program approved by ETA for purposes of § 688.600(c) and 29 CFR 5.5(a)(4)(ii). No changes were made to the regulatory text in response to these comments.

7. Subpart F – Additional Requirements

Section 688.730 What requirements apply to YouthBuild housing?

Comments: One commenter stated that the statement "….to increase the stock of affordable homes…" should include "safe, healthy, durable, resource efficient affordable homes." This same commenter expressed support for the proposed reduction in the duration of the restrictive covenant from a minimum of 10 years to a minimum of 5 years.

Department Response: This statement does not appear in the NPRM but only in the preamble. The NPRM recognizes the importance of safe and healthy housing as it requires that "[a]ll transitional or permanent housing for homeless individuals or families or low-income families must be safe and sanitary. The housing must meet all applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located." No changes were made to the regulatory text in response to this comment.

M. Part 651 – General Provisions Governing the Wagner-Peyser Act Employment Service

1. Background on the Wagner-Peyser Act Employment Service

The Wagner-Peyser Act of 1933 established the Employment Service (ES), which is a nationwide public labor exchange that provides employment services. The ES seeks to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. The Wagner-Peyser Act was amended in 1998 to

make ES part of the one-stop delivery system under WIA and has undergone further changes to integrate services under WIOA.

Parts 651, 652, 653, 654, and 658 update the language and content of the regulations to implement amendments made by title III of WIOA to the Wagner-Peyser Act. In some areas, these regulations establish entirely new responsibilities and procedures, in other areas, the regulations clarify and update requirements already established. The regulations make important changes to definitions, data submission, and increased collaboration, among other requirements of WIOA.

These regulations also address the court order from National Association for the Advancement of Colored People (NAACP), Western Region, et al. v. Brennan et al, No. 2010-72, 1974 WL 229 (D.D.C. Aug. 13, 1974) which resulted in a detailed mandate for various Federal and State actions [referred to as the Judge Richey Court Order (Richey Order) in the remainder of this preamble]. The Richey Order required the Department to implement and maintain a Federal and State monitoring and advocacy system and set forth requirements to ensure the delivery of employment services, benefits, and protections to Migrant and Seasonal Farm Workers (MSFW) on a non-discriminatory basis, and to provide such services in a manner that is qualitatively equivalent and quantitatively proportionate to those provided to non-farmworkers.

2. Introduction to part 651

20 CFR part 651 sets forth definitions for 20 CFR parts 652, 653, 654, and 658.

The Department received several comments regarding these definitions and has eliminated, revised, and added definitions, as needed. All changes to the definitions and the Department's responses to the comments received (whether changes were made in response to

the comments or not) are explained below. Additionally, the Department has made technical and clarifying changes. For the remaining definitions that are not discussed below, the Department received no comments and made no changes to the regulatory text.

3. Explanation of Changes and Responses to Public Comments

At the beginning of part 651, the Department added clarifying text which states, "In addition to the definitions set forth in sec. 3 of WIOA, the following definitions apply to the regulations in 20 CFR parts 652, 653, 654, and 658." This text is consistent with the discussion of proposed part 651 contained in the NPRM preamble. The Department added it to the regulatory text to ensure there is no confusion as to the application of these definitions and to make clear that the WIOA sec. 3 definitions also apply to these parts.

Agricultural Employer

The Department added this term and its definition in response to commenters' concerns with the proposed definition of "employer." The Department's rationale is described below, in the paragraph that responds to the comments on the term "employer." This added definition of "agricultural employer" parallels that of the definition in the Agricultural Worker Protection Act.

Applicant Holding Office

The Department received no comments on this definition; however, it changed "U.S.-based workers" to "U.S. workers" for clarification and uniformity across the definitions in this part. See further clarification of the Department's interpretation of "U.S. workers" below, in the Department's response to comments regarding the Clearance System definition

Applicant Holding State

The Department received no comments on this definition; however, it changed "U.S.-based workers" to "U.S. workers" for clarification and uniformity across the definitions in this

part. See further clarification of the Department's interpretation of "U.S. workers" below, in the Department's response to comments regarding the Clearance System definition.

Career Services

The Department received no comments on this definition, but the Final Rule includes a technical correction to ensure the definition refers to the correct section of WIOA.

Clearance System

Comments: A commenter urged the Department to revise this definition to make clear that it refers to the "orderly movement of U.S.-based job seekers" because the Agricultural Recruitment System (ARS) is specific to U.S.-based workers only.

Department Response: The Department agrees that the reference to job seekers in the definition of clearance system could be clearer. The Department is partially adopting the commenter's suggestion by revising the regulatory text to refer to job seekers in this definition as, "U.S. job seekers." The Department notes that § 653.500 states, "This subpart includes the requirements for the acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-round basis" (emphasis added). The term, "U.S. workers" means those workers defined at 20 CFR 655.5, which states:

> United States worker (U.S. worker) means a worker who is:
>
> (1) A citizen or national of the U.S.;
>
> (2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee under 8 U.S.C. 1157, section 207 of the INA, is granted asylum under 8 U.S.C. 1158, section 208 of the INA, or is an alien otherwise authorized under the immigration laws to be employed in the U.S.; or
>
> (3) An individual who is not an unauthorized alien (as defined in 8 U.S.C. 1324a(h)(3), section 274a(h)(3) of the INA) with respect to the employment in which the worker is engaging.

The term, "U.S. job seekers" means a U.S. worker who is interested in obtaining a job. Therefore, a "U.S. worker" would not be a "job seeker" if that individual is not interested in

obtaining a job. The change from "job seekers" to "U.S. job seekers" in this definition clarifies the intent of the clearance system, which is to recruit U.S. job seekers at the intrastate and interstate level when no U.S. job seekers were identified for an agricultural job order placed at the local level through the ARS.

Employer

Comments: A commenter recommended that the definition of employer include all employers or joint-employers of H-2A workers under 20 CFR part 655, subpart B, as well as the relevant Federal laws protecting farmworkers, including the Migrant and Seasonal Agricultural Workers Protection Act (AWPA), 29 U.S.C. 1801. In particular, this commenter suggested that, to allow meaningful and accurate employment determinations for MSFWs, the definition of employer should be further expanded to parallel AWPA's definition of "agricultural employer" as "any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker." Stating that incorporating this definition of agricultural employer into the employer definition would help ensure that MSFWs are given the tools to hold those who use their services and labor accountable when a violation occurs, this commenter concluded that a broad definition of employer that reflects the unique economic realities of agricultural employment is crucial for workers to assert their rights and force growers and contractors to honor their obligations.

Department Response: Although the commenters requested a revised and broadened definition of "employer," the Department has decided to retain the current definition of "employer" and add a separate definition of "agricultural employer" which parallels that of the

Agricultural Worker Protection Act. The Department anticipates this approach will effectively allow for meaningful and accurate employment determinations for MSFWs.

Employment-Related Laws

Comments: Two commenters said that the proposed definition was circular in that it used the term "employment-related laws" in the definition of employment-related laws; they requested clarification and stated it is necessary to know the definition of employment-related laws to identify the agencies that enforce them.

Department Response: The Department agrees with the commenters' suggestion and has revised the definition by deleting the reference to "employment-related laws" within the definition and replacing it with, "laws that relate to the employment relationship." The Department clarifies that "laws that relate to the employment relationship" means laws such as, but not limited to, the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Civil Rights Act, and other similar Federal, State, and local laws. The regulatory text provides examples of some of the agencies that enforce these laws to give guidance to help identify the enforcing agencies. However, the Department cannot identify all the agencies that enforce employment-related laws because such agencies may extend to each State's respective enforcement agencies, which vary and may change over time as well as Federal enforcement agencies. Maintaining the reference generally to agencies that enforce these laws will ensure the definition of "employment-related laws" maintains flexibility over time.

Comments: Another commenter expressed concern about the proposed definition of employment-related laws, asserting it would force untrained SWA staff to issue actions regarding perceived issues rather than act on provisions that are within their statutory authority

and stating that State agency staff's activities should relate solely to the statutory provisions of the authorizing Act.

Department Response: The Department notes that the proposed definition does not require any action for SWA staff. For further discussion of SWA staff responsibilities to refer perceived violations of employment-related laws to the appropriate enforcement agencies, please see the regulations and accompanying preamble at § 653.500 and subpart E of part 658.

Employment Service (ES)

In the NPRM, the Department added the definition of "Employment Service (ES) System." The Department received no comments on this definition, but the DOL WIOA Final Rule makes a non-substantive change to include the complete term "Wagner-Peyser Employment Service (ES) also known as Employment Service (ES)," and other non-substantive editorial changes.

Employment Service Office

In the NPRM, the Department defined "Employment Service Office" as "a local office of a State Workforce Agency." The Department received no comments on this definition, but the rule makes a clarifying change to enhance consistency with the regulations at §§ 652.215 and 678.305 through 315.

Farmwork

Comments: Two commenters expressed support for the elimination of references to North American Industry Classification System (NAICS) codes to reduce complexity and support for the addition of "fish farming" to allow for alignment with WIOA sec. 167. Further, these commenters supported the inclusion of "food processing," which they asserted would allow for the elimination of "migrant food processing workers," allow the SWA to more easily train

staff to identify MSFWs, and create stronger alignment with Wage and Hour Division (WHD) and Office of Foreign Labor Certification (OFLC) regulations. One commenter urged the Department to define who is included under "fish farming."

One commenter opposed the elimination of the NAICS codes from the proposed definition of farmwork, stating that the NAICS code is updated on a regular basis to address changes in work activities. This commenter further asserted that including the phrase "and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter" in the farmwork definition would make the current definitional structure even more difficult to understand and follow.

Department Response: The Department is not making substantive changes to the regulatory text in response to these comments, but has made a technical edit that makes clear that the definition of "agricultural commodity" applies to this definition throughout parts 651, 652, 653, 654, and 658. The Department notes that what activities are covered under "fish farming" is addressed through guidance.

The Department has determined that while the NAICS codes may be updated, the Department seeks to maintain consistency across its agencies. Aligning the definition at part 651 with the definition used at 29 CFR 500.20 and 29 CFR 655.103(c) is intended to help clarify and streamline the definition for practitioners who are otherwise forced to rely upon a variety of definitions depending on the program. The Department has determined it will be more beneficial for practitioners to draw upon a homogenous definition rather than to refer to a different and changing set of codes. Additionally, the Department acknowledges that issuing guidance to clarify or update aspects of the definition of farmwork is essential to maintain consistency with current practices and terminology that may change over time.

Comments: One commenter expressed support for broadening the definition of farmwork to correspond with the AWPA. This commenter also supported broadening of the definition of "agricultural commodities," by removing the phrase "produced on a farm" be removed from the agricultural commodities definition. In addition, this commenter stated the proposed agricultural commodities definition is different from the original source of the language at 12 U.S.C. 1141j(f) and that this difference could potentially exclude the type of workers that should be included in the movement toward inclusiveness: the commenter suggested the definition include downstream activities such as the handling, packing, and cultivating of commodities that may not traditionally be grown on land or on farms. This commenter suggested that such a change is necessary to achieve several of the proposed goals of the WIOA regulations.

Department Response: The Department has determined that, in order to maintain consistency with the definitions used by other DOL agencies, "on a farm" should be retained. Workers who perform "downstream activities" should be covered by the protections offered to all other non-farmworkers.

Farmworker

The definition of "farmworker" was proposed in the NPRM to replace the definition of "agricultural worker."

Comments: One commenter objected to removing "who is legally allowed to work in the United States," from the definition and urged the Department to retain and strengthen this language.

Department Response: The removal of the phrase "who is legally allowed to work in the United States" from the definition aligns this definition with definitions for the other programs. The Department has determined that it is unnecessary to mention immigration status in the

definitions for only a subset of programs. No changes have been made to regulatory text in response to this comment.

The term "farmworker" is used throughout this regulation, except that the Department uses the term "agricultural worker" where discussing OSHA standards or provisions limited to H-2A workers or regulations in order to maintain consistency with OSHA and H-2A terminology.

Field Checks

Comments: Expressing concern with the proposed definition's reliance on the term "placements," a few commenters recommended that, if the Department intends to use placements as a means to grant SWA staff jurisdiction to conduct field checks, the Department should require participating employers in the agricultural clearance system to report placements after work has begun to the SWA as a condition of participation. These commenters asserted that requiring State workforce agencies to seek out placements could impose a burden that is not expected from other job orders because many agricultural employers do not immediately report placements during busy harvest periods.

Department Response: The previous definition of "placements" included the requirement that the "employment office verif[y] from a reliable source, preferably the employer, that the individual had entered on a job." The definition of "field checks" in the Final Rule continues this requirement and does not place any additional burden on the SWA. The Department further notes that the ES office has the responsibility to report placements after work has begun, because it is facilitating the service to the employer, and follow-up on such a service is a normal course of action. No change has been made to the regulatory text in response to these comments.

Field Visits

Comments: Two commenters expressed support for the proposed definition of field visits, stating it would allow SWA staff and employers to understand better the difference between a field check and a field visit.

One commenter asked for clarification of the following language in the proposed definition: "The monitor advocate or outreach personnel *must keep records to discuss* ES services…."

Department Response: The Department acknowledges that the sentence "The monitor advocate or outreach personnel must keep records to discuss ES services…" is not clear enough. To clarify, the Department has rearranged the text to refer to record keeping requirements at the end of the definition.

Full Application

Comments: One commenter expressed concern with the removal of a definition of "full application" because of its use of "full registration," which the commenter stated helps to ensure State agency staff understand the importance of getting all demographic information from participants.

Department Response: The Department has determined that State agencies will continue to collect all pertinent demographic information through online systems (versus the more antiquated paper-based systems) because State agencies will eventually need to submit such information to the Department.

Individual with a Barrier to Employment

Comments: Another commenter recommended the Department clearly identify receipt of Social Security disability benefits as a barrier to employment.

Department Response: The Department's response to this recommendation that an individual in receipt of a Social Security Disability Insurance (SSDI) payment be considered an "individual with a barrier to employment" is discussed in the preamble text corresponding to § 680.640.

Individual with a Disability

Comments: The Department received comments which recommended the addition of a definition for "individual with a disability" in alignment with the definition from sec. 3 of the Americans with Disabilities Act of 1990 to ensure uniform protection of the class.

Department Response: To emphasize that employment services are universal and available to everyone, the Department added the definition of an "individual with a disability" which is the same as the definition in WIOA sec. 3(25). All the definitions in sec. 3 of WIOA apply to parts 652, 653, 654, and 658; however, because of the importance of stressing the universal nature of employment services, the Department has chosen to repeat the definition in part 651, as noted above.

Job Development

The Department has changed the word "applicant" to "participant" in this definition in order to conform to the new definition of "participant" in this part, which replaced the term "applicant." No other changes were made to this definition.

Comments: One commenter recommended revising this definition to include job development with an employer that does not have a job opening on file with the ES office.

Department Response: Revising the definition of "job development" to include "an employer that does not have a job opening on file with the ES service office" would be overly restrictive, because a job development could occur with an employer who has an opening on file

with the ES office, but the ES office may be working with the employer to develop a different job. Scenarios like this would create unwanted limitations on the prospects for assisting job seekers.

Comments: Another commenter recommended the Department revise the "job development" definition as a labor exchange service.

Department Response: The Department acknowledges that the service is indeed a labor exchange service, and labor exchange services are considered career services. However, the Department has determined that this revision would not substantively improve the definition of "job development."

Job referral

The Department received no comments on this definition, but the regulation changes the word "applicant" to "participant," conforming to the new definition of "participant."

Migrant Farmworker

Comments: A few commenters recommended revising the proposed definition to clarify what is meant by "unable to return to his/her permanent residence within the same day." Two commenters stated the term "unable" is overly restrictive and the intent of the regulation is to consider farmworkers who are "not reasonably able" to return to their permanent residence within the same day as migrant farmworkers.

Department Response: The Department agrees with the commenters that "not reasonably able," as recommended by the commenter, is more suitable and has changed the regulatory text accordingly. The Department will provide guidance on how it interprets "not reasonably able" to return to his/her residence within the same day.

One-Stop Center

The Department received no comments on this definition, however the regulation clarifies that the term one-stop center refers to the physical center described in sec. 121(e)(2)(A) of WIOA, in contrast with the broader definition of one-stop delivery system.

Order Holding Office

The Department received no comments on this definition; however, it changed "U.S.-based workers" to "U.S. workers" for clarification and uniformity across the definitions in this part. See further clarification of the Department's interpretation of "U.S. workers" under the Department's response to comments regarding the Clearance System definition above.

Outreach Contact

Comments: Expressing support for the proposed definition, two commenters stated this term would provide clarity, particularly when considering the inclusion of the word "each," and would raise the importance of the work done by MSFW outreach staff when considering outreach contacts do not always result in the registration of a participant.

Other commenters recommended revising the definition to clarify what type of contacts would qualify as an outreach contact. One commenter stated the lack of reference to the quality or depth of follow-up and lack of specification regarding whether the contact needs to be made outside of the one-stop center makes the proposed definition overly broad. Another commenter asked the Department to allow for in-office activity to be included as an outreach contact when the follow-up activity is being conducted on an MSFW who was initially contacted while on outreach.

Department Response: The Department notes the definition of "outreach contact" identifies three qualifying activities: the presentation of information, the offering of assistance, and follow-up activities; however, the definition does not specify where these activities need to

occur. Outreach duties can take place both inside and outside the office space. The Department will provide further guidance on this subject.

Outreach Worker

Comments: A commenter suggested the Department add a definition of "outreach worker" to clarify that an outreach worker includes only employees of a State agency, which this commenter stated is inferred from proposed § 653.107(b)(10). To accommodate the reality that many nonprofit organizations provide services to migrant and seasonal farmworkers (MSFWs), this commenter also suggested the Department add the term "nonprofit organization outreach worker" to mean "an employee of, volunteer for, agent of, or contractor for a nonprofit organization that provides health, educational, social, legal, or financial services to MSFWs."

Department Response: The Department declines to add a definition of outreach worker to indicate they are State agency employees. Paragraph (a)(1) of § 653.107 clearly states that outreach workers are employed by State agencies: "each State agency must employ an adequate number of outreach workers to conduct MSFW outreach in their service areas." Paragraph (a)(3) of § 653.107 further supports that outreach workers are only State agency employees by stating, "for purposes of hiring and assigning staff to conduct outreach duties, and to maintain compliance with State agencies' Affirmative Action programs, State agencies must seek, through merit system procedures, qualified candidates… ." Finally, § 653.107(b)(10) indicates that "outreach workers must be provided with, carry and display, upon request, identification cards or other material identifying them as employees of the State agency." These references throughout § 653.107 explicitly indicate that outreach workers referenced at 20 CFR parts 653 and 658 are employees of a State agency.

The Department also declines to add a definition of "nonprofit organization outreach worker." As explained in the preceding paragraph, the regulation sets out requirements of outreach workers who are State agency employees. The Department does not have authority over the outreach workers employed by nonprofit organizations that do not receive funding from the Department, and including a definition of them would cause unnecessary confusion.

Participant

Comments: A few commenters disagreed with the NPRM's replacement of the term "applicant" with "participant" throughout the ES program regulations, stating that both employers and individual job applicants would find the term change odd. Two commenters asserted the NPRM contained insufficient justification to change terms in this way. One commenter suggested the alignment of definitions would help one-stop partners.

Department Response: The Department disagrees that replacing the term "applicant" with "participant" will be odd for employers and job applicants because the term primarily is for internal data collection purposes. However, the Department has aligned these definitions with those used more broadly under WIOA at 20 CFR 677.150(b) (see Joint WIOA Final Rule). The term "reportable individual" is used to cover those individuals who receive employment services but do not meet the definition of participant in 20 CFR 677.150(a). This term will accurately capture those individuals formerly referred to in this part as "applicants." With the addition of the term "reportable individual," and by modifying the definition of "participant," the Department has aligned these terms with the definitions of 'reportable individual' and 'participant' under the rest of WIOA.

Reportable Individual

Comments: Multiple commenters raised concerns regarding the proposed replacement of the term "applicant" with "participant," as is addressed above. This is linked to the definition of Reportable Individual as well.

Department Response: As outlined in the "participant" definition in this section, the Department also has added the definition of "reportable individual" in order to capture the individuals who apply for and/or receive Wagner-Peyser Act funded employment services and to ensure alignment across the programs.

Respondent

The Department received no comments on this definition, but the Final Rule adds the word "individual" to the definition of respondent. A respondent is not limited to an employer or a State agency; rather the respondent can be any individual (such as a field manager, a co-worker, or a labor contractor) who respond to a complaint filed pursuant to 20 CFR part 658, subpart E. The Department determined it prudent to add "individual" to the definition for clarification.

Seasonal Farmworker

Comments: Some commenters expressed concern that the proposed definition would eliminate thresholds tied to number of days (25) and proportion of total wages (majority in farmwork) that an individual must have to qualify as a farmworker. These commenters expressed concerns that, under the proposed definition, a person employed in farmwork for 1 day during the past 12 months would qualify as a farmworker and that this proposed definition might make it difficult to implement integrity processes that validate the SWA's classification of individuals as MSFWs.

Department Response: The Department acknowledges commenters' concerns regarding the removal of the days and total wages originally included in the seasonal farmworker definition. However, for the purposes of the ES and the Department's Monitor Advocate System, if a farmworker qualifies as a seasonal farmworker because he or she worked 1 day in farmwork during the previous 12 months, that is acceptable. The Department understands that a myriad of circumstances could have led to the reason why that farmworker was able to work for only 1 day. For example, the worker could have been unable to find other employment and only was able to work 1 day, or, as another example, the worker could have been injured on the job and needed not to return to work in order to heal. As such, the Department will maintain its proposed definition.

Supply State(s)

The Department received no comments on this definition; however, it changed "U.S.-based workers" to "U.S. workers" for clarification and uniformity across the definitions in this part.

Supportive Services

Comments: One commenter suggested the definition of "supportive services" should specify whether Wagner-Peyser Act funds can be spent on supportive services, noting that such clarification is critical to avoiding disallowed costs.

Department Response: The Department received several comments about alignment across programs, especially aligning supportive services across title I and Wagner-Peyser Act (as amended by WIOA title III) services. The Department has modified the definition of "supportive services" at § 680.900 to include an inclusive, though not exhaustive, list of types of supportive services. To ensure consistency, the Department is modifying the definition of

supportive services to be the same as the definition used in § 680.900 relating to the WIOA title I formula programs. The list is not intended to be exhaustive, but rather illustrative of the types of supportive services that may be available. The Department notes, however, grantees must not use Wagner-Peyser Act sec. 7(a) funds, but may use Wagner-Peyser Act sec. 7(b) funds, to provide supportive services.

Tests

Comments: Some commenters objected to the proposed elimination of the definition of "tests," arguing that assessments and tests continue to be integrated into career assessments and planning, and citing proposed § 678.430(b), which defines one-stop career services and addresses skills assessments and diagnostic testing (see Joint WIOA Final Rule).

Department Response: The Department agrees with the commenters' concerns that tests are integrated into career assessments and planning. As a result, the Department changed the proposed definition to add the previous definition of "tests" back into this section.

United States Employment Service (USES)

While no comments were received regarding this definition, the Department has deleted this definition because it is redundant with the definition of Wagner-Peyser Act Employment Service (ES), above. Because ES is used throughout the chapter and USES is not, the Department has determined that the definition for USES is not necessary.

Veteran

Comments: The Department received a few comments requesting clarification of the term "veteran."

Department Response: In response to these comments, the Department has added the definition of "veteran" to the Final Rule. The definition is the same as the definition in WIOA sec. 3(63)(A), which in turn is the same as the definition in 38 U.S.C. 101.

Workforce and Labor Market Information (WLMI)

Comments: A couple commenters suggested the Department identify the types of labor market "participants" that make the "employment, training, and business decisions" referenced in the proposed definition of WLMI, including employers, educators and trainers, workers, students, and public and private organizations that invest in workforce development. These commenters also recommended additional WLMI examples to add to the 20 examples provided in the proposed definition.

Another commenter recommended the Department consult the Workforce Information Advisory Council and develop guidelines by area of LMI regarding this balance of demand for detailed localized data and data quality.

Department Response: "Workforce and Labor Market Information" is a term used to describe what types of data, information, and analysis may be used at the national, State, and local level to make policy decisions, develop strategic plans, and implement decisions. While the broad parameters of the system content are laid out in Wagner-Peyser Act sec. 15, as amended by sec. 308 of WIOA, the term WLMI is not itself defined in either statute. The Department based the proposed WLMI definition on several factors including: (1) data that are commonly considered to be part of the WIA LMI system; (2) additional items of information that should be considered to meet the new vision of WIOA; (3) potential types of information that could be included based on the consultations with the Workforce Information Advisory Council; and (4) data on outcomes of local employment and training activities. The Department is

intentionally broadening the system's understanding of what information can and should be considered in strategic planning. However, the Department is not implying that State labor market information agencies are required to produce all of the information included in the definition: such information may be derived from other sources, such as educational agencies and institutions, or economic development agencies. LMI agencies and WIOA partners should share and compare data with these other entities to obtain a fuller picture of the labor market, particularly the supply side.

Comments: One commenter described the proposed definition of WLMI as a list of products resulting from an extant system usually referred to by itself as Labor Market Information (LMI) and recommended removing the word "workforce," stating that it adds confusion. Stating LMI should be defined as a scientific process focusing on the domain of the labor market rather than an open ended list of products, this commenter recommended that § 651.10 instead define LMI as follows: "Labor Market Information (LMI) is an applied science; it is the systematic collection and analysis of data which describes and predicts the relationship between labor demand and supply."

Department Response: The Department examined the recommendation to shorten and simplify this simplified definition. The commenter's recommended definition is more restrictive than the statutory language describing WLMI in sec. 15(a) of the Wagner-Peyser Act. No change was made to the regulatory text in response to this comment.

Comments: Commenters also suggested that additional items be added to the proposed WLMI definition to expand what can be considered within the scope of WLMI for purposes of strategic planning and public workforce system operations.

Department Response: The Department agrees that clarifications were needed to the proposed WLMI definition, and as a result, the Final Rule reflects several changes. The wording of the first and second sentence of the introductory paragraph was modified to define WLMI and eliminate reference to the WLMI programs and system. This is not a policy change; rather, it reinforces the fact that WLMI programs do not produce all of the information items in the list, and DOL-funded agencies should not be held accountable for doing so. The proposed WLMI definition also was changed to add some of the items suggested by commenters and some wording was revised to clarify the purpose of each listed item.

Workforce and Labor Market Information System (WLMIS)

Comments: Two commenters suggested that the Department identify the Federal and State agencies that actively participate in the WLMIS as part of the definition. One of these commenters stated that doing so would be consistent with the text of proposed § 652.300(b)(2) and (b)(5), as well as the NPRM preamble discussion of part 652, subpart D (Workforce and Labor Market Information) under the heading "Continuous improvement, in part through consultation." Both commenters also suggested that the WLMIS definition should include the words "Federal-State cooperative" before "system."

Department Response: "Federal-State cooperative" is often used before "system," to specifically refer to the nature of certain existing agreements with the Bureau of Labor Statistics and may not apply more broadly. Additionally, because the list may change over time based on changes in agency data collection and data sharing policies and procedures, the Department declines to include a list of the Federal and State agencies that participate in WLMIS.

N. Part 652 – Establishment and Functioning of State Employment Service

1. Introduction

The regulations at 20 CFR part 652 set forth standards and procedures regarding the establishment and functioning of State ES operations. These regulations align part 652 with the WIOA amendments to the ES program, and with the WIOA reforms to the public workforce system that affect the ES program. The WIOA-amended Wagner-Peyser Act furthers longstanding goals of closer collaboration with other employment and training programs by mandating colocation of ES offices within one-stop centers or affiliated sites; aligning service delivery in the one-stop delivery system; and ensuring alignment of State planning and performance indicators in the one-stop delivery system. Other new provisions are consistent with long-term Departmental policies, including increased emphasis on reemployment services for UI claimants (sec. 7(a)); promotion of robust Workforce and Labor Market Information (WLMI); the development of national electronic tools for job seekers and businesses (sec. 3(e)); dissemination of information on best practices (sec. 3(c)(2)); and professional development for ES staff (secs. 3(c)(4) and 7(b)(3)).

Inadvertently, the preamble explanation for § 652.215 was duplicated in the regulatory text. That has been removed and the intended regulatory language, which is the original language from the WIA regulations at § 652.215, has been added except for a nonsubstantive change to the last sentence. The WIOA regulatory text at § 652.215 is not substantively different from the language inadvertently used in the NPRM.

The analysis that follows provides the Department's response to public comments received on the proposed part 652. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the

regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

Comments: Several comments prompted the Department to make minor changes to parts of the regulations in this section, as discussed below. One of the major areas in which the Department received comments was regarding colocation.

The Department received several varying comments regarding colocation. This part clarifies the intent of colocation and how ES-only affiliate sites do not meet the intent of WIOA.

Department Response: The Department broadened language in § 678.315(b) (see Joint WIOA Final Rule) to allow multiple programs to meet the more than 50 percent threshold by combining the time their staff members are physically present and to emphasize the expectation that colocation should be completed as expeditiously as possible. The Department will issue additional guidance on this topic.

Comments: Many commenters also raised questions and provided comments regarding Wagner-Peyser Act funds usage.

Department Response: The Department clarified that there are no changes in the activities that may be funded by Wagner-Peyser Act funds. Specifically, training services may not be provided with sec. 7(a) of the Wagner-Peyser Act funding; however, appropriate career services and labor exchange services may be provided to individuals in training and to clarify there is no restriction on funding training services with sec. 7(b) funds under the Wagner-Peyser Act.

Comments: In terms of reemployment, a few commenters suggested including developing and documenting reemployment plans and adding Worker Profiling and

Reemployment Services (WPRS) to the list of required Wagner-Peyser Act activities for UI claimants.

Department Response: The Department noted that providing assistance to UI claimants in the development of a reemployment plan is not just for claimants served by the RESEA or the WPRS program. Such assistance can be provided to any unemployed worker; providing such assistance is an allowable Wagner-Peyser Act cost.

Comments: Some commenters expressed concern with the regulation at § 652.209 requiring that reemployment services provided by State agencies must include conducting eligibility assessments and referring UI claimants to and providing application assistance for training and education resources and programs.

Department Response: The Department reiterates that this approach is consistent with the approach that existed under WIA, and will be continued under WIOA; States will be provided flexibility to leverage UI funds, W-P funds, and RESEA funds in States with RESEA programs for these purposes.

With regard to workforce labor market information, some of the clarifications identified in this part include: there is a need to provide extensive education and technical assistance with regard to accessing wage record data; the Workforce Information Advisory Council (WIAC) will advise on WLMI and may consider what kind of information is needed for planning, but it is not involved in developing State Plans; and the Departments of Labor and Education will issue joint guidance about use of wage data for performance in the context of the confidentiality requirements for the use UI wage record data and education data under the Family Educational Rights and Privacy Act (FERPA). In order to address concerns regarding "continuous improvement" as it pertains to the WLMI systems (WLMIS), § 652.300 was edited to reflect that

the parameters for continuous improvement will be identified in consultation with the WIAC. Additionally, the edits to this section align with WIOA and reference the Secretary's responsibility to prepare a 2-year plan for WLMIS.

2. Overarching Comments on Part 652

Comments: A few commenters recommended that the Department require that the UI and ES programs be given priority for any remaining Federal equity to help address chronic underfunding, especially the need to modernize State computer systems.

Department Response: The Department's response to this recommendation to require that UI and ES programs be given priority for any remaining Federal equity is addressed in the preamble text corresponding to § 683.240.

Comments: One commenter recommended additional funding to improve systems for reporting purposes to facilitate system alignment between core programs. The Department also received several comments on funding.

Department Response: The Department notes that funding levels are determined by Congress and cannot be resolved through this regulatory process.

The Department also made one clarifying change throughout this part. Previously, the regulatory text in part 652 has used the words "the Act" to refer to the Wagner-Peyser Act. Because of the ES system's integration in the public workforce system, which is governed by a number of different Acts such as WIOA, this reference has caused some confusion. To make references to the Wagner-Peyser Act clear, the Department has replaced "the Act" with "the Wagner-Peyser Act" throughout the text of the regulations in this part. The definition of "the Act" in part 651 has also been amended to reflect this change. In the titles of the regulatory sections, "the Act" has been replaced with "the Wagner-Peyser Act."

3. Subpart A – Employment Service Operations

Comments: One commenter expressed support for §§ 652.1 through 652.8 as proposed. Another commenter urged States, localities, and one-stop centers to make staff-assisted services (ideally provided by coaches or older worker specialists) available to older workers and other individuals with barriers to employment. Citing data, the commenter explained that older workers use self-service and "automated" services the least, and that access to staff makes all the difference. This commenter suggested that, at minimum, all front-line staffers should be required to have adequate training in generational competencies in order to provide quality staff-assisted services to older workers with varied backgrounds and needs at every stage of the process. Furthermore, this commenter explained that older workers who may be more likely to qualify for and exhaust their UI benefits, also benefit from staff-assisted services such as assessment and reemployment services early in an episode of unemployment.

Department Response: The Department agrees that States, localities, and one-stop centers must make staff-assisted services available to older workers and other individuals with barriers to employment and that these individuals can benefit from these services.

Front-line staff training is addressed in the Wagner-Peyser Act sec. 3(b)(4) (as amended by sec. 303(b)(4) of WIOA), which requires State agencies and their staff to assist in the planning and implementation of activities to enhance the professional development and career advancement opportunities of staff. The Department strongly encourages such training to include competencies related to serving populations with barriers to employment and to accessing services, including older workers. Additionally, the Department added direct language from the Wagner-Peyser Act sec. 3(b)(4) to § 652.204 to indicate that professional development and career advancement may be supported by the Governor's Reserve.

Section 652.3 Public labor exchange services system.

Comments: A commenter urged the Department to work with States to make the Wagner-Peyser Act program as flexible as possible to integrate it into the service delivery design of that State. While expressing support for the alignment of labor exchange services under WIOA with those provided by the ES program, some commenters urged that the alignment should reflect and seek to preserve the unique structures and functions of the various providers, including ES. Some of these commenters provided examples, including encouraging partners to work out arrangements to accommodate legal requirements that State public employees assist with the filing of UI claimant applications, and having ES staff conduct one-stop orientations as a first entry point for job seekers.

Department Response: While § 652.3 focuses on the statutory intent and minimum required functions of the ES program, the regulation provides flexibility in how services are provided and what other services are provided. The Department acknowledges the commenter's examples of ES and UI functions. The regulation provides flexibility for States and locals to consider effective strategies for providing meaningful assistance to individuals in filing their UI claims, and other intake functions.

Comments: A commenter suggested that the alignment of definitions would help for one-stop partners.

Department Response: The Department agrees with the commenter about the benefit of aligning definitions across the core programs, and as a result the terms "reportable individual" and "participant" have been aligned with the performance accountability of the other core programs.

Comments: A commenter noted that ES is focused on providing "UI relief," job placement, and reemployment services, whereas WIOA focuses on training workers and providing wrap-around services. Multiple commenters further discussed how the Wagner-Peyser Act and WIOA are two different laws with different public policy objectives. Related to this point, two commenters urged the Department to use the word "Act" when referring to the Wagner-Peyser Act throughout the regulation (e.g., "Wagner-Peyser Act services" rather than "Wagner-Peyser services"), reasoning that it is a separate and distinct enacted law.

Department Response: The Department recognizes the vital role the ES has in the public workforce system, often serving as the "front door" to the one-stop centers, ensuring universal access to all job seekers, and in providing labor exchange services that help job seekers and unemployed workers gain or return to employment. The Department notes, as the commenters mentioned, that the Wagner-Peyser Act is a separate law from WIOA, but is a critical component of the reforms that WIOA envisions. Recognizing this, the Department has added the word "Act" behind the references to "Wagner-Peyser" to accurately reflect the distinction between the Wagner-Peyser Act and WIOA.

Comments: In response to the Department's request for comments on challenges in aligning labor exchange services described under WIOA with those provided by the ES, one commenter asserted that additional funds would be needed to create a cohesive, collective reporting system for WIOA implementation.

Department Response: The Department received several comments on funding; however, funding levels are determined by Congress and beyond the scope of the NPRM; therefore they cannot be resolved through this regulatory process.

Comments: Some commenters suggested that the Department revise § 652.3(f) to refer to sec. 7(a) of the Wagner-Peyser Act, and thus ES labor exchange services. Although acknowledging that the referenced career services under WIOA are similar, these commenters asserted that they are not a substitute for Wagner-Peyser Act sec. 7(a) services.

Department Response: The Department agrees with the commenters that career services under WIOA are not a substitute for Wagner-Peyser Act sec. 7(a) services; § 652.3(f) has been amended to add reference to sec. 7(a) of the Wagner-Peyser Act.

Comments: A commenter asked whether business service representatives are required to "facilitate the match between job seekers and employers" (§ 652.3(c)) or whether this provision referred to the overall ES program responsibility.

Department Response: The Department considers the facilitation of the match between job seekers and employers to be a part of the overall responsibility of the ES program. Business services are an important component of the one-stop delivery system. While the Wagner-Peyser Act is responsible for facilitating the match between job seekers and employers, local areas may implement business services teams that include staff funded by the Wagner-Peyser Act and other partner programs to ensure quality services to area businesses and to avoid duplication of services.

Section 652.8 Administrative provisions.

The Department simplified the language in § 652.8(j)(1) by removing "including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief" because this is redundant with the phrase immediately preceding it, "any applicable nondiscrimination law." Conforming edits were also made at §§ 653.501(c)(ii), 658.411(c)(1) and (2), and 658.420(b)(1).

The Department made a clarifying change to § 652.8(i) by removing the sentence "Similarly, all complaints involving such matters should also be reported to the Secretary directly and immediately" and changing the first sentence to read "Any persons having knowledge of fraud, criminal activity or other abuse must report such information directly and immediately to the Secretary, including all complaints involving such matters." This clarifies that complaints related to fraud and abuse must be reported to the Secretary directly and immediately. The change reduces confusion about whether the requirement to report complaints is different from the requirement to report information to the Secretary; the requirement is the same for both.

Section 652.9 Labor disputes.

Comments: Stating that proposed § 652.9(a) could be misinterpreted by States and Workforce Development Boards, two commenters recommended that the provision be revised to say, "State agencies must not make" instead of "State agencies may not make."

Department Response: The Department considers job referrals on job orders which aid directly or indirectly in the filling of a job opening which is vacant because of a strike, labor dispute, or work stoppage to be inconsistent with the Department's policy of neutrality in activities that may impact union organizing. The Department proposed no changes to this section, as WIOA did not make any amendments to the Wagner-Peyser Act relevant to this section. This language—"State agencies may not make" was used under previous practice and there were no apparent misinterpretations or issues. No change was made to the regulatory text in response to this comment.

4. Subpart B – Services for Veterans

Comments: Some commenters expressed support for proposed § 652.100, particularly the inclusion of the statement regarding veterans' priority of service.

However, several commenters recommended that the Department define the term "veteran" by specifying that, as provided in 38 U.S.C. 101, "the term veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." In addition to urging a definition of "veteran," a commenter also recommended that the Department establish definitions for "eligible spouse," "significant barriers to employment," and "priority of service." Additionally, this commenter recommended that the regulation state veteran referral qualifications to the Disabled Veterans Outreach Program (DVOP) because these referrals are Wagner-Peyser Act funded services and not charged to the Jobs for Veterans State Grants (JVSG).

A commenter recommended that the Department include an option for LWDBs to require that one-stop operators adhere to labor standards for staff that work in the one-stop delivery system.

Department Response: The Department agrees with the commenters that adding a definition of "veteran" to the ES regulations would be beneficial, showing the consistent definition across multiple programs. The definition under 38 U.S.C. 101 applies to the Wagner-Peyser Act, WIOA, and veterans' Priority of Service under 38 U.S.C. 4215. (The definition of "eligible veteran" used in the JVSG program authorized under chapter 41 of title 38 of the U.S.C., is a different definition.) The Department added the definition of "veteran" consistent with 38 U.S.C. 101 and sec. 3(63)(A) of WIOA to the regulation at § 651.10.

In response to the commenters' suggestions to state veteran referral qualifications to DVOP, as well as define "eligible spouse," "significant barriers to employment," and "priority of

service," these concerns are already covered by joint guidance from the Veterans' Employment and Training Service and the Employment and Training Administration. See TEGL No. 19-13 ("Expansion and Clarification of Homeless Definition as a Significant Barrier to Employment (SBE)"), Change 2 and TEGL No. 10-09 ("Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or in part by the U.S. Department of Labor (DOL)"), which can be found at http://wdr.doleta.gov/directives). Also, "eligible spouse" and "priority of service" are fully described in the regulations governing the JVSG program at 20 CFR parts 1001 and 1010. No change was made to the regulatory text.

The Department's response to the recommendation for LWDBs to require that one-stop operators adhere to labor standards is addressed in the Joint WIOA Final Rule preamble discussion for 20 CFR part 678, subpart C.

5. Subpart C – Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Section 652.201 What is the role of the State Workforce Agency in the one-stop delivery system?

Comments: The Department received a few comments stating that this section should clarify that Wagner-Peyser Act services must be colocated in at least one one-stop center in each local area and requested that the Department provide additional direction on what should be included in the MOU to make sure that local Wagner-Peyser Act operations are closely connected with Local WDB priorities.

Department Response: The requirements for Wagner-Peyser Act services to be colocated are outlined in §§ 652.202, 678.310, and 678.315 (see Joint WIOA Final Rule). The Department expects that the entity that administers the ES system, in consultation with LWDBs and one-stop partners, may need to make the necessary changes to comply with this requirement.

Additionally, the specific requirements for MOUs are contained in 20 CFR 678.500, which outlines what must be included in the MOU executed between the LWDBs, with the agreement of the CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area. No change was made to the regulatory text.

Section 652.202 May local Employment Service offices exist outside of the one-stop delivery system?

Comments: Some commenters stated that either the existing § 652.202(b) should be retained or that § 652.202 should specify that "one-stop centers in this rule refer to both comprehensive and affiliate one-stop centers." These commenters reasoned that the Wagner-Peyser Act requires State workforce agencies to provide ES "statewide in underserved areas." They cited two Department-sponsored studies that they stated demonstrate that the ES program in affiliated sites was the backbone and core component of these technologically linked one-stop center sites in many rural communities where LWDBs could not establish full-service one-stop centers. Further, these commenters asserted that maintaining current § 652.202(b) would be consistent with proposed § 680.100(b)(1), which permits services at "affiliated sites or at specialized centers." Expressing similar concerns about ES access in rural areas, a commenter asked whether proposed § 652.202 means that affiliate ES offices may no longer physically exist.

One commenter explained that the WIOA NPRM's proposed requirements relating to colocation would do little to improve efficiencies and stabilization of facilities costs. For example, this commenter stated that adding one partner program staff to the ES office simply for complying with the NPRM against stand-alone ES offices (proposed at 20 CFR 678.315(b)) would be fairly simple to accomplish, but meaningless as far as the stated goals for improved service and coordination, less duplication, and greater access. This commenter stated that a

requirement to colocate adult and dislocated worker with ES into full centers would likely be sufficient impetus over time to have the major core program partners concentrate on finding suitable facilities, although it would pose a difficult problem in many localities. This commenter and another stated that although proposed § 652.202 and related discussion in §§ 678.310 and 678.315 (see Joint WIOA Final Rule) is intended to address greater partner integration where ES are delivered, the discussion is confusing with overlapping references to one-stop centers, affiliated sites, and even affiliated sites. These commenters suggested that perhaps WIOA and the ES program should be required to colocate in proportion to participants served, forming over time the basis of a more financially sound, center-based system with fewer affiliates and locally unique inviting core and non-core program partners as space is available.

Department Response: Colocation is intended to achieve several purposes: improved service delivery and coordination, less duplication of services, and greater access to services in underserved areas. While the Department understands that it may be difficult to establish full-service one-stop centers in some rural communities, it has concluded that retaining the previous § 652.202(b) and allowing local ES offices to operate solely as affiliated sites or through electronically or technologically linked access points contradicts the intent of WIOA. No change was made to the regulatory text in response to these comments.

Additionally, § 678.315(b) (see Joint WIOA Final Rule) allows multiple programs to meet the more than 50 percent threshold by combining the time their staff members are physically present. This is further discussed in the preamble accompanying 20 CFR 678.315.

Additionally, the Department has determined that requiring colocation of WIOA and ES program services in proportion to participants served would be too burdensome a requirement to impose on States.

Comments: Two commenters asked if there was a timeline for the requirement that ES offices must be colocated in one-stop centers.

Department Response: The Department expects colocation to be completed as expeditiously as possible. However, it acknowledged that there are legitimate concerns about the timeline for the requirement that ES offices must be colocated in one-stop centers, due to factors such as real property issues, decisions on site locations, discussions with municipal or county governments, and development of memoranda of understanding. Therefore, as indicated in 20 CFR 678.310 (see Joint WIOA Final Rule), a State in such circumstance must be prepared to provide the Department with a plan that details the steps the State will take to achieve colocation of ES and a timetable showing how the State will achieve this within a reasonable amount of time. The Department is issuing guidance on the approach it will use to obtain required plans and timelines for completion.

Section 652.203 Who is responsible for funds authorized under the Wagner-Peyser Act in the workforce development system?

The Department did not receive any comments on this section. No changes were made to this section of the regulatory text.

Section 652.204 Must funds authorized under section 7(b) of the Wagner-Peyser Act (the Governor's Reserve) flow through the one-stop delivery system?

Comments: Some commenters recommended that this section should include activities that enhance the professional development and career advancement for ES staff as an activity that can be supported by the Governor's Reserve following the amendment of sec. 3(b)(4) of the Wagner-Peyser Act (amended by sec. 303(b)(4) of WIOA) to make such activities required. One commenter emphasized the importance of training activities to enhance the professional

development of ES staff, given WIOA's expansion of services and the central role of ES staff in providing referrals and application and assistance for training and education programs and resources.

Expressing support for proposed § 652.204, one commenter urged the Department to promote the training of staff on how to assist older workers.

Department Response: The Department acknowledges and supports professional development for ES staff, and considers it to be essential in building staff capacity and ensuring staff are fully equipped to provide seamless and high-quality service to all customers who need ES services. The commenters' recommendations and support for front-line staff training are addressed in the Wagner-Peyser Act at sec. 3(b)(4) (as amended by sec. 303(b)(4) of WIOA), which requires State agencies and their staff to plan and implement opportunities to enhance the professional development of staff to ensure quality service delivery. This is consistent with the uses of funds under sec. 7(b)(3) of the Wagner-Peyser Act, which allow the funds to be used for "models for enhancing professional development and career advancement opportunities of State agency staff." The Department has added language to § 652.204 to clarify that professional development and career advancement of SWA staff can be supported by funds under sec. 7(b) of the Wagner-Peyser Act (the Governor's Reserve). The Department also has added language to the title of § 652.204 to clarify that § 652.204 refers to the sec. 7(b) funds. Additionally, the Department added language to § 652.204 to clearly state that under sec. 7(b) of the Wagner-Peyser Act, 10 percent of the State's Wagner-Peyser Act allotment is reserved for these activities.

With regard to the suggestion to train front-line staff on assisting older workers, the Department expects that staff are trained and equipped with the knowledge, skills, and motivation to provide superior service to all job seekers, including older workers.

Section 652.205 May funds authorized under the Wagner-Peyser Act be used to supplement funding for labor exchange programs authorized under separate legislation?

Comments: A commenter asked which other programs would be funded by the Wagner-Peyser Act, specifically whether training would be funded and asked how this is consistent with § 652.206.

Department Response: Section 652.205 made no changes in the activities that may be funded by Wagner-Peyser Act funds. Although § 652.205(a) states that States may use such funds to supplement any work activity carried out under WIOA, the paragraph clearly applies to "funds authorized under 7(a) or 7(b) of the Wagner-Peyser Act." Section 7(b) of the Wagner-Peyser Act allows for the provision of training services, however that is not the primary purpose of 7(b), and any training services provided with these funds must be consistent with the allowable activities in 7(b). These allowable 7(b) activities include services for groups with special needs as well as the extra costs of exemplary models for delivering labor exchange services, as well as the other services under sec. 7(a) of the Wagner-Peyser Act.

Section 652.206 May a State use funds authorized under the Wagner-Peyser Act to provide applicable "career services," as defined in the Workforce Innovation and Opportunity Act?

Comments: Some commenters recommended that the Department revise § 652.206 to make clear that the labor exchange services under WIOA and under the Wagner-Peyser Act are distinct. They proposed amending this section as follows:

"Yes, 90 percent of the funds allotted to States under the Wagner-Peyser Act must be used for services identified under sec. 7(a) of the Act to assist job seekers and employers and ~~funds authorized under sec. 7(a) of the Act must be used~~ to provide career services as identified in § 678.430(a) of this chapter and secs. 134(c)(2)(A)(i)-(xi) of WIOA…."

Department Response: The Department has determined that it is not necessary to amend the regulation as the commenters have requested, because § 652.206 states that career services must be provided consistent with the requirements of the Wagner-Peyser Act, which specifies that 90 percent of the funds allotted to States may be used for services identified under sec. 7(a) of the Wagner-Peyser Act to assist job seekers and employers. In addition, sec. 7(b) states that 10 percent of the State's allotment under the Wagner-Peyser Act is reserved for 7(b) activities. As discussed above, the Department has added language to § 652.204 to clarify the amount of funds reserved for 7(b) activities.

Comments: In response to the Department's request for comments on how services provided by the ES can be more aligned with other services in the one-stop delivery system, two commenters suggested that the Department: (1) require, over time, maximum colocation of ES and title I adult and dislocated worker staff forming full one-stop centers with foundations of at least these two core programs in each labor market area (which may be sub-areas of local areas); (2) implement standardized triage processes/forms used by staff that are voluntary for customers; (3) require mandatory coordination of business services; and (4) encourage more purposeful and deliberate ongoing joint staff development training.

Department Response: The Department notes the comments about the alignment of ES services and those of the one-stop delivery system. The Department intends to ensure colocation of ES and title I adult and dislocated worker staff over time. The Department has determined

that requiring these specific activities in the regulation as suggested by the commenters would limit flexibility. The Department will provide guidance on allowable activities and may address this topic in future technical assistance. No changes were made to regulatory text in response to these comments.

Comments: One commenter asked for clarification regarding the statement that "career services must be provided consistent with requirements of the Wagner-Peyser Act," particularly whether this means that career services are charged to the Wagner-Peyser Act only and how supportive services should be charged. Some commenters requested that the Department clarify that career services can be delivered remotely using technology due to the limited number of Wagner-Peyser Act staff that are available for traditional services.

Department Response: Funds under sec. 7(a) of the Wagner-Peyser Act may be used to provide career services, whereas funds under sec. 7(b) may be used to provide career services, supportive services, and training, as discussed above. The Department encourages Local WDBs to coordinate ES with title I and other partner programs to have a full range of training and supportive services available to participants. The Department understands the importance of providing staff-assisted services virtual and clarifies that facilitated self-help can be provided in-person or virtually. The Department emphasizes, however, that, as stated in 20 CFR 678.305(d)(3) (see Joint WIOA Final Rule), to meet the definition of providing sufficient "access" through the one-stop center, services provided through a technological "direct linkage" must be meaningful, available in a timely manner, and not simply a referral to additional services at a later date or time. While virtual services that do not meet this definition may be provided, they must supplement the "access" to services provided by other means, and cannot stand-alone as the only access provided through the one-stop center.

Comments: Requesting clarification regarding what services would qualify as "individualized career services," a commenter agency urged the Department to provide joint training with the one-stop partners to carry out the intent of § 652.206.

Department Response: "Individualized career services" are defined in 20 CFR 678.430(b) (see Joint WIOA Final Rule) and include: (1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers; (2) development of an individual employment plan; (3) group counseling; (4) individual counseling; (5) career planning; (6) short-term pre-vocational services; (7) internships and work experiences that are linked to careers (as described in 20 CFR 680.180); (8) workforce preparation activities; (9) financial literacy services (as described in sec. 129(b)(2)(D) of WIOA and 20 CFR 681.500); (10) out-of-area job search assistance and relocation assistance; and (11) English language acquisition and integrated education and training programs.

The Department has issued guidance with regard to the provision of career services under the ES program in TEGL No. 03-15 ("Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services") (see http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm); the Departments may provide additional training, guidance, and technical assistance on this subject.

Comments: One commenter asked under what conditions the Wagner-Peyser Act program is no longer authorized for funding and/or transferred to another funding source and if the "line of demarcation" is when the participant initiates training.

Department Response: WIOA provides flexibility in what Wagner-Peyser Act funds may be used and when referrals to other programs take place; however, training is not an allowable

activity under sec. 7(a) funds. Coordination among programs including the transfer or referral of participants, is a local decision. Therefore, the referral process to other programs must generally be determined at the local level consistent with State one-stop policies.

Section 652.207 How does a State meet the requirement for universal access to services provided under the Wagner-Peyser Act?

Comments: A couple commenters recommended expanding the characterization of virtual services to include facilitated self-help services in which ES staff are proactive; for example, ES staff initiating email invitations to consider applying for matched job openings. One commenter disagreed with proposed §§ 652.207 and 652.208's reference to services provided remotely or via online self-service as "virtual services." Stating that these are "real services" and that staff-assisted services can also be provided via online mechanisms, this commenter recommended that these provisions instead reference provision of services in person, remotely, or via other online mechanisms, whether staff-assisted or self-service.

Department Response: Facilitated self-help can be provided in person or virtually. However, the Department emphasizes that as stated in 20 CFR 678.305(d)(3) (see Joint WIOA Final Rule), services provided through technology must be meaningful, available in a timely manner and not simply a referral to additional services at a later date or time. Additionally, while the Department agrees that "virtual services" are actual services and that staff-assisted services may also be provided via online mechanisms, to prevent potential confusion with a change in this terminology, no change was made in the regulatory text.

Comments: A commenter recommended that § 652.207(b)(1) provide further detail regarding how States are required to serve individuals with disabilities, such as a specific reference to WIOA sec. 188, ensuring programmatic and physical accessibility of all services,

and other applicable sections of the Americans with Disabilities Act. This commenter expressed concern that the delay in the issuance of sec. 188 nondiscrimination regulations could create possible misunderstandings concerning States' legal obligations to serve individuals with disabilities.

Department Response: The Department acknowledges the commenter's concern about ensuring States are required to serve individuals with disabilities and ensuring programmatic and physical accessibility of all services. The ES program, like all services funded by the Department, must be physically and programmatically accessible to individuals with disabilities, as further described in 20 CFR 678.800 and 20 CFR 678.305(e) (see Joint WIOA Final Rule), WIOA sec. 188 at 29 CFR part 38, and any subsequent Civil Rights Center regulations which govern one-stop center accessibility.

Section 652.208 How are applicable career services related to the methods of service delivery described in this part?

Comments: A commenter recommended that access points should be defined in § 652.208 as a means to link job participants back to the one-stop center to ensure area-wide service.

Department Response: The Department has determined that the commenter's suggested definition for "access points" would not provide enough clarity and consistency in the intent of this term. Instead, an applicable example of "access points" is contained in 20 CFR 678.310 (see Joint WIOA Final Rule), which states that, in addition to the requirement for a physical center in each local area where required one-stop partners must provide access to their programs, services, and activities, the one-stop delivery system may also provide access to programs, services, and activities through a network of eligible one-stop partners that provide at least one or more of the

programs, services, and activities at a physical location or through an electronically or technologically linked access point, such as a library.

Comments: One commenter asked at which point registration must occur for purposes of Wagner-Peyser Act accountability.

Department Response: The Department understands the commenter is referring to the point performance accountability begins when they asked about registration. For the core WIOA programs, of which the ES system is one, performance accountability begins after a determination of eligibility and an individual receives a service beyond a self-service or information-only service consistent with 20 CFR 677.150(a) (see Joint WIOA Final Rule) and § 680.110. For the Wagner-Peyser Act, which is a program that provides 'universal access,' there are no eligibility criteria. All job seekers meet the eligibility criteria of the Wagner-Peyser Act, so for performance accountability purposes, it is when an individual becomes a "participant" as discussed in part 651 and 20 CFR 677.150(a). An individual needs to receive a service beyond self-service or information-only services either in person or remotely through virtual services in order to be considered a participant in 20 CFR 677.150(a).

Comments: Noting that proposed § 652.208 appears to contradict regulations in other sections by use of the word "may," some commenters urged the Department to ensure that regulations governing how career services are delivered are consistent for all sections.

Department Response: The word "may" is used in § 652.208 to communicate that the States have different methods by which they may choose to deliver services under the Wagner-Peyser Act. This is consistent with the different options in delivering services under other WIOA title I programs. Regarding the consistency between Wagner-Peyser Act services and career services in other programs, the Department notes that the primary function of the Wagner-

Peyser Act under sec. 7(a) is to provide labor exchange services to job seekers. Labor exchange services are considered a type of career services under WIOA, and other WIOA career services may be provided consistent with the Wagner-Peyser Act regulations at § 652.206, or through other programs.

Section 652.209 What are the requirements under the Wagner-Peyser Act for providing reemployment services and other activities to referred unemployment insurance claimants?

Comments: Several commenters recommended that § 652.209(b)(2) should include developing and documenting reemployment plans as another reemployment services activity provided by ES staff.

Some of these commenters stated that the reemployment plan is a component of the Worker Profiling and Reemployment Services (WPRS) and Reemployment and Eligibility Assessment (REA) programs, and consists of an agreement between the claimant and the SWA that requires participation by claimants in selected reemployment services. Commenters observed that in those programs the failure of the claimant to agree to, attend, or satisfactorily complete a plan may result in the denial of benefits. A State agency asked for clarification regarding how the use of Wagner-Peyser Act funds to support reemployment and related services to UI claimants fits with the State's REA and Reemployment Services and Eligibility Assessments (RESEA) programs. In particular, this commenter asked if a claimant starts with UI versus ES, whether the State can assist them in a comprehensive center.

Department Response: Providing assistance to UI claimants in the development of a reemployment plan is not just for claimants served by the RESEA or the WPRS program, but can be for any unemployed worker, and providing such assistance is an allowable Wagner-Peyser Act cost. The Department plans to address these issues in guidance.

Wagner-Peyser Act funds may be used to support reemployment services to UI claimants fits with the State's RESEA program, States have considerable flexibility to effectively leverage these two funding sources. The Department notes that not all States have RESEA programs and RESEA only serves a small percentage of UI claimants. Therefore, the Department expects that Wagner-Peyser Act funds will be used to serve all UI claimants more broadly.

States have flexibility under UI and ES to provide services through a comprehensive center. Two activities that can be funded with either funding source are conducting eligibility assessments and reviewing compliance with the State's work search requirements as a condition of UI eligibility.

Comments: Two commenters disagreed with the proposed requirement that reemployment services provided by State agencies must include conducting eligibility assessments and referring UI claimants to and providing application assistance for training and education resources and programs. Stating that WIOA does not require including these services as required reemployment services provided to UI claimants but merely requires that when these services are provided, States must use Wagner-Peyser Act sec. 7(a) funds to pay for them, these commenters stated that proposed §§ 652.209 and 652.210 go beyond what is in the Wagner-Peyser Act and reduce States' flexibility in designing reemployment services. Expressing concern that activities for UI claimants should not pull ES staff from providing career services and other MOU responsibilities, one commenter recommended that the 20 CFR part 652, subpart C regulations emphasize that both basic career services and reemployment services must be provided under ES.

Department Response: The approach the Department is taking is to serve UI claimants and other unemployed workers consistent with the approach that existed under WIA, and will be

continued under WIOA. States must have the capacity to deliver these services as part of the Wagner-Peyser Act services. However, it is also the Department's intent to provide States with flexibility to leverage UI funds, ES funds, and RESEA funds, in States with RESEA programs, for these purposes and will clarify that flexibility in future guidance.

Comments: One commenter requested clarification regarding "referrals and application assistance" for training and education resources in proposed § 652.209(b)(3), asking whether ES staff will be required to provide application assistance for Pell grants and other student assistance grants.

Department Response: The Department has determined that the language in the Wagner-Peyser Act sec. 7(a)(3), as amended by sec. 305(b) of WIOA, regarding providing UI claimants with referrals to and application assistance for training and education programs is clear; no change was made in the regulatory text. Because training and education program application processes vary in complexity, the Department chooses not to be overly prescriptive, giving States flexibility with regard to implementing this requirement.

Comments: Another commenter asked whether the Profiling Reemployment Program (PREP) and the RESEA programs would satisfy the requirement to provide "reemployment services and other activities" to UI claimants.

Department Response: The Department assumes the Profiling Reemployment Program referenced in the comment is a State name for the Federally required WPRS program. Neither the RESEA program nor the WPRS program fully satisfies the requirement to provide reemployment services and other activities to UC claimants. The RESEA program is a relatively small temporary program that currently serves only a small percentage of UI claimants and is not operational in all States. The WPRS program is similarly small in scope. The Department will

clarify this issue in future guidance. No changes were made to the regulatory text in response to these comments.

Comments: Stating that UI claimants are core customers of the ES, one commenter expressed support for the proposed expanded definition of "enhanced career services" in the one-stop centers to include assistance with UI claim filing and eligibility assessments. This commenter discussed recent occurrences of UI claimants flooding one-stop centers seeking help with claim filing because they are unable to file claims remotely during periods of service disruption or seasonally high unemployment.

Department Response: The Department notes the commenter's support and no change was made to the regulatory text.

Section 652.210 What are the Wagner-Peyser Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?

Comments: Expressing concern that "necessary guidance and counseling" is a very intensive service, a few commenters requested clarification about what is required under this term, and recommended that the Department make clear that using technology to provide services remotely is allowable.

Department Response: The Department acknowledges the commenters' concerns that "necessary guidance and counseling" can be an intensive service. This particular section of the regulation only applies to UI claimants "requiring assistance," and, therefore, it is not the entire universe of claimants. If the claimant "requires assistance," he/she is likely to need staff-assisted services. The Department intends to address this in future guidance.

Comments: One commenter asked who would administer the work test and eligibility assessments and to what degree are States required to assist UI claimants if they are a call center State. Another commenter asked whether the services provided in the WPRS and the RESEA programs would satisfy the requirements of § 652.210.

Department Response: With regard to using Wagner-Peyser Act resources to support the work test and eligibility assessments, the Department is consistent with the approach that existed under WIA, and will be continued under WIOA; this approach requires that States have the capacity to deliver these services as part of the Wagner-Peyser Act endorsement services program. It is also the Department's intent, however, to provide States with flexibility to leverage UI funds, Wagner-Peyser Act funds, and RESEA funds in States that operated RESEA programs for these purposes, and will clarify that flexibility in future guidance.

Neither the RESEA program nor the WPRS program fully satisfies the requirement to provide reemployment services and other activities to UC claimants. The RESEA program is a relatively small temporary program that serves currently only a small percentage of UI claimants and is not operational in all States. The WPRS program is similarly small in scope. This will be clarified in future guidance from the Department.

Section 652.211 What are State planning requirements under the Wagner-Peyser Act?

The Department received only supportive comments on this section, so no changes were made to the regulatory text.

Section 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Wagner-Peyser Act?

Comments: Several commenters requested that the Department continue to allow the exemptions for Massachusetts, Colorado, and Michigan from the merit-based staffing requirements under sec. 3(a) of the Wagner-Peyser Act that the Secretary of Labor granted prior to WIA. According to some of these commenters, because the exemptions pre-date WIA, WIOA does not specifically address or rescind the merit staff exemptions granted under the Wagner-Peyser Act, and the Department's WIOA NPRM was silent on the status of the exemptions, the existing State merit staff exemptions for the demonstration sites remain in full effect. Some commenters discussed how their one-stop operators chartered under the existing exemption are performing well and have met or exceeded performance standards.

One commenter said that in some of the Massachusetts local areas, Wagner-Peyser Act services are provided by State employees (employed by the State university) and that the State university meets all the requirements of merit staff, although it is not part of the SWA. This commenter recommended that the Department allow any State employees currently providing Wagner-Peyser Act services whose employing agency meets the definition of merit staff (5 CFR part 900) to be able to continue providing those services. According to this commenter, allowing these employees to continue providing Wagner-Peyser Act services would meet all of the objectives associated with the Department's State merit staffing requirement.

Two commenters cited a Department comparative evaluation of the three merit staff exemption States that they asserted did not conclude that alternative delivery was improved, and suggested that, if one of the three demonstration States ceases using non-State government staff, the temporary demonstration authority should lapse and not be further authorized by the Department.

Several other commenters indicated that § 652.215 should re-affirm that no additional demonstrations of alternative delivery of Wagner-Peyser Act services by non-State government employees should be authorized. Another commenter requested that § 652.215 specify whether additional demonstrations would be authorized.

Some commenters urged the Department to remove the State merit staffing requirement from the Final Rule or, at a minimum, allow for a waiver whereby States can apply to "opt out" of the requirement. These commenters stated that given that the "core services" under WIA, the "career services" under WIOA and the "employment services" under the Wagner-Peyser Act are essentially the same services, there no policy or economic rationale for maintaining a State merit staff requirement in the ES program while city, county, and non-governmental employees simultaneously provide the same services in the WIOA programs. According to these commenters, the Michigan v. Herman court ruling (81 F. Supp. 2nd 840 (W.D. Mich. 1998)) established that continuing or eliminating the merit staffing policy was at the discretion of the Department, meaning that the Department could modify or eliminate the merit staffing policy simply by changing its regulations.

Department Response: The Department acknowledges the varying concerns and points of view regarding the State merit staffing requirement. The benefits of merit staffing in promoting greater consistency, efficiency, accountability, and transparency have been well established, and the Department intends to continue Wagner-Peyser Act merit staffing requirements under WIOA. To further clarify the merit staffing requirement, the Department, as noted above, has replaced the preamble language that was duplicated inadvertently in the NPRM with the WIA regulatory text of § 652.215, which is not different substantively from the preamble description in the NPRM. The only change in the regulatory text from that used in that

section of WIA is that in place of the original last sentence from WIA regulations at § 652.215, the Department has revised the last sentence to read: "No additional exemptions, other than the ones previously authorized under the Wagner-Peyser Act as amended by WIA, will be authorized." The Department does not consider this a substantive change from the language in the WIA version of § 652.215 since the last sentence in the WIA regulations at § 652.215 was that "No additional demonstrations will be authorized."

Section 652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Wagner-Peyser Act?

Comments: In response to the Department's request for comments about whether any other changes are needed to allow one-stop operators to ensure the efficient and effective operations of the one-stop center, some commenters urged that the purview of one-stop operators over ES staff should not be expanded because it would undermine the impartial and unbiased delivery of public labor exchange services to job seekers and employers throughout the State. Some of these commenters stated that just as UI staff members located in one-stop centers are not under the authority of non-State government management, so too should ES staff not be under the authority of private entity one-stop operators. These commenters reasoned that undue influence or pressure by non-State government operators could adversely affect the integrity of the labor exchange process and undermine the integrity of work test activities that are mandated under the Wagner-Peyser Act.

Some commenters expressed concerns that a mandatory competitive process for choosing operators would increase the chance for private entities as operators overstepping their span of control over State agency staff from guidance to operational direction for ES programs. These commenters urged the Department to make clear in the regulations that the role of operators

should not be management of other entity program staff and especially of processes operated by State merit staff.

Some commenters expressed support for this proposed section.

Department Response: The Department clarifies that the regulations for this section did not expand the purview of one-stop operators over State merit staff. These regulations are unchanged from before WIOA, with the exception of an added reference to § 678.500 (see Joint WIOA Final Rule), which provides the requirements for the local MOU.

Regarding concern about the competitive process for choosing operators and its impact on guidance to and oversight of State merit staff, the Department reiterates that one-stop operators only may provide State merit staff employees guidance that is programmatic in nature regarding the provision of labor exchange services, and such guidance must be consistent with the Wagner-Peyser Act, local MOU, and collective bargaining agreements. All personnel matters remain under the authority of the State agency. No changes were made to the regulatory text in this section.

6. Subpart D – Workforce and Labor Market Information

Overarching Comments on Part 652, Subpart D

Comments: In the event wage record reporting requirements are changed, one commenter emphasized the importance of a strong educational effort tailored towards State agencies and employers on new data elements and adapting data systems.

Department Response: The Department agrees with the need to provide extensive education with regard to accessing wage record data and is issuing guidance on this issue, and will provide necessary technical assistance.

Comments: One commenter asked for clarification regarding the Workforce Information Advisory Council's (WIAC) role under WIOA, including whether the Council is involved in developing State Plans or whether it is an independent activity.

Department Response: The WIAC will provide input and recommendations regarding Unified and Combined State Plans, but it will not be involved in developing them.

Comments: One commenter asked about the references to work with other "Federal agencies" in §§ 652.300 and 652.302; in particular, to which agencies does this term refer and how will this partnership be tied to the Federal WIOA process (if at all)?

Department Response: The Department has determined it is not necessary to list the Federal and State agencies that participate in the WLMIS, because it is inadvisable to create a list that may change over time based on changes in agency data collection and data sharing policies and procedures.

Comments: One commenter suggested that one area needing additional work is comparing real-time LMI data with State and local area job vacancy surveys to better understand labor market operations. This commenter urged that Federal support must be continued at adequate levels for key infrastructure groups, such as Analyst Resource Center (ARC), Local Employment and Wage Information Systems (LEWIS), and Projections Managing Partnership (PMP). Another commenter urged the Department to require that improvements to the WLMIS include a more effective and more widely used national job advertising system that allows employers to quickly and easily post job openings to any and all one-stop centers located in regions from which they would hire.

Department Response: The Department also acknowledges the commenter's concern regarding adequate Federal funding; however, funding levels are determined by Congress and cannot be resolved through this regulatory process.

The WLMIS already includes or directs employers and job seekers to some job-posting tools, such as the National Labor Exchange (NLX), which allows employers to request that their job openings be posted nationwide.

Comments: One commenter recommended that UI records be available to NFJP grantees.

Department Response: The Department is reviewing the needs for wage record access by a wide array of public workforce system grantees and is working with States on mechanisms to provide aggregate performance data, including through systems designed to facilitate data sharing of wage record information.

Section 652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?

Comments: Expressing concerns about the inability to confirm job matches in neighboring States, one commenter stated that accuracy on WIOA performance indicators would be greatly improved if the Department encouraged and supported sharing of UI data across State lines. This commenter encouraged a Department-led initiative for data exchange in multi-State economic and workforce regions. Similarly, a commenter encouraged the Department to facilitate a timely process for Wage Record Interchange System (WRIS) renegotiation to allow States to more easily exchange wage records across State lines and improve overall performance. The letter also urged the Departments of Labor and Education to issue joint guidance on how to match administrative data from education, training, and wage systems while maintaining

important privacy protections, such as those provided under the Family Educational Rights and Privacy Act (FERPA) and UI confidentiality regulations.

Department Response: The Department is working with States on improved mechanisms to provide wage data through systems designed to facilitate data sharing of wage record information. The Department also is exploring the feasibility of providing cross-State data to enable States to produce better labor market information, such as labor shed analysis in regions that cross State borders.

The Departments of Labor and Education are issuing joint guidance with regard to use of wage data for performance in the context of the confidentiality requirements for the use UI wage record data and education data under FERPA.

Comments: One commenter expressed support for the proposed language at § 652.300 that codified the WLMI requirements in WIOA and created a platform for their implementation. Regarding the codification of the Secretary's duties related to "continuous improvement" of the WLMIS, a commenter stated that there is no clear definition of "continuous improvement" and asked how the Secretary will determine what is considered an improvement and how much funding will be made available to provide measurable improvement of local area LMI. Another commenter similarly stated the importance that adequate funding be maintained for LMI programs to produce the information required to support WIOA under part 652, subpart D.

Department Response: The Department understands the importance of identifying what is considered "continuous improvement" as it pertains to the WLMIS. As a result, § 652.300(a) has been updated to reflect that, "The Secretary will consult with the Workforce Information Advisory Council on these matters and consider the council's recommendations." This regulatory text contemplates using the WIAC consultation process to inform the continuous

improvement of the WLMIS. The Department also acknowledges the comments regarding funding; however, funding levels are determined by Congress and cannot be resolved through this regulatory process.

Comments: A commenter suggested that, in § 652.300(b), the Department add a reference to or text from 29 U.S.C. 49*l*-2(c) concerning the Secretary's responsibility to prepare a 2-year plan for the WLMIS.

Department Response: The Final Rule has been updated to reflect this responsibility, adding the following language: "(7) Prepare a 2-year plan for the workforce and labor market information system, as described in the Wagner-Peyser Act sec. 15(c), as amended by WIOA sec. 308(d)."

Section 652.301 What are wage records for purposes of the Wagner-Peyser Act?

Comments: In objecting to the proposed changes in the wage record confidentiality provisions at 20 CFR part 603, a couple of commenters explained that providing wage records to educational entities creates too many opportunities for mistaken use or misuse of UI confidential information to be of benefit to the State's need for efficiency and integrity in performance reporting. These commenters asserted that the inclusion of the Federal Employer Identification Number (FEIN) and availability of employer name and address only creates the opportunity for training providers to misuse that information as part of direct marketing campaigns. These commenters asserted that FEIN data elements are not essential to the calculation of common measures, because a unique identifier for each employer could be a State UI account number instead. Moreover, these commenters suggested that the only reason to include a FEIN as part of a State wage record definition is the capacity to integrate wage records into a national database.

Department Response: The Department is committed to ensuring the confidentiality of UI wage data. The regulations in 20 CFR part 603 establish the permissible disclosures and allowable uses of the data and include non-disclosure requirements. These requirements must be embedded in the MOU between the State agency that collects wage record data and the entity that receives the data in accordance with the regulation. The Department notes that many public educational institutions were already able to access wage record data and, therefore, does not consider the more explicit identification of public institutions of higher education as a "public official" to be a significant expansion of entities that are permitted to receive the data.

With regard to the concern for the use of the FEIN, the commenter is correct that the FEIN is not necessary for performance purposes; it has the potential to be valuable in the context of creating labor market information. No changes were made to the regulatory text in response to these comments.

Section 652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?

Standardizing Definitions of Wage Information Elements

Comments: Commenting that standard definitions would help wage records be more consistent across States, a few commenters expressed support for the proposed language at § 652.302 that directs the Department, in consultation with other Federal agencies, States, and the Workforce Information Advisory Council, to develop standard definitions for wage records and help improve their collection and reporting. A commenter stated that standard definitions are the most critical potential contribution of any Federal regulations, both from the perspective of employers (for whom diverse definitions create complexity in recordkeeping systems) and for the national LMI system, which also faces complexity and uncertainty if core elements are

defined differently by States. Some commenters noted the difficulty of standardizing definitions, emphasizing the need for substantial and ongoing outreach, guidance, training, and audit support for employers to implement them correctly.

This commenter also discussed how enhancement of wage records could involve considerable costs to update the systems, while one other commenter indicated that there could be efficiencies, costs savings, and reduction in reporting burden if systems used by States were standardized, rather than needing to contain customized elements for each State. Another commenter added that standard definitions would require changes to Federal law and/or regulations, which would likely necessitate changes to State laws and/or regulations.

Several commenters expressed contrasting views on the workload burden of wage record changes on both State workforce agencies and employers, some saying it would reduce the burden and others saying it would increase it and also inquiring on the source of funds for the costs incurred to make such changes.

Department Response: The Department acknowledges the positive comments concerning standardization of data definitions for wage record data and improved process for collection of the data. The Department notes that moving to standardized definitions and new reporting requirements for wage record data will involve some burden on employers, payroll associations and other third-party administrators, and States, and it will also require resources to support it. Therefore, the Department is committed to approaching this effort in a highly inclusive and consultative manner that recognizes the realities of the changes that will need to be made by all the impacted stakeholders and the resources required to accomplish the change. The Workforce Information Advisory Council's work may also help inform this effort. Noting that there are

significant benefits to achieving standardization of data definitions and reporting processes, the Department made no changes to regulatory text in response to these comments.

New Wage Information Data Elements

Comments: While acknowledging the potential benefits of receiving additional information through the wage record reporting process, some commenters urged the Department to consider the costs and potential burden of any change to wage record reporting for both employers and State agencies. These commenters and others suggested that increased data elements could result in missing or inaccurate data resulting in costs for State agencies to follow-up on rejected wage reports.

When considering additional data elements, one commenter cautioned that the Department should examine whether certain data are already being provided in some other format (e.g., new hire reporting) such that requiring as part of quarterly wage records could create duplicative reporting requirements.

Two commenters expressed concerns that more onerous reporting requirements would decrease timely filing compliance that could make it more difficult to set up timely and accurate initial monetary determinations, which could lead to an increase in improper payments.

One commenter asked for clarification regarding whether new data that might be added to wage record reports would be governed by different confidentiality standards (other than 20 CFR part 603).

Another commenter urged the Department to include all impacted stakeholders in the review of the costs and benefits of enhancing wage records. Similarly, one commenter encouraged the Department to seek employer input on any changes to the wage records process

and to add employers to the list of stakeholders with which the Secretary is required to consult included in § 652.302(b).

Department Response: The language in the preamble of the NPRM with regard to the potential for adding data elements to wage records simply signaled the Department's intent to continue exploration of adding new data elements to wage records to support improved labor market information. It acknowledged the need for continued work with the Workforce Information Advisory Council and consultation with the full range of stakeholders. There also was an acknowledgement that to implement a requirement for new data elements would require legislation. There is no regulatory text on this issue; therefore, a change is not necessary.

Section 652.303 How do the requirements of part 603 of this chapter apply to wage records?

The Department received only supportive comments on this section. No changes were made to the regulatory text in this section.

O. Part 653 – Services of the Wagner-Peyser Act Employment Service

In subparts B and F, the Department is implementing the WIOA title III amendments to the Wagner-Peyser Act, as well as streamlining and updating certain sections to eliminate duplicative and obsolete provisions. The Department is also updating the regulations to maintain consistency with the Judge Richey Court Order ("Richey Order"), NAACP v. Brennan, 1974 WL 229, at *7, as it pertains to services to migrant and seasonal farmworkers.

1. Subpart B – Services for Migrant and Seasonal Farmworkers

Section 653.102 Job information.

The Department made several changes to § 653.102, including a requirement that State Workforce Agencies (SWAs) make job order information conspicuous and available to migrant and seasonal farmworkers (MSFWs) "…by all reasonable means" rather than "in all local

offices" to reflect the obligation of State agencies to contact MSFWs who are not being reached by the normal intake activities including at their working, living, or gathering areas to explain the services available at the local one-stop center.

Comments: One commenter suggested the Department add a bulleted list to provide clarification on what is meant by "all reasonable means."

Department Response: In order to maintain flexibility for the Department and SWAs to continue to serve MSFWs, the Department will provide guidance on what is meant by making job order information conspicuous and available by "all reasonable means." No changes were made to the regulatory text in response to this comment.

Section 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

Comments: One commenter asked for clarification regarding the § 653.103(b) requirement for SWAs to ensure MSFWs who are English Language Learners (ELLs) receive, free of charge, language assistance necessary to afford them meaningful access to the programs, services, and information offered by one-stop centers. Specifically, this commenter asked whether this would require access to interpreters or that an interpretive language phone line should be made available.

Department Response: SWAs must satisfy this requirement by making interpretive language phone lines available and free of charge to the individual who needs or requests such services. See Executive Order 13166 ("Improving Access to Services for Persons with Limited English Proficiency") and TEGL No. 26-02 ("Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons") for further guidance.

Section 653.107 Outreach and Agricultural Outreach Plan.

Comments: One commenter urged the Department to ensure all State Monitor Advocate (SMA) and outreach staff full-time equivalent (FTE) efforts are exclusively dedicated to MSFW services as detailed in the Agricultural Outreach Plan (AOP). To ensure MSFWs receive dedicated staff effort and the corresponding benefits, this commenter suggested requiring States to track personnel time via payroll timesheets and report that time to the Department to compare actual MSFW time with the FTE specified in the AOP.

Department Response: The regulations at § 653.108(d) state, "The SMA must devote full-time to monitor advocate functions. Any State that proposes less than full-time dedication must demonstrate to its Regional Administrator that the SMA function can be effectively performed with part-time staffing." As such, § 653.108(a) explains "The State Administrator has overall responsibility for State Workforce Agency self-monitoring." Such regulations are meant to ensure the SMA is devoted to all appropriate activities on a full-time basis. Moreover, the regulations at § 653.107(a)(4) require "The 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, must assign, in accordance with State merit staff requirements, full-time, year-round staff to conduct outreach duties. The remainder of the States must hire year-round part-time outreach staff and, during periods of the highest MSFW activity, must hire full-time outreach staff." The Department does not deem it necessary for a SWA to track dedicated MSFW personnel time via payroll timesheets and report that time to the Department. In light of the State Administrator's requirement for self-monitoring, however, if an individual knows the State Administrator is not requiring these provisions, and a formal variance has not been granted for SMA part-time status, the individual

must inform the Regional Administrator and the Regional Monitor Advocate (RMA) for appropriate action.

Furthermore, the provision of employment and training services to MSFWs is the responsibility of the SWA through its local one-stop centers, and is not exclusively the responsibility of the SMA or the outreach workers. This is made explicit through the mandates of the Richey Order, where it states, "The Federal and State monitoring system reviews on a continuous basis the services provided to MSFWs, as well as the benefits and protections to MSFWs, the functioning of the Complaint System, and the compliance of State ES offices with all applicable laws, regulations, and directives."

Section 653.107(a) – State Workforce Agency Outreach Responsibilities

Comments: Several commenters supported the incorporation of the Richey Order language to "employ an adequate number of outreach workers" into § 653.107(a)(1). Although the language in proposed § 653.107(a)(1) and (a)(4) articulates an expectation for the SWA to assign outreach staff, other commenters expressed concern that the language does not provide a threshold, which these commenters explain could allow SWAs the ability to reduce staffing levels below one MSFW outreach FTE per significant MSFW office due to reduced availability of resources. For this reason, the commenters requested the Department provide clarification on what is meant by the term "adequate."

Department Response: The Department interprets the term, "adequate" to mean a sufficient number of staff who must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. The Department does not intend the term "adequate" to mean that a SWA should reduce the number of outreach workers hired—if anything, a SWA may need to bring more outreach workers on board to meet the needs of

MSFWs in the State or work collaboratively with partners (pursuant to collaborative agreements) to ensure satisfactory outreach activities are satisfied. The Department acknowledges that each State allocates Wagner-Peyser Act funds in accordance with its respective needs in serving MSFWs. No change was made to regulatory text in response to these comments.

Comments: One commenter asked whether the provision to hire an adequate number of outreach workers means that all States, no matter what their MSFW population, must have outreach workers. This commenter asserted that this would be difficult in a State where MSFW activity is low and concentrated for a short duration of time in one area of the State, but then is spread out in isolated remote areas far from each other. Stating that interns make good outreach workers, this commenter asked if interns could meet the criteria for hiring adequate outreach workers.

Another commenter requested clarification regarding appropriate funding for year-round part-time staff and specifically whether Wagner-Peyser Act funds would pay for it under career services. This commenter also asked that the Department allow non-top 20 States to use discretion as to what times of year in their regions would be appropriate to hire outreach workers, if at all.

Department Response: All States (significant and non-significant) are required to hire outreach workers to locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Each non-significant State must determine, through fact-based research, which time of year hosts the peak number of MSFWs, and the State must hire full-time outreach staff during such periods. Wagner-Peyser Act funds must be used to hire such outreach workers. Correspondingly, the Department notes § 653.107(a)(3), outlines the provisions for hiring outreach workers. Under these provisions, the SWAs must seek to hire

qualified outreach workers through merit system procedures. Because interns are almost never hired according to merit system procedures, hiring interns would generally not meet the criteria of hiring adequate outreach workers.

Comments: One commenter recommended revising the first sentence of § 653.107(a)(1) to read, "Each State agency must employ an adequate number of outreach workers to conduct MSFW outreach in their service area local ES offices that serve a significant number of MSFWs." This commenter reasoned the Richey Order mandated State agencies employ an adequate number of staff and assign them to ES offices that serve a significant number of MSFW workers.

Department Response: The Department has determined the language at § 653.107(a)(1) requiring each SWA to employ an adequate number of outreach workers to conduct outreach in its service areas is sufficient and does not need further clarification. As required in the Richey Order, it is the Department's responsibility to deliver to MSFWs on a non-discriminatory basis all services, benefits, and protections authorized by law and required by Department regulations, to extend coverage of local job order information to rural areas, and to provide MSFWs with assistance to enable them to use such information on a non-discriminatory basis.

Comments: Numerous commenters expressed support for the § 653.107(a)(1) language that SWA Administrators must ensure SMAs and outreach workers coordinate their outreach efforts with WIOA sec. 167 (NFJP) grantees, public and private community service agencies, and MSFW groups. One of these commenters asserted that currently coordination is inconsistent and varies widely.

Department Response: The Department agrees that outreach workers' coordination with NFJP grantees is essential and that requirement is maintained in § 653.107(a)(1). The

Department has also changed the word "should" to "must" in § 653.107(a)(2)(i) and (ii), to clarify that these aspects of SWAs' outreach efforts are required.

Comments: One commenter noted the text at proposed § 653.107(a)(3) appeared to be missing part of the last sentence (paragraph (a)(3)(iii)) because it dropped off with the word "and" following paragraphs (a)(3)(i) and (a)(3)(ii). This commenter asked if the intent was to remove the optional qualification of being racially or ethnically representative of the MSFWs in the service area and recommended that the Department maintain the "and/or" in the current regulatory language so that an outreach worker does not have to be both from an MSFW background and bilingual.

Department Response: Text in § 653.107(a)(3)(iii) was accidentally omitted from the NPRM. The text should read, "(iii) Who are racially or ethnically representative of the MSFWs in the service area." The Department has included this language (which is taken verbatim from the existing regulation and has not been altered) in the Final Rule. Additionally, the Department concurs with the commenters' recommendation to maintain "and/or" to allow for hiring outreach workers who may have one or more of the required characteristics but are not required to have all three. The regulatory text reflects these changes.

Comments: One commenter stated proposed § 653.107(a)(4) would strengthen the obligation of SWAs to hire dedicated MSFW outreach staff in part by eliminating the ability of a Regional Administrator to permit a SWA to deviate from this outreach-staffing obligation. In contrast, a different commenter objected to the proposed changes in this provision, stating States have limited resources and hiring outreach workers is no guarantee the State will achieve the goal discussed in the preamble to "ensure that States have a means to contact MSFWs who are not being reached by the normal intake activities conducted by the local ES offices." Because

States are required to submit outreach plans annually, this commenter suggested that it should be sufficient to meet the intent of WIOA if the State submits an acceptable plan for providing the needed services given its particular circumstances and conditions, without the need to hire additional workers for this purpose.

Department Response: Section 653.107(a)(4) states that a SWA may not need to hire additional outreach workers if it is already meeting the needs of MSFWs in the State. Additionally, the Department does not consider the AOP to "be sufficient to meet the intent of WIOA." As is described at § 653.107(d)(2)(iii), the AOP requires a SWA to, "Describe the State Workforce Agency's proposed outreach activities including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices" and—as stated at § 653.107(d)(2)(iv)—to, "[d]escribe the activities planned for providing the full range of employment and training services to the agricultural community, both MSFWs and agricultural employers, through the one-stop centers." Such activities are anticipated activities/plans. The mechanism in place to ensure a State is meeting its outreach goals is self-monitoring and periodic reviews conducted by State, Regional, and the National Monitor Advocate, as discussed in § 653.108.

Section 653.107(a)(5) provides a requirement that a SWA must publicize the availability of ES "through such means as newspaper and electronic media publicity," and one commenter recommended the Department add "social media" as another way to publicize because it is the widest possible method to distribute information. Another commenter asked whether it could use Wagner-Peyser Act funds to publicize the availability of ES.

Department Response: The Department considers social media to be included in electronic media. The Department plans to issue guidance on publicizing employment services and appropriate funding sources.

Comments: Regarding proposed § 653.107(a)(3), one commenter recommended that outreach staff qualifications include bilingual staff to serve monolingual farmworkers, staff to concentrate in rural agricultural areas, and to carry additional marketing/promotional materials to attract farmworkers to the job centers.

Department Response: The Department notes that § 653.107(a)(3) requires SWAs to hire and assign staff through merit system procedures, who are either: from MSFW backgrounds and/or speak a language common among MSFWs in the State and/or are racially or ethnically representative of the MSFWs in the service area. Additionally, § 653.107(a)(4) states, "All outreach staff must be multilingual if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field." The Department also notes it will offer suggestions for outreach worker materials to provide MSFWs via technical assistance. No changes have been made in regulatory text in response to this comment.

Comments: In § 653.107(a)(4), commenters recommended the Department implement a minimum threshold of at least 50 percent MSFW outreach staff total hours that they must spend at places where MSFWs live, work, and congregate (outside of the outreach staff's local office). Stating that this is particularly important in the top 20 States with the highest estimated year-round MSFW activity, these commenters reasoned that due to strained resources, local managers increasingly rely on MSFW outreach staff to backfill for other positions that may reduce MSFW outreach staff's ability to reach MSFWs effectively.

Department Response: The Department notes the requirement at § 653.107(a)(4) whereby, "The 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, must assign, in accordance with State merit staff requirements, full-time, year-round staff to conduct outreach duties." Outreach duties mean those duties identified at § 653.107(b) and include traveling to locations where MSFWs congregate, as well as conducting follow-up activities. This means outreach workers will need to conduct outreach activities at the areas where MSFWs live, work, and congregate, as well as from the local ES office. When outreach workers are hired as full-time, year-round staff, they must dedicate all such time to outreach activities described at § 653.107(b). Outreach workers in States which are not classified as the top 20 significant States, who are hired as year round part-time outreach workers, may dedicate part of their time to other activities as required by the ES office so long as they are satisfying their outreach activities pursuant to § 653.107(b) on a part-time basis. No changes were made to regulatory text in response to these comments.

Section 653.107(b) – Outreach Worker's Responsibilities.

Comments: Many commenters expressed support for the inclusion of training on sexual harassment in § 653.107(b)(7). These commenters also suggested the Department consider expanding this provision to include similar language about human sexual coercion, assault, and human trafficking. One commenter recommended the Department include a provision requiring outreach workers provide MSFWs affected by sexual harassment with information about the full range of services available to them in the community, including sexual assault services, the U.S. Equal Employment Opportunity Commission (EEOC), law enforcement, and legal services. This commenter also suggested the regulatory text require outreach workers who become aware

of possible sexual harassment to refer the information to the EEOC or other appropriate enforcement agency.

Department Response: The Department agrees that in addition to training outreach workers on how to identify and refer possible incidents of sexual harassment, training on similar issues such as sexual coercion, assault, and human trafficking is also key in helping to connect victims with appropriate resources and support networks. The Department has added such language to the regulatory text at § 653.107(b)(7). Regarding the suggestion for the Department to require outreach workers who become aware of possible violations to refer the information to the appropriate enforcement agencies, the Department notes that outreach workers' referral responsibilities are discussed at § 653.107(b)(6).

Comments: Two commenters objected to the NPRM's deletion of the requirement that "significant MSFW local offices should conduct especially vigorous outreach in their service areas," expressing concern that without the word "vigorous" some State agency employees might interpret this as not being a priority or a requirement.

Department Response: The Department's intention is not to signal a reduction in the required intensity of outreach activities because all outreach efforts must be vigorous. However, because commenters suggest the omission could be interpreted to make such a statement, the Department has decided to include the paragraph in the Final Rule text at § 653.107(b)(11).

Comments: One commenter suggested the requirement that outreach workers must explain to MSFWs information on other organizations serving MSFWs in their area (§ 653.107(b)(1)(iii)), and the regulatory text should include "information on other organizations serving MSFWs in their intended area of employment or permanent home."

Department Response: The Department agrees that such information should be provided when requested. Such information may be provided as a follow-up activity with an MSFW who has requested it. No change was made to the regulatory text in response to this comment.

Comments: One commenter stated the proposed § 653.107(b)(2) prohibition on outreach workers entering an employer's property or work area without permission of the employer, owner, or farm labor contractor should be reviewed. The commenter explained that outreach workers can enter workers' living quarters if they are doing an inspection for H-2A employers as part of the field inspection prior to 50 percent of the contract with the employer.

Department Response: The Department notes that SWA staff may enter MSFW working and housing areas during a field check pursuant to § 653.503. Furthermore, § 653.503(a) requires the SWA to notify an employer in writing of such field checks.

Comments: Also related to outreach worker access to employer sites, one commenter recommended the Department revise § 653.107(b)(2) to secure access rights of SWA outreach workers and to provide for a reasonable right of access for nonprofit organization outreach workers at employer-owned or employer-controlled housing. This commenter explained that the limitations on workers' right of access to conduct outreach proposed in the NPRM are more onerous than the 1980 regulations because the proposed language would expand the limitation from entering "work areas" to "an employer's property," which this commenter stated would commonly include employer-controlled MSFW housing. The commenter concluded the Department offered no rationale for this substantial revision of the outreach worker access regulation in the NPRM, explaining that entry by outreach personnel onto employer property that is not a work area, such as MSFW housing and gathering areas, does not implicate the considerations that justify obtaining permission to enter work areas. The commenter proposed

several reasons to support the need for expanded outreach worker right of access, including the following:

- Farmworkers in employer-controlled housing are uniquely vulnerable to exploitation and abuse.
- The law is unclear on the right of access by service providers
- Employers impede outreach workers' access to MSFWs, including via threats of violence, threats of arrest and prosecution and arrest.
- Ensuring nonprofit health, education, social, and legal service providers the right of access to MSFWs would directly further the central purposes of the Wagner-Peyser Act and WIOA.

In addition, based on the Department's justification of requiring "permission of the employer, owner, or farm labor contractor," the commenter suggested that the Department should add the phrase "as applicable" after the first use of the word "without" in § 653.107(b)(2). Incorporating all of its comments discussed immediately above, the commenter recommended specific language for § 653.107(b)(2), which it asserted appropriately balances the rights and responsibilities of employers, property owners, farm labor contractors, and SWAs.

Department Response: The Department notes that SWA staff may access MSFWs at their working and living areas through field checks and site visits. However, the Department has determined it is beyond the scope of this regulation to secure "reasonable" access rights for nonprofit organization outreach workers to enter employer-owned or employer-controlled housing. The Department additionally notes its intention was not to further limit outreach worker access to MSFWs; this was an unintended. The Department has changed § 653.107(b)(2)

to use the original language as included in the existing regulation at 20 CFR 653.107(j)(1)(v), except that the word "shall" is replaced with "must" throughout.

Comments: A commenter also urged the Department to clarify that, if a parcel of land or property serves as both a worksite/work area and housing for MSFWs, outreach personnel do not need to obtain permission from workers to enter the housing portion of such a parcel or property.

Department Response: Section 653.107(b)(2) requires outreach workers to obtain permission from workers before entering their living area and that they must comply with appropriate State laws regarding access.

Comments: In response to proposed § 653.107(b)(8), one commenter recommended the Department allow for MSFW outreach records to be maintained or reproduced by the State's official data collection system to avoid duplication of data entry.

Department Response: The Department has determined that State agencies may maintain and reproduce outreach records as they deem appropriate and in accordance with relevant records retention laws, since such laws vary by State.

Section 653.107(c) – ES office outreach responsibilities

Comments: One commenter recommended the Department exempt non-significant ES offices from the requirement to file with the SMA a monthly summary report of outreach efforts because they do not normally conduct outreach and the requirement would impose an unnecessary burden on those offices. Another commenter requested clarification on § 653.107(c) regarding whether all States must establish outreach programs, or that only those top 20 States with significant MSFW populations establish an outreach program and their local ES office managers must report on outreach activities to the SMA.

Department Response: The Department will not provide an exemption for non – significant ES offices from submitting the monthly summary report because it is important for the SMA to know what efforts all ES offices are making to locate and contact MSFWs. However, the Department notes that summary reports must be submitted for months when outreach is conducted. The Department concluded that maintaining this requirement as proposed will not impose an unnecessary burden on offices any more than what was already required at 20 CFR 653.107(n).

Section 653.107(d) – State Agricultural Outreach Plan (AOP)

Comments: Several commenters urged the Department to incorporate language requiring SWAs consult with National Farmworker Jobs Program (NFJP) grantees or give NFJP grantees the opportunity to contribute to the AOP. One of these commenters stated that because these plans are far more important now, they should be treated with that significance. A commenter stated that the NFJP grantee community was required to review and comment on these plans under prior legislation.

Department Response: The Department concurs with commenters that SWAs must consult NFJP grantees and that the grantees have the opportunity to contribute to AOPs. The Department has changed paragraph (d)(3) to incorporate the language in the existing regulation at 20 CFR 653.107(d) back into the Final Rule. The Department made nonsubstantive updating changes to that language to make it consistent with the Final Rule. The Department also replaced the words "Regional Administrator" with "the Department" to be consistent with the new State Plan submission process described in 20 CFR part 676 (see Joint WIOA Final Rule). AOPs will now be submitted to the Department through a portal, along with the State Plans.

Section 653.108 State Workforce Agency and State Monitor Advocate responsibilities.

Comments: Two commenters expressed support for the removal of the requirement for SMAs to work in the State central office.

One commenter sought clarification on the § 653.108(g)(1) requirement whereby the SMA must conduct an "ongoing review" of the delivery of services and protections afforded by ES regulations to MSFWs by the SWA and local ES offices. Further, this commenter asked whether this requirement would apply to every State or to the top 20 designated States and whether the SMA must review each local ES office. Asking what "ongoing review" would specifically require, this commenter urged the Department to clarify which local offices must be reviewed annually, biannually, or less frequently.

Department Response: All SMAs are required to conduct the duties set forth in § 653.108—which apply to SMAs in both significant and non-significant States. This includes reviewing the data and reports submitted by local ES offices as they are submitted to the SWA. The Department further notes § 653.108(g)(3), which requires that all SWAs, "Ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff, are reviewed at least once per year by State staff." Therefore, all significant offices must be reviewed at least one time per year if they are not reviewed by Federal staff.

Comments: One commenter suggested the Department revise § 653.108(i) to require local ES office managers transmit copies of the entire Complaint System log, rather than transmitting only copies of logs of MSFW complaints to be consistent with § 658.410 and because this information is required for reporting.

Department Response: The Department supports the suggestion and has revised the regulatory text at § 653.108(i) to require local ES office managers to transmit copies of the entire

Complaint System log as required in § 658.140. Such a change will maintain consistency, as proposed by the commenter.

Comments: Regarding proposed § 653.108(k) and (l), several commenters expressed support for strengthening of the relationship between SMAs and NJFP grantees and coordinating their service delivery. Some commenters suggested the Department provide guidelines for the Memorandum of Understanding (MOU), as well as additional guidance and training for SMAs and NFJP grantees on their respective relationships, roles, and responsibilities. One commenter recommended the creation of an evaluation tool or feedback mechanism for NFJP grantees and the SMA.

Department Response: The Department will issue guidance for the Memorandum of Understanding (MOU) between the SMA and NFJP grantees and additional guidance and training for the SMA and NFJP grantees on their respective relationships, roles, and responsibilities.

Additionally, paragraph (1) has been changed to clarify the requirement to establish an MOU. It now makes clear that an MOU must be established between the SMA and the NFJP grantees, and the SMA may establish an MOU with the other organizations serving farmworkers.

Comments: Proposed § 653.108(s) required that the SMA prepare an Annual Summary, and some commenters suggested the Department require the summary be provided to NFJP grantees along with any service-related findings because the guidelines for the Annual Summary includes instances where the SMA would be summarizing and commenting on NFJP service delivery both explicitly (§ 653.108(s)(7)) and implicitly where NFJP is part of the one-stop center and the broader ES system. Another commenter similarly recommended the Department require the SMA to make the Annual Summary available to grantees. The commenter also

suggested the Department require the SMA to provide grantees a template of the report in advance to ensure grantees collect pertinent information throughout the program year. Another commenter asked if the Annual Summary for the MSFW program could be included in the annual performance report required under WIOA sec. 116(d).

Department Response: While the Department fully supports increasing collaboration between the SMA and the NFJP grantees, it has determined that sharing the Annual Summary with the NFJP grantee is not required. Because some information contained in the Annual Summary may be for internal (State/Federal) government use only, the Department does not deem it in the best interest of the SWA to share such information. Regarding the suggestion for the Department to require the SMA to provide grantees a template of the Annual Summary in advance to ensure grantees collect pertinent information throughout the program year, the Department notes that such data collection may vary from State to State and may depend upon each State's MOU with the NFJP grantee. Therefore, the Department recommends each SMA come to an agreement with the NFJP grantee (through the MOU) about what data must be shared or collected. Additionally, the Department has determined the Annual Summary should not be submitted through the annual performance report process pursuant to WIOA sec. 116(d) because § 653.108(s) procedures will expedite the review process for those who need to analyze the reports.

Section 653.109 Data collection and performance accountability measures.

Comments: A couple commenters recommended the Department revise the references to the pre-WIOA performance indicators. Another commenter noted that some of the proposed performance indicators in § 653.109 are not in line with the WIOA measures to track participants in unsubsidized employment in the second quarter after exit, participants in unsubsidized

employment in the fourth quarter after exit, and median earnings. Therefore, this commenter recommended the Department bring those measures in line with WIOA to ensure consistency across all programs.

Department Response: The Department agrees and has changed § 653.109(a) to be consistent with the WIOA performance indicators listed in sec. 116 of the law.

The Department has also made a minor edit to § 653.109(b)(9), to add data on "apparent violations" to the list of data the SWA must collect. This is consistent with the data collection that the SWAs already perform. Additionally, the Department has added reference to the data required to be collected by the Combined Plans to § 653.109(d). The regulatory text already referenced the Unified Plans, and this change aligns the paragraph with the requirements of sec. 103 of WIOA.

Section 653.110 Disclosure of data.

Comments: One commenter recommended the Department revise § 653.110 to clarify that data and records relating to employer participation in the job service are only confidential in limited circumstances and that these regulatory disclosure requirements preempt State laws that render the records and data privileged or confidential. This commenter raised a 2015 court decision, Texas RioGrande Legal Aid, Inc., et al. v. Range (TRLA case), in which the Fifth Circuit found that current § 653.110 did not confer a specific right to obtain records, which was a rejection of the Departments of Labor and Justice position in the amicus brief the Departments filed in the case. Stating that the TRLA case gives the Department a clear road map of how it can remove all ambiguity from § 653.110, the commenter made specific suggestions for revisions of the regulatory text.

Department Response: Section 653.110 (a) states, "SWAs must disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by SWAs and ES offices pursuant to § 653.109" and § 653.109(f) requires SWAs to "(s)ubmit additional reports to the Department as directed." These reports are considered records, and they, as well as additional reports submitted by the SWAs to the Department as directed by the Department, must be disclosed to the public pursuant to § 653.109. In order to maintain flexibility as data collection evolves, the Department declines to specify specific required disclosures in this regulation. Moreover, § 653.110 clearly refers to records when it makes an explicit exception for memoranda and reports at § 653.110(d) because memoranda and reports are kinds of records: "SWA intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the SWA and the ETA, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided the reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, may also be withheld provided the reason is given to the requestor in writing." The Department concludes that records are implicitly included in §§ 653.109 and 653.110.

The Department will address each of the commenter's requests for revisions as bulleted below.

- Include explicit language conferring a public right to obtain the records included in § 653.109. Department Response: The Department interprets the requirements for disclosure at § 653.110(a) to include those reports required at § 653.109(f) and memoranda and reports referenced at § 653.110(d).

- Revise § 653.110(a) to include all "records" as well as all "data," possibly including reference to a well-established definition of records such as the Freedom of Information Act's definition at 5 U.S.C. 552a(a)(4). Department Response: The Department does not deem it necessary to revise § 653.110(a).
- Include a right to all records related to employer participation in the job service, rather than only the data specifically enumerated in § 653.109. Alternatively, the Department could revise § 653.109 to include a requirement that State agencies retain the records underlying the data that section already requires those agencies to keep. Department Response: The Department will not make these changes because it would not place such requirements in the regulations without first requesting public input.
- Add a provision in § 653.110 that explicitly preempts States from enacting laws that would categorically render employer records identified in § 653.109 undisclosable as privileged and confidential. Department Response: The Department cannot make this change because it is outside the scope of what was originally proposed in the NPRM.
- Remove the language "or are otherwise privileged against disclosure" in § 653.110(d) that the Department proposed be added in the NPRM. The commenter stated that a court could construe this language to include State public records acts that render employer records privileged, confidential, or both. Department Response: The Department finds upon further reflection that the additional language has caused confusion and is unnecessary. The Department strikes the phrase from the Final Rule.

Section 653.111 State Workforce Agency staffing requirements.

Comments: One commenter suggested the requirement in proposed § 653.111(b) for the State agency to hire sufficient numbers of qualified, permanent, minority staff in significant MSFW ES offices should apply only to significant MSFW States or significant MSFW areas. Another commenter asked whether this provision would require State job postings to include specifically hiring of "minorities" from MSFW backgrounds.

Department Response: The Department declines to change the regulatory text in response to this comment. Paragraph (b) of § 653.111 is not limited to significant MSFW States or areas; it applies to significant MSFW ES offices. Even in cases where a State or area is not deemed significant, there may yet be a significant number of MSFWs using or located near a significant ES office. The Department seeks to ensure such MSFWs have the resources they need to access ES services and significant offices which hire qualified, permanent minority staff may help facilitate such provision of services

Additionally, a SWA may utilize appropriate language from the Final Rule for the job postings.

2 Subpart F – Agricultural Recruitment System for U.S. Workers

Section 653.500 Purpose and scope of subpart.

Comments: One commenter urged the Department to clarify what it considered imprecise language in §§ 653.500 through 501, stating the proposed language left unclear which sections of subpart F apply to U.S. farmworkers who apply for employment under clearance orders that are attached to applications for foreign temporary agricultural orders. This commenter suggested the Department confirm if the third sentence should read "This subpart affects all job orders for workers…" rather than, "This section affects all job orders for workers,"

which would ensure that the provisions of the Agricultural Recruitment System (ARS) apply to all clearance orders.

Department Response: The Department changed the regulatory text at § 653.500 to clarify that the purpose described in § 653.500 applies to this entire subpart F versus a single section. To the extent that the commenter was expressing confusion as to how this subpart applies to agricultural clearance orders seeking temporary foreign workers, the Department notes that this subpart is about the ARS, which is a system used to recruit U.S. workers for temporary, less than year-round farmwork. Part 655 of this chapter explains the process for hiring non-U.S. workers for this type of work.

Section 653.501 Requirements for processing clearance orders.

Comments: One commenter objected to the continuation of the requirement to recruit workers in three sequential steps: locally, followed by intrastate recruitment, then interstate recruitment, if needed. This commenter stated the sequential process is inconsistent with proposed § 653.102, which directs State agencies make job order information available by all reasonable means, including the internet, labor exchange systems, and one-stop centers. This commenter suggested it might be discriminatory and inconsistent with the Richey Order to carry out a successive local, intrastate, and interstate recruitment for temporary agricultural jobs while all other jobs are broadcast at once through every available means.

Similarly, another commenter recommended the Department eliminate the ARS process because most States use Web-based, online job listing sites, which after 24 hours automatically upload job orders to the national level on two sites (US.jobs of the National Labor Exchange and JOBcentral). This commenter stated the ARS process is obsolete, outdated, burdensome, and time consuming. Further, the commenter suggested the ARS regulations need clarification if the

ARS is to remain and recommended that, if retained, the ARS should be required only for significant MSFW States.

Another commenter suggested the Department update the part 653 ARS language to account for technological advancements in labor exchange systems.

Department Response: The Richey Order requires the Department to: (1) Extend coverage of local Job Bank order information to rural areas and provide MSFWs with assistance to enable them to use such information on a non-discriminatory basis; (2) Review all interstate job orders prior to approval for transmission and require all State and Federal offices processing such interstate job orders to comply with specific requirements; and 3) Require each State ES agency to review and process all intrastate job orders in accordance with the procedures and requirements set forth in sec. I-D of the Order.

Connecting employers with job seekers at the local level helps both parties, as there are fewer transportation and housing costs. This sequential process is particular for agricultural job orders and may not be appropriate for other employment sectors. Furthermore, agricultural work is typically rural and housing and transportation accommodations may be necessary to ensure the workers are able to access the appropriate worksite. For these reasons, the Department has determined job orders should begin at the local level. Furthermore, the Department has determined it is required to facilitate a system by which job orders are cleared through intrastate, then interstate processes as required under the Richey Order.

In addition, the Department also deems it necessary for non-significant MSFW States to participate in ARS for three primary reasons: 1) Equality of opportunity: employers in non-significant States (just as significant States) must have the opportunity to hire U.S. workers through the ES system; 2) Uniformity of ES services: ARS is one of the many services offered

through the ES system and should be offered to agricultural employers and individuals who seek agricultural employment in any State, regardless of its designation as a significant State; and 3) Requirement to maintain a system of clearing labor between the States: sec. 3(a) of the Wagner-Peyser Act mandates the Department assist SWAs in maintaining a system of clearing labor between the States which provides workers maximum opportunity to have access to agricultural jobs.

To reconcile the need to test the local labor market and subsequently test the intrastate and interstate clearance systems when using the internet, the Department recommends ES offices suppress employer information. Suppressing employer information means that a job seeker will need to contact the ES office in order to receive all pertinent information regarding the job and the ES office then has the opportunity to gauge the level of interest in the job from U.S. job seekers. It also allows the ES office to provide the job seeker with not only the employment opportunity specifically sought, but also information on all other services and opportunities offered through the center.

The Richey Order mandates the Department "require each State ES agency to review and process all intrastate job orders in accordance with the procedures and requirements set forth in section I-D of [the] Order" and to review "all interstate job orders prior to approval for transmission and shall require all State and Federal offices processing such interstate job orders to comply with the following requirements." The Department's step-by-step process in the regulations implements the mandates of the Order by ensuring job seekers and employers have access to ARS in a logical and organized manner.

Lastly, the Department agrees that the references to "State agencies" would be better clarified by the term, "State Workforce Agencies" or "SWAs." As such, the Department will

replace the terms throughout the Final Rule. The Department has also edited § 653.501(c)(1)(ii) to make the regulatory text consistent with 29 CFR part 38.

Section 653.501(b) – ES office responsibilities

Comments: One commenter submitted two recommended revisions for the agricultural clearance form prescribed by the Department (ETA Form 790) to require an employer to identify and provide contact information of the grower business for each worksite identified in the job order and, for those employers who will use the job order in connection with a future application for temporary employment certification for H-2A, to provide contact information for the person(s) who will perform recruiting activities for the job.

Department Response: The Department notes the Paperwork Reduction Act (PRA) provides the public an opportunity to submit comments and requests for revisions for the Department's forms, including ETA Form 790. The PRA process should be used to suggest changes to a specific form.

Further, the Department notes the ETA Form 790 is intended for the recruitment of domestic, U.S. workers and not for the recruitment of foreign workers. Instead, Form 9142A, H-2A Application for Temporary Employment Certification, addresses the requirement for employers seeking to hire foreign workers. The Department has determined the suggestion to include recruiter information for foreign workers would more appropriately be addressed through the PRA process for the Form 9142A. The Department welcomes such comments at that time.

Section 653.501(c) – SWA Responsibilities

Comments: A few commenters objected to the language requirement at proposed § 653.501(c)(1)(i) stating it may limit the SWA's ability to effectively communicate job requirements (particularly with Management Information Systems [MIS] or job match systems

that contain character limits) or may impact the look and format to make an announcement less visibly pleasing. Further, these commenters suggested the language in this section could be required on all job orders and that it should not be required on agricultural clearance orders alone.

Department Response: The language in § 653.501(c)(1)(i) is substantively the same language required at existing § 653.501(a) and (b). The only difference is "JS" is replaced with "ES." Therefore, there should be no additional burden placed on State agencies from what was originally required. The Department notes the language is already included in the ETA Form 790; as such, a SWA will not need to alter its internal systems to accommodate new/different language.

While no comments were received regarding § 653.501(c)(3)(i), the Department revised the regulatory text to clarify that order-holding office notification must be in writing and that email notification may be acceptable. This revision does not substantively change the notification requirement but it clarifies the intent of the requirement to make notification verifiable. This is consistent with the Department's response to the comment received on § 653.501(c)(3)(iv), described in the following paragraph.

Comments: One commenter recommended that § 653.501(c)(3)(iv) be changed to require an employer to provide notification in writing (which may include email) rather than the proposed language that requires employers to provide an assurance that they will notify the order-holding office or State agency by email and telephone immediately upon learning that a crop is maturing earlier or later or other factors have changed the terms of employment. This commenter reasoned that allowing notification by telephone could result in miscommunication as well as difficulties for a State agency to confirm that an employer provided appropriate notice

if the employer states it made a call to the State agency. Additionally, this commenter suggested that any changes prompted by this comment may result in needed changes to § 653.501(d)(8).

Department Response: The Department notes § 653.501(c)(3)(iv) requires the employer to notify the order-holding office or SWA by "e-mailing *and* telephoning immediately upon learning that a crop is maturing earlier or later . . .." This telephonic requirement ensures information is relayed most expeditiously in case the recipient is not checking his/her email. It also ensures there is written correspondence to confirm such notification.

As discussed earlier in § 651.10, the Department has decided to revise the definition of migrant farmworkers. While the Department did not receive any comments specifically relating to § 653.501(c)(3)(vi), the Department received comments referring to the definition of migrant farmworkers who are "unable" versus "not reasonably able" to return to their permanent residence within the same day (regarding the definitions in § 651.10). The Department agrees with the commenters that "unable" appears more restrictive than intended. The Department has decided to use the words "not reasonably able" to return to a permanent residence, rather than "unable." To align changes in § 651.10 with § 653.501(c)(3)(vi), the Department revised the paragraph to use the term "not reasonably able."

Comments: One commenter urged the Department to elaborate on what "reasonable access" for outreach workers means in § 653.501(c)(3)(vii). In addition, this commenter recommended the Department modify § 653.501(c)(3)(vii) allowing nonprofit organization outreach workers to have reasonable access to MSFWs to perform general outreach activities, to meet with a worker who has requested such meeting, and to meet with the nonprofit organization's clients or customers. Two other commenters requested clarification on this provision, asking if the intent is for outreach staff to provide only outreach services to U.S.

workers for clearance orders where a placement has been confirmed. These commenters stated such clarification would eliminate the SWA's ability to conduct outreach to H-2A clearance orders where a placement has not been made.

Department Response: The Department declines to define "reasonable access" in the regulatory text, however reasonable access means that outreach workers must be able to locate, contact, and interact with MSFWs at their worksites, living quarters, and gathering areas in order to be able to provide MSFWs with services and information pursuant to the outreach workers' duties outlined at § 653.107. Regarding the commenter's request for the Department to modify § 653.501(c)(3)(vii) to allow nonprofit organization outreach workers reasonable access to MSFWs to perform general outreach activities, to meet with a worker who has requested such meeting, and to meet with the nonprofit organization's clients or customers, the Department has determined it is beyond the scope of this regulation to secure "reasonable" access rights for nonprofit organization outreach workers and so is not amending the regulation to include such provisions. Regarding the request for clarification on whether the intent of § 653.501(c)(3)(vii) is for outreach staff to provide only outreach services to U.S. workers for clearance orders where a placement has been confirmed, the Department seeks to clarify the intent is not for outreach workers to only provide outreach services to U.S. workers. All outreach workers must follow the requirements set forth at § 653.107(b)

Comments: A few commenters requested clarification regarding "eligible workers," in § 653.501(c)(5), asking if the Department intends for the first week wage guarantee to be applicable to all workers referred (including local workers) or only those workers who live beyond the local area of intended employment (migrant workers).

Department Response: The eligible workers referred to in § 653.501(c)(5) are those identified at paragraph (d)(4): all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members.

Comments: A few commenters also recommended the Department modify the last sentence of paragraph (c)(5) to align with ES complaint procedures, which could require an immediate referral to the Department's Wage and Hour Division (WHD). This sentence as proposed stated, "If an employer fails to comply under this section the order holding office may notify DOL's Wage and Hour Division for possible enforcement."

Department Response: The proposed language stating the order holding office "may" notify WHD was intended to allow the issue to be resolved at the local level without immediate referral to WHD. If the issue is not resolved at the local level within 5 business days, it must be referred to WHD for possible enforcement. The Department made no change to § 653.501(c)(5).

Comments: One commenter urged the Department to clarify the employer liability outlined in § 653.501(c)(5) applies to U.S. workers who are referred pursuant to H-2A clearance orders. Also relating to this provision, one commenter recommended the Department revise the first sentence to remove the "at least 10 working days prior" phrase to read, "If there is a change to the anticipated date of need and the employer fails to confirm with the applicant-holding office or the order-holding office, prior to referred workers departure, the employer must pay eligible workers referred through the clearance system."

Department Response: Section 653.501(c)(5) applies to any worker referred through the Agricultural Recruitment System. In response to the suggestion for the Department to revise § 653.501(c)(5), the Department has determined that maintaining the language as proposed is the

best way to ensure that migrant workers have ample notice before departing their residence to begin work pursuant to the clearance order.

Section 653.501(d) – Processing Clearance Orders

Comments: One commenter stated it has always been instructed that the H-2A precertification process mirrors the ARS process and that § 653.501 should be followed when recruiting and referring U.S. domestic workers to H-2A jobs. Two other commenters similarly expressed concerns with this language, asserting that because all clearance orders processed by their State are H-2A, the statement that this section does not apply to foreign temporary workers would eliminate the first week wage guarantee, which applied to all ARS orders under WIA, including those tied to H-2A. These commenters also expressed concern that the workers' rights brochure they use to comply with WIA rules would no longer be applicable to H-2A clearance orders and, thus, would be eliminated.

One commenter suggested the Department revise the first sentence of § 653.501(d) to read, "This subsection does not apply to clearance orders …" (rather than "section"), to clarify the exclusion applies only to paragraph (d). Asserting that additional confusion is created by the § 653.501(c)(5) pay guarantee reference to § 653.501(d)(4), this commenter stated that the inconsistent use of section and subsection make it difficult to read the intent of subpart F's various provisions. This commenter asserted there is no rationale for excluding clearance orders attached to H-2A orders from § 653.501(d) provisions other than clearance order transmitting-related provisions at § 653.501(d)(1) and (d)(3), including the nondiscrimination criteria (§ 653.501(d)(2)), the date-of-need protections (§ 653.501(d)(4), (d)(7), and (d)(9)), and the mandate to local ES offices to provide workers with a list of workers' rights (§ 653.501(d)(11)). Stating the Department has a mandate to ensure that the employment of H-2A workers "will not

adversely affect the wages and working conditions of workers in the U.S. similarly employed" (8 U.S.C. 1188(a)(1)(B)), this commenter expressed concern that these U.S. worker protections in the event of an unexpected or unannounced change in the date of need are vital to ensuring that H-2A employers follow through with their statutory obligation to hire qualified U.S. workers.

Department Response: Only § 653.501(d)(3) does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers, pursuant to part 655, subpart B, as such clearance orders must be sent to the Chicago National Processing Center. The Department has clarified the regulatory text at § 653.501(d) by removing the statement "This section does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to 20 CFR 655 subpart B." from the opening paragraph of § 653.501(d), and inserting it at paragraph (d)(3), which now reads, "The approval process described here in paragraph (d)(3) of this section does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to 20 CFR part 655 subpart B as such clearance orders must be sent to the Chicago National Processing Center. For non-criteria clearance orders (orders that are not attached to applications under 20 CFR part 655 subpart B), the ETA regional office must…." The Department notes that all steps and requirements for processing clearance orders at § 653.500 et seq. are intended for the recruitment of U.S. workers. However, U.S. workers may continue to be recruited once a job order becomes part of the H-2A process pursuant to § 655.135(d). The Department will issue guidance on the Agricultural Recruitment Process.

Comments: In response to the § 653.501(d)(1) requirement that the order-holding office must transmit a copy of the approved clearance order to the State agency, one commenter suggested the order-holding office should be required to transmit the completed clearance order

to the SMA for approval and distribution to streamline the process and minimize the chance for errors. For similar reasons, this commenter also suggested the Department replace the § 653.501(d)(3) requirement for the ETA regional office to review and approve the order with a requirement for the supply State's SMA to review and approve the order within 10 working days. The commenter reasoned that regional offices often approve only to have supply States return the order with a denial, further delaying the order.

Department Response: The requirement to transmit the completed clearance order applies to the SWA and it is the SWA's decision whether the primary individual charged with processing clearance orders is the SMA or a different SWA employee. The Department has determined the Regional office is in an appropriate position to assess labor supply States based on the ES reports it receives from each State in its region. No change was made to regulatory text in response to this comment.

Comments: A few commenters recommended the Department remove proposed § 653.501(d)(4) because it places burdens on the job seeker to contact the applicant-holding office 9 to 5 days before the date of need to secure the first weeks wage guarantee and on the SWA to document such communication. One commenter recommended the Department revise this paragraph to read, "The applicant-holding office should notify referred workers to contact the applicant-holding office or the order-holding office to verify the date of need cited prior to their departure." This commenter stated this would allow for more flexibility due to the nature of the industry and would give the worker the most up-to-date information on the contract prior to departing.

Department Response: The Department has determined it cannot remove § 653.501(d)(4), as wage guarantees are a requirement under the Judge Richey Court Order.

Further, the Department does not agree with the commenter that the paragraph should be revised such that the referred workers should contact the applicant-holding office or the order-holding office, because the applicant's primary contact is with the applicant-holding office, not the order-holding office. The Department has determined it would be an undue burden on the job seeker to contact the order-holding office. The Department will provide additional guidance on this process.

Comments: One commenter asked if the checklists that local ES office staff are required to provide farmworkers and applicants in their native language (§ 653.501(d)(6) and (d)(10)) could be replaced with the requirement to provide a copy of the clearance order itself. This commenter noted that it has encountered issues where workers hired on the interstate clearance orders have indicated they did not receive accurate information prior to arriving on the job site. The commenter asserted that requiring staff to provide a copy of the approved clearance order would help eliminate any confusion and misinterpretations.

Department Response: The Department notes that some clearance orders may be more than 20 pages and if a SWA was required to supply the clearance order to each job seeker, it could overly burden the SWA. Consistent with the Judge Richey Court Order, the Department has concluded that notifying the job seeker that the clearance order is available upon request is sufficient, as long as referred job seekers obtain a full explanation of the terms and conditions of employment.

Section 653.502 Conditional access to the Agricultural Recruitment System.

Comments: One commenter expressed concerns that the steps and requirements outlined in § 653.502 assume that employers have full knowledge of the ARS in order to submit a written request for conditional access to the intrastate or interstate clearance system. In particular, this

commenter asserted that for employers to be sufficiently familiar with the intricacies of the ARS to submit advanced requests for conditional access would require SWAs to mount a massive marketing and educational program, which this commenter asserted would be a large burden.

Department Response: SWA staff should be trained in the ARS process. When an employer seeks workers for agricultural work, it is incumbent upon the SWA to explain all available options to the employer, including the ARS process and the option for conditional access if applicable. The Department has determined this will not overly burden SWAs as it was originally required at 20 CFR 654.403.

Section 653.503 Field checks.

Comments: Commenters expressed support for the proposed changes to this section. However, many commenters expressed concerns or requested clarification regarding proposed § 653.503.

One commenter stated the requirements of § 653.503(a) are contradictory to the WIOA structures for statewide activities and that completing mandatory field checks would cause a significant reduction in the time spent by the SWA in meeting WIOA's requirements.

Department Response: The Department notes the Judge Richey Court Order mandated that the Department ensure each SWA hires staff to conduct field checks and determine whether wages, working, and housing conditions are as specified in job orders and that actual conditions and terms of employment do not violate State and Federal law.

Comments: A few commenters recommended the Department remove the language in proposed § 653.503(a), stating that notifying an employer after a placement is made would not be transparent and would add unnecessary burden on State agency staff. Instead, these commenters recommended the Department add language on the ETA Form 790 or its supporting

documents that employers interested in participating in the ARS should be informed a field check may be conducted if a worker is placed.

Department Response: The Department agrees with the commenter stating employers should be notified that a field check may be conducted for all job orders placed through ARS and that such notification must be transparent. The Department notes § 653.503(a) states, "If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order" (emphasis added). To guarantee employers have been notified and have signed a document accepting field checks, the Department concurs that such notification may be provided through the attachment to the ETA Form 790. Including the notification in the ETA Form 790 would help ensure the employer has been notified and concurs with the requirement. The Department will propose the language be added to the attachment to the ETA Form 790 in the next Paperwork Reduction Act public notice for the Form.

Comments: A commenter asked the Department to clarify whether the "worker placed on a clearance order" in § 653.503(a) should be one that would have been referred through the ES system or not. In addition, the commenter asked if the referenced clearance orders also include criteria clearance orders, and requested the Department clarify whether notification in writing can include email.

Department Response: Field checks only pertain to placements made through the ARS process (pursuant to part 653, subpart F) and can include criteria and non-criteria job orders—but § 653.503 specifically refers to the placement of U.S. workers. Regarding whether notification

in writing can include email, the Department notes the attachment to the ETA Form 790 includes such notification and when a SWA provides the form to the employer and the employer signs it, § 653.503(a) has been satisfied. Additionally, if the SWA so chooses, the SWA may send an email to the employer when a worker has been placed which re-emphasizes the possibility for a field check pursuant to § 653.503.

Comments: Several commenters asked for clarification on § 653.503(b). One commenter sought clarification on the meaning of, "or at 100 percent of the worksites where less than 10 employment service placements have been made." Another commenter asked the Department to clarify if field checks at 100 percent of jobsites are required for clearance orders that have fewer than 10 placements for each order or if the entire State agency has made fewer than 10 placements on clearance orders during the quarter. If the field checks at 100 percent of jobsites is still required for clearance orders with fewer than 10 placements, this commenter asked if the 25 percent minimum still would apply overall. Another commenter recommended the Department revise § 653.503(b) to require field checks on "25 percent of all agricultural worksites where U.S. placements have been made," stating the language as proposed would burden States that have a low or no placement rate with conducting field checks of all employers participating in the H-2A program if the expectation is to include visits to employers where no placement of U.S. workers has taken place. One commenter expressed similar concerns, suggesting that because the majority of employers in that State do not request more than one or two workers, proposed § 653.503(b) would require the State to visit each of the 400 plus employers participating in the State's H-2A program, which would be burdensome. Another commenter requested the Department clarify whether the § 653.503(b) requirement applies to criteria clearance orders as well. Reasoning that "less than 10" would include worksites with

zero placements, this commenter further suggested the Department revise this language to States, "worksites where less than 10 or more than 1 placement was made."

Department Response: Based on the number of requests the Department received to clarify the regulatory text at § 653.503(b), the Department has revised the regulatory text to clarify the requirements. The regulatory text now states: "Where the SWA has made placements on 10 or more agricultural clearance orders (pursuant to part 653 subpart F) during the quarter, the SWA must conduct field checks on at least 25 percent of the total of such orders. Where the SWA has made placements on 9 or fewer job orders during the quarter (but at least 1 job order), the SWA must conduct field checks on 100 percent of all such orders." For example, if a SWA has made placements of U.S. workers on 100 separate job orders through ARS, the SWA is required to conduct field checks on at least 25 of those job orders (25 percent of 100). In another example, if a SWA has made placements of U.S. workers on 6 job orders through ARS, the SWA is required to conduct field checks on all 6 job orders (100 percent of the orders because there was more than 1 but fewer than 9 job orders). These field checks only pertain to placements made through the ARS process (which can include criteria and non-criteria job orders—but § 653.503 specifically refers to the placement of U.S. workers). "Placements," which is defined at § 651.10, means the hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the employment office completed all of the following steps:

(1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific applicant;

(2) Made prior arrangements with the employer for the referral of an individual or individuals;

(3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;

(4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(5) Appropriately recorded the placement.

Comments: One commenter asserted that § 653.503(c) expands the field check requirements from "wages, hours, working, and housing conditions" to the "full terms and conditions of employment," which would lead to unfair and unequal enforcement activities because "full terms and conditions" is not defined. Further, this commenter stated the § 653.503(c) requirement that field checks must occur "at a time when workers are present" would lead to a reduction in the time allowed for training and job placement activities.

Department Response: The Department does not interpret the change in language to be a substantive expansion from what is now required. The Department notes that requesting employers sign the ETA Form 790, thereby agreeing to abide by the "full terms and conditions" of employment, for which field checks appropriately ensure such compliance. Additionally, the Judge Richey Court Order requires those conducting field checks, "to determine whether wages, working and housing conditions are as specified in job orders and that actual conditions and terms of employment do not violate State and Federal law." The Department further notes that SWA staff is charged with providing and explaining to MSFWs information and resources regarding ES services, other organizations serving MSFWs in the area, and a basic summary of farmworker rights, including their rights with respect to the terms and conditions of employment. Therefore, conducting such outreach activities (as required at § 653.107) does not constitute time

away from training and job placement. In fact, such outreach is intended to extend training and job placement opportunities to MSFWs.

Comments: A commenter stated that the proposed field check requirements in § 653.503(b) and (d) would have a chilling effect on employers' decisions to use the ARS. This commenter also suggested the required field checks are not authorized by the controlling statutes and may not be constitutional.

Department Response: The Department notes that field checks and referrals of apparent violations are now required under 20 CFR 653.503, and employers continue to use the ARS. The existing regulations at 20 CFR 653.503 for field checks state that when conducting field checks, "If State agency personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated on the job order or that an employer is violating an employment related law, the State agency shall document the finding and attempt informal resolution. If the matter has not been resolved within 5 working days, the SWA shall follow the procedures set forth at subpart F of part 658 of this chapter." Attempting informal resolution at the local level is also intended to assist employers in remedying certain apparent violations that may resolve the issue and not necessitate the need for a referral to an enforcement agency.

Further, the Department disagrees with the commenter's suggestion that the required field checks are not authorized by the controlling statutes and that they do not provide sufficient certainty and regularity required to make "warrantless inspections constitutional." Employers know of field checks, which are conducted with sufficient regularity due to the requirement at § 653.503(b) mandating field checks on certain percentages of placements depending on how many placements a State has made.

Comments: A commenter raised concerns regarding the § 653.503(d) requirement to report violations of employment-related law suggesting it would (among other things) negatively impact the ARS process; be challenging to implement; and would lead to an increase in referrals to enforcement agencies.

Department Response: The Department does not agree that § 653.503(d) will foster hostile attitudes between employers and employees, towards SWA staff, and to the ARS in general. The Department has received information on numerous occasions from employers and SWA staff that the ability to resolve issues informally at the local level has been beneficial because it gives the employer a chance to rectify the situation before it is referred to an enforcement agency. Not all issues may be informally resolved and many may be referred to an enforcement agency, but the regulations generally allow for such informal resolution where appropriate. The Department has changed the regulatory text to clarify this.

Comments: Regarding the § 653.503(e) provision that would allow State agencies to enter into agreements with State and Federal enforcement agencies to conduct field checks on behalf of SWA personnel, a commenter stated the information sharing permitted under this provision would lead to an unwillingness of both workers and employers to use the system, with an unintended consequence of an increase in use of Farm Labor Contractors and the H-2A program. Further, the commenter asserted § 653.503(e) is contradictory in that the non-SWA "may conduct field checks instead of and on behalf of State agency personnel" but then provides: "The SWA must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies."

Department Response: The Department notes that such arrangements between State and Federal enforcement agencies are now permitted in the regulations at 20 CFR 653.503(b) and

this has not, to its knowledge, caused an unwillingness of both workers and employers to use the system. The Department disagrees with the commenter and has determined that such arrangements are useful for SWAs in meeting their field check requirements.

P. Part 654 – Special Responsibilities of the Employment Service System

1. Introduction

In the NPRM, the Department proposed to revise the ETA regulations governing housing for farmworkers at 20 CFR part 654, subpart E, issued under the authority of the 1933 Wagner-Peyser Act by updating outdated terminology and by establishing an expiration date for the ETA standards. This proposed expiration date was intended to transition housing currently governed by the ETA standards to the Occupational Safety and Health Administration (OSHA) regulations governing temporary labor camps for agricultural workers as set forth at 29 CFR 1910.142. After considering the public comments received on this aspect of the proposal, the Department withdraws its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards, as explained in further detail below.

The analysis that follows provides the Department's response to public comments received on the proposed part 684 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve

the readability and conform the document stylistically that are not discussed in the analysis below.

Several commenters expressed support for the proposed changes to subpart E of part 654 stating the housing standards would be strengthened, would increase safety and sanitation requirements, and would positively impact the overall health and quality of life for MSFWs. However, most commenters expressed concerns about the proposal and in many cases asked that the proposal be withdrawn.

Comments: One commenter noted in the absence of updated OSHA temporary labor camp regulations, it opposed the phase-out and repeal of the ETA housing standards because, according to this commenter, there are several instances where the ETA regulations provide clear, unambiguous numerical standards, while the OSHA regulations offer vague guidance. This commenter further asserted that clearly delineated obligations, with specific numerical benchmarks, eliminate disputes as to the housing provider's obligations.

Additionally, commenters raised the following reasons for not supporting the proposal: (1) the high cost of making the necessary changes; (2) insufficient economic analysis conducted by the Department; (3) lack of availability of funding assistance; (4) difficulty (or potential impossibility) in obtaining permits (including zoning permits); (5) lack of sufficient time to transition; (6) the difficulty or impossibility of complying with OSHA's requirement at 29 CFR 1910.142(a)(2), which states: "The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept."; (7) DOL hearings conducted in the 1970s pursuant to the same proposal concluded there was not an adequate basis for the publication of a new final standard or for the issuance of a new

proposal; and (8) there is no indication that housing under the ETA standards is any less adequate, safe, or sanitary than that under the OSHA standards.

Many commenters also suggested that the impossibility of complying with the new standards would lead to a loss of available farmworker housing because existing housing would still be out of compliance. A few commenters stated the proposal would put some agricultural employers out of business. One commenter posited the NPRM did not provide evidence that employers, SWAs, Department personnel, employees, or anyone else is experiencing any "confusion" about how farmworker housing is inspected. This commenter also questioned whether the Department may legally expand the application of the OSHA housing standards it adopted under special procedures available for consensus standards to housing to which the OSHA standards never previously applied.

One commenter suggested the Department allow agricultural employers a variance for the OSHA requirement at 29 CFR 1910.142(a)(2), asserting it is not always possible or desirable to have at least 500 feet between the livestock and food processing/sleeping areas. In order to better understand the impact of the proposed regulations, the Department solicited the following information from the public through the NPRM: (1) the approximate number of agricultural housing units in the United States provided by agricultural employers for farmworkers; (2) the approximate percentage of the total farmworker housing units that currently fall under the ETA standards set forth in 20 CFR part 654; and (3) the estimated cost of bringing those housing units from the ETA standards into compliance with the OSHA standards. The Department received few responses. The limited feedback suggested it would cost individual employers between $15,000 and $300,000 to transition into the OSHA standards, with one commenter suggesting it would cost over $1 million for employers in one State. One commenter indicated that most of its

housing inspections fell under the ETA standards. Several commenters also had specific questions for the Department.

Department Response: The Department has taken the aforementioned comments into consideration and withdraws its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards governing temporary labor camps for agricultural workers as set forth at 29 CFR 1910.142. The Department based its decision on the following reasons: (1) it did not receive sufficient information in response to its solicitation for information in order to conduct a thorough impact analysis; (2) it seeks to further investigate information received suggesting the specificity and clarity provided by the ETA standards may be helpful when disputes arise; (3) it acknowledges the possible financial and logistical burdens that the OSHA standards could impose on some agricultural employers; and (4) it seeks to further study farmworker housing, how it could be improved, and the impact such improvement would have on stakeholders.

While the Department withdraws its proposal at this time, it continues to interpret the regulations at part 654, subpart E, to be transitional until such time when one set of improved agricultural housing standards may be used for all farmworkers.

The Department will continue to require compliance with the regulations at 20 CFR part 654, subpart E, for farmworker housing built prior to April 3, 1980, or where prior to March 4, 1980, a contract for the construction of the specific housing was signed. However, subsequent housing must comply with OSHA temporary labor camp standards at 29 CFR 1910.142.

The provisions of § 654.403 have been relocated to 20 CFR 653.502 because they more directly relate to the governance and operation of the Agricultural Recruitment System (ARS) rather than the condition of worker housing.

Section 654.408 Screening.

Comments: One commenter suggested the Department revise proposed screen requirements at § 654.408 to allow for an exception for housing with central air conditioning.

Department Response: The Department does not support creating an exception for housing with central air conditioning because, in cases where such central air conditioning fails, it would be necessary for the windows to have proper screens in place. No change to the regulatory text was made in response to this comment.

Section 654.414 Garbage and other refuse.

Comments: Asserting that most local municipalities do not provide for twice weekly garbage disposal services, one commenter recommended the Department revise the § 654.414(b) language requiring the "collection of refuse at least twice a week" to include "or as often as possible according to local collection schedules."

Department Response: The "at least twice a week" requirement helps ensure refuse is properly disposed of and maintains the health and safety of the workers and the environment. No change to the regulatory text was made in response to this comment.

Q. Part 658 – Administrative Provisions Governing the Wagner-Peyser Act Employment Service

1. Introduction

Part 658 sets forth systems and procedures for complaints, monitoring for compliance assessment, enforcement, and sanctions for violations of the ES regulations and employment-related laws, including discontinuation of services to employers and decertification of State Workforce Agencies (SWAs).

The analyses that follows provides the Department's response to public comments received on the proposed part 658 regulations relating to administrative provisions governing the ES program. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. The Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below. Lastly, the Department will issue guidance on the Complaint System, informal resolution, referring complaints and apparent violations, and on subpart F – Discontinuation of Services to Employers by the Employment Service.

2. Subpart E – Employment Service and Employment-Related Law Complaint System

This subpart covers the purpose and scope of the Complaint System, the requirements pertaining to complaints filed at the local and State level, and the requirements for when a complaint rises to the Federal level.

Comments: One commenter urged the Department to reinstate the original Job Service Complaint System as established in 1980 as a cost-effective and efficient alternative to litigation for disputes between farmworkers and the employers to whom they have been referred through the job service network. Stating that the Job Service Complaint System, established in response to the Richey Order, allowed farmworkers to obtain quick resolution of complaints regarding jobs to which they had been referred by the ES system, this commenter stated that the changes to the Complaint System following the passage of the Immigration Reform and Control Act of 1986 resulted in the current Complaint System being of little use to aggrieved workers because they no

longer have the opportunity to participate in the processing of their complaint. According to this commenter, because the deadlines set out in the 1980 regulations that had made the Complaint System so attractive to farmworkers have been removed, the Complaint System is no longer an attractive alternative to litigation. Further, this commenter stated that because the current Complaint System does not ordinarily result in a formal finding regarding the worker's complaint, it rarely generates a result that provides the basis for discontinuation of services to an employer who has violated the rights of a farmworker referred through the ES system. For this reason, the commenter stated, employers are free to violate the rights of domestic farmworkers with impunity, knowing there is virtually no chance they will face the potentially severe sanction of discontinuation of employment services (with the corresponding lack of access to the H-2A program) if they ignore the guarantees and assurances in their clearance orders.

Department Response: The Department clarifies that complainants continue to have the opportunity to participate in the processing of their complaint pursuant to § 658.411(e)(1) and (e)(2), at which time the complainant must determine if the complaint has been resolved to his/her satisfaction or if the complaint should be elevated to the next level of review. Regarding deadlines for resolution of complaints, the Department notes for complaints submitted to the ES office "if resolution has not been achieved to the satisfaction of the complainant within 15 working days after receipt of the complaint, or 5 working days with respect to complaints filed by or on behalf of migrant and seasonal farmworkers (MSFWs), the Complaint System representative must send the complaint to the SWA for resolution or further action…" For complaints submitted or referred to the SWA "if resolution at the SWA level has not been accomplished within 30 working days after the complaint was received by the SWA, whether the complaint was received directly or from a ES office pursuant to paragraph (d)(2)(ii) of this

section, the SWA must make a written determination regarding the complaint." The Department has determined that such time periods are relatively short and do not place an undue burden on the complainants seeking to resolve complaints. For employment-related law complaints referred to enforcement agencies outside of the Department, the Department notes it is beyond its jurisdiction to impose resolution deadlines for such agencies. For employment-related law complaints referred to agencies within the Department, the Department notes that each agency must abide by its respective regulations and any change to such regulations would require a Notice of Proposed Rulemaking. Should an organization seek changes to any such regulations, the Department recommends submitting comments when such an opportunity presents itself.

Regarding the commenter's assertion that because the current Complaint System does not ordinarily result in a formal finding regarding the worker's complaint, it rarely generates a result that provides the basis for discontinuation of services to an employer who has violated the rights of a farmworker referred through the ES, the Department clarifies that a formal finding (i.e., a final determination by an enforcement agency) is only one of the many bases for discontinuation of services specified at § 658.501. For example, § 658.501(a)(1) through (a)(3) do not necessitate such a determination (as do many of the other provisions under § 658.501).

No change to the regulatory text was made in response to these comments.

Section 658.400 Purpose and scope of subpart.

Comments: One commenter stated the proposed change to § 658.400(a) to require the acceptance of ES-related complaints made within 2 years of the occurrence (increased from 1 year) would have an adverse effect on SWA performance. Specifically, this commenter predicted that States would accrue unresolved complaints resulting from complainants leaving the area before completion of the investigation, in particular MSFWs. However, a different

commenter expressed support for the expansion from 1 to 2 years, stating that expanding the period of time to allow an aggrieved worker to file a complaint would alleviate some of the burdens workers face when asserting their rights, including fear of retaliation from employers or discomfort in filing complaints against an employer while still employed when workers discovered violations before their work ends. Other obstacles addressed by this commenter were associated with the transient and mobile nature of the work, such as moving several times, lack of information or resources to file a complaint, and temporary inability to maintain the complaint proceedings.

Department Response: While the Department acknowledges the potential for more complaints to remain unresolved for a longer period of time the Department has determined that the positive effects outweigh the fact that some complaints may take longer to resolve. It is exactly because of the transient nature of MSFWs that it is important to allow more time for complainants to come forward and for complaints to be resolved.

The Department made no changes to the regulatory text, except for the clarifying change to add "parts 651, 652, 653, 654, and" to the end of § 658.400(a). This change clarifies that the ES complaint system accepts complaints involving the failure to comply with the ES regulations under parts 651, 652, 653, 654, and part 658, not just part 658, as was proposed. This is consistent with the jurisdiction of the complaint system under the existing regulations.

Comments: One commenter stated that the Department's proposed changes to § 658.400(c) significantly expand the required enforcement activities from "wages, hours, working, and housing conditions" to all employment-related laws, and this commenter suggested that establishing SWA staff as the ultimate enforcement agent for dozens of diverse regulatory

regimes is counter to WIOA's goals for preparing an educated and skilled workforce and for meeting the skilled workforce needs of employers.

Department Response: The Department clarifies that SWA staff (unless otherwise authorized) are not enforcement agents for employment-related laws. Rather, SWA staff that become aware of possible violations of employment-related laws through field checks or apparent violations is charged with attempting to resolve the issue at the local level (when appropriate) and, if not resolved, referring the case to the appropriate enforcement agency.

Section 658.410 Establishment of local and State complaint systems.

Comments: Stating the NPRM is unclear as to how staffing should be assigned to address complaints at the various levels (managers and line staff), some commenters recommended the Department allow local areas to determine how management and line staff are engaged in handling complaints, whether in person, on the phone, or other types of correspondence. One commenter expressed support for having local areas decide how management and line staff are engaged in handling complaints and recommended that this process be included in the local plan.

Department Response: The Department clarifies that as long as the requirements at § 658.410 are met, the ES office manager may determine specific processes that are conducive for his/her respective office. The Department has determined the SWA must make decisions regarding the inclusion of this process in the local plan,

Comments: One commenter asked whether the Department would make the Complaint System posters available to the SWAs for the § 658.410(d) requirement that SWAs ensure information pertaining to the use of the Complaint System is publicized with an ETA-approved poster in each one-stop center,.

Department Response: The Complaint System poster is accessible on the internet at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2820.

Comments: Two commenters recommended the Department either remove the § 658.410(m) requirement that the Complaint System representative must regularly follow up on complaints after they are referred to an enforcement agency, or only require SWA staff to request that an enforcement agency follow up once a resolution to the complaint has been achieved. These commenters reasoned that, although an existing requirement under WIA, it is ineffective despite technological advances because most enforcement agencies do not share outcomes of investigations with SWA staff due to confidentiality requirements.

Department Response: The Department notes that the requirement for the Complaint System representative to follow-up on complaints submitted by MSFWs pursuant to § 658.410(m) is intended to ensure complaint resolution. Such follow-up helps ensure that complaints are progressing within the enforcement agency, and that MSFWs are updated on the status of their complaints. The Department understands that many enforcement agencies may be restricted from sharing specific information. However, the Department has determined that follow-up activities will deter the possibility for complaints to remain stagnant and instead will push them closer to resolution. The Department has determined that eliminating the requirement for follow-up with MSFW complainants would adversely affect complainants. The Department further notes that § 658.140(m) has been changed to remove the requirement for quarterly follow-up on non-MSFW complaints. This is consistent with § 658.411(b)(1)(i). This inconsistency in the NPRM was an error.

The Department added two paragraphs to § 658.410, paragraphs (n) and (o), in response to comments received on proposed § 658.411. Those comments and additions are discussed below.

Section 658.411 Action on complaints.

Comments: While stating their understanding that the intent is for Boards to coordinate with all relevant enforcement agencies concerning MSFW complaints, two commenters recommended the Department retain the reference to 29 CFR part 42 (which the NPRM removed) because that regulation coordinates Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), and Department activities relating to MSFWs.

Department Response: The Department clarifies that it does not intend for Workforce Development Boards (WDBs) to coordinate with all relevant enforcement agencies concerning MSFW complaints; rather, SWAs must follow the procedures required at § 658.411.

The Department concurs with the commenters that coordination of the activities of the Wage and Hour Division (WHD), within the former Employment Standards Administration, OSHA, and the Employment and Training Administration (ETA) relating to MSFWs is essential. The intention behind the proposed regulations at § 658.411 was to not limit coordination to only those agencies, but to expand it to all employment-related law enforcement agencies. No changes were made to the regulatory text. Still, the Department acknowledges the vital importance of Coordinated Enforcement at 29 CFR part 42 and will work to carry out such activities described at 29 CFR part 42 and also work to expand coordination with other enforcement agencies such as the Equal Employment Opportunity Commission (EEOC).

Comments: One commenter recommended the Department add a requirement that any notices sent to the worker regarding their complaint must be sent in the worker's native

language. Further, this commenter urged the Department to require all correspondence with a MSFW regarding his/her complaint be required both by phone and by certified mail. In addition, this commenter urged the Department to revise the regulatory text to clarify that any time the regulations specify that ES staff, the SMA, or other person must communicate with a MSFW, that communication must be directed to the MSFW's representative, if he or she has one. This commenter reasoned that because MSFWs frequently move and change telephone numbers, ES communication directed to the MSFW's local address or last known telephone number may go unanswered.

Department Response: The Department agrees with recommendation that all SWA correspondence regarding a complaint be sent to the worker in his/her native language would benefit English Language Learner (ELL) MSFWs and would be consistent with some requirements at part 653 of this chapter (i.e., assistance in understanding the terms and conditions of employment must be provided in the worker's native language if requested, and the provision of a checklist must be provided in the workers native language where necessary). The Department has added paragraph (n) to the regulatory text at § 658.410 requiring complaint related correspondence between the complainant and the SWA to be translated into the complainant's native language. The Department has determined translating such correspondence will ensure the complainant understands the status of the complaint and whether he/she is required to take any action.

The Department also agrees it would be beneficial for the ES office or the SWA to attempt to communicate with the MSFW in the manner most likely to reach him/her, particularly via telephone. The Department recommends that SWAs attempt communication via telephone with MSFWs; however, the requirement for written notification stands as the official means for

notification because such correspondence helps both parties maintain records of the complaint status.

The Department further agrees with the commenter that, in cases where the complainant has a designated representative and has requested that the ES office or the SWA communicate through the representative, such communication will facilitate complaint resolution and in cases where the complainant is a MSFW who moves frequently, a representative may be the most convenient individual to contact. The Department has added a provision allowing a complainant to designate an individual to act as his/her representative throughout the filing and processing of a complaint to the regulatory text at § 658.410(o). References to the complainant's representative also were added to paragraphs (a)(3) and (a)(4) of § 658.411. These changes are consistent with the references to a complainant's representative that were included throughout proposed § 658.411. The Department received no comments on these references and made no changes to the regulatory text. It is logical that ES staff and SWAs following-up on such complaints must be able to communicate with the complainant's representative if he/she has so designated.

Comments: One commenter expressed concern that the ES office may not necessarily be in the best position to determine on its own which is the most appropriate referral for a worker with a wage claim, possible Migrant and Seasonal Agricultural Worker Protection Act (AWPA) violation, or sexual harassment complaint. The commenter suggested the goal of the complaint process should be to facilitate MSFW's access to enforcement agencies and other resources and not to become a source of delay or obstacle. This commenter concluded that the Complaint System regulations should provide MSFWs with the resources to make their own informed

choices about whether to attempt informal resolution or file a complaint with an enforcement agency, rather than have the ES office decide for them.

Department Response: The Department seeks to clarify that one of the intentions of the Complaint System is to facilitate the resolution of complaints for MSFWs and non-MSFWs. If an ES staff member or outreach worker receives information about a possible violation of the ES regulations or employment-related laws, it is incumbent upon that individual to assist. Such assistance may mean taking a formal complaint from the individual or, if that individual does not choose to submit a complaint, the staff member must attempt resolution through the apparent violation process outlined at § 658.419. For concerns that staff may not know the most appropriate avenue to refer the worker, the Department notes the requirement for outreach workers to be trained pursuant to § 653.107(b)(7). For MSFWs with the resources to make their own choice about whether to attempt informal resolution or file a complaint, the Department clarifies that the complainant has a choice to submit a formal complaint or allow the ES representative to file an apparent violation. Either way, the ES staff must assist the MSFW and attempt to resolve the situation; the tactics for resolving the situation will vary depending on the issue. For example, EO and CRC related complaints must be immediately logged and referred to the appropriate enforcement agency.

Section 658.411(a) – Filing Complaints

Comments: Two commenters recommended that § 658.411(a)(3) provide flexibility for staff to use other complaint forms, rather than the Complaint/Referral Form prescribed or approved by the Department, when it is immediately determined that the complaint falls under the jurisdiction of another agency and such a complaint form is available. These commenters asserted that such flexibility would be helpful because most of the employment -related law

complaints received by the SWA involve allegations of lack of payment of wages, which mainly fall under the jurisdiction of a different State agency.

Department Response: In response to these comments, the Department has changed § 658.411(a)(3) to provide the flexibility for SWA staff to use other complaint forms rather than the Complaint/Referral Form prescribed by the Department so long as the alternate form has been approved by the Department. The Department included the requirement that the alternate form be one approved by the Department, to ensure the ability of the Department to track ES action on complaints or apparent violations accurately. If SWAs use forms from different agencies that the Department has not approved, it may make tracking complaint resolution more challenging.

Comments: Regarding the requirement that ES office and SWA staff consider complaints submitted via letter or email, two commenters asserted that the regulatory text proposed does not provide sufficient understanding of the difference between a customer concern that does not require formal processing versus a formal complaint. While agreeing with allowing such flexibility for customers to exercise their right to file a complaint, these commenters requested guidance on what can be considered as a signature in an email and what minimum information is needed to establish that the SWA has sufficient information to initiate an investigation. Expressing confusion regarding how complaints are received and processed, some commenters requested the Department provide clear and consistent guidance. Another commenter recommended the Department eliminate the requirement for complaints to be signed to permit MSFW representatives to file complaints on behalf of MSFWs.

Department Response: The Department will issue guidance explaining the difference between a customer concern and a formal complaint, including what can be considered a

signature in an email, what minimum information is needed to establish an investigation, and how to receive and process complaints.

The Department does not agree that the requirement for complaints to be signed by the complainant be eliminated as a signature is helpful in processing complaints and referring complaints to the appropriate enforcement agencies. However, the Department agrees it would be helpful for MSFW complainants if a representative could file the complaint on behalf the MSFW. The Department added language to § 658.411(a)(3) allowing a MSFW or his/her representative to sign the complaint if the MSFW has designated a representative pursuant to § 658.410(o).

Comments: One commenter recommended the Department clarify the language with respect to taking complaints to specify whether an ES office must communicate the referral to the MSFW representative.

Department Response: The Department clarifies that when an MSFW (or his/her representative) files a complaint at an ES office, the Complaint System representative must follow-up with the complainant or his/her representative if the complaint has been referred to an enforcement agency.

Section 658.411(b) – Complaints Regarding an Employment-related Law

Comments: A few commenters objected to the proposed requirement that local ES offices and SWAs attempt informal resolution of the complaint. These commenters asserted that incorporating the additional step of attempted informal resolution by the SWA staff would delay the referral and investigation, and would become burdensome on the SMA. One commenter stated that staff are not trained in how to conduct investigations and this process could directly interfere with a possible investigation by an enforcement agency because it might cause the

employer to be alert of an onsite investigation. Another commenter expressed concern that if informal resolution was achieved, the complaint would no longer be referred to a relevant enforcement agency, which would result in the agency not being able to document the allegation and the resolution within their management information system.

Department Response: The Department clarifies that "informal resolution" means an attempt to resolve an issue at the local level. Such resolution may be conducted by the ES office Complaint System representative and is intended to expedite resolution of certain complaints. For example, the Complaint System representative can work with the complainant and the employer to resolve miscommunications or issues relating to wages or working hours, or in some cases, assist the employer in coming into compliance with certain working or housing conditions. Such mediation can be faster than referring the case to an enforcement agency. However, the Department notes that not all issues are appropriate for attempted informal resolution, such as most equal opportunity (EO) or forced labor-related complaints (e.g., human trafficking, sexual harassment, sexual coercion). In these cases, the Department has added clarifying language to § 658.411(b)(1)(ii)(B) requiring the complaints be immediately logged and referred to the appropriate enforcement agency for prompt action. Certain complaints also are required to be immediately logged and referred, as discussed in § 658.411(c). The Department will issue guidance on informal resolution and referring complaints/apparent violations. Regarding the concern that informal resolution means that cases are not referred to enforcement agencies, the Department notes that not all cases need to be referred to an enforcement agency and in some cases, resolving the issues at the local level achieves the best outcome for all parties. Moreover, the Department requires SWAs track all complaints and apparent violations which are then

reported to the Department. Therefore, the Department still receives such information for tracking and analysis.

Comments: One commenter urged the Department to revise § 658.411(b)(1)(ii) to specify that any MSFWs affected by an apparent employment -related law violation should be given outreach materials identifying the full range of agencies that may be able to assist them, including health services and legal aid offices, regardless of whether the ES office determines that a referral is necessary. If the issue is not resolved within 5 business days, this commenter recommended the workers be given the option of a referral to appropriate enforcement agencies, legal aid organizations, or consumer advocate organizations, regardless of whether the ES office determines that such referral is appropriate. Expressing concerns about the level of discretion with respect to the ES office decision to refer a MSFW's complaint regarding an employment-related law, this commenter urged the Department to revise § 658.411(b)(1)(ii)(C) and (D) to make clear that referral of a complaint is mandatory.

Department Response: The Department notes the regulatory text requires outreach workers to "explain to MSFWs at their working, living or gathering areas …in a language readily understood by them…the services available at the local one-stop center, … information on the Complaint System, information on the other organizations serving MSFWs in the area,… [and] a basic summary of farmworker rights, including their rights with respect to the terms and conditions of employment." The Department interprets the provision of such information to include health and legal aid services. Further, the Department recommends through training and guidance that outreach workers bring outreach material on the various services provided in the area for the MSFWs. If an ES staff member observes or is in receipt of information regarding an

apparent violation, it may not be feasible to provide affected MSFWs with the pertinent information at that time; however, such information may be provided as a follow-up activity.

The Department clarifies that referring employment-related law complaints to the appropriate enforcement agency after 5 days if the complaint has not been resolved is required if the issue is not resolved within 5 business days. The Department further seeks to clarify that the statement, "the representative must determine *if* the complaint should be referred to…" does not mean that the representative must determine whether the complaint will be referred; rather it means the representative must determine if the complaint should be referred to "the appropriate enforcement agency" or "another public agency" or a "legal aid organization," etc. Given that the use of the word "if" in this sentence has caused confusion and may be misinterpreted, the Department has changed the regulatory text by rewording § 658.411(b)(1)(ii)(C) as follows: If the issue is not resolved within 5 business days, the representative must refer the complaint to the appropriate enforcement agency (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate) for further assistance.

Comments: Regarding the § 658.411(b)(2) requirement that the SWA must initiate procedures for discontinuation of services if an enforcement agency makes a final determination that the employer violated an employment-related law, one commenter recommended the Department require agencies to notify the SWA when such agency has made a final determination. For non-Department agencies, this commenter said it would support the development of a form to be used by all agency-referred cases under the Complaint System that would request notification of the outcome of the referral and explain the need for the agency to inform the SWA of the results of the referred complaint.

Department Response: The Department agrees it would be helpful if enforcement agencies notified the SWA when a final determination has been made. In order to facilitate the communication, the Department encourages SWAs enter into agreements with enforcement agencies regarding notification of final determination of complaints.

Section 658.411(c) – Complaints Alleging a Violation of Rights under the Equal Employment Opportunity Commission (EEOC) Regulations or enforced by the Department of Labor's Civil Rights Center (CRC)

Comments: Two commenters requested clarification for handling complaints alleging a violation of rights by employers, asking whether all complaints must be forwarded to the EEOC if received at the local or State level. One commenter recommended the Department revise § 658.411(c) to require all complaints involving discrimination be forwarded directly to the EEOC, rather than requiring the extra steps of referring a local Equal Opportunity (EO) representative, who would refer it to the State EO representative, who would then refer the case to the EEOC. This commenter suggested that the extra steps would add a layer of complexity and inevitable delay, which could be detrimental to discrimination complaints given the short limitations period for filing a charge of discrimination with the EEOC. Another commenter asked whether the § 658.411(c)(1) requirement that the local Complaint System representative must refer the complaint to a local EO representative would go to the local area EO officer or the State EO officer.

Department Response: The Department clarifies the EO referral process. When an ES office or a SWA receives an EO-related complaint, the complaint must immediately be logged and referred to either the EO representative at the local or State level, or the EEOC. Once the EO representative has received the referral, he/she will make a determination as to whether it is

appropriate to resolve the complaint at that level, or if it should be referred to a different level (e.g., a State EO representative may determine that the case would most appropriately be resolved by the EEOC, or the EEOC may determine that the case would most appropriately be resolved by the State EO representative). In order to clarify this in the regulatory text, the Department removed § 658.411(c)(3) through (c)(4) and clarifies in (c)(1) that EO-related complaints immediately must be logged and referred to an EO representative for appropriate handling. The Department further seeks to clarify that SWAs should not attempt informal resolution on EO-related complaints or apparent violations as these matters are highly sensitive and require trained EO investigators.

The Department has also edited § 658.411(c)(1) and (c)(2) to make the regulatory text consistent with the anti-discrimination protections in 29 CFR part 38 and the role of the Department's Civil Rights Center.

Section 658.411(d) – Complaints Regarding the ES Regulations

Comments: Noting that many MSFWs do not have a reliable, permanent mailing address, one commenter urged the Department to revise § 658.411(d) to provide that, when the local ES office needs additional information from the complainant, the office should communicate with the complainant in the way most likely to reach him or her, such as by cell phone or social media. If the complainant fails to respond, and the ES office determines that it is unable to resolve the complaint or complete the investigation without the requested information, this commenter suggested that the complaint be referred to the SMA to determine whether further action is possible. In addition, this commenter recommended the Department revise § 658.411(d)(2) to include allowing for filing of a complaint by email.

Department Response: Regarding the commenter's suggestion at § 658.411(d) for the Department to provide that, when the ES office needs additional information from the complainant, the office should communicate with the complainant in the way most likely to reach him or her, such as by cell phone or social media, the Department agrees that it would be beneficial for the ES office to attempt to communicate with the MSFW in the manner most likely to reach him/her, particularly via telephone. However, the Department has concerns about attempting to contact the MSFW via social media, as social media may not be a private communication forum. The Department recommends that SWAs attempt communication via telephone with MSFWs pursuant to § 658.411(d); however, the requirement for written notification stands as the official means for notification because such correspondence helps both parties maintain records of the complaint status.

Regarding the suggestion for the ES office to refer a complaint to the SMA if the complainant has not responded, the Department does not deem this necessary due to its change to the regulations at § 658.400(a) whereby the Complaint System now covers ES-related complaints made within 2 years of the alleged violation. Increasing the limitations period to 2 years will provide greater protections to those participating in the ES by accommodating those individuals who may not be able to file complaints within a year from the alleged occurrence. No change was made to the regulatory text in response to these comments.

In response to the suggestion to allow filing a complaint by email, the Department notes it proposed in the NPRM that a complaint could be filed by email and has made no change to the regulatory text at § 658.411(a)(4).

The Department made technical corrections to clarify in (d)(2)(i) that the complaint would be in regard to an "alleged" violation of the ES regulations and also that the appropriate

ES office Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt if all necessary information has been submitted to the ES office pursuant to paragraph (a)(4)). The Department corrected the cross-references and corresponding language in the regulatory text at paragraphs (d)(2)(ii), (d)(3)(ii), and (d)(4)(ii).

Section 658.411(e) – Resolution of Complaints

Comments: Suggesting the NPRM would disproportionately dismiss MSFW complaints, one commenter recommended the Department eliminate complaint resolution based on the complainant's failure to respond within 20 working days or 40 working days if the worker is a MSFW. Discussing the barriers MSFWs might face in promptly responding to requests for information, the commenter asserted that MSFWs generally have limited access to mail services, as mail delivered to labor camps may be distributed sporadically and is often screened by employers prior to delivery. Moreover, according to this commenter, a MSFW may move several times over the course of the season and often does not know what his or her physical address will be in the future. While stating that allowing for email correspondence is helpful, this commenter cautioned that few labor camps have internet access and workers often do not own cell phones or have an alternative means to access email. This commenter further suggested the Department either expand the deadline for complaint resolution to 1 year or, or in the alternative, allow a provision for MSFWs to reopen complaints within 1 year of being closed for failure to respond to a request for information. Reasoning that many MSFWs return to the same area each year for a particular crop, this commenter asserted that establishing a 1-year deadline would allow for the possibility that a worker would return to the same area and be able to respond to requests for information related to the complaint.

Department Response: The Department agrees that because MSFWs move so frequently, it can be difficult for them to receive mail. The Department seeks to ensure that complaints may be followed through to resolution without placing a burden on the complainant or the SWA. The Department has determined that allowing a MSFW to reopen a case after 1 year, as the commenter suggested, is appropriate. It is consistent with the provision in § 658.400(a) that allows a complainant to file a complaint with a 2-year limitations period. Such flexibility also ensures the Department is taking into account the unique needs of MSFWs and helping such individuals resolve complaints. The Department does not anticipate an increased burden on the SWA because the complaint would already be filed with the SWA. Even if the complaint was closed, the complainant could issue another complaint (regarding the same issue but opening it as a new complaint) because of the 2-year limitations period. It would not place an additional burden on the SWA because the SWA would not need to open a new complaint. Instead, it would reopen the original complaint and have access to much of the information needed to process the complaint. The Department added § 658.411(f) to give a complainant the opportunity to reopen a complaint up to 1 year after the SWA has closed the case.

Comments: One commenter urged the Department to require the reviewer to verify whether any lack of response from a MSFW is intentional (i.e., the MSFW actually received the request) before dismissing a complaint, such as by phone call, email, return mail receipt, or personal delivery by outreach workers.

Department Response: The Department has determined that requiring the reviewer to verify whether any lack of response from a MSFW is intentional would be too great a burden on the SWA and would be too subjective in nature to establish any continuity across the States. No change was made to the regulatory text in response to this comment.

Section 658.419 Apparent violations.

Comments: Regarding the proposed requirement to refer apparent violations of employment-related laws to ES office managers, one commenter recommended that if the apparent violation involves MSFWs, the SMA also should receive a copy of the documentation.

Department Response: The Department notes that data pertaining to apparent violations will be sent to SMAs as such information is required in the Labor Exchange Agricultural Reporting System (LEARS). No change was made to the regulatory text in response to this comment.

Comments: One commenter requested clarification as to whether the move of the Apparent Violations section from the MSFW section to the Complaint System section is an indication that it applies to all employment industries.

Department Response: The Department notes the Richey Order requires it to ensure that each State or ES office "refer every violation of State or Federal law of which it has knowledge to appropriate State or Federal enforcement officials, including officials or other agencies of DOL and of Federal agencies and departments other than DOL, and utilize to the maximum possible extent the full resources of the DOL monitor/advocate system in expediting such referrals." In this light, the Department takes it upon itself to ensure that any violation is appropriately referred while taking into account the procedures outlined at part 658, subpart E. Furthermore, the Department seeks to clarify that the Complaint System as stated at § 658.400(a) handles complaints against an employer about the specific job to which the applicant was referred through the ES, and complaints involving the failure to comply with the ES regulations under this part; the Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws. The Department interprets the mandates

of the Richey Order to apply to industries outside of farm work, however the Complaint System explicitly contemplates only what is described at part 658, subpart E.

Section 658.420 Responsibilities of the Employment and Training Administration regional office.

While the Department did not receive comments regarding § 658.420, it changed the language in paragraphs (b)(1) and (b)(2) to make it consistent with current civil rights provisions in WIOA sec. 188 and the implementing regulations at 29 CFR part 38. It also added an exception in paragraph (c) to complaints filed pursuant to paragraphs (b)(1) and (b)(2), and added the following sentence, "The RMA must follow-up monthly on all complaints filed by MSFWs including complaints under (b)(1) and (b)(2)." These changes are consistent with current practice and were added for clarity.

Section 658.421 Handling of Employment Service regulation-related complaints.

Comments: Suggesting the Department clarify the role of the Regional Administrator in the ES complaint process, one commenter recommended the Department revise § 658.421 such that complainants who allege a violation of the ES regulations may bring a complaint directly to the Regional Administrator, especially in situations where the administrative exhaustion procedures in § 658.421(a)(1) are likely to adversely affect workers.

Department Response: The Department has changed the language of § 658.421(a)(2) to clarify that this section allows for a complaint to be filed with the Regional Administrator and if the Regional Administrator determines that the nature and scope of a complaint described in paragraph (a) of this section is such that the time required to exhaust the administrative procedures at the SWA level would adversely affect a significant number of individuals, the RA must accept the complaint and take certain actions.

Section 658.422 Handling of employment-related law complaints by the Regional Administrator.

Comments: One commenter recommended the Department clarify in § 658.422 that complainants may submit employment-related law complaints directly to the Regional Administrator, commenting that the proposed text of this section did not clarify what office should take the complaints.

Department Response: The Department agrees the language in § 658.422 was not explicit in stating that employment-related law complaints could be filed directly with the Regional Administrator and that only the title alluded to such a process. The Department added paragraph (a) that makes this explicit in the regulatory text of this section. The remaining paragraphs have been renumbered accordingly. Paragraph (c) has also been changed to clarify that complaints received from non-MSFWs must be logged, just as complaints from MSFWs under paragraph (b).

3. Subpart F – Discontinuation of Services to Employers by the Employment Service

Comments: A few commenters requested general clarification regarding proposed part 658, subpart F. These commenters stated they were unclear as to the process and impact of these regulations.

Department Response: The Department will issue guidance on part 658, subpart F.

Section 658.501 Basis for discontinuation of services.

Comments: Relating to outreach workers' access to employer sites, one commenter noted proposed § 658.501(a)(7) continues the requirement for the SWA to initiate discontinuation of services to a grower who refuses to cooperate in the conduct of field checks pursuant to § 653.503. The commenter states this means an employer would not face a penalty for failing to

permit outreach workers access to MSFWs to perform outreach duties. As such, this commenter recommended the Department revise § 658.501(a)(7) to require State agencies initiate discontinuation of services to employers who interfere with the access rights of State agency or nonprofit organization outreach workers or fail to provide those workers with reasonable access to MSFWs.

Department Response: The Department notes § 658.501(a)(2) provides the basis for discontinuation of services if an employer submits a job order and refuses to provide assurances, in accordance with 20 CFR part 653, subpart F. The attachment to the ETA Form 790 includes a requirement whereby "the employer also assures that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107." The Department further notes that § 658.501(a)(3) states discontinuation of services will apply if the employer is found to have failed to comply fully with assurances made on job orders. The Department has determined that an employer who does not grant outreach workers reasonable access to MSFWs as required in the assurances attachment to the ETA Form 790 may be subject to discontinuation of services pursuant to part 658, subpart F. No changes have been made to the regulatory text in response to this comment. However, the Department seeks to clarify that the subject of granting outreach workers employed by nonprofit organizations access to MSFWs hired through the ES is beyond the scope of the Department.

Section 658.504 Reinstatement of services.

Comments: Noting that proposed subpart F did not include a minimum time during which services are to be discontinued, one commenter recommended the period of discontinuation of services should be no less than 2 years if an employer is found to have engaged in the misconduct set forth in § 658.501. Regarding the restitution provision at § 658.504(a)(2)(ii), this

commenter urged the Department to require services to be discontinued until the employer provides restitution to all workers who are harmed by the employer's conduct, rather than requiring restitution only to the complainant. The commenter asserted that requiring restitution to only the complainant would give an employer incentive to violate the terms of the job order.

Department Response: The Department disagrees with the commenter about the suggestion to impose a minimum time during which services must be discontinued. The Department disagrees because the time will vary for an employer to remedy the situation. Once an employer remedies the issue, employment services may resume (except where the employer has undergone the discontinuation of services pursuant to § 658.501(a)(8)). Regarding the suggestion for the Department to require the discontinuation of services continue until an employer provides restitution to all workers who were harmed by the employer's conduct, the Department proposes that such a determination must be made on a case-by-case basis by the appropriate enforcement agency. No changes have been made to the regulatory text in response to this comment.

4. Subpart G – Review and Assessment of State Workforce Agency Compliance with Employment Service Regulations

Comments: Expressing support for the flexibility and understanding of things outside of a State agency's control relative to performance outcomes, a few commenters recommended the Department extend this flexibility and understanding to local areas.

Department Response: The Department acknowledges these comments. As SWAs are the Department's grantees, the Department recommends commenters request any additional local flexibility (outside what is required in these regulations) through the SWA.

Section 658.601 State Workforce Agency responsibility.

Comments: Regarding the self-appraisal system for ES operations to determine success in reaching goals and correct deficiencies in performance, one commenter requested the Department take into account statistical adjustments regarding economic conditions and participant characteristics which may be a factor when identifying plan goals.

Department Response: The Department notes WIOA sec. 102 requires the State Plan include an analysis of the economic conditions in the State and WIOA sec. 116 requires the Department to take into account participant characteristics. Because such information is required under WIOA, the Department agrees with the commenter and will take statistical adjustments regarding economic conditions and participant characteristics into account. The Department received no other comments on subpart G, and made no changes to the regulatory text except for occasional non-substantive editorial changes, and changes from USES to "Employment Service System or ES System," to be consistent with the changes made in part 651.

VI. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Order (E.O.) 12866 directs agencies, in deciding whether and how to regulate, to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. E.O. 13563 is supplemental to and reaffirms E.O. 12866. It emphasizes the importance of quantifying current and future costs and benefits; directs that regulations be developed with public participation; and where relevant and feasible, directs that regulatory approaches be considered that reduce burdens, harmonize rules across agencies, and maintain flexibility and freedom of choice for the public. Costs and benefits should include both quantifiable measures and qualitative assessments of possible impacts that are difficult to

quantify. If regulation is necessary, agencies should select regulatory approaches that maximize net benefits. The Office of Management and Budget (OMB) determines whether a regulatory action is significant and, therefore, is subject to review.

Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any action that is likely to result in a rule that could:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The Final Rule is not a significant regulatory action under sec. 3(f) of E.O. 12866. The economic effects of the costs and transfers (i.e., monetary payments from one group to another that do not affect total resources available to society) that will result from the changes in this Final Rule are not economically significant because they are less than $100 million for the first year and all subsequent years after implementation of the rule.

Outline of the Analysis

Section V.A.1 describes the need for the DOL WIOA Final Rule, and section V.A.2 describes the alternatives that were considered in the DOL WIOA NPRM. Section V.A.3 summarizes the public comments received related to the NPRM, and provides the Department's

responses to the comments. Section V.A.4 describes the process used to estimate the costs of this rule and the general inputs used such as wages and number of affected entities. Section V.A.5 explains updates made to the assumptions and inputs used in the analysis of this Final Rule relative to the assumptions and inputs used in the analysis of the NPRM. Section V.A.5 also describes how these changes affected the costs and transfers of this Final Rule. Section V.A.6 describes how the provisions of this Final Rule will result in quantifiable costs and transfers and presents the calculations the Department used to estimate them. Finally, section V.A.7 summarizes the estimated first-year and 10-year total costs and transfers and describes the qualitative benefits of this Final Rule.

Summary of the Analysis

The Department provides the following summary of the Regulatory Impact Analysis:

(1) This Final Rule is not an "economically significant rule" under sec. 3(f)(4) of E.O. 12866.

(2) This Final Rule is not expected to have a significant cost impact on a substantial number of small entities.

(3) This Final Rule will not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995.

In total, the Department estimates that this Final Rule will generate costs and transfer payments. As shown in Exhibit 1, this Final Rule is estimated to have an average annual cost of $35.0 million and a total 10-year cost of $278.8 million (with 7-percent discounting). In addition, the Final Rule is estimated to result in annual transfer payments of $12.9 million and total 10-year transfer payments of $96.9 million (with 7-percent discounting).

Exhibit 1: Estimated Monetized Costs and Transfer Payments of the Final Rule (2015 dollars)		
	Total Costs ($ mil)	**Transfers ($ mil)**
Undiscounted 10-Year Total	$350.4	$128.9
10-Year Total with 3% Discounting	$314.9	$113.2
10-Year Total with 7% Discounting	$278.8	$96.9
10-Year Average	$35.0	$12.9
Annualized with 3% Discounting	$36.9	$13.3
Annualized with 7% Discounting	$39.7	$13.8

The largest contributor to the total cost of this Final Rule is the requirement related to the development and continuous improvement of the workforce development system, followed by the Local WDBs career pathways development and the colocation of ES services. See the cost subsection of section V.A.6 (Subject-by-Subject Analysis) below for a detailed explanation.

The Department was unable to quantify several important benefits to society due to data limitations and a lack of existing data or evaluation findings. We describe qualitatively the benefits related to required competition for all one-stop operators. In addition, based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies sponsored by the Department), the Department identified the following societal benefits: (1) training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, in combination with the Board membership provision requiring employer representation, is expected to improve the quality of the training and, ultimately, the number and caliber of job placements. The Department identified several channels through which these benefits might be achieved: (1) better information about training

providers enables workers to make more informed choices about programs to pursue; (2) sanctions on under-performing States serve as an incentive for both States and local entities to monitor performance more effectively and to intervene early; and (3) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities lead to the benefits discussed above.

In addition, the Final Rule will result in transfer payments. The Department estimates that this Final Rule will result in annual average transfer payments of $12.9 million and a total 10-year transfer payment of $96.9 million (with 7-percent discounting). These transfers result from increased funding for targeting out-of-school youth (OSY). See the transfer subsection of the section V.A.6 (Subject-by-Subject Analysis) below for a detailed explanation.

1. Need for Regulation

Public Law 113-128, the Workforce Innovation and Opportunity Act (WIOA), enacted on July 22, 2014, statutorily requires publication of implementing regulations, if required, no later than 180 days after the date of enactment. The Department has determined that implementing regulations are necessary for the WIOA program to be operated efficiently and effectively and that such regulations shall provide Congress and others with uniform information necessary to evaluate the outcomes of the new workforce law.

2. Alternatives in Light of the Required Publication of Regulations

OMB Circular A-4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives outside the scope of their current legal authority if such alternatives best satisfy the philosophy and principles of E.O. 12866. Although WIOA provides little regulatory discretion, the Department assessed, to the extent feasible, alternatives to the regulations.

In the NPRM, the Department considered significant alternatives to accomplish the stated objectives of WIOA, while also seeking to minimize any significant economic impact of the Final Rule on small entities. This analysis considered the extent to which WIOA's prescriptive language presented regulatory options that also will allow for achieving the Act's articulated program goals. The Department, in many instances, has reiterated the Act's language in the regulatory text, and has expanded some language to provide clarification and guidance to the regulated community. The additional regulatory guidance should result in more efficient administration of the program by reducing ambiguities and subsequent State and local revisions because of unclear statutory language.

In addition, the Departments considered the issuance of sub-regulatory guidance in lieu of additional regulations. This policy option has two primary benefits to the regulated community. First, sub-regulatory guidance will be issued following publication of the Final Rule, thereby allowing States and local areas additional time to adhere to additional guidance. Second, sub-regulatory guidance is more flexible, allowing for faster modifications and any subsequent issuances, as necessary.

The Department considered two possible alternatives in the NPRM:

(1) Implement the changes prescribed in WIOA, as noted in this Final Rule, thereby satisfying the statutory mandate; or

(2) Publish no regulations and rescind existing WIA final regulations, thereby ignoring the WIOA statutory requirement to publish implementing regulations, thus forcing the regulated community to follow statutory language for implementation and compliance purposes.

The Department considered these two options in accordance with the provisions of E.O. 12866 and chose to publish the WIOA Final Rule—that is, the first alternative. The Department

considered the second alternative—retaining existing WIA regulations as the guide for WIOA implementation—but concluded that the requirements have changed substantially enough that new implementing regulations are necessary for the public workforce system to achieve program compliance. The Department considered, but rejected, the third alternative—not to publish an implementing regulation and rescind existing WIA final regulations—because the WIOA legislative language, inherently, does not provide sufficient detailed guidance to implement WIOA effectively; regulations are necessary to achieve program compliance.

In addition to the regulatory alternatives noted above, the Department also considered phasing in certain elements of WIOA over time (different compliance dates), thereby allowing States and localities more time for planning and successful implementation. As a policy option, this alternative appears appealing in a broad theoretical sense and, where feasible (e.g., Wagner-Peyser Act colocation of services), the Department has recognized and made allowances for different implementation schedules. Upon further consideration and to begin to achieve the intended legislative benefits of WIOA, however, additional implementation delays beyond those noted in this Final Rule could outweigh the benefits of alternative starting dates. Specifically, because many critical WIOA elements depend on the implementation of other provisions (e.g., technology and performance reporting are intrinsically related), discussions indicated that the alternative of delaying additional aspects was operationally infeasible.

Furthermore, in assessing alternatives (e.g., different requirements for different-sized firms) the data necessary to review this option fully will not exist until Local WDBs conduct procurements and announce awards. Similarly, performance standards will be negotiated at a future time and will be based on a variety of factors, including State and local economic conditions, resources, and priorities. Establishing standards in advance of this statutorily defined

process might not be efficient or effective. The enforcement methods described in the Final Rule reflect prescribed WIOA requirements, and entity size, in and of itself, should not create alternative methods for compliance or different periods for achieving compliance. The Department has not determined sufficiently valid reasons for altering compliance timeframes beyond those described in the Final Rule for small entities.

The Department's impact analysis has concluded that, by virtue of WIOA's prescriptive language, particularly the requirement to publish implementing regulations within 180 days, no available regulatory alternatives other than those discussed above are viable.

3. General Comments Received on the Economic Analysis in the Notice of Proposed Rulemaking

The Department received several public comment submissions that addressed the economic analysis in the NPRM. The Department considered the comments received. The significant comments and summaries of the Department's analyses and determinations are discussed below.

a. A Status Quo Alternative in the Cost-Benefit Analysis

In the NPRM, after considering two possible alternatives: (1) implement the changes prescribed in WIOA, or (2) not publish regulation and rescind existing WIA final regulations, the Department chose the first alternative.

Comments: Several commenters stated that the Department is required to present alternatives to the rule and explain why those alternatives were not selected instead of the approach chosen for the rule. The commenters suggested that the Department should choose the long-standing status quo as an alternative, which would maintain the current system. The

commenters stated that the current system has worked for more than 40 years and would avoid problems that the rule would create.

Department Response: The economic analysis involves assessing one or more regulatory alternatives against the status quo. OMB's Circular A-4 provides guidance to agencies for conducting a cost-benefit analysis and explains that each agency should consider alternative regulatory approaches and properly evaluate the costs and benefits of regulations and their alternatives.[1] An agency, however, is not required to consider the status quo as a regulatory alternative. As is frequently the case, for this rule, the status quo is the same as the baseline, which is the situation likely to occur in the absence of regulation.

b. Contextualizing Workforce Innovation and Opportunity Act Costs

In the NPRM, to contextualize the cost of the proposed rule, the Department expressed the annual cost of the NPRM as being between 1.1 and 1.2 percent of the average annual cost of WIA over fiscal year (FY) 2012 through FY 2014 (using 3-percent and 7-percent discounting, respectively). The average annual budget for WIA implementation from FY 2012 through FY 2014 for the Department was $2.8 billion.

Comments: One commenter objected to the NPRM's discussion of the incremental burden of WIOA as a proportion of the Department's annual $2.8 billion WIA budget. Another commenter stated that contextualizing WIOA costs in terms of the WIA budget does not reflect the complexities of implementing WIOA. These commenters suggested that comparing the incremental WIOA burden against the administrative funds available to States would be more accurate because these would be the funding source for most of the new requirements.

In addition, one commenter stated that the Department did not provide its source of the average annual WIA budget estimate. The commenter cited DOL's Training and Employment

[1] OMB (2003) Circular A-4 Retrieved from:. https://www.whitehouse.gov/omb/circulars_a004_a-4/ .

Services budget as a proxy, which showed that the Department's funding decreased 1.8 percent from FY 2014 to FY 2015. This percentage is greater than the 1.1 to 1.2 percent of the estimated WIOA implementation costs presented in the NPRM.

Department Response: In this Final Rule, the Department presents the incremental burden of WIOA both as a proportion of the average annual budget for WIA implementation of $3.5 billion and as a proportion of the administration and transition funds that might be used for WIOA implementation.[2] The source of the average annual budget for WIA implementation is the Employment and Training Administration (ETA) budget Web sites.[3] The Department summed the WIA funding for the adult, dislocated worker, youth, and ES programs for each fiscal year from 2012 to 2014 and then averaged the sum over the 3-year period. For the adult and dislocated worker programs, each fiscal year's funding is calculated as the sum of the program year's July funding and the previous program year's October funding. The youth program's and ES program's funding are obligated to States in April and July, respectively, and therefore corresponds to the fiscal year in which it is obligated.

c. Workforce Investment Act Costs

[2] This value increased from $2.8 billion in the NPRM to $3.5 billion in the Final Rule because the Department added WIA funding for the Wagner-Peyser Act ES program from FY 2012 to FY 2014 and the funding was inflated to 2015 dollars. The Department calculated the inflation factor using data from Table 24. "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items."

[3] U.S. Department of Labor, Employment and Training Administration. (2015). Archive of State Statutory Formula Funding. Retrieved from: https://www.doleta.gov/budget/py01_py09_arra_archive.cfm. The Department used data from the following files to estimate the average annual WIA budget: WIA Adult Activities Program (Program Years [PYs] 2011, 2012, 2013, and 2014); WIA Dislocated Worker Activities Program (PYs 2011, 2012, 2013, and 2014); and WIA Youth Activities (PYs 2012, 2013, and 2014). The youth activities funding is obligated to States in April and therefore corresponds to the fiscal year in which it is obligated. The Department inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.
U.S. Department of Labor, Employment and Training Administration. (2015) State Statutory Formula Funding. Retrieved from: https://www.doleta.gov/budget/statfund.cfm. The Department also used data from the following files to estimate the average annual WIA budget: Employment Services Program Dollar Tables (PYs 2012, 2013, and 2014). The youth activities funding is obligated to States in April and therefore corresponds to the fiscal year in which it is obligated. The Department inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

Comments: One commenter suggested that the Department should have conducted a cost-benefit analysis for both WIA and WIOA. The commenter also indicated that any estimates from the original WIA regulations are outdated.

Department Response: The Department estimated incremental costs of WIOA from WIA as the baseline. Although we did not quantify the WIA baseline, to the extent possible, we considered the WIA baseline when estimating the incremental burden. In addition, this analysis includes no cost-benefit estimates associated with the WIA regulations.

d. Wage Rate Assumptions

To estimate the cost of the requirements in the NPRM, the Department multiplied the amount of time required to perform an activity by workers' hourly mean wage rates for their occupational categories and the loaded wage factors to reflect total compensation, which includes non-wage factors such as health care and retirement benefits.

Comments: One commenter asked the Department to provide the sources of the estimated wage rates and the loaded wage factors.

Department Response: In the NPRM, the Department used the 2013 Bureau of Labor Statistics (BLS) wage rates for State government employees, including hospitals and schools, for State and local employees based on the general occupational category of the workers who would perform the proposed activities. The loaded wage factor is based on the employer cost for employee compensation data contained in the BLS Employment Cost Index.

For the Final Rule, please refer to section V.A.4 (Analysis Considerations) for a description of the sources of the occupational categories and the loaded wage factor.

e. Burden Estimation Process

Comments: One commenter asked the Department to clarify the process and assumptions used to develop the labor burden estimates for the rule requirements.

Department Response: To develop the labor burden estimates of the rule, the Department considered how much effort would be required for each activity needed to meet the requirements relative to the baseline (i.e., the current practice under WIA). We consulted with ETA program experts to obtain estimates. Please refer to section V.A.4 (Analysis Considerations) for a description of how the Department estimated the burden for this Final Rule.

f. Underestimated Costs

In the NPRM, the Department estimated that the rule would result in an undiscounted total 10-year cost of $384.4 million.

Comments: A few commenters stated that costs for many requirements were significantly underestimated in the NPRM by the Department. They also pointed out that the only costs quantified in the NPRM were new implementation costs and ongoing costs of required activities carried over from WIA were not considered in the NPRM.

Department Response: The commenters did not provide any cost data to substantiate their assertion that the Department significantly underestimated the costs of the requirements in the NPRM. The Department accurately estimated the compliance costs to affected entities to the extent possible based on best available information and program experience. We acknowledge, however, that our cost estimates are subject to potential uncertainty in, and variability of, the data and assumptions used in the analysis. Nevertheless, these cost estimates represent the Department's expert judgment regarding the additional labor and capital costs associated with the new requirements. Although we did not quantify the WIA baseline, we considered the WIA

baseline to the extent possible when estimating the incremental burden associated with implementing this WIOA-required Final Rule by the requirements of Executive Order 13563, Executive Order 12866, and OMB Circular A-4. This analysis includes no cost-benefit estimates associated with the WIA regulations.

g. Data Reporting Requirements

In the NPRM, the Department requested public comments on the challenges and benefits of requiring additional data elements in quarterly wage reports, including: (1) program participants' social security numbers; (2) the wages program participants earn after exiting the program; and (3) the names, addresses, States, and (when known) the Employer Identification Numbers of the employers paying those wages.

Comments: One commenter estimated that the initial and ongoing costs of modifying its reporting system to accommodate a new data element on employer wage reports would be approximately $2 million and that this estimate does not account for other costs associated with reporting additional information. The commenter stated that costs associated with audits and delinquent reporting reviews would increase if additional elements were added to wage reporting.

Several commenters stated that WIOA's data collection requirements would require a large effort to track, record, validate, and report; the commenters also found some of the data to be questionable. The commenters stated that these proposed requirements would cause hardship for small States with limited funding.

Department Response: The Department's program experts estimated the costs of data reporting requirements under WIOA based on their program experience and consultations with State and local programs. The costs of modifying the reporting system will vary by size of the

program; therefore, the Department used average cost estimates in the analysis. The Department did not quantify benefits of the data reporting requirements related to improved performance reporting and program evaluation.

h. Mandatory Employment and Services

Comments: One commenter questioned whether any analysis was available that estimated the projected cost of mandated employment and services to youth and students with disabilities.

Department Response: The Department is unaware of any cost analysis of mandated employment and services to youth and students with disabilities in the United States. The Department does not mandate supported employment in this DOL WIOA Final Rule.

i. Migrant and Seasonal Farmworker Housing – Estimated Impact on Employers

In the NPRM, the Department estimated that most of the approximately 6,400 U.S. employers who hire foreign workers under the H-2A program and who already provide housing would not be affected by the NPRM because Occupational Safety and Health Administration (OSHA) housing standards apply more frequently than the ETA standards for housing investigations. Specifically, the Department estimated that every region, except the Northeast and Pacific Northwest, has agricultural housing that predominantly falls under the OSHA standards. Compliance, however, varies by State. For example, housing inspections in Colorado and Wyoming largely fall under ETA standards.

Comments: Four commenters rejected the argument that most employers who hire foreign workers under the H-2A program would not be affected. For example, commenters cited that 65 to 75 percent of housing units in Virginia follow ETA standards with southern States having similar rates. These commenters objected to the Department's method for estimating the total number of employers affected by the housing provision. They suggested that, instead of

basing its analysis on approximations and assumptions due to a lack of housing data, the Department should ask State Workforce Agencies, which inspect housing H-2A workers use and operate on behalf of DOL to report data on the number of housing units inspected. Alternatively, the Department should contact agricultural employers for cost estimates. Several commenters provided estimates.

Department Response: The Department agrees that some State Workforce Agencies may be able to provide the number of housing units subject to OSHA or ETA standards. In the Final Rule, however, the Department is rescinding the proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards. Therefore, estimating the number of affected employers is no longer necessary for this rule.

j. Migrant and Seasonal Farmworker Housing – Cost Estimates

In the NPRM, the Department did not quantify the costs associated with the provision related to Migrant and Seasonal Farmworker (MSFW) housing. The Department asked the public to provide comments on: (1) the number of housing units farmworkers use, (2) the percentage of housing units that currently fall under the ETA standards, and (3) the cost to change from ETA to OSHA standards.

Comments: Several commenters objected that the cost of provision (w) "Migrant and Seasonal Farmworker (MSFW) Housing" was not quantified.

Department Response: In the Final Rule, the Department is rescinding its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards. Therefore, farmers will experience no additional costs because of this rule.

k. Migrant and Seasonal Farmworker Housing – Benefits

Department Response: In the Final Rule, the Department is rescinding its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards. Therefore, neither farmers nor farmworkers will experience benefits related to this provision because of this rule.

l. Initial Regulatory Flexibility Analysis

Comments: Numerous commenters suggested that the Department failed to comply with the requirements of the Regulatory Flexibility Act by not preparing an Initial Regulatory Flexibility Analysis (IRFA) and making the IRFA available for public comment. The commenters stated that the IRFA must describe the impact of the proposed rule on small entities and present alternatives to the proposed rule that would minimize the impact while accomplishing the stated objectives of the applicable statutes. In doing so, the IRFA must meet certain guidelines regarding why the action is being taken, the estimate of small entities to which the proposed rule would apply, and the discussion of alternatives.

Department Response: The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities because they already receive financial assistance under the WIA program and likely will continue to do so under the WIOA program. The Department expects that WIOA will have no cost impact on small entities and, therefore, preparing an IRFA was unnecessary. See section V.B (Regulatory Flexibility Act) below for more details.

m. Impact on Small Businesses

Comments: One commenter found that concluding the NPRM would have no cost impact on small entities was unreasonable. The commenter stated that the analysis did not show how

transfer payments would fully finance the incremental costs of WIOA. In addition, the analysis did not quantify the existing costs or identify sources or mechanisms to pay for the new costs. The commenter also stated that in addition to affecting one-stop center operators, the regulation would affect small entities such as small training providers and service providers.

Department Response: The Department considered small training providers and service providers as small entities in the Regulatory Flexibility Analysis. We indicated that transfer payments are a significant aspect of this analysis in that most WIOA cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. The Department expects that this Final Rule will have no net cost for small entities.

4. Analysis Considerations

The Department estimated the additional costs and transfers associated with implementing this WIOA-required Final Rule from the existing program baseline, that is the current practices complying with, at a minimum, the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000).

The Department explains how the required actions of States, Local WDBs, employers and training entities, government agencies, and other related entities were linked to the expected costs, benefits, and transfers. We also consider, where appropriate, the unintended consequences introduced by this Final Rule. The Department has made every effort, where feasible, to quantify and monetize the costs, benefits, and transfers of this Final Rule. We are unable to quantify benefits associated with the Final Rule because of data limitations and a lack of operational data or evaluation findings on the provisions of the Final Rule or WIOA in general. Therefore, we describe some benefits qualitatively.

The Department has made every effort to quantify all incremental costs associated with the implementation of WIOA as distinct from those that already exist under WIA, WIOA's predecessor statute. Despite our best efforts, however, we might be double counting some activities that occur under WIA. Thus, the costs itemized below represent an upper bound for the potential burden of implementing WIOA.

In addition to this Final Rule, DOL and ED are publishing a Joint Final Rule to implement specific requirements of WIOA that fall under both Departments' purviews (Joint WIOA Final Rule). The Department acknowledges that these final rules and their associated impacts might not be fully independent from one another, but we are unaware of a reliable method to quantify this interdependence. Therefore, this analysis does not capture the correlated impacts of the costs, benefits, and transfers of this Final Rule and those associated with the Joint WIOA Final Rule.

In accordance with the regulatory analysis guidance articulated in Circular A-4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (i.e., costs, benefits, and transfers that accrue to citizens and residents of the United States) of this WIOA-required Final Rule. The analysis covers 10 years (2016 through 2025) to ensure it captures major additional costs and transfers that accrue over time. The Department expresses all quantifiable impacts in 2015 dollars and uses 3-percent and 7-percent discounting following Circular A-4.

Exhibit 2 presents the number of entities expected to experience a change in level of effort (workload) due to the requirements included in this Final Rule. The Department provides these estimates and uses them extensively throughout this analysis to estimate the cost of each provision.

Exhibit 2: Number of Affected Entities by Type	
Entity Type	**Number of Entities**
States impacted by DOL program requirements[4]	57 [5]
States without colocated Wagner-Peyer offices and one-stop delivery systems (one-stops)	10 [6]
States without sector strategies	21 [7]
States without policies for career pathways	27 [8]
States that must pay their share for proportionate use of one-stops	54 [9]
States that receive sanctions	5 [10]
Local areas without colocated ES offices and one-stops	100 [11]
Local WDBs	580 [12]
Local WDBs newly selecting one-stop operators	250 [13]**Error! Bookmark not efined.**
Local WDBs performing regional plan modifications	300 [14]**Error! Bookmark not efined.**
Eligible Training Providers (ETPs)	11,400 [15]

Estimated Number of Workers and Level of Effort

The Department presents the estimated average number of workers and the estimated average level of effort required per worker for each activity in the subject-by-subject analysis.

[4] For simplicity, the Department's use of the term "States" in this RIA refers to the 50 States; the District of Columbia; the U.S. territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands; and the Republic of Palau, a country in free association with the United States.
[5] Based on internal Department of Labor data.
[6] Department of Labor estimate.
[7] Ibid.
[8] U.S. Department of Education, U.S. Department of Labor, and U.S. Department of Health and Human Services. (2014). *Viewing Party Guide*. National Dialogue on Career Pathways Retrieved from: https://learnwork.workforce3one.org/view/2001425433998607383/info.
[9] Department of Labor estimate.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] Ibid.

To derive these estimates, ETA program experts consulted with State programs to estimate the average levels of effort and the average number of workers needed for each activity to meet the requirements relative to the baseline (i.e., the current practice under WIA). These estimates are the national averages for all States; thus, some States could experience higher actual costs, while actual costs could be lower for other States.

Compensation Rates

In the subject-by-subject analysis, the Department presents the additional labor and other costs associated with the implementation of each provision in this Final Rule. Exhibit 3 presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the Final Rule. We use the BLS mean hourly wage rate for State and local employees.[16,17] We adjust the wage rates using a loaded wage factor to reflect total compensation, which includes non-wage factors such as health and retirement benefits.[18] For the State and local sectors, we use a loaded wage factor of 1.57, which represents the ratio of

[16] Bureau of Labor Statistics. (2016). *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999200 – State government, excluding schools and hospitals (OES designation)*. Retrieved from: http://www.bls.gov/oes/current/naics4_999200.htm.

[17] Bureau of Labor Statistics. (2016). *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999300 – Local government, excluding schools and hospitals (OES designation)*. Retrieved from: http://www.bls.gov/oes/current/naics4_999300.htm.

[18] The Department believes that the overhead costs associated with this Final Rule are small because the additional activities required by the Final Rule will be performed by existing employees whose overhead costs are already covered. However, acknowledging that there might be additional overhead costs, as a sensitivity analysis of results, we calculated the impact of more significant overhead costs by including an overhead rate of 17 percent. This rate has been used by the Environmental Protection Agency (EPA) in its final rules (see, for example, EPA Electronic Reporting under the Toxic Substances Control Act Final Rule, Supporting & Related Material), and is based upon a Chemical Manufacturers Association study. An overhead rate from chemical manufacturing may not be appropriate for all industries, so there may be substantial uncertainty concerning the estimates based on this illustrative example. (In contrast, DOL's Employee Benefits Security Administration (EBSA) includes overhead costs that are substantially higher and more variable across employee types than EPA's—between 39 and 138 percent of base wages for compensation and benefits managers, lawyers, paralegals and other legal assistants, and computer systems analysts—as presented in detail at www.dol.gov/ebsa/pdf/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-march-2016.pdf.) Using an overhead rate of 17 percent would increase the total cost of the Final Rule by 17 percent, from $89.9 million in Year 1 to $105.1 million. Over the 10-year period, using an overhead rate of 17 percent would increase the total undiscounted cost of the Final Rule from $350.4 million to $409.9 million, or 17 percent.

average total compensation[19] to average wages in 2015.[20,21] We then multiply the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate.

The Department uses the hourly compensation rates presented in Exhibit 3 throughout this analysis to estimate the labor costs for each provision.

Exhibit 3: Compensation Rates (2015 dollars)

Position	Average Hourly Wage Rate	Loaded Wage Factor	Hourly Compensation Rate
	a	b	c = a × b
Local Employees			
Computer systems analysts	$38.70	1.57	$60.76
Database administrators	$37.96		$59.60
Lawyers	$47.63		$74.78
Management analysts	$38.60		$60.60
Management occupations staff	$40.53		$63.63
Secretaries and administrative assistants	$18.66		$29.30
Social workers	$25.77		$40.46
State Employees			
Chief executive	$54.26	1.57	$85.19
Computer systems analysts	$35.78		$56.17
Database administrators	$36.32		$57.02
Lawyers	$41.71		$65.48
Management analysts	$29.22		$45.88

[19] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation*. Retrieved from: http://www.bls.gov/schedule/archives/ecec_nr.htm. The Department calculated this value using data from Table 3. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group." Total compensation for all workers. To calculate the average total compensation in 2015 of $44.53, the Department averaged the total compensation for all workers provided in March, June, September, and December releases.

[20] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation*. Retrieved from: http://www.bls.gov/schedule/archives/ecec_nr.htm.
The Department calculated this value using data from Table 3. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group." Wages and salaries for all workers. To calculate the average wage and salary in 2015 of $28.41, the Department averaged the wage and salaries for all workers provided in March, June, September, and December releases.

[21] The State and local loaded wage factor was applied to all non-Federal employees. Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the Department used the State and local-sector loaded wage factor (1.57) instead of the private-sector wage factor (1.44) for all non-Federal employees to avoid underestimating the costs.

Exhibit 3: Compensation Rates (2015 dollars)			
Position	**Average Hourly Wage Rate**	**Loaded Wage Factor**	**Hourly Compensation Rate**
Management occupations staff	$41.65		$65.39
Secretaries and administrative assistants	$17.30		$27.16
Social and community service managers	$34.53		$54.21
Social workers	$22.43		$35.22

At a minimum, all affected entities are currently required to comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000); however, some affected entities might already comply with some provisions of the Final Rule. This analysis estimates the incremental costs and transfers that affected entities that are not yet compliant with the Final Rule will incur. The equation below shows the method the Department uses to calculate the incremental total cost for each provision over the 10-year analysis period. The methodology used in estimating the quantifiable transfers is provided in the subject-by-subject analysis.

$$\text{Total Cost} = \sum_{T=1}^{10}\left(A_l \sum_{i=1}^{n}(\mathrm{N_i} \times \mathrm{H_i} \times \mathrm{W}_i \times \mathrm{L}_i) + \sum_{j=1}^{m}\mathrm{A_j} \times \mathrm{C_j}\right)$$

Where, A_l Number of affected entities that will incur labor costs,

N_i Number of staff of occupational category *i*,

H_i Hours required per staff of occupational category *i*,

W_i Mean hourly wage rate of staff of occupational category *i*,

L_i Loaded wage factor of staff of occupational category *i*,

A_j Number of affected entities incurring non-labor costs of type *j*,

C_j Non-labor cost of type *j*,

i Occupational category,

n Number of occupational categories,

j Non-labor cost type,

m Number of non-labor cost types, and

T Year.

The total cost of each provision is calculated as the sum of the total labor cost and total non-labor cost incurred each year over the 10-year period (see Exhibit 28 for the average annual cost of the Final Rule by provision). The total labor cost is the sum of the labor costs for each occupational category *i* (e.g., computer systems analyst, database administrators, and lawyers) multiplied by the number of affected entities that will incur labor costs, A_l. The labor cost for each occupational category *i* is calculated by multiplying the number of staff required to perform the required activity, N_i; the hours required per staff member to perform the required activity, H_i; the mean hourly wage rate of staff of occupational category *i*, W_i; and the loaded wage factor of staff of occupational category *i*, L_i. The total non-labor cost is the sum of the non-labor costs for each non-labor cost type *j* (e.g., consulting costs) multiplied by the number of affected entities that will incur non-labor costs, A_j.

Transfer Payments

In addition, the Department provides an assessment of transfer payments associated with transitioning the Nation's public workforce system from the requirements of WIA to the new requirements of WIOA. In accordance with Circular A-4, we consider transfer payments as payments from one group to another that do not affect total resources available to society.

One example of transfer payments results from the expectation that available U.S. workers trained and hired who were previously unemployed will no longer seek new or continued unemployment insurance benefits. Assuming other factors remain constant, the Department expects State unemployment insurance expenditures to decline because of the hiring

of U.S. workers following WIOA implementation. We, however, cannot quantify all transfer payments due to a lack of adequate data.

5. Updates to the Cost-Benefit Analysis for the Final Rule

In total, the Department estimates that this Final Rule will generate costs over a 10-year period. The Final Rule is estimated to result in 10-year undiscounted costs of $350.4 million (in 2015 dollars). In the NPRM, the Department estimated that the proposed rule would result in $384.4 million in undiscounted costs (in 2013 dollars). The Final Rule also quantifies transfer payments of $128.9 million (in 2015 dollars). As discussed below, after reviewing public comments and with further consultation with program experts in the DOL program areas, we updated the cost and transfer analyses and made changes to specific provisions in the NPRM that affected costs and transfers. While the updates made to each provision (i.e., changes from the NPRM estimates) are discussed under the relevant headings below, a detailed description of each cost provision remains in section V.A.6 (Subject-by-Subject Analysis).

General Updates

In the Final Rule economic analysis, the Department updates all costs and transfers to 2015 dollars from 2013 dollars in the NPRM. This update increases the estimated costs and transfers of the Final Rule relative to the costs presented in the NPRM.

In addition, the Department has made several updates to labor costs. First, we use more specific occupational categories than those used in the NPRM (i.e., administrative staff, WDB members, counsel staff, local stakeholders, managers, and technical staff). In the Final Rule, the occupational categories include chief executives, computer systems analysts, database administrators, lawyers, management analysts, management occupations staff, secretaries and administrative assistants, social and community service managers, and social workers. Due to

the numerous changes made in the analysis, which are described in detail below, these occupational categories add more specificity to the labor costs, but determining whether they had a positive or negative effect on costs or transfers was not possible.

Second, the Department has updated labor costs, including wage rates and loaded wage factors, to reflect 2015 BLS data. Furthermore, instead of using State government employee wage rates for workers at both the State level and local level as in the NPRM, we applied wage rates for State government employees and local government employees to workers at the State and local levels, respectively. Depending on the occupational category, the State-level wage rate could be higher or lower than the corresponding local-level wage rate; thus, determining whether this had a positive or negative effect on costs was not possible.

Third, based on further discussions with program experts, the Department has increased the overall number of States from 56 to 57 in the Final Rule because we concluded that the WIOA requirements also will affect the Republic of Palau.

New State WDB Membership Requirements

This section describes the updates to the NPRM's provision (a) "New State Workforce Development Board Membership Requirements." In this Final Rule's subject-by-subject analysis, costs related to this provision are found in provision (a) "New State WDB Membership Requirements." The cost of this provision reflects the cost for States to establish State WDBs in accordance with the membership requirements. The total undiscounted 10-year cost of this provision decreased from $313,000 in the NPRM to $272,000 in the Final Rule.[22]

At the State level for the DOL programs, the Department made the changes presented in Exhibit 4. We replaced the manager with the more precise occupational categories of chief executives and management occupations staff. We assumed that 25 percent of the effort would

[22] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

be the responsibility of a chief executive and 75 percent of a management occupations staff member. We also replaced the technical staff with the more precise occupational category of management analyst.

Exhibit 4: Updates to Costs of State-Level DOL Programs – New State WDB Membership Requirements									
NPRM					Final Rule				
(a) New State Workforce Development Board Membership Requirements					(a) New State WDB Membership Requirements				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	1	20	One time	56 States	Chief executive	1	5	One time	57 States
Counsel staff	1	15	One time	56 States	Management occupations staff	1	15	One time	57 States
Technical staff	2	20	One time	56 States	Lawyer	1	15	One time	57 States
Admin. staff	1	20	One time	56 States	Management analyst	2	20	One time	57 States
					Secretary or admin. assistant	1	20	One time	57 States

Development and Continuous Improvement of the Workforce Development System

This section describes the updates to the NPRM's provision (b) "Development and Continuous Improvement of the Workforce Development System." In the Final Rule's subject-by-subject analysis, this cost provision and provision (f) "Identification of Regions," have been combined in the Final Rule to form provision (b) "Development and Continuous Improvement of the Workforce Development System." This provision of the Final Rule estimates the cost for State WDBs to assist State Governors in: (1) the development and continuous improvement of the State's workforce development systems, and (2) the identification of regions, including

planning regions, and the designation of local areas, after consultation with Local WDBs and chief elected officials (CEOs). The cost estimate for the first item was initially included in provision (b) of the NPRM along with a portion of the second item.[23] For these items, the total undiscounted 10-year cost decreased from $92.1 million in the NPRM to $65.5 million in the Final Rule.[24]

Exhibit 5 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

Exhibit 5: Updates to Costs of State-Level DOL Programs – Development and Continuous Improvement of the Workforce Development System									
NPRM					**Final Rule**				
(b) Development and Continuous Improvement of the Workforce Development System					**(b) Development and Continuous Improvement of the Workforce Development System**				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Sector Strategies					***Sector Strategies***				
Manager	1	300	Annual	21 States	Management occupations staff	1	300	Annual	21 States w/o extensive and systematic sector strategies
Technical staff	2	1,260	Annual	21 States	Management analyst	2	1,260	Annual	21 States w/o extensive and systematic sector strategies
Career Pathways					***Career Pathways***				
Manager	1	300	Annual	27 States	Management occupations	1	300	Annual	27 States w/o policies for

[23] See provision (f) "Identification of Regions" below for revised cost estimates related to the second item, identifying regions and designating local areas.
[24] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

Exhibit 5: Updates to Costs of State-Level DOL Programs – Development and Continuous Improvement of the Workforce Development System									
NPRM					**Final Rule**				
(b) Development and Continuous Improvement of the Workforce Development System					**(b) Development and Continuous Improvement of the Workforce Development System**				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
					staff				career pathways
Technical staff	2	1,260	Annual	27 States	Management analyst	2	1,260	Annual	27 States w/o policies for career pathways
Identify Regions					***Identify Regions***				
Manager	1	40	One time	56 States	Management occupations staff	1	40	One time	57 States
Counsel staff	1	40	One time	56 States	Lawyer	1	40	One time	57 States
Technical staff	1	80	One time	56 States	Management analyst	1	80	One time	57 States
Admin. staff	1	20	One time	56 States	Secretary or admin. assistant	1	20	One time	57 States

Development of Statewide Policies Affecting the State's One-Stop Delivery System

This section describes the updates to the NPRM's provision (c) "Development of Statewide Policies Affecting the State's One-Stop System." In the Final Rule, costs related to this provision, found in (d) "Development of Statewide Policies Affecting the State's One-Stop System," reflect the efforts of State WDBs to help Governors develop and review statewide policies affecting the coordinated provision of services through the States' one-stop delivery systems. The total undiscounted 10-year cost of this provision increased from $1.2 million in the NPRM to $1.4 million in the Final Rule.

Exhibit 6 presents the updates to the State-level DOL program. The Department replaced the managers in our previous estimate with the more precise occupational categories of management occupations staff and social and community service managers. After consulting with program experts, we increased the level of effort for managerial staff from 40 hours to 60 hours to account for the effort related to developing policies governing service delivery to job seekers under WIOA. We estimated that 30 percent of the effort (18 hours) would be for a management occupations staff member and 75 percent (42 hours) for a social and community service manager. We also increased the level of effort for lawyers from 40 hours to 60 hours. In addition, we increased the number of technical staff from two to three and replaced them with the more precise occupational category of management analyst.

Exhibit 6: Updates to Costs of State-Level DOL Programs – Development of Statewide Policies Affecting the State's One-Stop Delivery System

NPRM					Final Rule				
(c) Development of Statewide Policies Affecting the State's One-Stop System					(d) Development of Statewide Policies Affecting the State's One-Stop Delivery System				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	1	40	One time	56 States	Management occupations staff	1	18	One time	57 States
Counsel staff	1	40	One time	56 States	Social & community service manager	1	42	One time	57 States
Technical staff	2	120	One time	56 States	Lawyer	1	60	One time	57 States
					Management analyst	3	120	One time	57 States

Development of Strategies for Technological Improvements

This section describes the updates to the NPRM's provision (d) "Development of Strategies for Technological Improvements." In the Final Rule, costs related to this provision can be found in provision (e) "Development of Strategies for Technological Improvements." The cost of this provision reflects the efforts of State WDBs to help Governors develop strategies for technological improvements to facilitate access to and improve the quality of services and activities provided through the one-stop delivery system. The total undiscounted 10-year cost of this provision decreased from $2.3 million in the NPRM to $2.0 million in the Final Rule.[25]

Exhibit 7 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of computer systems analyst.

Exhibit 7: Updates to Costs of State-Level DOL Programs – Development of Strategies for Technological Improvements									
NPRM					**Final Rule**				
(d) Development of Strategies for Technological Improvements					**(e) Development of Strategies for Technological Improvements**				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	1	20	Annual	56 States	Management occupations staff	1	20	Annual	57 States
Technical staff	1	40	Annual	56 States	Computer systems analysts	1	40	Annual	57 States

State Plan Modification

This section describes the updates to the NPRM's provision (e) "State Plan Modification." After careful consideration, the Department has decided that incremental costs related to State Plan modifications are captured in the costs for Unified and Combined State Plan biennial modifications in the Joint WIOA Final Rule. See provision (b) "Unified or Combined

[25] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

State Plans: Expanded Content, Biennial Modification, and Submission Coordination Requirements" of the Joint WIOA Final Rule economic analysis. Therefore, the total undiscounted 10-year cost of this provision of $135,000 in the NPRM was removed in the Final Rule. Exhibit 8 presents the updates to the State-level DOL program.

Exhibit 8: Updates to Costs of State-Level DOL Programs – State Plan Modification									
NPRM					Final Rule				
(e) State Plan Modification					Moved to Joint DOL-ED Final Rule				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	1	10	4th year	56 States	N/A See Joint WIOA Final Rule				
Counsel staff	1	4	4th year	56 States					
Technical staff	2	10	4th year	56 States					
Admin. staff	1	4	4th year	56 States					

Identification of Regions

This section describes the updates to the NPRM's provision (f) "Identification of Regions." This provision and provision (b) "Development and Continuous Improvement of the Workforce Development System," have been combined in the Final Rule to form provision (b) "Development and Continuous Improvement of the Workforce Development System." It reflects the efforts of State WDBs to assist the Governor in: (1) developing and continuously improving the State's workforce development system, and (2) identifying regions, including planning regions, and designating local areas, after consultation with Local WDBs and CEOs. A cost estimate for the second item only was initially included in provision (f) of the NPRM. The total

undiscounted 10-year cost of this provision decreased from $1.1 million in the NPRM to $968,000 in the Final Rule.[26]

Exhibit 9 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

Exhibit 9: Updates to Costs of State-Level DOL Programs – Identification of Regions									
NPRM					Final Rule				
(f) Identification of Regions					(b) Development and Continuous Improvement of the Workforce Development System				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	2	40	2nd & 6th years	56 States	***Identification of Regions***				
Counsel staff	1	10	2nd & 6th years	56 States	Management occupations staff	2	40	2nd & 6th years	57 States
Technical staff	3	15	2nd & 6th years	56 States	Lawyer	1	10	2nd & 6th years	57 States
Admin. staff	2	10	2nd & 6th years	56 States	Management analyst	3	15	2nd & 6th years	57 States
					Secretary or admin. assistant	2	10	2nd & 6th years	57 States

Appoint New Local WDB and Appropriate Firewalls

This section describes the updates to the NPRM's provision (g) "Appoint New Local Workforce Development Board and Appropriate Firewalls." In the Final Rule, costs related to this provision can be found in provision (f) "Appoint New Local WDB and Appropriate Firewalls." It reflects the requirement to appoint new Local WDBs and establish sufficient

[26] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

firewalls and conflict-of-interest policies and procedures approved by the Governor when a Local WDB is selected as a one-stop operator through a sole-source procurement. The total undiscounted 10-year cost of this provision decreased from $4.6 million in the NPRM to $4.5 million in the Final Rule.[27]

Exhibit 10 presents the updates to Local WDBs. In our estimates for appointing new Local WDBs, the Department replaced the technical staff with the more precise occupational category of management analyst. In our estimates for appropriate firewalls, the Department replaced the technical staff with the more precise occupational category of computer systems analyst.

Exhibit 10: Updates to Costs of Local WDBs – Appoint New Local WDB and Appropriate Firewalls									
NPRM					**Final Rule**				
(g) Appoint New Local Workforce Development Board and Appropriate Firewalls					**(f) Appoint New Local WDB and Appropriate Firewalls**				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Appoint New Local WDB					***Appoint New Local WDB***				
Manager	1	20	One time	580 Local WDBs	Management occupations staff	1	20	One time	580 Local WDBs
Counsel staff	1	15	One time	580 Local WDBs	Lawyer	1	15	One time	580 Local WDBs
Technical staff	2	20	One time	580 Local WDBs	Management analyst	2	20	One time	580 Local WDBs
Admin. staff	1	20	One time	580 Local WDBs	Secretary or admin. assistant	1	20	One time	580 Local WDBs
Appropriate Firewalls					***Appropriate Firewalls***				
Manager	1	8	One time	580 Local	Managemen	1	8	One time	580 Local

[27] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

Exhibit 10: Updates to Costs of Local WDBs – Appoint New Local WDB and Appropriate Firewalls									
NPRM					Final Rule				
(g) Appoint New Local Workforce Development Board and Appropriate Firewalls					(f) Appoint New Local WDB and Appropriate Firewalls				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
				WDBs	t occupations staff				WDBs
Counsel staff	1	8	One time	580 Local WDBs	Lawyer	1	8	One time	580 Local WDBs
Technical staff	1	20	One time	580 Local WDBs	Computer systems analyst	1	20	One time	580 Local WDBs

Career Pathways Development

This section describes the updates to the NPRM's provision (h) "Career Pathways Development." In the Final Rule's subject-by-subject analysis, costs related to this provision can be found in provision (g) "Local WDB Career Pathways Development." The cost of this provision reflects the cost for Local WDBs, with representatives of secondary and postsecondary education programs, to lead efforts in developing and implementing career pathways in the local area by aligning the employment, training, education, and supportive services needed by adults and youth, particularly individuals with barriers to employment. The total undiscounted 10-year cost of this provision decreased from $70.7 million in the NPRM to $65.4 million in the Final Rule.[28]

Exhibit 11 presents the updates related to Local WDBs. The Department replaced the technical staff in our previous estimate with the more precise occupational category of

[28] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

management analyst. All other aspects of the analysis, including the number of hours by occupational category, remain unchanged.

Exhibit 11: Updates to Costs of Local WDBs – Career Pathways Development									
NPRM					Final Rule				
(h) Career Pathways Development					(g) Local WDB Career Pathways Development				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	1	80	Annual	580 Local WDBs	Management occupations staff	1	80	Annual	580 Local WDBs
Counsel staff	1	10	Annual	580 Local WDBs	Lawyer	1	10	Annual	580 Local WDBs
Technical staff	1	80	Annual	580 Local WDBs	Management analyst	1	80	Annual	580 Local WDBs
Admin. staff	1	20	Annual	580 Local WDBs	Secretary or admin. assistant	1	20	Annual	580 Local WDBs

Development of Proven and Promising Practices

This section describes the updates to the NPRM's provision (i) "Development of Proven and Promising Practices." In the Final Rule, costs related to this provision can be found in provision (h) "Local WDB Development of Proven and Promising Practices." It reflects the cost for Local WDBs to lead local efforts in identifying and promoting proven and promising strategies and initiatives for meeting the needs of employers, workers, and job seekers (including individuals with barriers to employment). Examples include providing physical and programmatic accessibility to the one-stop delivery system and identifying and disseminating information on proven and promising practices conducted in other local areas for meeting such

needs. The total undiscounted 10-year cost of this provision increased from $2.9 million in the NPRM to $21.4 million in the Final Rule.[29]

Exhibit 12 presents the updates to the local-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst and removed the counsel and administrative staff because they would not be involved in local efforts in identifying and promoting proven and promising strategies at the Local WDB level.

Exhibit 12: Updates to Costs of Local-Level DOL Programs – Development of Proven and Promising Practices									
NPRM					Final Rule				
(i) Development of Proven and Promising Practices					(h) Local WDB Development of Proven and Promising Practices				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	1	20	Annual	56 States	Management occupations staff	1	20	Annual	580 Local WDBs
Counsel staff	1	10	Annual	56 States	Management analyst	1	40	Annual	580 Local WDBs
Technical staff	1	40	Annual	56 States					
Admin. staff	1	15	Annual	56 States					

Technology

This section describes the updates to the NPRM's provision (j) "Technology." In the Final Rule, costs related to this provision can be found in provision (i) "Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness." It reflects the efforts of Local WDBs to develop strategies for using technology

[29] This variance in cost is a result of increasing the number of affected entities from 56 States to 580 Local WDBs. Because the activities performed will be similar for workers at the State and local level, the level of effort was not reduced.

to maximize the accessibility and effectiveness of the local workforce development system for employers, workers, and job seekers. The total undiscounted 10-year cost of this provision decreased from $23.7 million in the NPRM to $21.5 million in the Final Rule.[30]

Exhibit 13 presents the updates to the Local WDBs. The Department replaced the technical staff with the more precise occupational category of computer systems analyst.

Exhibit 13: Updates to Costs of Local WDBs – Technology									
NPRM					Final Rule				
(j) Technology					(i) Local WDBs Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	1	20	Annual	580 Local WDBs	Management occupations staff	1	20	Annual	580 Local WDBs
Technical staff	1	40	Annual	580 Local WDBs	Computer systems analyst	1	40	Annual	580 Local WDBs

Selection of the One-Stop Operator

This section describes the updates made to the NPRM's provision (k) "Selection of the One-Stop Operator." In the Final Rule, costs related to this provision can be found in provision (j) "Competitive Process for Selection of the One-Stop Operator." The cost of this provision reflects Local WDBs' selection of a one-stop operator through a competitive process. The total undiscounted 10-year cost of this provision decreased from $19.0 million in the NPRM to $14.2 million in the Final Rule.[31]

[30] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.
[31] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

Exhibit 14 presents the updates to Local WDBs. The Department replaced the technical staff with the more precise occupational category of social worker.

Exhibit 14: Updates to Costs of Local WDBs – Selection of the One-Stop Operator									
NPRM					Final Rule				
(k) Selection of the One-Stop Operator					(j) Competitive Process for Selection of the One-Stop Operator				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	1	80	2nd, 6th, & 10th years	250 Local WDBs newly selecting one-stop operators	Management occupations staff	1	80	2nd, 6th, & 10th years	250 Local WDBs newly selecting one-stop operators
Counsel staff	1	40	2nd, 6th, & 10th years	250 Local WDBs newly selecting one-stop operators	Lawyer	1	40	2nd, 6th, & 10th years	250 Local WDBs newly selecting one-stop operators
Technical staff	2	120	2nd, 6th, & 10th years	250 Local WDBs newly selecting one-stop operators	Social worker	2	120	2nd, 6th, & 10th years	250 Local WDBs newly selecting one-stop operators
Admin. staff	1	40	2nd, 6th, & 10th years	250 Local WDBs newly selecting one-stop operators	Secretary or admin. assistant	1	40	2nd, 6th, & 10th years	250 Local WDBs newly selecting one-stop operators

Coordination with Education Providers

This section describes the updates to the NPRM's provision (l) "Coordination with Education Providers." In the Final Rule, costs related to this provision can be found in provision (k) "Local WDB Coordination with Education Providers." The cost of this provision reflects

Local WDBs coordinating activities with education and training providers in the local area. The total undiscounted 10-year cost of this provision increased from $3.2 million in the NPRM to $21.4 million in the Final Rule.[32]

Exhibit 15 presents the updates to the local-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst. We removed the counsel and administrative staff because they would not be involved in this effort at the Local WDB level.

Exhibit 15: Updates to Costs of Local-Level DOL Programs – Coordination with Education Providers									
NPRM					Final Rule				
(l) Coordination with Education Providers					(k) Local WDB Coordination with Education Providers				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	1	30	Annual	56 States	Management occupations staff	1	20	Annual	580 Local WDBs
Counsel staff	1	10	Annual	56 States	Management analyst	1	40	Annual	580 Local WDBs
Technical staff	1	40	Annual	56 States					
Admin. staff	1	10	Annual	56 States					

Regional Plans

This section describes the updates to the NPRM's provision (m) "Regional Plans." In the Final Rule, costs related to this provision can be found in provision (l) "Regional Plans." The cost of this provision reflects the efforts of Local WDBs and CEOs within a planning region to

[32] This variance in cost is a result of increasing the number of affected entities from 56 States to 580 Local WDBs. Because the activities performed will be similar for workers at the State and local level, the level of effort was not reduced.

prepare, submit to the State, and obtain approval of a single regional plan that includes a description of the regional planning activities described in WIOA and incorporates local plans for each local area in the planning region. The total undiscounted 10-year cost of this provision decreased from $10.3 million in the NPRM to $9.5 million in the Final Rule.[33]

Exhibit 16 presents the updates to Local WDBs. The Department replaced the technical staff with the more precise occupational category of management analyst.

Exhibit 16: Updates to Costs of Local WDBs – Regional Plans									
NPRM					Final Rule				
(m) Regional Plans					(l) Regional Plans				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	2	20	2nd & 6th years	580 Local WDBs	Management occupations staff	2	20	2nd & 6th years	580 Local WDBs
Counsel staff	1	8	2nd & 6th years	580 Local WDBs	Lawyer	1	8	2nd & 6th years	580 Local WDBs
Technical staff	2	40	2nd & 6th years	580 Local WDBs	Management analyst	2	40	2nd & 6th years	580 Local WDBs
Admin. staff	1	8	2nd & 6th years	580 Local WDBs	Secretary or admin. assistant	1	8	2nd & 6th years	580 Local WDBs

Local and Regional Plan Modification

This section describes the updates to the NPRM's provision (n) "Local and Regional Plan Modification." In the Final Rule, costs related to this provision can be found in provision (m) "Local and Regional Plan Modification." The cost of this provision reflects the efforts of each Local WDB, in partnership with the CEO, to review the local plan every 2 years and submit a

[33] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

modification as needed, based on significant changes in labor market and economic conditions and other factors. The total undiscounted 10-year cost of this provision decreased from $4.1 million in the NPRM to $3.8 million in the Final Rule.[34]

Exhibit 17 presents the updates to the Local WDBs for regional plans. For local and regional plan modification, the Department replaced the technical staff with the more precise occupational category of management analyst.

Exhibit 17: Updates to Costs of Local-Level Boards – Local and Regional Plan Modification									
NPRM					**Final Rule**				
(n) Local and Regional Plan Modification					**(m) Local and Regional Plan Modification**				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Local Plan Modification					***Local Plan Modification***				
Manager	1	10	4th year	580 Local WDBs	Management occupations staff	1	10	4th year	580 Local WDBs
Counsel staff	1	4	4th year	580 Local WDBs	Lawyer	1	4	4th year	580 Local WDBs
Technical staff	2	10	4th year	580 Local WDBs	Management analyst	2	10	4th year	580 Local WDBs
Admin. staff	1	4	4th year	580 Local WDBs	Secretary or admin. assistant	1	4	4th year	580 Local WDBs
Regional Plan Modification					***Regional Plan Modification***				
Manager	2	10	4th & 8th years	300 Local WDBs that will modify regional plans	Management occupations staff	2	10	4th & 8th years	300 Local WDBs that will modify regional plans

[34] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

Exhibit 17: Updates to Costs of Local-Level Boards – Local and Regional Plan Modification									
NPRM					Final Rule				
(n) Local and Regional Plan Modification					(m) Local and Regional Plan Modification				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Counsel staff	1	4	4th & 8th years	300 Local WDBs that will modify regional plans	Lawyer	1	4	4th & 8th years	300 Local WDBs that will modify regional plans
Technical staff	2	20	4th & 8th years	300 Local WDBs that will modify regional plans	Managemen t analyst	2	20	4th & 8th years	300 Local WDBs that will modify regional plans
Admin. staff	1	5	4th & 8th years	300 Local WDBs that will modify regional plans	Secretary or admin. assistant	1	5	4th & 8th years	300 Local WDBs that will modify regional plans

Improved Information about Potential Training Program Providers

This section describes the updates to the NPRM's provision (o) "Improved Information about Potential Training Program Providers." In the Final Rule, costs related to this provision can be found in provision (n) "Improved Information about Eligible Training Program Providers." The cost of this provision reflects the efforts of State-maintained Eligible Training Provider Lists (ETPLs) to provide information to the public on the effectiveness of Eligible Training Providers (ETPs) in achieving positive outcomes for WIOA training participants. The

total undiscounted 10-year cost of this provision increased from $5.5 million in the NPRM to $4.5 million in the Final Rule.[35]

Exhibit 18 presents the updates to the State-level DOL program. The Department replaced the technical staff in our previous estimate with the more precise occupational category of management analyst.

Exhibit 18: Updates to Costs of State-Level DOL Programs – Improved Information about Potential Training Program Providers									
NPRM					Final Rule				
(o) Improved Information about Potential Training Program Providers					(n) Improved Information about Eligible Training Program Providers				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	1	32	Annual	56 States	Management occupations staff	1	32	Annual	57 States
Technical staff	2	40	Annual	56 States	Management analyst	2	40	Annual	57 States
Admin. staff	1	80	Annual	56 States	Secretary or admin. assistant	1	80	Annual	57 States

Sanctions on Under-Performing States

This section describes the updates to the NPRM's provision (p) "Sanctions on Under-Performing States." In the Final Rule, costs related to this provision can be found in provision (o) "Sanctions on Under-Performing States." It reflects the costs related to States that are sanctioned when they fail to meet the State-adjusted levels of performance for a program for a second consecutive program year or if they fail to submit a report for any program year. The

[35] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

total undiscounted 10-year cost related to this provision decreased from $5.2 million in the NPRM to $408,000 in the Final Rule.[36]

Exhibit 19 presents the updates to the State-level DOL program. In the NPRM, the Department accounted for the cost of each State to calculate the annual performance levels of its core programs to determine whether it is subject to sanctions. After consulting with our program experts, the Department acknowledges that the determination on whether States receive sanctions will be made at the Federal level using an objective statistical model. This cost is now accounted for in provision (c) of the Joint WIOA Final Rule economic analysis. In this DOL WIOA Final Rule, the Department is now accounting only for costs associated with receiving a sanction. We reduced the number of States from 56 to 5 because only five States, at most, are expected to receive a sanction each year. We replaced the technical staff in our previous estimate with the more precise occupational category of management analyst.

Exhibit 19: Updates to Costs for State-Level DOL Programs – Sanctions on Under-Performing States									
NPRM					Final Rule				
(p) Sanctions on Under-Performing States					(o) Sanctions on Under-Performing States				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	1	40	Annual	56 States	Chief executive	1	40	Annual	5 States
Technical staff	1	80	Annual	56 States	Management analyst	1	80	Annual	5 States
Admin. staff	1	40	Annual	56 States	Secretary or admin. assistant	1	40	Annual	5 States

Colocation of ES Services

[36] This variance in cost is a result of the reduction in the number of affected States.

This section describes the updates to the NPRM's provision (q) "Colocation of Wagner-Peyser Services." In the Final Rule, costs related to this provision can be found in provision (p) "Colocation of ES Services." The cost of this provision reflects the requirement for ES offices and one-stop centers to colocate. The total undiscounted 10-year cost for this provision decreased from $63.9 million in the NPRM to $57.9 million in the Final Rule.[37]

Exhibit 20 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst. In addition, we inflated the consultant cost from $10,000 in 2013 dollars to $10,200 in 2015 dollars.[38] The consultants will assist with planning, property issues (e.g., selling buildings currently owned by ES and finding buildings that meet certain safety requirements), and integrating information technology (IT) and case management systems.

Comment [GM1]:

Exhibit 20: Updates to Costs of State-Level DOL Programs – Colocation of ES Services									
NPRM					Final Rule				
(q) Colocation of ES Services					(p) Colocation of ES Services				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	10	40	One time	10 States	Management occupations staff	10	40	One time	10 States
Counsel staff	10	10	One time	10 States	Lawyer	10	10	One time	10 States
Technical staff	20	25	One time	10 States	Management analyst	20	25	One time	10 States
Admin. staff	10	5	One time	10 States	Secretary or admin. assistant	10	5	One time	10 States

[37] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.
[38] Bureau of Labor Statistics. (2016). *CPI Detailed Report Data for February 2016*. Retrieved from: http://www.bls.gov/cpi/cpid1602.pdf .
The Department calculated the inflation factor of 1.02 using data from Table 24. "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items." To calculate the inflation factor, the Department divided the average annual CPI-U for 2015 by the average annual CPI-U for 2013 (=237.017 / 232.957).

Exhibit 20: Updates to Costs of State-Level DOL Programs – Colocation of ES Services									
NPRM					Final Rule				
(q) Colocation of ES Services					(p) Colocation of ES Services				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Consultant cost	$10,000		One time	10 States	Consultant cost	$10,200		One time	10 States

Exhibit 21 presents the updates to the local-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

Exhibit 21: Updates to Costs of Local-Level DOL Programs – Colocation of ES Services									
NPRM					Final Rule				
(q) Colocation of ES Services					(p) Colocation of ES Services				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	100	40	One time	100 Local areas	Management occupations staff	100	40	One time	100 Local areas
Technical staff	200	25	One time	100 Local areas	Management analyst	200	25	One time	100 Local areas
Admin. staff	100	5	One time	100 Local areas	Secretary or admin. assistant	100	5	One time	100 Local areas

Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System

This section describes the updates to the NPRM's provision (r) "Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System." In the Final Rule, costs related to this provision can be found in provision (q) "Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System." It reflects the cost related to each one-stop partner contributing its proportional share to the funding of one-stop infrastructure costs. The

total undiscounted 10-year cost decreased from $68.0 million in the NPRM to $45.6 million in the Final Rule.

Exhibit 22 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of social worker. All other aspects of the analysis, including the number of hours by occupational category, remain unchanged.

Exhibit 22: Updates to Costs for State-Level DOL Programs – Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System									
NPRM					Final Rule				
(r) Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System					(q) Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	50	40	3rd, 6th, & 9th years	54 States that need to pay their proportional share	Management occupations staff	50	40	3rd, 6th, & 9th years	54 States that need to pay their proportional share
Counsel staff	50	1	3rd, 6th, & 9th years	54 States that need to pay their proportional share	Lawyer	50	1	3rd, 6th, & 9th years	54 States that need to pay their proportional share
Technical staff	100	40	3rd, 6th, & 9th years	54 States that need to pay their proportional share	Social worker	100	40	3rd, 6th, & 9th years	54 States that need to pay their proportional share
Admin. staff	50	5	3rd, 6th, & 9th years	54 States that need to pay their proportional share	Secretary or admin. assistant	50	5	3rd, 6th, & 9th years	54 States that need to pay their proportional share

Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship

This section describes the updates to the NPRM's provision (s) "Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship." In the Final Rule, costs related to this provision can be found in provision (r) "Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List." The cost of this provision reflects the efforts of the Governor, after consultation with the State WDB, to establish criteria, information requirements, and procedures for the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State (i.e., procedures for initial determination and renewals of eligibility). The total undiscounted 10-year cost related to this provision increased from $529,000 in the NPRM to $2.5 million in the Final Rule.

Exhibit 23 presents the updates to the State-level DOL program. For establishing eligibility procedures for training providers, the Department replaced the technical staff with the more precise occupational category of management analyst. We also added a burden for reporting: one database administrator per ETP that will incur a 3-hour, one-time cost.

Exhibit 23: Updates to Costs to State-Level DOL Programs – Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship									
NPRM					**Final Rule**				
(s) Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship					**(r) Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List**				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	1	40	One time	56 States	***Establishing Training Provider Eligibility Procedures***				
Counsel staff	1	20	One time	56 States	Management occupations staff	1	40	One time	57 States
Technical staff	1	80	One time	56 States	Lawyer	1	20	One time	57 States
					Management analyst	1	80	One time	57 States
					Reporting				
					Database administrator	1	3	One time	11,400 ETPs

Determining Eligibility of New and Previously Eligible Providers

This section describes the updates to the NPRM's provision (t) "Determining Eligibility of New and Previously Eligible Providers." In the Final Rule, costs related to this provision can be found in provision (s) "Determining Initial Eligibility of New and Previously Eligible Providers." The costs reflect the efforts of the Governor, after consultation with the State WDB, to establish procedures for determining eligibility of providers and include application and renewal procedures, eligibility criteria, and information requirements. The total undiscounted 10-year cost of this provision decreased from $1.1 million in the NPRM to $879,000 in the Final Rule.

Exhibit 24 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

Exhibit 24: Updates to Costs of State-Level DOL Programs – Determining Eligibility of New and Previously Eligible Providers									
NPRM					Final Rule				
(t) Determining Eligibility of New and Previously Eligible Providers					(s) Determining Initial Eligibility of New and Previously Eligible Providers				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
Manager	1	40	One time	56 States	Management occupations staff	1	40	One time	57 States
Technical staff	2	110	One time	56 States	Management analyst	2	110	One time	57 States
Admin. staff	2	50	One time	56 States	Secretary or admin. assistant	2	50	One time	57 States

Biennial Review of Eligibility

This section describes the updates to the NPRM's provision (u) "Biennial Review of Eligibility." In the Final Rule, costs related to this provision can be found in provision (t) "Biennial Review of Training Provider Eligibility." The cost of this provision reflects the costs of training providers to submit information for evaluation as specified in the Governor's eligibility criteria, information requirements, and procedures. The total undiscounted 10-year cost of this provision decreased from $2.7 million in the NPRM to $2.1 million in the Final Rule.[39]

Exhibit 25 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

[39] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

Exhibit 25: Updates to Costs of State-Level DOL Programs – Biennial Review of Eligibility									
NPRM					Final Rule				
(u) Biennial Review of Eligibility					(t) Biennial Review of Eligibility				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	1	30	4th, 6th, 8th, & 10th years	56 States	Management occupations staff	1	30	4th, 6th, 8th, & 10th years	57 States
Technical staff	2	60	4th, 6th, 8th, & 10th years	56 States	Management analyst	2	60	4th, 6th, 8th, & 10th years	57 States
Admin. staff	2	30	4th, 6th, 8th, & 10th years	56 States	Secretary or admin. assistant	2	30	4th, 6th, 8th, & 10th years	57 States

Disseminating the Training Provider List with Accompanying Information

This section describes the updates to the NPRM's provision (v) "Disseminating the Training Provider List with Accompanying Information." In the Final Rule, costs related to this provision can be found in provision (u) "Disseminating the Training Provider List with Accompanying Information." The cost of this provision reflects the efforts of the Governor or State agency to disseminate the State ETPL and accompanying performance and cost information to Local WDBs in the State and to members of the public. The total undiscounted 10-year cost of this provision decreased from $1.7 million in the NPRM to $1.5 million in the Final Rule.[40]

Exhibit 26 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

[40] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

Exhibit 26: Updates to Costs of State-Level DOL Programs – Disseminating the Training Provider List with Accompanying Information									
NPRM					Final Rule				
(v) Disseminating the Training Provider List with Accompanying Information					(u) Disseminating the Training Provider List with Accompanying Information				
Labor Category	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**	**Labor Category**	**Average Number of Workers**	**Average Level of Effort (Hrs.)**	**Freq.**	**Number of Affected Entities**
Manager	1	30	One time	56 States	Management occupations staff	1	30	One time	57 States
Technical staff	2	80	One time	56 States	Management analyst	2	80	One time	57 States
Admin. staff	2	45	One time	56 States	Secretary or admin. assistant	2	45	One time	57 States
IT reprogramming or database staff	2	125	One time	56 States	Database administrator	2	125	One time	57 States

Migrant and Seasonal Farmworker Housing

This section describes the updates to the NPRM's provision (w) "Migrant and Seasonal Farmworker Housing." The cost of this provision was not quantified in the NPRM because this this provision has been rescinded in the Final Rule.

In addition, the Department moved one provision that appeared in the Joint WIOA NPRM to this DOL WIOA Final Rule. The Department describes this provision below.

Identification and Dissemination of Best Practices

After careful consideration, the Department has concluded that the costs associated with provision (d) "Identification and Dissemination of Best Practices" in the Joint WIOA NPRM economic analysis are more appropriate for this Final Rule because the requirement affects State WDBs only. The costs of this provision reflect efforts by State WDBs to assist Governors in

identifying and disseminating best practices. This provision results in a total undiscounted 10-year cost of $3.1 million.

Exhibit 27: Updates to Costs of State-Level DOL Programs –Identification and Dissemination of Best Practices									
NPRM					Final Rule				
Moved from Joint WIOA NPRM					(c) Identification and Dissemination of Best Practices				
Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities	Labor Category	Average Number of Workers	Average Level of Effort (Hrs.)	Freq.	Number of Affected Entities
N/A					Management occupations staff	1	20	Annual	57 States
See Joint WIOA NPRM					Management analyst	2	40	Annual	57 States
					Secretary or admin. assistant	1	20	Annual	57 States

Youth Funds Targeting Out-of-School Youth

This section describes the updates to the transfer payments analysis. In the NPRM, the Department described the transfer payments qualitatively due to data limitations and a lack of operational data or evaluation findings on the provisions of the NPRM or WIOA in general. In this DOL WIOA Final Rule, the Department was able to quantify the transfer payments related to youth funds targeting OSY. This accounts for transfers expected to result from decreases in burdens on taxpayers as more youth leave the youth programs and obtain employment. For transfers associated with youth funds targeting OSY, the quantified transfer payments increased from $0 in the NPRM to $128.9 million in the Final Rule.

6. Subject-by-Subject Analysis

The Department's analysis below covers the expected costs of the following 21 provisions of the WIOA Final Rule against the baseline of the current practice under WIA: (a) "New State WDB Membership Requirements;" (b) "Development and Continuous Improvement of the Workforce Development System;" (c) "Identification and Dissemination of Best Practices;" (d) "Development of Statewide Policies Affecting the State's One-Stop System;" (e) "Development of Strategies for Technological Improvements;" (f) "Appoint New Local WDB and Appropriate Firewalls;" (g) "Local WDB Career Pathways Development;" (h) "Local WDB Development of Proven and Promising Practices;" (i) "Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness;" (j) "Competitive Process for Selection of the One-Stop Operators;" (k) "Local WDB Coordination with Education Providers;" (l) "Regional Plans;" (m) "Local and Regional Plan Modification;" (n) "Improved Information about Eligible Training Program Providers;" (o) "Sanctions on Under-Performing States;" (p) "Colocation of ES Services;" (q) "Partners Required to Pay their Share for Proportionate Use of the One-Stop Delivery System;" (r) "Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List;" (s) "Determining Initial Eligibility of New and Previously Eligible Providers;" (t) "Biennial Review of Training Provider Eligibility;" and (u) "Disseminating the Training Provider List with Accompanying Information."

In addition, the Department analyzed the expected transfers related to "Youth Funds Targeting Out-of-School Youth."

The Department emphasizes that many of the provisions in this WIOA-required Final Rule also are existing requirements under WIA. For example, the requirement that States "prepare annual reports" is a current requirement under WIA that States routinely undertake.

Accordingly, our regulatory analysis focuses on new costs and transfers that can be attributed exclusively to the enactment of WIOA, as addressed in this Final Rule. Much of WIA's infrastructure and operations are carried forward under WIOA and, therefore, are not considered "new" burdens resulting from this Final Rule.

Quantifiable Costs of the Final Rule

The following sections describe the provisions that are expected to result in costs.

a. New State WDB Membership Requirements

States must establish State WDBs in accordance with the membership requirements of WIOA sec. 101(b). Under WIOA sec. 101(b)(1)(C)(i), the majority of the State WDB representatives must be from businesses or organizations in the State. These representatives must be owners, chief executive officers, or chief operating officers of the businesses or executives with optimum policy-making or hiring authority. WIA did not include specific requirements for percentage of State WDB business members.

WIOA sec. 101(b)(1)(C)(ii) requires at least 20 percent of State WDB members to be representatives of labor organizations who have been nominated by State labor federations and at least one member to be a member of a labor organization or a training director from a joint labor-management apprenticeship program (if such program exists in the State). Members may include representatives of community-based organizations (CBOs) that have demonstrated expertise in addressing the employment, training, or education needs of individuals with barriers to employment or eligible youth.

WIA sec. 111(b)(1)(C) required that State WDB members include representatives of labor organizations, representatives of organizations that have experience with respect to youth activities and expertise in the delivery of workforce investment activities, including chief

executive officers of community colleges and CBOs. No minimum percentage requirement for this type of membership, however, was required. In accordance with WIOA sec. 101(b)(2), State WDB membership must represent the diverse geographic areas of the State. WIA did not include a requirement that State WDB representation cover the diverse geographic areas of the State.

Costs

To estimate State WDB costs (see Exhibit 4), the Department multiplied the estimated average number of chief executives per State (1) by the time required to adjust the State WDB membership (5 hours) and by the hourly compensation rate ($85.19/hour). We repeated the calculation for the following occupational categories: lawyers (1 lawyer at $65.48/hour for 15 hours), management occupations staff (1 manager at $65.39/hour for 15 hours), management analysts (2 analysts at $45.88/hour for 20 hours each), and secretaries or administrative assistants (1 assistant at $27.16/hour for 20 hours). We summed the labor cost for all five occupational categories ($4,767) and multiplied the result by the number of States (57). This calculation results in a one-time cost of $271,742 in the first year of the Final Rule, which is an average annual cost of $27,174.

b. Development and Continuous Improvement of the Workforce Development System

WIOA sec. 101(d)(3)(A) through (G) require the State WDB assist the Governor in developing and continuously improving the State's workforce development system, including identifying barriers and means for their removal to coordinate and align programs and activities better; developing career pathway strategies to support individuals in entering or retaining employment; developing customer outreach strategies; developing and expanding strategies to meet the need of employers, workers, and job seekers through industry or sector partnerships

related to in-demand industry sectors and occupations; identifying regions, including planning regions, and designating local areas (after consultation with Local WDBs and CEOs);[41] developing and continuously improving the one-stop delivery system; and developing strategies to train and inform staff.

WIA sec. 111(d)(2) also required the State WDB to assist the Governor in developing and continuously improving the statewide workforce development system; however, the list of included activities was limited to review of local plans and development of linkages to ensure coordination and non-duplication among the programs and activities of one-stop partners. Like WIOA, WIA required State WDBs to assist the Governor in designating local areas (WIA sec. 111(d)(4)). State WDBs, however, have significantly more explicit responsibilities in terms of developing strategies for workforce development systems in the State.

Costs

The Department estimated the State WDBs' annual labor costs for developing or expanding sector strategies (see Exhibit 5) by multiplying the estimated average number of management occupations staff members per State (1) by the time required to review the workforce development system (300 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the management analysts (2 analysts at $45.88/hour for 1,260 hours each). We summed the labor cost for both categories ($135,235) and multiplied the result by the number of States that do not have extensive and systematic sector strategies (21). Over the 10-year period, this calculation yields an estimated recurring annual cost of $2.8 million ($2,839,927), which is equal to a 10-year total cost of $28.4 million ($28,399,266).

[41] According to WIOA sec. 106(a)(1), identification of regions is part of the process for developing the State Plan and is necessary to receive an allotment under other provisions of WIOA.

Similarly, the Department estimated the State WDBs' annual labor cost for expanding career pathways strategies by multiplying the estimated average number of management occupations staff members per State (1) by the time required to review the workforce development system (300 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the management analysts (2 analysts at $45.88/hour for 1,260 hours each). We summed the labor cost for the two occupational categories ($135,235) and multiplied the result by the number of States that do not have policies for career pathways (27).[42] Over the 10-year period, this calculation yields an estimated recurring annual cost of $3.7 million ($3,651,334), which is equal to a total 10-year cost of $36.5 million ($36,513,342).

The Department estimated the labor cost that State WDBs will incur to identify regions by multiplying the estimated average number of lawyers per State (1) by the time required to review the workforce development system (40 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: management occupations staff (1 manager at $65.39/hour for 40 hours), management analysts (1 analyst at $45.88/hour for 80 hours), and secretaries or administrative assistants (1 assistant at $27.16/hour for 20 hours). We summed the labor cost for all four occupational categories ($9,448) and multiplied the result by the number of States (57) to estimate this one-time labor cost of $538,559. Over the 10-year period, this calculation yields an average annual cost of $53,856.

The Department estimated the labor cost for State WDBs (See Exhibit 9) by first multiplying the estimated average number of lawyers per State (1) by the time required to identify regions in the State (10 hours each) and by the hourly compensation rate ($65.48/hour).

[42] U.S. Department of Education, U.S. Department of Labor, and U.S. Department of Health and Human Services (2014, September). *Viewing party guide*. National Dialogue on Career Pathways. Retrieved from: https://learnwork.workforce3one.org/view/2001425433998607383/info.

We performed the same calculation for the following occupational categories: management occupations staff (2 managers at $65.39/hour for 40 hours each), management analysts (3 analysts at $45.88/hour for 15 hours each), and secretaries or administrative assistants (2 assistants at $27.16/hour for 10 hours each). We summed the labor costs for all four occupational categories ($8,494) and multiplied the result by the number of States (57) to estimate this cost as $484,147, occurring in 2017 and 2021 and resulting in an average annual cost of $96,829. This is equal to a total 10-year cost of $968,293.

The sum of these costs yields a total average annual cost of $6.6 million ($6,641,946) for individuals from the State level to review the workforce development system. This is equal to total 10-year cost of $66.4 million ($66,419,460).

c. Identification and Dissemination of Best Practices

Under WIOA sec. 101(d)(6), State WDBs must assist Governors in identifying and disseminating best practices, including practices for:

1. The effective operation of one-stop centers, relating to the use of business outreach, partnerships, and service delivery strategies, including strategies for serving individuals with barriers to employment.
2. The development of effective Local WDBs, which could include information on contributing factors to enable Local WDBs to exceed negotiated levels of performance, sustain fiscal integrity, and achieve other measures of effectiveness.
3. The development of effective training programs that support efficient placement of individuals into employment or career pathways and that respond to real-time labor market analysis; that effectively use direct assessment and prior learning assessment to measure an individual's prior knowledge, skills, competencies, and experiences; and that

evaluate such skills and competencies for adaptability.

WIA did not include requirements relating to State WDBs supporting the development of best practices. Therefore, costs will be incurred by State WDBs to assist Governors in identifying and disseminating the best practices. State WDBs will incur annual labor costs to become compliant with this provision.

Costs

The Department estimated the labor cost that States would incur (see Exhibit 27) by multiplying the estimated average number of management occupations staff members per State (1) by the time required to assist in the development of best practices (20 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the management analysts (2 analysts at $45.88/hour for 40 hours each) and secretaries or administrative assistants (1 assistant at $27.16/hour for 20 hours). We summed the labor cost for all three occupational categories ($5,521) and multiplied the result by the number of States (57) to estimate this annual labor cost at $314,720, which results in a 10-year cost of $3.1 million ($3,147,198).

d. Development of Statewide Policies Affecting the State's One-Stop Delivery System

Under WIOA sec. 101(d)(6), State WDBs must assist Governors in developing and reviewing statewide policies that affect the coordinated provision of services through the State's one-stop delivery system. These policies include those concerning objective criteria and procedures for Local WDBs to assess one-stop centers and guidance for the allocation of one-stop center infrastructure funds, and policies relating to the appropriate roles and contributions of one-stop partners within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation.

WIA did not include requirements relating to State WDBs' support of the development of policies affecting the coordinated provision of services through the State's one-stop delivery system.

Costs

The Department estimated the labor cost that State WDBs will incur (see Exhibit 6) by multiplying the estimated average number of lawyers per State (1) by the time required to provide objective criteria and procedures (60 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the management occupations staff (1 manager at $65.39/hour for 18 hours), social and community service managers (1 manager at $54.21/hour for 42 hours), and management analysts (3 analysts at $45.88/hour for 120 hours each). We summed the labor cost for all four occupational categories ($23,899) and multiplied the result by the number of States (57) to estimate this one-time labor cost at $1.4 million ($1,362,268), which results in an average annual cost of $136,227.

e. Development of Strategies for Technological Improvements

Under WIOA sec. 101(d)(7), State WDBs must assist Governors in developing strategies for technological improvements to facilitate access to and improve the quality of services and activities provided through the one-stop delivery system. These strategies include improvements to enhance digital literacy skills, accelerate acquisition of skills and recognized postsecondary credentials by participants, strengthen professional development of providers and workforce professionals, and ensure technology is accessible to individuals with disabilities and individuals residing in remote areas.

WIA did not include requirements relating to State WDBs' support of the development of strategies for technological improvements to facilitate access to, and improve the quality of, one-stop delivery system services and activities.

Costs

The Department estimated the labor cost that State WDBs will incur (see Exhibit 7) by multiplying the estimated average number of management occupations staff members per State (1) by the time required to develop strategies (20 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the computer systems analysts (1 analyst at $56.17/hour for 40 hours). We summed the labor cost for both categories ($3,555) and multiplied the result by the number of States (57) to estimate a recurring annual cost of $202,612, which is equal to a total 10-year cost of $2.0 million ($2,026,122).

f. Appoint New Local WDB and Appropriate Firewalls

The Local WDB is appointed by the CEOs in each local area in accordance with State criteria established under WIOA sec. 107(b) and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2). The WIOA sec. 107(b)(2) membership criteria differ from the WIA sec. 117(b)(2) Local WDB membership criteria, and will result in a new one-time cost incurred by local CEOs in each local area because they will have to appoint a new Local WDB whose membership satisfies the requirements of WIOA sec. 107(b)(2). In particular, WIOA requires that a majority of Local WDB members be representatives of local area business (sec. 107(b)(2)(A)), whereas WIA required membership from local area business but did not include the requirement that such membership be a majority.

Additionally, WIOA sec. 107(b)(2)(B) requires that at least 20 percent of Local WDB membership be representatives of labor organizations (including at least one member from a

joint labor-management apprenticeship program, if one exists in the local area); CBOs (optional); and organizations with youth employment, training, or educational expertise (optional). WIA required Local WDB membership from representatives of labor organizations and CBOs, but did not include reference to apprenticeship programs or organizations with youth expertise, nor did WIA include the minimum 20-percent requirement.

Further, WIOA requires Local WDB membership to include a representative from an adult education provider and a representative of higher education providing workforce investment activities (including community colleges), while the WIA Local WDB membership requirements did not reference such membership representation.

Under § 679.410(a), a Local WDB may be selected as a one-stop operator through sole-source procurement or through successful competition, in accordance with part 678, subpart D (see Joint WIOA Final Rule). The procedures for sole-source selection of one-stop operators include requirements about maintaining written documentation and developing appropriate firewalls and conflict-of-interest policies. Therefore, when a Local WDB is selected as a one-stop operator through a sole-source procurement, it must establish sufficient firewalls and conflict-of-interest policies and procedures that the Governor approves. These requirements will result in one-time costs for the Local WDBs that will elect sole-source one-stop operator competition.

Costs

The Department estimated the labor costs incurred by Local WDBs (see Exhibit 10) by multiplying the estimated average number of lawyers per Board (1) by the time required to appoint a new Local WDB (15 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: management

occupations staff members (1 manager at $63.63/hour for 20 hours), management analysts (2 analysts at $60.60/hour for 20 hours each), and secretaries or administrative assistant (1 assistant at $29.30/hour for 20 hours). We summed the labor cost for the four occupational categories ($5,404) and multiplied the result by the number of Local Boards (580) to estimate this one-time cost as $3.1 million ($3,134,494), which results in an average annual cost of $313,449.

In addition, the Department estimated the labor cost for Local WDBs to develop written agreements by multiplying the estimated average number of lawyers per Local WDB (1) by the time required to develop written agreements (8 hours) and by the hourly compensation rate ($74.78/hour). We repeated the calculation for the management occupations staff members (1 manager at $63.63/hour for 8 hours) and computer systems analysts (1 analyst at $60.76 for 20 hours). We summed the labor cost for the three occupational categories ($2,322) and multiplied the result by the number of Local WDBs (580) to estimate this one-time cost as $1.3 million ($1,347,038), which results in an average annual cost of $134,704.

In total, these calculations yield a one-time cost of $4.5 million ($4,481,532), which results in an average annual cost of $448,153 for individuals from the local level to appoint new Local WDBs and set administrative firewalls that avoid conflicts of interest.

g. Local WDB Career Pathways Development

Under WIOA sec. 107(d)(5), Local WDBs, with representatives of secondary and postsecondary education programs, must lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services needed by adults and youth, particularly individuals with barriers to employment. WIA did not include requirements relating to Local WDBs developing or implementing career pathways.

Costs

The Department estimated the labor cost for Local WDBs (see Exhibit 11) by first multiplying the estimated average number of lawyers per Local WDB (1) by the time required to develop and implement career pathways (10 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: management occupations staff members (1 manager at $63.63/hour for 80 hours), management analysts (1 analyst at $60.60/hour for 80 hours), and secretaries or administrative assistants (1 assistant at $29.30/hour for 20 hours). We summed the labor cost for all four occupational categories ($11,272) and multiplied the result by the number of Local WDBs (580) to estimate a recurring annual cost of $6.5 million ($6,537,876), which is equal to a total 10-year cost of $65.4 million ($65,378,760).

h. Local WDB Development of Proven and Promising Practices

Under WIOA sec. 107(d)(6), Local WDBs must lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers, and job seekers (including individuals with barriers to employment), including providing physical and programmatic accessibility to the one-stop delivery system, in accordance with WIOA sec. 188 and the Americans with Disabilities Act, if applicable. This provision further requires Local WDBs to identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs. WIA did not include requirements for Local WDBs to identify or promote proven strategies for meeting the needs of employers, workers, and job seekers in the local workforce development system.

Costs

For Local WDBs (see Exhibit 12), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1) by the time required to identify and promote proven strategies (20 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for the management analyst occupational category (1 analyst at $60.60/hour for 40 hours). We summed the labor cost for these two occupational categories ($3,697) and multiplied the result by the number of Local WDBs (580) to estimate a recurring annual cost of $2.1 million ($2,144,028), which is equal to a total 10-year cost of $21.4 million ($21,440,280).

i. Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness

Under WIOA sec. 107(d)(7), Local WDBs must develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, workers, and job seekers by facilitating connections among the case management information systems for the one-stop partner programs, facilitating access to services provided through the one-stop delivery system (including facilitating access in remote areas), identifying strategies for better meeting the needs of individuals with barriers to employment (such as improving digital literacy skills), and leveraging resources and capacity within the local workforce development system. WIA did not include requirements for Local WDBs to develop technology strategies for improving accessibility and effectiveness of the local workforce development system.

Costs

The Department estimated the cost for Local WDBs (see Exhibit 13) by first multiplying the estimated average number of management occupations staff members per Local WDB (1) by the time required to develop technology strategies (20 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for the computer systems analysts (1 analyst at $60.76/hour for 40 hours). We summed the labor cost for these two occupational categories ($3,703) and multiplied the result by the number of Local WDBs (580) to estimate a recurring annual cost of $2.1 million ($2,147,740), which is equal to a total 10-year cost of $21.5 million ($21,477,400).

j. Competitive Process for Selection of the One-Stop Operator

Under WIOA sec. 107(d)(10)(A), Local WDBs must, consistent with WIOA sec. 121(d) and with the agreement of the CEO for the local area, designate or certify one-stop operators and may terminate for cause the eligibility of such operators. WIOA sec. 121(d)(2)(A) specifies that selection of a one-stop operator must be through a competitive process. WIA sec. 117(d)(2) also required Local WDBs to designate one-stop operators; however, WIA sec. 121(d)(2) allowed for designation of a one-stop operator through either a competitive process or in accordance with an agreement reached between the Local WDB and a consortium of entities that includes at least three one-stop partners. Therefore, WIOA requires a newly competitive procurement process for all Local WDB designations of one-stop operators. The one-stop competition regulations at part 678, subpart D (see Joint WIOA Final Rule), however, provide for sole-source procurement for one-stop operators under limited conditions. Nevertheless, because of the new WIOA requirement mandating competitive one-stop operative procurement, this analysis assumes that all 580 Local WDBs would have to implement a competitive procurement process. Of these

Local WDBs, only 250 Local WDBs would have to newly implement a competitive procurement process.

Costs

The Department estimated the cost for Local WDBs (see Exhibit 14) by first multiplying the estimated average number of lawyers per Local WDB (1) by the time required to designate one-stop operators (40 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: management occupations staff members (1 manager at $63.63/hour for 80 hours), social workers (2 workers at $40.46/hour for 120 hours each), and secretaries or administrative assistants (1 assistant at $29.30/hour for 40 hours). We summed the labor costs for these four occupational categories ($18,964) and multiplied the result by the number of Local WDBs that will be newly selecting one-stop operators competitively (250) to estimate a cost of $4.7 million ($4,741,000) occurring in 2017, 2021, and 2025. Over the 10-year period, this calculation yields an average annual cost of $1.4 million ($1,422,300), which is equal to a total cost of $14.2 million ($14,223,000).

k. Local WDB Coordination with Education Providers

Under WIOA sec. 107(d)(11), Local WDBs must coordinate activities with education and training providers in the local area, including providers of workforce investment activities, providers of adult education and literacy activities under title II of WIOA, certain providers of career and technical education, and local agencies administering certain plans under the Rehabilitation Act of 1973. WIA did not include requirements relating to Local WDB coordination with education providers.

Costs

For Local WDBs, the Department estimated this labor cost (see Exhibit 15) by first multiplying the estimated average number of management occupations staff members per State (1) by the time required to coordinate activities with local education and training providers (20 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for the management analyst occupational category (1 analyst at $60.60/hour for 40 hours). We summed the labor cost for both occupational categories ($3,697) and multiplied the result by the number of Local WDBs (580) to estimate a recurring annual cost of $2.1 million ($2,144,028), which is equal to a 10-year total cost of $21.4 million ($21,440,280).

l. Regional Plans

WIOA sec. 106(c)(2) requires Local WDBs and CEOs within a planning region to prepare, submit to the State, and obtain approval of a single regional plan that includes a description of the regional planning activities described in WIOA and incorporates local plans for each local area in the planning region. Specifically, WIOA sec. 106(c)(1) specifies that regional planning must include the following seven activities: (1) establishment of regional service strategies, including use of cooperative service delivery alignment; (2) development and implementation of sector initiatives for in-demand industry sectors or occupations for the region; (3) collection and analysis of regional labor market data (in conjunction with the State); (4) establishment of administrative cost arrangements, including the pooling of funds for regional administrative costs, as appropriate; (5) coordination of transportation and other supportive services, as appropriate, for the region; (6) coordination of services with regional economic development services and providers; and (7) establishment of an agreement concerning how the planning region will negotiate collectively and reach agreement with the

Governor on local levels of performance for, and report on, the performance accountability measures for local areas or the planning region. WIA did not include provisions relating to State WDB identification of regions or regional coordination.

Costs

For Local WDBs (see Exhibit 16), the Department estimated this cost by first multiplying the estimated average number of lawyers per Local WDB (1) by the time required to prepare, submit, and obtain approval of a single regional plan (8 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: management occupations staff members (2 managers at $63.63/hour for 20 hours each), management analysts (2 analysts at $60.60/hour for 40 hours each), and secretaries or administrative staff (1 staff member at $29.30/hour for 8 hours). We summed the labor cost for the four occupational categories ($8,226) and multiplied the result by the number of Local WDBs (580) to estimate this cost as $4.8 million ($4,770,987), which occurs in 2017 and 2021. This calculation results in an average annual cost of $954,197, which is equal to a total 10-year cost of $9.5 million ($9,541,974).

m. Local and Regional Plan Modification

Under WIOA sec. 108(a), each Local WDB, in partnership with the CEO, must review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors. These factors include changes to local economic conditions, changes in the financing available to support WIOA title I and partner-provided WIOA services, changes to the Local WDB structure, and a need to revise strategies to meet performance goals. If the local area is part of a planning region, the Local WDB must comply with WIOA sec. 106(c) in the preparation and submission of a regional plan. WIA sec.

118 did not require local plan review and modification more frequently than the 5-year duration of a WIA local plan.

Costs

For Local WDBs (see Exhibit 17), the Department estimated the local plan modification cost by first multiplying the estimated average number of lawyers per Local WDB (1) by the time required to review and modify the 4-year plan (4 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: management occupations staff members (1 manager at $63.63/hour for 10 hours), management analysts (2 analysts at $60.60/hour for 10 hours each), and secretaries or administrative assistants (1 assistant at $29.30/hour for 4 hours). We summed the labor cost for all four occupational categories ($2,265) and multiplied the result by the number of Local WDBs (580) to estimate this one-time cost of $1.3 million ($1,313,480), occurring in 2019. Over the 10-year period, this calculation yields an average annual cost of $131,348.

Similarly, the Department estimated the regional plan modification cost for Local WDBs by first multiplying the estimated average number of lawyers per regional board (1) by the time required to review and modify the 4-year plan (4 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: management occupations staff members (2 managers at $63.63/hour for 10 hours each), management analysts (2 analysts $60.60/hour for 20 hours each), and secretaries or administrative assistants (1 assistant at $29.30/hour for 5 hours). We summed the labor cost for all four occupational categories ($4,142) and multiplied the result by the number of regional boards (300) to estimate a cost of $1.2 million ($1,242,666), occurring in 2020 and 2023. Over

the 10-year period, this calculation yields an average annual cost of $248,533, which is equal to a total cost of $2.5 million ($2,485,332).

The sum of these costs yields a 10-year cost of $3.8 million ($3,798,812), which results in an average annual cost of $379,881 for individuals from the Local WDBs to review and modify the 4-year plan.

n. Improved Information about Eligible Training Program Providers

WIOA sec. 122 establishes requirements for State ETPLs to provide information to the public on the effectiveness of ETPs in achieving positive outcomes for WIOA training participants. The State-maintained ETPLs provide adults, dislocated workers, and other workers with better information about potential training program providers and enable them to make better-informed choices about programs to pursue. As explained in WIOA sec. 122, the required information for the State ETPL includes performance information on WIOA participants including percentage employed 2 and 4 quarters after program exit, median earnings 2 quarters after exit, and percentage obtaining a credential. Other reporting requirements for the State ETPLs include the cost of attendance for WIOA participants, credentialing program information, program completion rate, and additional information the State may require.[43]

To be included on an ETPL, training providers must establish eligibility through an application procedure and then must maintain eligibility, including a biennial review by a State-appointed agency, according to a State Governor's procedure. Once it determines eligibility for ETPs, the State must make easily understood ETPLs publicly available, through electronic means and the one-stop delivery system. Finally, information analyzed and published by the

[43] The costs associated with performance reporting for ETPs is explained in the WIOA sec. 116 analysis in the "Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions"; Notice of Proposed Rulemaking at 80 FR 20573.

Local WDBs about local labor markets also will help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Costs

At the State level for DOL programs (see Exhibit 18), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1) by the time required to provide additional information about eligible training program providers (32 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: management analysts (2 analysts at $45.88/hour for 40 hours each), and secretaries or administrative assistants (1 assistant at $27.16/hour for 80 hours). We summed the labor cost for all three occupational categories ($7,936) and multiplied the result by the number of States (57) to estimate a recurring annual cost of $452,334. This is equal to a 10-year total cost of $4.5 million ($4,523,338).

o. Sanctions on Under-Performing States

Section 116(f)(1)(B) of WIOA requires the Department to assess a sanction if a State fails to meet the State-adjusted levels for program performance for a second consecutive program year or if "a State fails to submit a report under subsection (d) for any program year." Three reports are required under WIOA sec. 116(d): State annual performance reports, local area performance reports, and ETP performance reports. Of these, only the State annual performance report must be submitted by the State to the Secretary of Labor. Section 116(f)(1) of WIOA requires that sanctions for performance failure continue until such date the Secretary of Labor or the Secretary of Education (as appropriate) determines that the State meets such State-adjusted levels of performance and has submitted such reports for the appropriate program years. Under

WIA, the Department had discretion over whether to issue sanctions for underperformance or failure to submit a performance report.

Costs

At the State level (see Exhibit 19), the Department estimated the costs by first multiplying the estimated average number of chief executives per State (1), the time required to evaluate State performance (40 hours), and the hourly compensation rate ($85.19/hour). We performed the same calculation for management analysts (1 analyst at $45.88/hour for 80 hours) and secretaries or administrative assistants (1 assistant at $27.16/hour for 40 hours). We summed the labor cost for all three occupational categories ($8,164) and multiplied the result by the number of States receiving sanctions (5) to estimate a recurring annual cost of $40,822, which is equal to a 10-year total cost of $408,220.

p. Colocation of ES Services

WIOA sec. 121(e)(3) requires colocation of ES offices and one-stop centers established under title I of WIOA. Fulfilling this requirement could involve resolving real property issues, decisions on site locations, discussions with municipal or county governments, and development of agreements with partners to participate at both comprehensive and affiliated sites. Colocation is intended to improve service delivery, avoid duplication of services, and enhance coordination of services, including location of staff to ensure expanded access to services in underserved areas. WIA did not include requirements for collocation.

Costs

At the State level for DOL programs (see Exhibit 20), the Department estimated this labor cost by first multiplying the estimated average number of lawyers per State (10), the time required to colocate ES services (10 hours each), and the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories:

management occupations staff members (10 managers at $65.39/hour for 40 hours each), management analysts (20 staff at $45.88/hour for 25 hours each), and secretaries or administrative assistants (10 assistants at $27.16/hour for 5 hours each). We summed the labor cost for all four occupational categories ($57,002) and multiplied the result by the number of States without colocated ES services (10) to estimate a one-time cost of $570,020, which results in an annual cost of $57,002.

At the State level, the Department estimated consultant costs for assisting with planning, property issues (e.g., selling buildings currently owned by ES and finding buildings that meet certain safety requirements), and integrating IT and case management systems by multiplying the estimated consultant costs ($10,200) by the number of States without colocated ES services (10). This calculation yields an estimated one-time cost of $102,000, resulting in an average annual cost of $10,200.

At the local level (see Exhibit 21), the Department estimated labor costs by first multiplying the estimated average number of management occupations staff members for all local entities within a State (100), the time required to colocate ES services (40 hours each), and the hourly compensation rate ($63.63/hour). We performed the same calculation for the management analysts (200 analysts at $60.60/hour for 25 hours each) and secretaries or administrative assistants (100 assistants at $29.30/hour for 5 hours each). We summed the labor cost for all three occupational categories ($572,170) and multiplied the result by the number of local areas without colocated ES offices and one-stop centers (100) to estimate a one-time cost of $57.2 million ($57,217,000), resulting in an annual cost of $5.7 million ($5,721,700).

The sum of these costs yields a one-time cost of $57.9 million ($57,889,020), which results in an average annual cost of $5.8 million ($5,788,902) for individuals from the State and local levels to colocate ES services.

q. Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System

An important goal under both the local and State funding mechanisms is to ensure that each one-stop partner contributes its proportional share to the funding of one-stop infrastructure costs, consistent with Federal cost principles. Under WIOA sec. 121(h), in general, Governors must ensure that one-stop partners appropriately share costs. Contributions must be based on a proportional share of use and all funds must be spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including Federal cost principles. WIOA sec. 121(h)(1) established two methods for funding the infrastructure costs of one-stop centers: a local funding mechanism and a State funding mechanism. Both methods use the funds provided to one-stop partners by their authorizing legislations; there is no separate funding source for one-stop infrastructure costs. WIA did not include directives relating to the funding of the one-stop infrastructure.

Costs

At the State level (see Exhibit 22), the Department estimated the costs related to this provision (e.g., the cost of developing memoranda of understanding) by first multiplying the estimated average number of lawyers per State (50), the time required for States to comply with payment requirements proportional to use of one-stop delivery systems (1 hour each), and the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: management occupations staff members (50 managers at $65.39/hour for 40 hours each), social workers (100 workers at $35.22/hour for 40 hours each), and

secretaries or administrative assistants (50 assistants at $27.16/hour for 5 hours each). We summed these products for all four occupational categories ($281,724) and multiplied the result by the number of States that need to pay their proportional share (54) to estimate a cost of $15.2 million ($15,213,096) occurring in 2018, 2021, and 2024, resulting in an average annual cost of $4.6 million ($4,563,929). This is equal to a total 10-year cost of $45.6 million ($45,639,288).

r. Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List

Under WIOA sec. 122(a)(1), the Governor, after consultation with the State WDB, must establish criteria, information requirements, and procedures regarding the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State (i.e., procedures for initial determination and renewals of eligibility). In establishing the ETP eligibility criteria, the Governor must take into account: (1) the performance of training providers; (2) the need to ensure access to training services throughout the State, including in rural areas and through the use of technology; (3) information reporting to State agencies with respect to other Federal and State programs involving training services, including one-stop partner programs; (4) the degree to which the training programs relate to in-demand industry sectors and occupations in the States; (5) any relevant State licensing requirements for the program; (6) ways in which the criteria can encourage providers to use industry-recognized certifications; (7) the ability of the providers to offer programs that lead to recognized postsecondary credentials; (8) the quality of a training program; (9) the ability of the providers to provide training services to individuals who are employed and individuals with barriers to employment; and (10) other factors the Governor determines appropriate to ensure accountability of the providers, informed choice of participants, one-stop centers ensure

providers meet the needs of local employers and participants, and collection of information is not unduly burdensome or costly to providers (WIOA sec. 122(b)(1)).

In establishing the information requirements, the Governor must require that a training provider submit appropriate, accurate, and timely information to the State, which must include information on performance, recognized postsecondary credentials received by participants, cost of attendance, the program completion rate, and eligibility criteria established by the Governor (WIOA sec. 122(b)(2)).

As explained in § 680.410, training providers, including those operating under the individual training account exceptions, must qualify as ETPs, except for those engaged in on-the-job and customized training (for which the Governor should establish qualifying procedures as discussed in § 680.530). Registered apprenticeship programs are automatically eligible to be included in the ETPL, provided the program remains a registered apprenticeship program. All registered apprenticeship programs must be informed of their automatic eligibility to be included on the list, and must be provided an opportunity to consent to their inclusion, before being placed on the State list of eligible training providers and programs. The Governor must establish a mechanism for registered apprenticeship program sponsors in the State to be informed of their automatic eligibility and to indicate that the program sponsor wishes to be included on the State list of eligible training providers and programs. The regulation specifies that this mechanism must place minimal burden on registered apprenticeship program sponsors and must be developed in accordance with guidance from the U.S. Department of Labor Office of Apprenticeship representative in the State or with the assistance of the recognized State apprenticeship agency, as applicable.

Under WIA sec. 122(b)(2), the Governor had to establish a procedure for Local WDBs to use to determine initial eligibility. Other than requiring performance information, however, WIA did not prescribe requirements for what must be included in the Governor-established eligibility criteria, information requirements, and ETP procedures. Regarding apprenticeships, WIA sec. 122(b)(1) required such training programs to submit an ETP application to the relevant Local WDB to include such information as the Local WDB may require.

Costs

At the State level (see Exhibit 23), the Department estimated this cost by first multiplying the estimated average number of lawyers per State (1); the time needed to establish criteria, information requirements, and procedures for training provider eligibility (20 hours); and the hourly compensation rate ($65.48/hour). We performed the same calculation for the management occupations staff members (1 manager at $65.39/hour for 40 hours) and management analysts (1 analyst at $45.88/hour for 80 hours). We summed the labor cost for all three occupational categories ($7,596) and multiplied the result by the number of States (57) to estimate a one-time cost of $432,949, resulting in an annual cost of $43,295.

At the local level, the Department estimated this cost by first multiplying the estimated average number of database administrators per ETP (1); the time needed to establish criteria, information requirements, and procedures for training provider eligibility (3 hours); and the hourly compensation rate ($59.60/hour). We summed the labor cost ($179) and multiplied the result by the number of ETPs (11,400) to estimate a one-time cost of $2.0 million ($2,038,320), resulting in an annual cost of $203,832.

The sum of these amounts yields a one-time cost of $2.5 million ($2,471,269), which results in an average annual cost of $247,127 for individuals from the State and local levels to establish criteria, information requirements, and procedures for training provider eligibility.

s. Determining Initial Eligibility of New and Previously Eligible Training Providers

Under the requirements of WIOA sec. 122, the Governor, after consultation with the State WDB, establishes the procedures for determining eligibility of training providers, which include application and renewal procedures, eligibility criteria, and information requirements. The Governor was permitted to establish a transition procedure under which WIA-ETPs could continue to be eligible through June 30, 2016 (or such earlier date determined appropriate by the Governor).[44] Under § 680.450, all providers that previously have not been eligible under either WIA sec. 122 or WIOA sec. 122, except for registered apprenticeship programs, must submit required information to be considered for initial eligibility in accordance with the Governor's procedures. Under WIOA sec. 122(b)(4)(B), providers receive initial eligibility for only 1 fiscal year and after the initial eligibility expires, providers are subject to the Governor's application procedures for continued eligibility, described in § 680.460, to remain eligible (see provision (t) Biennial Review of Training Provider Eligibility below).

Costs

At the State level for DOL programs (see Exhibit 24), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1), the time needed to determine provider eligibility (40 hours), and the hourly compensation rate ($65.39/hour). We performed the same calculation for the

[44] In the NPRM, the Department stated that the Governor may establish a transition procedure under which WIA-ETPs may continue to be eligible through December 31, 2015. The Department extended the time for the implementation of continued eligibility requirements for training providers eligible under WIA by 6 months, unless the Governor determined that an earlier date was possible.

management analysts (2 analysts at $45.88/hour for 110 hours each) and secretaries or administrative assistants (2 assistants at $27.16/hour for 50 hours each). We summed the labor cost for all three occupational categories ($15,425) and multiplied the result by the number of States (57) to estimate a one-time cost of $879,236, resulting in an annual cost of $87,924.

t. Biennial Review of Training Provider Eligibility

Under WIOA sec. 122(c)(2), the procedures established by the Governor must provide for biennial review and renewal of eligibility for providers of training services. Paragraph (h) of § 680.460 provides discretion for a State to establish eligibility criteria that require more frequent review but specifies that the review must be at least every 2 years. This biennial review process will require the submission of information from training providers and the evaluation of such information as specified in the Governor's eligibility criteria, information requirements, and procedures. Paragraph (j) of § 680.460 requires that the procedure for biennial review of training provider eligibility include verification of the registration status of registered apprenticeship programs.

WIA required training providers to submit performance information and meet performance levels annually to remain eligible (WIA sec. 122(c)(5) and § 663.530). The WIA regulations at § 663.540 required the annual submission of the following information to allow the Local WDB to determine subsequent eligibility of training providers: program-specific performance information, information on program costs, and any additional verifiable performance information that the Governor determines to be appropriate for obtaining subsequent eligibility.

<u>Costs</u>

At the State level (see Exhibit 25), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1), the time needed to perform the eligibility review (30 hours), and the hourly compensation rate ($65.39/hour). We performed the same calculation for the management analysts (2 analysts at $45.88/hour for 60 hours each) and secretaries or administrative assistants (2 assistants at $27.16/hour for 30 hours each). We summed the labor cost for all three occupational categories ($9,097) and multiplied the result by the number of States (57) to estimate a cost of $518,523 that occurs four times over the 10-year analysis period (i.e., 2019, 2021, 2023, and 2025), that is, an average annual cost of $207,409. This is equal to a 10-year total cost of $2.1 million ($2,074,093).

u. Disseminating the Training Provider List with Accompanying Information

To assist participants in choosing employment and training activities, the Governor or State agency must disseminate the State ETPL and accompanying performance and cost information to Local WDBs in the State and to members of the public online through Web sites and searchable databases and through whatever means the State uses to disseminate information to consumers, including the one-stop delivery system and its program partners throughout the State (WIOA sec. 122(d), § 680.500). WIA also required the designated State agency to disseminate the State ETPL and accompanying performance and cost information to the one-stop delivery systems within the State but did not include specific requirements that the State ETPL be made electronically available online (see § 663.555).

Costs

At the State level (see Exhibit 26), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State

(1), the time needed to disseminate the ETPL with accompanying information (30 hours), and the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: database administrators (2 administrators at $57.02/hour for 125 hours each), management analysts (2 analysts at $45.88/hour for 80 hours each), and secretaries or administrative assistants (2 assistants at $27.16/hour for 45 hours each). We summed the labor cost for all four occupational categories ($26,002) and multiplied the result by the number of States (57) to estimate a one-time cost of $1.5 million ($1,482,108), resulting in an annual cost of $148,211.

Relative to the baseline of current practice under WIA, the 21 provisions of the WIOA Final Rule described above are expected to result in costs of $350.4 million ($350,375,401) over the total 10-year period. This is equivalent to an average annual cost of $35.0 million ($35,037,540). See section V.A.7 (Summary of the Analysis) for a summary of these costs.

Quantifiable Transfer Payments

This section describes the quantifiable transfer payments expected to result from the Final Rule. Transfer payments, as defined by Circular A-4, are payments from one group to another that do not affect total resources available to society. Because of data limitations, the Department relied on expert judgement for some of the transfer estimates.

a. Youth Funds Targeting Out-of-School Youth

Under WIA, local areas were required to spend at least 30 percent of youth funds to assist eligible OSY. Under WIOA, States and local areas will be required to spend at least 75 percent of youth funds on OSY.

In addition to several benefits, discussed below in section V.A.7 (Summary of the Analysis), the Department's focus on OSY will result in transfers related to a larger tax base and

reduced burdens on taxpayers. These programs are expected to help youth that are particularly vulnerable, such as those who are low-income, minorities, or high school dropouts. Unassisted OSY have a higher likelihood of imposing large costs on society. Based on the Current Population Survey (CPS) by the U.S. Census Bureau, there were 6 million "disconnected youth" between the ages of 16 and 24 (i.e., youth who are not enrolled in school and not employed) in 2015.

Child Trends also found that due to their lack of education, youth without high school degrees are more likely to live in poverty and receive government assistance.[45]

Wald and Martinez (2002) found that dropouts were in prison at rates 10 to 20 times higher than youth who graduated from high school.[46] Incarcerating these individuals represents an additional cost to taxpayers. Belfield and Levin (2012) found that each disconnected youth costs taxpayers approximately $236,000 over the youth's lifetime and imposes $704,000 in societal costs. The estimated fiscal burden accounts for lost tax payments, public crime expenditures (e.g., incarceration and legal system costs), higher public health and welfare expenditures, and reduced public education costs. The estimate of the societal cost includes lost earnings, crime costs (e.g., incarceration and reduced quality of life), increased health, welfare, and social services expenditures, lower workforce productivity, and lower education spending.[47]

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[45] Child Trends Databank. (2015). *High school dropout rates*. Retrieved from: http://www.childtrends.org/?indicators=high-school-dropout-rates.

[46] Wald, M., and Martinez, T. (2003). *Connected by 25: Improving the life chances of the country's most vulnerable 14–24 year olds* (Working Paper). William and Flora Hewlett Foundation. Retrieved from: http://law.stanford.edu/wp-content/uploads/2015/07/Wald-and-Martinez-Connected-by-251.pdf.

[47] Belfield, C. R., Levin, H. M., and Rosen, R. (2012). *The economic value of opportunity youth*. Retrieved from: http://www.serve.gov/sites/default/files/ctools/econ_value_opportunity_youth.pdf?utm_source=5+Things+to+Know+about+Youth+not+Employed+or+in+School&utm_campaign=5+things+to+know+about+youth+not+employed+or+in+school&utm_medium=email.

In their report, Measure of America found that the cost of youth disconnection—including health care, public assistance, and incarceration—was $26.8 billion in 2013.[48]

Transfers

Under WIOA, individuals exiting the youth program will have an increased likelihood of gaining employment. According to ETA program data from FY 2015, 102,723 youth exit the youth program each year. The Department assumes that the increase in funding will result in a 15-percent increase in youth exiting the program each year, resulting in 118,132 youth exiting per year. Of the 15,409 additional youth exiting the youth program under WIOA due to the increased funding targeting youth, the Department assumed that 20 percent will gain employment due to the expertise they gained from the youth program. According to the Young Invincibles' report,[49] on average, an unemployed 18- to 24-year-old will cost Federal and State governments more than $4,100 each year[50] in forgone tax revenue and safety-net benefits paid out, which is equal to $4,182 in 2015 dollars.[51] The Department assumed that all youth obtaining full-time year-round jobs after exiting the youth program will be 24 years old, and will reduce the taxpayer burden by $4,182. The full benefits to youth unemployment will account for individuals who exited the program before they became 24 years old, and remained employed until becoming at least 25 years old.

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[48] Lewis, K., and Burd-Sharps, S. (2015). *Zeroing in on place and race: Youth disconnection in America's cities*. Measure of America of the Social Science Research Council. Retrieved from: http://ssrc-static.s3.amazonaws.com/wp-content/uploads/2015/06/MOA-Zeroing-In-Final.pdf.

[49] O'Sullivan, R., Mugglestone, K., and Allison, T. (2014). *In this together: The hidden cost of young adult unemployment.* Young Invincibles. Retrieved from: http://younginvincibles.org/wp-content/uploads/2014/01/In-This-Together-The-Hidden-Cost-of-Young-Adult-Unemployment.pdf.

[50] This is compared to a full-time year-round worker.

[51] Bureau of Labor Statistics. (2016). *CPI Detailed Report Data for February 2016*. Retrieved from: http://www.bls.gov/cpi/cpid1602.pdf. The Department calculated the inflation factor of 1.02 using data from Table 24. "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items." To calculate the inflation factor, the Department divided the average annual CPI-U for 2015 by the average annual CPI-U for 2013 (=237.017 / 232.957).

The Department multiplied the number of youth that will gain employment due to WIOA (3,082) by the annual cost to taxpayers ($4,182) to estimate an annual benefit of $12.9 million ($12,887,628). Over the 10-year analysis period, this calculation results in a total benefit of $128.9 million ($128,876,276) to Federal and State governments.

7. Summary of the Analysis

Exhibit 28 summarizes the estimated average annual costs for each provision of the Final Rule. The exhibit also presents a high-level qualitative description of the benefits resulting from full WIOA implementation of each regulatory provision in this DOL WIOA Final Rule. These qualitative forecasts are predicated on program experience and are outcomes for which data will become available only after implementation. The Department estimates the average annual cost of the Final Rule over the 10-year analysis period at $35.0 million. The largest contributor to this cost is the provision related to the development and continuous improvement of the workforce development system, which is $6.6 million per year. The next largest cost results from the Local WDB career pathways development, which is an estimated $6.5 million per year, followed by the colocation of ES services at an estimated $5.8 million per year.

EXHIBIT 28: Estimated Costs of the Final Rule by Provision (2015 dollars)			
Provision	**Average Annual Costs (undiscounted)**	**Percent of Total Costs**	**Qualitative Benefit Highlights**
(a) New State WDB Membership Requirements	$27,174	0.08%	Policy implementation efficiencies from reduced size and maneuverability
(b) Development and Continuous Improvement of the Workforce Development System	$6,641,946	18.96%	Mission clarification and ongoing commitment should foster future envisioned benefits continuing to accrue; Enhanced employer and employee services as a result of recognition of real labor markets (without artificial jurisdictional boundaries)
(c) Identification and Dissemination of Best Practices	$314,720	0.90%	Mission clarification and system building
(d) Development of Statewide Policies Affecting the State's One-Stop Delivery System	$136,227	0.39%	Mission clarification for State WDBs and overall system building capacity
(e) Development of Strategies for Technological Improvements	$202,612	0.58%	Recognition of the efficiencies generated by technology and enhanced management capabilities especially using outcome data
(f) Appoint New Local WDB and Appropriate Firewalls	$448,153	1.28%	Efficient use of Local WDB time; avoids conflicts of interest and negative publicity; administrative savings
(g) Local WDB Career Pathways Development	$6,537,876	18.66%	Improved educational and employment outcomes; potential employees are better prepared for jobs
(h) Local WDB Development of Proven and Promising Practices	$2,144,028	6.12%	Improved job placements and customer service
(i) Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness	$2,147,740	6.13%	Improved customer service; better decision-making from improved service level data; reduced paper costs, improved collaboration across service partners; improved customer service planning
(j) Competitive Process for Selection of the One-Stop Operator	$1,422,300	4.06%	Improved public confidence in the process; avoided conflicts of interest
(k) Local WDB Coordination with Education Providers	$2,144,028	6.12%	Improved preparation of workers and youth for future jobs; enhanced placements and outcomes

EXHIBIT 28: Estimated Costs of the Final Rule by Provision (2015 dollars)			
Provision	**Average Annual Costs (undiscounted)**	**Percent of Total Costs**	**Qualitative Benefit Highlights**
(l) Regional Plans	$954,197	2.72%	Savings from expanded collaboration; increased services to customers; reduced administrative overhead
(m) Local and Regional Plan Modification	$379,881	1.08%	Increased coordination of services leading to resource efficiencies; transparency
(n) Improved Information about Potential Eligible Training Program Providers	$452,334	1.29%	Improved customer decision-making; linkage of resources to outcomes and accountability for training and improved placement outcomes
(o) Sanctions on Under-Performing States	$40,822	0.12%	Improved services; better use of WIOA funds; enhanced recognition of performance imperatives by States and local areas; more accountability
(p) Colocation of ES Services	$5,788,902	16.52%	Reduced administrative overhead; improved service delivery and customer service; more efficient and effective public administration
(q) Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System	$4,563,929	13.03%	Expanded system cohesion; improved service delivery; avoidance of fragmented or duplication of services
(r) Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List	$247,127	0.71%	Increased training opportunities, especially for youth; effective administration linking to accountability and outcomes
(s) Determining Initial Eligibility of New and Previously Eligible Providers	$87,924	0.25%	Increased transparency; uniform treatment of ETPs; reduced incidents of non-meritorious performance
(t) Biennial Review of Training Provider Eligibility	$207,409	0.59%	Increased competition leading to more and better placements
(u) Disseminating the Training Provider List with Accompanying Information	$148,211	0.42%	More informed customer choice; clearer link of training resources to desired outcomes; more transparency

EXHIBIT 28: Estimated Costs of the Final Rule by Provision (2015 dollars)			
Provision	**Average Annual Costs (undiscounted)**	**Percent of Total Costs**	**Qualitative Benefit Highlights**
TOTAL COSTS	**$35,037,540**	**100.00%**	

Note: Totals might not sum due to rounding.

Exhibit 29 summarizes the estimated transfers related to the Final Rule. The Department estimates the total average annual transfer of the Final Rule to be $12.9 million.

Exhibit 29: Estimated Transfers of the Final Rule by Provision (2015 dollar)	
Provision	**Average Annual Transfer (undiscounted)**
(a) Youth Funds Targeting Out-of-School Youth	$12,887,628
TOTAL TRANSFERS	**$12,887,628**

Exhibit 30 summarizes the estimated first-year costs for each provision of this Final Rule. The Department estimates the total first-year cost of this Final Rule to be $89.9 million. The largest contributor to the first-year cost is the provision related to the colocation of ES services at an estimated $57.9 million. The next largest first-year cost results from the development and continuous improvement of the workforce development system at an estimated $7.0 million, followed by the Local WDB career pathways development at an estimated $6.5 million.

Exhibit 30: Estimated First-Year Costs of the Final Rule by Provision (2015 dollars)		
Provision	**Total First-Year Costs**	**Percent of Total First-Year Costs**
(a) New State WDB Membership Requirements	$271,742	0.30%
(b) Development and Continuous Improvement of the Workforce Development System	$7,029,820	7.82%
(c) Identification and Dissemination of Best Practices	$314,720	0.35%
(d) Development of Statewide Policies Affecting the State's One-Stop Delivery System	$1,362,268	1.52%
(e) Development of Strategies for Technological Improvements	$202,612	0.23%
(f) Appoint New Local WDB and Appropriate Firewalls	$4,481,532	4.99%
(g) Local WDB Career Pathways Development	$6,537,876	7.28%
(h) Local WDB Development of Proven and Promising Practices	$2,144,028	2.39%
(i) Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness	$2,147,740	2.39%
(j) Competitive Process for Selection of the One-Stop Operator	$0	0.00%
(k) Local WDB Coordination with Education Providers	$2,144,028	2.39%
(l) Regional Plans	$0	0.00%

Exhibit 30: Estimated First-Year Costs of the Final Rule by Provision (2015 dollars)		
Provision	**Total First-Year Costs**	**Percent of Total First-Year Costs**
(m) Local and Regional Plan Modification	$0	0.00%
(n) Improved Information about Eligible Training Program Providers	$452,334	0.50%
(o) Sanctions on Under-Performing States	$40,822	0.05%
(p) Colocation of ES Services	$57,889,020	64.43%
(q) Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System	$0	0.00%
(r) Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List	$2,471,269	2.75%
(s) Determining Initial Eligibility of New and Previously Eligible Providers	$879,236	0.98%
(t) Biennial Review of Training Provider Eligibility	$0	0.00%
(u) Disseminating the Training Provider List with Accompanying Information	$1,482,108	1.65%
TOTAL COST	**$89,851,156**	**100.00%**

Note: Totals might not sum due to rounding.

Exhibit 31 summarizes the estimated first-year transfers of this Final Rule. The Department estimates the total first-year transfer of this Final Rule to be $12.9 million.

Exhibit 31: Estimated First-Year Transfers of the Final Rule by Provision (2015 dollars)	
Provision	**Total First-Year Transfers**
(a) Youth Funds Targeting Out-of-School Youth	$12,887,628
TOTAL TRANSFER	**$12,887,628**

Exhibit 32 summarizes the estimated annual and total costs and transfers of this DOL WIOA Final Rule. The estimated total (undiscounted) cost of the rule sums to $350.4 million over the 10-year analysis period, which is equal to an average annual cost of $35.0 million per year. In total, the estimated 10-year discounted costs of the Final Rule range from $278.8 million to $314.9 million (with 7- and 3-percent discounting, respectively).

The estimated total (undiscounted) transfers of the rule sum to $128.9 million over the 10-year analysis period, for an average annual transfer of $12.9 million per year. In total, the

estimated 10-year discounted transfers of the Final Rule range from $96.9 million to $113.2 million (with 7- and 3-percent discounting, respectively).

To contextualize the cost of the Final Rule, the Department's average annual budget for WIA over the FY 2012–2014 was $3.5 billion.[52] Thus, the annual additional cost of implementing the Final Rule is 1.1 percent of the average annual cost of implementing WIA over the FY 2012–2014 (with either 3-percent or 7-percent discounting). In response to public comments, we also contextualize the cost of the Final Rule relative to the amount of administrative and transition funds available to States, which averaged $200.1 million between PY 2014 and PY 2015.[53] The annual additional cost of implementing the Final Rule is between 18.5 percent and 19.8 percent of the average annual administrative and transition funds budget (with 3-percent and 7-percent discounting, respectively).

[52] U.S. Department of Labor, Employment and Training Administration. (2015). Archive of State Statutory Formula Funding. Retrieved from: https://www.doleta.gov/budget/py01_py09_arra_archive.cfm. The Department used data from the following files to estimate the average annual WIA budget: WIA Adult Activities Program (PYs 2011, 2012, 2013, and 2014); WIA Dislocated Worker Activities Program (PYs 2011, 2012, 2013, and 2014); and WIA Youth Activities (PYs 2012, 2013, and 2014). Note that for the adult and dislocated worker activities programs, each fiscal year's funding is calculated as the sum of the program year's July funding and the previous program year's October funding. The youth activities funding is obligated to States in April and therefore corresponds to the fiscal year in which it is obligated. The Department inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.
U.S. Department of Labor, Employment and Training Administration. (2015) State Statutory Formula Funding. Retrieved from: https://www.doleta.gov/budget/statfund.cfm. The Department also used data from the following files to estimate the average annual WIA budget: Employment Services Program Dollar Tables (PYs 2012, 2013, and 2014). Note that Wagner-Peyser Act funds for a program year are obligated to States in July; therefore, these funds correspond to the fiscal year in which they are obligated. The Department inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.
[53] TEGL No. 34-14, TEGL No. 12-14, and TEGL No. 24-14. Funds from PY 2014 were inflated to 2015 dollars.

Exhibit 32: Estimated Monetized Costs and Transfers of the Final Rule (2015 dollars)		
Year	**Total Costs**	**Transfers**
2016	$89,851,156	$12,887,628
2017	$30,471,554	$12,887,628
2018	$35,688,517	$12,887,628
2019	$23,550,089	$12,887,628
2020	$20,475,421	$12,887,628
2021	$46,203,174	$12,887,628
2022	$20,475,421	$12,887,628
2023	$22,236,610	$12,887,628
2024	$35,688,517	$12,887,628
2025	$25,734,944	$12,887,628
Undiscounted 10-Year Total	**$350,375,401**	**$128,876,276**
10-Year Total with 3% Discounting	**$314,911,219**	**$113,232,100**
10-Year Total with 7% Discounting	**$278,750,652**	**$96,853,514**
10-Year Average	**$35,037,540**	**$12,887,628**
Annualized with 3% Discounting	**$36,917,202**	**$13,274,256**
Annualized with 7% Discounting	**$39,687,822**	**$13,789,762**

Qualitative Benefits

The Department was unable to quantify the important benefits to society due to data limitations and a lack of existing data or evaluation findings on the particular items. These include benefits from increased competition for all one-stop operators, the increased employment opportunities for unemployed or underemployed U.S. workers, benefits of colocation of ES services, enhanced ETP process, regional planning, and evaluation of State programs. Below, the Department describes qualitatively these benefits in qualitative terms. These qualitative forecasts are predicated on program experience and are outcomes for which data will become

available only after implementation. Although these studies are largely based on programs and their existing requirements under WIA, they capture the essence of the societal benefits that can be expected from this Final Rule.

Exhibit 33: Cost Savings by Study		
Study	**Cost Savings (Percent)**	
	Low Estimate	**High Estimate**
Segal (2005)[54]	5	50
Hodge (2000)[55]	6	12
Hilke (1993)[56]	5	20
Cohen (1997)[57]	31	
Burt and Boyett (1979)[58]	11	18

State evaluation research. In support of a State's strategic plan and goals, State-conducted evaluations and other forms of research will enable each State to test various interventions geared toward State conditions and opportunities. Results from such evaluation and research, if used by States, could improve service quality and effectiveness, potentially leading to higher employment rates and earnings among participants. Implementing various innovations that have been tested and found effective also could lead to lower unit costs and increased numbers of individuals served within a State. Sharing the findings nationally could lead to new service or management practices that other States could adopt to improve participant results, lower unit costs, or increase the number served.

[54] Segal, G. (2005). Making Florida's government competitive. *Backgrounder*. (44). The James Madison Institute. Retrieved from: http://reason.org/files/fb2c24752ac451b648c88d99b262dcfe.pdf.
[55] Hodge, G. A. (2000). *Privatization: An International Review of Performance*. Boulder, CO: Westview Press.
[56] Hilke, J. (1993). *Cost Savings from Privatization: A Compilation of Study Findings* (How to Guide No. 6). Reason Foundation. Retrieved from: http://reason.org/files/b987e7bd89f4c4e21c8a73857b7001e8.pdf.
[57] Cohen, W. S. (1997). *Defense Reform Initiative Report*. Washington, D.C.: Department of Defense.
[58] Burt, N. D., and Boyett, J. E. (1979). Reduction in selling price after the introduction of competition. *Journal of Marketing Research*, *16*(2), 275–279.

Training's impact on placement. A recent study found that flexible and innovative training that is closely related to a real and in-demand occupation is associated with better labor market outcomes for training participants. Youth disconnected from work and school can benefit from comprehensive and integrated models of training that combine education, occupational skills, and support services.[59] The study noted, however, that evidence for effective employment and training-related programs for youth is less extensive than for adults, and that there are fewer positive findings from evaluations.[60] The WIA youth program remains largely untested.[61] One study found that WIA training services increase placement rates by 4.4 percent among adults and by 5.9 percent among dislocated workers,[62] while another study concluded that placement rates are 3 to 5 percent higher among all training recipients.[63]

Participants in occupational training had a 5 percentage points higher reemployment rate than those who received no training, and reemployment rates were highest among recipients of on-the-job training, a difference of 10 to 11 percentage points.[64] The study found that training, however, did not correspond to higher employment retention or earnings.[65] A Youth

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[59] U.S. Department of Labor, U.S. Department of Commerce, U.S. Department of Education, and U.S. Department of Health and Human Services. (2014). *What Works In Job Training: A Synthesis of the Evidence*. Retrieved from: http://www.dol.gov/asp/evaluation/jdt/jdt.pdf.

[60] Ibid.

[61] Decker, P. T., and Berk, J. A. (2011.) Ten years of the Workforce Investment Act (WIA): Interpreting the research on WIA and related programs. *Journal of Policy Analysis and Management*, *30*(4), 906–926.

[62] Hollenbeck, K., Schroeder, D., King, C. T., and Huang, W.-J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005-06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.

[63] Heinrich, C. J., Mueser, P. R., and Troske, K. R. (2009). *Workforce Investment Act non-experimental net impact evaluation*. Columbia, MD: IMPAQ International, LLC. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Workforce%20 Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.

[64] Park, J. (2011). *Does occupational training by the Trade Adjustment Assistance Program really help reemployment?: Success measured as matching*. Washington, DC: U.S. Department of Labor, Employment and Training Administration. Retrieved from: https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2011-09.pdf.

[65] Ibid.

Opportunity Grant Initiative study found that Youth Opportunity was successful at improving outcomes for high-poverty youth. Youth Opportunity also increased the labor-force participation rate overall and for subgroups, including 16- to 19-year-old adolescents, women, African Americans, and in-school youth.[66] Department-sponsored research found that participants who received core services (often funded by ES) and other services in one-stop centers were more likely to enter and retain employment.[67]

Training's impact on wages. Before enactment of WIA, Job Training Partnership Act services had a modest but statistically significant impact on the earnings of adult participants.[68] WIA training increased participants' quarterly earnings by $660; these impacts persisted beyond 2 years and were largest among women.[69] WIA adult program participants who received core services (e.g., skill assessment, labor market information) or intensive services (e.g., specialized assessments, counseling) earned up to $200 more per quarter than non-WIA participants did. Earnings of participants who received training services in addition to core and intensive services initially were less but caught up within 10 quarters with the earnings of participants who received only core or intensive services; marginal benefits of training could exceed $400 per quarter. Earnings progressions were similar for WIA adult program participants and users of the

[66] Jackson, R. H., Malené Dixon, R., McCoy, A., Pistorino, C., Zador, P., Lopdell, J, Bruno, L. (2007). *Youth Opportunity Grant Initiative: Impact and synthesis report*. Prepared by Decision Information Resources, Inc. for U.S. Department of Labor, Employment and Training Administration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/YO%20Impact%20and%20 Synthesis%20Report.pdf.

[67] U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research. (2013). *Five-Year research and evaluation strategic plan program years 2012–2017*. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2013_21.pdf.

[68] Barnow, B., and Gubits, D. (2003). *Review of recent pilot, demonstration, research, and evaluation initiatives to assist in the implementation of programs under the Workforce Investment Act* (Occasional Paper 2003-10). U.S. Department of Labor, Employment and Training Administration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/ETAOP%202003-10%20Review%20of%20Recent%20Pilot%2C%20Demonostration%2C%20Research%2C%20and%20Evaluation%20Initiatives.pdf.

[69] Ibid.

labor exchange only.[70] WIA training services also improved participants' long-term wage rates, doubling earnings after 10 quarters over those not receiving training services.[71] WIA participants who did not receive training, however, earned $550 to $700 more in the first quarter after placement. The study also noted that individuals who did not receive training received effective short-term counseling that enabled them to gain an immediate advantage in the labor market.[72]

Another Department program, the Job Corps program for disadvantaged youth and young adults, produced sustained increases in earnings for participants in their early twenties. Students who completed Job Corps vocational training experienced average earnings increases by the fourth follow-up year over the comparison group, whereas those who did not complete training experienced no increase.[73] Another publication also noted that, on average, adults experienced a $743 quarterly post-exit earnings boost.[74]

Those who completed training experienced a 15-percent increase in employment rates and an increase in hourly wages of $1.21 relative to participants without training.[75] Participation

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[70] Chrisinger, C. K. (2011). *Earnings progression among workforce development participants: Evidence from Washington State*. U.S. Department of Labor, Employment and Training Administration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2011-11.pdf.

[71] Heinrich, C. J., Mueser, P. R., and Troske, K. R. (2009). *Workforce Investment Act non-experimental net impact evaluation*. Columbia, MD: IMPAQ International, LLC. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Workforce%20 Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.

[72] Ibid.

[73] Gritz, M., and Johnson, T. (2001). *National Job Corps Study: Assessing program effects on earnings for students achieving key program milestones*. Prepared by Battelle Memorial Institute for U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/MilestoneImpactReport-Final.pdf.

[74] Hollenbeck, K., Schroeder, D., C.T. King, C. T., and Huang, W.-J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005-06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20 for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.

[75] Needels, K., Bellotti, J., Dadgar, M., and Nicholson, W. (2006). *Evaluation of the Military Base National Emergency Grants: Final report* (Occasional Paper 2007-02). Prepared by Mathematica Policy Research for U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research.

in WIA training also had a distinct positive, but smaller, effect on employment and earnings, with employment 4.4 percentage points higher and quarterly earnings $660 higher than for comparison group members.

The following are channels through which these benefits might be achieved:

Better information for workers. The accountability measures will provide workers with higher-quality information about potential training program providers and enable them to make better-informed choices about which programs to pursue. The information analyzed and published by the State and Local WDBs about local labor markets also will help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Consumers of educational services, including disadvantaged and displaced workers, require reliable information on the value of different training options to make informed choices. Displaced workers tend to be farther removed from schooling and lack information about available courses and the fields with the highest economic return.[76] Given these information gaps and financial pressures, that displaced workers learn of the economic returns to various training plans is important.[77] Nevertheless, one study determined that the cost-effectiveness of WIA job training for disadvantaged workers is "modestly positive" due to the limited sample of States on which the research was based.[78]

Retrieved from: https://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20Military%20Base%20National%20Emergency%20Grants%20Final%20Report.pdf.

[76] Greenstone, M., and Looney, A. (2011). *Building America's job skills with effective workforce programs: A training strategy to raise wages and increase work opportunities*. Washington, DC: The Hamilton Project. Retrieved from: http://www.brookings.edu/~/media/research/files/papers/2011/11/training-greenstone-looney/11_training_greenstone_looney.pdf.

[77] Jacobson, L. S., LaLonde, R. J., and Sullivan, D. G. (2011). *Policies to reduce high-tenured displaced workers' earnings losses through retraining* (Discussion Paper 2011-11). Washington, D.C.: The Hamilton Project. Retrieved from: http://www.brookings.edu/~/media/research/files/papers/2011/11/displaced-jacobson-lalaonde-sullivan/11_displaced_jls_paper.pdf.

[78] Heinrich, C. J., Mueser, P. R., Troske, K. R., Jeon, K.-S., and Kahvecioglu, D. C. (2009). *New estimates of public employment and training program net impacts: A nonexperimental evaluation of the Workforce Investment Act*

Sanctions to under-performing States. WIOA requires the Department to place sanctions on States that underperform for 2 consecutive years. The sanction will be 5 percent of set-aside funding. Having a clear and credible sanction will serve as an incentive for States and local entities to monitor performance more effectively and to intervene early to avoid the loss of funding.

Evaluations of WIA indicate that sanctions have a larger influence on programs than incentives do. Two-thirds of local areas have indicated that the possibility of sanctions influenced their programs, whereas only slightly more than half indicated that incentives had an influence.[79] Further, several Job Centers consider student placement outcomes in staff performance evaluations and pay for vocational instructors.[80] This practice has significantly increased staff interest in successful student placement following program completion.[81]

State performance accountability measures. This requirement will include significant data collection for Local WDBs to address performance indicators for the core programs in their jurisdictions. This data collection will enable the State WDBs to assess performance across each State. Training providers will be required to provide data to Local WDBs, which will represent a cost in the form of increased data collection and processing. Employers and employees also will have to provide information to the training providers, which will take time. This provision, in combination with the State and Local WDB membership provisions requiring employer/business

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program (Discussion Paper 4569). Bonn, Germany: Institute for the Study of Labor (IZA). Retrieved from: http://ftp.iza.org/dp4569.pdf.

[79] Dunham, K., Mack, M., Salzman, J., and Wiegand, A. (2005). *Evaluation of the WIA performance measurement system: Survey report*. Prepared by Social Policy Research Associates for U.S. Department of Labor, Employment and Training Administration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20WIA%20Performance%20Measurement%20System%20-%20Survey%20Report.pdf.

[80] Johnson, T., Gritz, M., Jackson, R., Burghardt, J., Boussy, C., Leonard, J., and Orians, C. (1999). *National Job Corps study: Report on the process analysis*. Prepared by Mathematica Policy Research, Inc. for U.S. Department of Labor, Employment and Training Administration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/99-jc_analysis.pdf.

[81] Ibid.

representation, is expected to improve the quality of local training and, ultimately, the number and caliber of job placements.

Implementation of follow-up measures, rather than termination-based measures, might improve long-term labor market outcomes, although some could divert resources from training activities.[82]

Before-after earning metrics capture the contribution of training to earnings potential and minimize incentives to select only training participants with high initial earnings.[83] With the exception of programs in a few States, current incentives do not reward enrollment of the least advantaged.[84] In addition, the study noted evidence that the performance standards can be "gamed" in an attempt to maximize their centers' measured performance.[85]

Pressure to meet performance levels could lead providers to focus on offering services to participants most likely to succeed. For example, current accountability measures might create incentives for training providers to screen participants for motivation, delay participation for those needing significant improvement, or discourage participation by those with high existing wages.[86]

The following subsections present additional channels by which economic benefits might be associated with various aspects of the Final Rule:

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[82] Courty, P., and Marschke, G. (2007). Making government accountable: Lessons from a federal job training program. *Public Administration Review*, *67*(5), 904–916.
[83] Heckman, J. J., Heinrich, C., and Smith, J. A. (1997). Assessing the performance of performance standards in public bureaucracies. *The American Economic Review*, *87*(2), 389–395.
[84] Ibid.
[85] Ibid.
[86] Dunham, K., Mack, M., Salzman, J., and Wiegand, A. (2005). *Evaluation of the WIA performance measurement system: Survey report.* Prepared by Social Policy Research Associates for U.S. Department of Labor, Employment and Training Administration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20WIA%20Performance%20Measurement%20System%20-%20Survey%20Report.pdf.

Dislocated workers. A study found that, for dislocated workers, receiving WIA services significantly increased employment rates by 13.5 percent and boosted post-exit quarterly earnings by $951.[87] Another study found, however, that training in the WIA dislocated worker program had a net benefit close to zero or even below zero.[88]

Self-employed individuals. Job seekers who received self-employment services started businesses sooner and had longer-lasting businesses than nonparticipants. Self-employment assistance participants were 19 times more likely to be self-employed than nonparticipants and expressed high levels of satisfaction with self-employment. A study of Maine, New Jersey, and New York programs found that participants were four times more likely to obtain employment of any kind than nonparticipants were.[89]

Workers with disabilities. A study of individuals with disabilities enrolled in training for a broad array of occupations found that the mean hourly wage and hours worked per quarter for program graduates were higher than for individuals who did not complete the program.

Out-of-school youth. Several benefits are expected to result from the Department's increased funding for OSY—especially those from vulnerable groups such as low-income youth, minorities, and high school dropouts. According to Lerman (2005), that youth who have left

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[87] Hollenbeck, K., Schroeder, D., King, C. T., and Huang., W.-J. (2005). *Net Impact Estimates for Services Provided through the Workforce Investment Act* (Occasional Paper 2005-06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.

[88] Heinrich, C. J., Mueser, P. R., and Troske, K. R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.

[89] Kosanovich, W. T., Fleck, H., Yost, B., Armon, W. and Siliezar, S. (2001). *Comprehensive assessment of self-employment assistance programs*. Prepared by DTI Associates for U.S. Department of Labor, Office of Workforce Security. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Comprehensive%20Assessment%20of%20Self-Employment%20Assistance%20Programs.pdf.

school recently develop skills directing them toward having productive careers is critical.[90] As discussed above in the transfer subsection of the section V.A.6 (Subject-by-Subject Analysis), increased investment in programs that target OSY is expected to result in higher youth employment, higher incomes, reduced crime, and a reduction in the waste of human potential. As a note of caution, however, Lerman (2005) found that only a few of the programs sponsored by the Department, other Federal and State government agencies, and private foundations aimed at helping at-risk, OSY have resulted in concrete benefits that have exceeded each program's costs.[91]

In conclusion, after a review of the quantitative and qualitative analysis of the impacts of this Final Rule, the Department has determined that the societal benefits justify the anticipated costs.

Qualitative Transfers

In addition, there is an important transfer payment that the Department was unable to quantify. Below, the Department describes qualitatively the transfer payment that is expected to result from layoff aversion due to rapid response activities.

Layoff Aversion Due to Rapid Response Activities. Under the WIA Regulations, rapid response operators could use the funds to assess the potential for averting layoffs. Under WIOA, the regulations at § 682.330 require rapid response to include layoff aversion strategies and activities, but only as applicable. The Final Rule includes several broad strategies and specific activities that are critical to gathering information, maintaining readiness, and ensuring the

[90] Lerman, R. I. (2005). *Programs to support out-of-school youth* (Occasional Paper 2005-14). Washington, D.C.: U.S. Department of Labor, Employment and Training Administration. Retrieved from: http://wdr.doleta.gov/research/FullText_Documents/Programs%20to%20Support%20Out-of-School%20Youth%20Report.pdf.
[91] Ibid.

ability to capitalize on opportunities that will prevent, or minimize the duration of, unemployment.

Although adding layoff aversion to a State's portfolio of rapid response services will not necessarily change the rapid response costs for States because States take resources from other rapid response activities to do so, layoff aversion is economically valuable in many ways. Saving jobs keeps people working and earning income to be spent in the economy and prevents the costs associated with unemployment, including unemployment insurance and retraining. Businesses sell goods and services, make profits, and pay taxes, while maintaining a skilled workforce. Communities thrive when residents are working and actively participating in the economy. Preventing job loss, and minimizing the duration of unemployment, ensures that the public workforce system is a critically important player in creating and maintaining a successful economy, and layoff aversion can deliver meaningful, positive benefits such as retaining wages, maintaining economic activity, expanding tax bases, minimizing the costs of retraining, and increasing employee morale.

This benefit is difficult to quantify because it is not possible to measure the number of individuals who would have been unemployed or the duration of their unemployment if layoff aversion services were not available.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business

Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact.

The Small Business Administration (SBA) defines a small business as one that is "independently owned and operated and which is not dominant in its field of operation." The definition of small business varies from industry to industry to the extent necessary to reflect industry size differences properly. An agency must either use the SBA definition for a small entity or establish an alternative definition, in this instance, for the workforce industry. The Department has adopted the SBA definition for the purposes of this certification.

The Department has notified the Chief Counsel for Advocacy, SBA, under the RFA at 5 U.S.C. 605(b), and certifies that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in large measure, by the fact that small entities are already receiving financial assistance under the WIA program and will likely continue to do so under the WIOA program as articulated in this Final Rule.

Affected Small Entities

This Final Rule can be expected to impact small one-stop center operators. One-stop operators can be a single entity (public, private, or nonprofit) or a consortium of entities. The types of entities that might be a one-stop operator include: (1) an institution of higher education; (2) an ES SWA established under the Wagner-Peyser Act; (3) a community-based organization, nonprofit organization, or workforce intermediary; (4) a private for-profit entity; (5) a government agency; (6) a Local WDB, with the approval of the local CEO and the Governor; or (7) another interested organization or entity that can carry out the duties of the one-stop operator. Examples include a local chamber of commerce or other business organization, or a labor organization.

Impact on Small Entities

The Department indicates that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. The Department has highlighted costs that are new to WIOA implementation and this Final Rule. Therefore, the Department expects that the DOL WIOA Final Rule will have no cost impact on small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this Final Rule does not impose a significant impact on a substantial number of small entities under the RFA; therefore, the Department is not required to produce any Compliance Guides for Small Entities as mandated by the SBREFA.

D. Paperwork Reduction Act

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

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is

minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

In accordance with the PRA, the Department submitted a series of ICRs to OMB when the NPRM was published. The NPRM provided an opportunity for the public to comment on the information collections directly to the Department; commenters also were advised that comments under the PRA could be submitted directly to OMB. OMB issued a notice of action for each request asking the Department to resubmit the ICRs at the final rule stage and after considering public comments. Where information collection instruments were not ready at the time the NPRM published, the Department provided additional opportunities for the public to comment on the information collections through notices in the Federal Register that provided additional comment periods on the associated forms and instructions. These comment periods provided at least 60 days for comments to be submitted to the agency. Each of these ICRs was then submitted for OMB approval, and the Department published notices in the Federal Register that invited comments to be sent to OMB for a period lasting at least 30 days. The Department also submitted each ICR for further approval to incorporate the provisions of this Final Rule; these Final Rule ICRs were not subject to further public comment. The Department provides a status of the each ICR in the summary section that immediately follows in this portion of the preamble.

Where a review remained pending, when this preamble was drafted, the Department will publish an additional notice to announce OMB's final action on the ICR.

It should be noted that the ICR review status reported in this section only relates to requests related directly to this Final Rule. Certain ICR packages that were previously approved are being updated to change references to those in the Final Rule. As has been the practice throughout WIOA implementation, the Department will continue to update stakeholders on the status of the ICRs through other means.

For some packages, substantive requirements were approved via a notice of action and as of the date of the drafting of this preamble, the information collection is being updated to reflect references in the WIOA Final Regulations. We note that the ETA Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System review is pending as of the date this preamble was drafted. The substantive requirements will be approved through a notice of action by OMB, and will take effect as of that date. The Department will announce this approval.

The information collections in this Final Rule are summarized as follows.

State Training Provider Eligibility Collection

Agency: DOL-ETA.

Title of Collection: State Training Provider Eligibility Collection.

Type of Review: New collection.

OMB Control Number: 1205-0523.

Affected Public: State, Local, and Tribal Governments, and Private Sector.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 122).

Total Estimated Number of Respondents Annually: 11,457.

Total Estimated Number of Annual Responses: 11,457.

Frequency of Responses: On Occasion.

Total Estimated Annual Time Burden: 8,835 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations sections: § 680.450, § 680.460, § 680.490, § 680.500.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: Under WIOA sec. 122, the Governor, after consultation with the State WDB, must establish criteria, information requirements, and procedures regarding the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State. The Final Rule describes the process for adding "new"' providers to the ETPL, explains the detailed application process for previously WIA-eligible providers to remain eligible under WIOA, describes the performance information that providers are required to submit to the State in order to establish or renew eligibility, and explains the requirements for distributing the ETPL and accompanying information about the programs and providers on the list.

The Department received no comments concerning this information collection.

ETA Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System

Agency: DOL-ETA.

Title of Collection: ETA Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System.

Type of Review: New collection.

OMB Control Number: 1205-0521.

Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Obligation to Respond: Required to Obtain or Retain Benefits.

Total Estimated Number of Respondents Annually: 17,262,375.

Total Estimated Number of Annual Responses: 34,526,494.

Total Estimated Annual Time Burden: 8,881,228 hours.

Total Estimated Annual Other Costs Burden: $6,791,395.

Regulations sections: § 684.420, § 684.610, § 684.700, § 684.800, § 685.210, § 685.400, § 688.420, § 688.610.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: This new information collection will consolidate the existing information collections for YouthBuild, National Farmworkers Jobs Program, Indian, and Native Americans Program participants. These information collections are currently approved under OMB Control Numbers 1205-0422, 1205-0425, and 1205-0464. The WIOA Performance Management and Information and Reporting System would standardize the initial application, quarterly, and annual reporting processes for program participants.

Comments: The Department received comments in specific areas (e.g., performance indicators, ICR documents) and general topics (e.g., burden estimates).

The Department received comments expressing concern that the proposed Participant Individual Record Layout (PIRL) did not identify which data elements are optional, required, or only required for a specific program or for specific participant characteristics. Similarly, four commenters requested that the final version of the PIRL contain information indicating which

programs are required to report each data element and under which conditions each data element must be reported to help States determine how to modify their systems to capture the data properly. Two commenters assumed that, except where clearly indicated otherwise, all data elements are required for all participants, even those receiving minimal staff involvement, and commented that this would be a significant change from existing reporting requirements. One commenter requested that, if the intent is that all data elements before section E be gathered for all programs, the Department consider limiting the required data elements to those really needed for each program. Particularly for title III, this commenter expressed concern that participants would drop out if asked to provide large amounts of information not directly related to matching them with a job.

Department Response: The PIRL consists of required and optional data elements for multiple programs and partners. Therefore, it is not expected that every data element will apply to every individual in every program. As noted above, the Department has extended the PIRL by identifying the reporting requirements for each program. For instance, as indicated by one of the commenters, it would not be realistic to collect the same depth and breadth of information from individual accessing ES services relative to individual receiving training services under a different program. Additional guidance and technical assistance will be provided on data collection and reporting requirements specific for each program.

Comments: Several commenters stated that the proposed information collection is not clear regarding the Indian and Native American (INA) program's reporting obligations and suggested that WIOA sec. 166 grantees have their own reporting systems, performance indicators, and a separate DOL-only PIRL. Two commenters also asked if all of the proposed reporting forms are required in order to begin programming a management information system.

Department Response: The Department notes that the performance indicators for the INA program are statutorily required by WIOA; the Department does not have the discretion to deviate from the indicators required in sec. 166(h)(1)(A) of WIOA. The Department has included INA programs in these comprehensive performance reporting requirements for the workforce programs. Section 166(h)(1)(A) requires the Secretary of Labor, in consultation with the Native American Employment and Training Council (NAETC), to develop additional performance indicators and standards. Different programs will be subject to different data element reporting requirements; in other words, INA program grantees only will be reporting on data elements in the DOL-only PIRL that are specifically related to the INA program. Additionally, the reporting template/form included in this ICR will be the required form for each program mentioned in the PIRL. In other words, while there is only one common form to be used, there will be one report form required for each grantee within the various programs included in this ICR.

Comments: A commenter expressed concerns regarding the burden of increased reporting requirements on the INA program, including the need for technical experts to design reporting systems to capture all new requirements and the re-training of employees on reporting procedures. Two different commenters recommended that the Department fund the development of a robust, flexible, and secure Web-based system that will meet the needs of both the grantees and the Federal system. One of the commenters stated that a Web-based reporting system would address many of the problems associated with the current Bear Tracks management information system, which lacks support for grantees' internal management and reporting requirements and is difficult to support and upgrade, particularly for non-Windows users.

Department Response: The Department urges the commenters to review the program additional matrix added to the PIRL, which designates which data elements need to be collected by each program. All data elements listed in the PIRL are not required to be collected by the INA program; therefore, the burden is not as heavy as anticipated.

The Department has worked on an appropriate balance between stewardship of Federal funds through tracking and reporting outcomes and not over-burdening recipients of those Federal funds with excessive reporting and other administrative requirements. However, reporting is essential for tracking participant outcomes and the overall effectiveness of all programs, including the INA program. Although the performance indicators require additional follow-up and longer tracking periods for participants, the Department does not consider this to be a significant increase in reporting burden.

The Department concurs with the commenter on the need for training on the new performance indicators and reporting requirements and will provide on-going technical assistance to grantees as the system transitions to the new performance indicators and reporting requirements under WIOA. The Department also agrees with the commenter that it will require technical experts to develop a reporting system for INA program grantees and will be working in collaboration with the NAETC and with INA program grantees to develop a management information system that will allow grantees to track and report on INA participants. The Department will provide guidance and technical assistance at subsequent NAETC meetings to include the reporting process and system.

The Department will consider a transition period for grantees so that consultation and training is provided on the final reporting requirements for WIOA and to allow the development of a new reporting system. The Department commits to working with the NAETC on developing

the revised reporting system and will consider web-based reporting as a means to reduce the maintenance of the system.

Comments: Referencing PIRL section E.04 (Indian and Native American Program), a commenter requested clarification on whether the Bear Tracks management information system is mandated for the INA program and, if so, who would fund the costly system enhancements to meet WIOA reporting requirements. The commenter asserted that disaggregation is a concern for tribal affiliation in California because many California tribes are small and data elements such as date of birth, zip code, barriers to employment, and tribal affiliation may reveal personally identifiable information (PII). The commenter asked if the Department has completed and evaluated a privacy impact study for California Indian Manpower Consortium and requested confidentiality assurances for California tribes.

Department Response: The Bear Tracks management information system is not a DOL-mandated system for INA program grantees. It was developed in collaboration with the NAETC and INA grantee community to increase reporting efficiency and accuracy and to allow for the transmission of individual participant records to the Department. Although the Bear Tracks management information system is not mandatory, INA program grantees will be required to use a system that transmits participant data in a manner that meets the Department's reporting requirements. The Department has taken several steps to manage the secure transfer of individual participant records. These steps include: a page for the file upload (for grantees) that is Secure Socket Layer (SSL) enabled; a Secure File Transfer protocol (S-FTP) used to transfer files from the Employment and Training Administration (ETA) to the State of Kansas for UI wage matching (Kansas has an S-FTP server and DOL has the S-FTP client) and lastly, only aggregate data are returned to the Department with data suppressed on grantees with fewer than

4 records. The Department has completed a Privacy Impact Assessment (PIA) for the Enterprise Business Support System (EBSS), which is the system that collects and stores data for the INA program (See the PIA located at: http://www.dol.gov/oasam/ocio/programs/PIA/ETA/ETA-EBSS.htm) DOL has determined that the safeguards and controls for this system adequately protect the information as indicated in EBSS System Security Plan, dated March 5, 2013.

Comments: Other commenters asserted that the gathering of information required for the PIRL would have significant costs, a few commenters urged the Department to evaluate each data element and require only those that are either mandated by statute or that truly have meaning and add value. One of these commenters stated that, while there are costs to modify information technology (IT) systems, including increased time spent gathering the data, it is ultimately the customers who pay these costs because more resources spent gathering data means less resources spent assisting customers and longer waits to see staff.

Department Response: Although the PIRL consists of several data elements not previously collected by the Department's workforce programs, most of the data elements were previously required under the WIA "WIASRD," which is the precursor to the PIRL. In general, data elements were added only if required by WIOA either directly or indirectly (i.e., if required for one or more performance calculations, or required for eligibility determinations). As noted previously, the Department has taken every effort to strike a balance between its fiduciary responsibilities pertaining to stewardship of Federal funds and the desire to not impose undue administrative burden.

The intent of this ICR is to streamline reporting across the Department's workforce programs, and this is reflected in the PIRL through the inclusion all data elements necessary for each of the programs included in the collection to meet their individual program reporting

requirements. Programs are required only to collect and report on those elements that are statutorily required and/or necessary to determine performance outcomes for those individuals to whom they provide services. The Department has minimized, to the extent possible, the burden placed on customers and service providers through the implementation of this new reporting system and will provide further support to ease this transition through future guidance and technical assistance.

Comments: Two commenters expressed concern that there are common data elements in both the Joint WIOA PIRL and the DOL-only PIRL that have different definitions and recommended that the Department ensure the definitions of common data elements remain consistent. One commenter recommended that the Department align the numbering between the Joint WIOA PIRL and the DOL-only PIRL data elements and correct situations in which some numbers are used more than once. Another commenter expressed concern that some data elements in the proposed DOL-only PIRL relating to participant characteristics are defined differently than in the VR Report 911.

Department Response: The Departments have worked to eliminate inconsistencies and align reporting requirements and the specific data elements, including using the exact same definitions for both versions of the PIRL, and aligning all element numbers. In addition, the Rehabilitation Services Administration (RSA) has added additional 911 elements to be consistent with the PIRL. Both DOL and RSA are revising existing data collection instruments. The increase in burden required to reorganize and renumber all of the data elements would exceed any burden removed by having consistent fields numbered across programs. RSA is also revising instructions to eliminate any duplicate numbers. Where appropriate, for reporting

purposes, RSA also plans to aggregate some of the more detailed 911 data elements to be consistent with the PIRL.

Comments: A commenter asked how data conflicts would be addressed if multiple PIRLs are submitted for the same individual by different agencies that have the individual on a different participation timeline. This commenter also expressed concern about integrating data from programs that are not part of the State system but are administered through grants to local areas and organizations throughout the State (e.g., YouthBuild and INA programs). If the information reported by these programs is to end up in an integrated PIRL, this commenter asserted that it will take time and effort for the State to establish a way to obtain and report the data from these additional programs to incorporate with ES, WIOA, and TAA.

Department Response: The Department notes that States have the flexibility to submit a separate PIRL for each program, or a PIRL for each participant, including services received from all programs. The Department will perform any integration that takes place using multiple PIRL data elements to link individual records in the case where a unique identifier across programs is not available. There will also be an upload option for the entire PIRL layout, for those States who wish to integrate their programs into one data file submission. Regarding grantee programs outside of the State, the Department agrees that this level of data integration may be difficult or in some cases not appropriate. The Department will continue to evaluate which programs should be integrated, and the most efficient methods to do so.

Comments: A commenter inquired if one PIRL file will be integrated for all programs (title I subtitle B, title I subtitle D, title II, ES program, trade, and other non-WIOA programs noted) or whether each program will have its own file. If each program provides its own file, the commenter requested clarification regarding whether Trade would need to collect data elements

that are not Trade-specific (e.g., low-income, low levels of literacy, and other data elements not currently reported in TAPR). A commenter expressed support for requiring Trade programs to use the PIRL as its program reporting layout, but requested clarification on the specific reporting requirements for TAA. For example, the commenter asked if quarterly Unemployment Insurance (UI) benefit information, as currently required on the TAPR, is still required and, if so, where these data will be collected on the PIRL. A commenter also expressed the understanding that each State can select if TAA will be included in the PIRL or reported in a separate program report.

Department Response: Although the PIRL will be used for multiple DOL programs (both formula and discretionary), not all data elements will apply to every program, for example, data on cultural barriers is required by the WIOA statute for title I programs but there is no similar requirement for TAA programs. Therefore, data elements pertaining to cultural barriers would not be collected for individuals participating in the TAA program only. All data elements of the TAPR are included in the PIRL. UI benefit information is to be reported collected in PIRL 401. Each program will be made aware of which elements are required data elements; the additional data elements in the PIRL will be considered optional for States and grantees to report on.

Comments: Regarding section B (One-Stop Center Program Participation Information), a commenter said that because National Farmworker Jobs Program (NFJP) grantees operate their own case management and data management programs, they only can be expected to report participation in other WIOA programs for individuals for whom they arrange co-enrollment. The commenter expressed concern that there is not consistency among one-stop operators from

service area to service area or State-to-State relating to the amount of cooperation and data sharing that States are willing or legally able to do with non-State agencies.

Department Response: NFJP grantees are a required one-stop partner and must enter into a memorandum of understanding (MOU) with Local WDBs as described in WIOA sec. 121(c). As part of this MOU, Local WDBs and the required partners must describe the manner in which the services will be coordinated and delivered through the one-stop delivery system, including the methods of individual referrals between the one-stop operator and the one-stop partners for appropriate services and activities. WIOA sec. 121(c)(2)(B) also provides that other provisions consistent with WIOA may be included in the MOU, and the Department encourages required one-stop partners, such as NFJP grantees, to include language that can facilitate sharing of co-enrollment data for reporting purposes. The Department will issue additional guidance regarding the development of MOUs between Local WDBs and required one-stop partners. No revision to the data element text has been made.

Comments: Regarding section D (Program Outcomes Information), a commenter expressed support for maintaining the ability of grantees to use supplemental data sources to track performance outcomes for all participants who are not found in wage records, reasoning that it provides certain program operators with the necessary flexibility to obtain performance outcome data without having access to wage records (e.g., community-based organizations). If such grantees use supplemental data sources but are unable to calculate performance outcomes for participants who choose not to provide their social security number, the commenter urged the Department to provide flexibility so there is no disincentive for serving these individuals (e.g., allow grantees to exclude these participants from performance outcome calculations but still include them in service counts, i.e., the participant served and exited column).

Department Response: For individuals that do not have or choose not to provide a Social Security Number (SSN), the Department will allow for supplemental data to be used to track employment rates and wages of the participants. The Department notes that employment and wages must be collected and verified for a participant through either wage record matching or through supplemental wage information, in order for the participant to be included as being in unsubsidized employment during the second quarter and in the fourth quarters after exit; this requirement allows such participants without disclosed SSNs to be included in performance outcomes. States should report SSN matched data without reporting the SSN as the unique identifier, except to the extent permitted under the H-1B grant program. The data provided by UI is the most reliable and least burdensome data available for reporting employment rates and wages; however, the Department will allow data from the other sources listed in the PIRL to be used when UI data are unavailable. In other words, participants who identify as having a SSN and those who do not will all be accountable for performance outcomes as well as overall participant and exiter counts. Both the Departments of Education and Labor continue to work to find solutions that will allow States to access the data needed to comply with these requirements under WIOA.

Comments: A commenter asked, concerning section E.02 (H-1B), whether only agencies that operate the H-1B program are responsible for completing this section, or whether programs under WIOA are required to confirm whether a person is an H-1B participant and, if so, whether WIOA is required to report these data elements. Similarly, noting that the PIRL has additional program data elements, e.g., H-1B (section E.02), Reintegration of Ex-Offenders (sections E.05 and E.06), and Office of Disability Employment Policy (ODEP) (section E.08), another commenter asked if States are now required to gather the data from the organizations that have

been awarded these grants or whether grantees are expected to submit their own files. If the State is required to report on these programs, the commenter asked for additional guidance relating to how States will learn the identity of these grantees and expressed concern about sufficient lead time for State IT departments to make system modifications.

Department Response: The Department is implementing the PIRL format across multiple programs, but not all programs will require the same data elements. For instance, H-1B grantees will be responsible for the collection and reporting of the required data elements under the H-1B section of the PIRL. Similarly, other discretionary grant programs will report only on those sections of the PIRL (i.e., those data elements that pertain to their respective program). In other words, the PIRL file for a participant in one program may look quite different from the PIRL file for a participant in a different program. States will not be responsible for the submission of discretionary grant programs – the grantees themselves will have the responsibility of submitting data on their participants.

Comments: Three commenters expressed confusion concerning PIRL 408 – Highest School Grad Completed (WIOA), on what to report for this data element. If an individual completes a full-time technical or vocational school, noting that although this data element no longer includes an option for vocational school, the Program Performance Scorecard lists vocational school under Educational Level. The commenters also asked whether it was a mistake that "Other Postsecondary Degree or Certification" is no longer included as an option under this data element. A commenter suggested that either the Department should further define this data element for consistent use and to avoid user error, or this data element should be removed. An advocacy organization recommended that the Department revise this data element to include educational attainment completed in foreign countries in the data element

specification, reasoning that it would aid service providers in determining the appropriate services a participant requires.

Department Response: The Department has revised this data element for better clarity. If an individual has attained a postsecondary technical or vocational degree, the participant would be coded as a '5' as per the element instructions. The option of "other postsecondary degree or certification" is not included here as the Department urges States and grantees to best choose one of the eight options for this element. Additionally, to reduce reporting burden, the Department did not add a separate option for completing an education program or attaining a degree or certificate. If this is the scenario, this participant's degree would be treated as one earned domestically and also be coded as such.

Comments: In discussing the measurable skill gains, a commenter expressed concern that the specifications include individuals who have an Exclusionary Reasons (PIRL 923) code of "01." Although acknowledging that this is to allow title II adult education providers to report on their corrections education/education of other institutionalized individuals, this commenter asserted that not excluding these individuals from title I performance is of concern because most participants who have been excluded from performance due to being institutionalized or incarcerated are waiting adjudication in a jail and are unable to secure bond; they are not in a prison where adult education providers are providing services. The commenter stated that there should be a better way to calculate and report this measure specific to each program. Another commenter expressed concerns regarding the burden of reporting on measurable skill gains as well as the accuracy of the measure. The commenter asserted that gathering and documenting information such as transcripts, report cards, progress reports, and exams would pose a hardship to States because schools will not provide student information, citing FERPA laws. Further, the

commenter said that testing individuals for educational functional levels is costly, time consuming, and unrealistic.

A commenter suggested there should be a minimum threshold of participation for a customer to reach (to be defined by Local WDBs) before that customer is counted towards this performance indicator (e.g., number of hours completed). This commenter also recommended that customers who start an education or training program in the last quarter of the program year should be subject to measure in the following program year given that they may not be able to demonstrate measurable gains so quickly. Moreover, given the diversity of possible education and training programs, this commenter recommended that requirements for documentation should be clear and simple, offer maximum flexibility as to what can demonstrate a skill gains, and stipulate that documentation is necessary only as back-up in the event of an audit, but not necessary to report on an outcome.

Department Response: In the final ICR, the Department excludes those who become institutionalized, as defined in PIRL 923, option "01." Although the Department understands the concerns around data gathering, the measure is required by statute; therefore, programs should form the necessary partnerships to obtain the information. Further, the Department has determined that, given the diversity of participant needs and program services, imposing a time threshold by which progress may be documented would be somewhat arbitrary and make the measure more complex. Such practice could result in excluding a number of participants from performance accountability reporting requirements, even if those participants would achieve a gain under one of the measures of progress. The Department recognizes that participants enrolling late in the program year may not have enough time to achieve a measurable skill gains prior to the end of the first program year, and the Department recognized this could be perceived

to negatively impact performance. However, the negotiation process and the statistical adjustment model may take into account enrollment patterns and lower baseline data when setting targets for the measurable skill gains indicator. The Department is concerned about incentivizing behavior that discourages service providers from enrolling individuals, such as disconnected youth, when they first approach programs. The Department emphasizes that programs must not delay enrollment in a program or prohibit participants from entering a program late in the program year. All participant outcomes, regardless if achieved at the end of the reporting period in which they enrolled or in the next reporting period count as positive outcomes for the program as they are not exit-based measures.

Comments: A commenter sought clarification on what data elements by program need to be recorded and when, asserting that there is no clear definition of what is required to be reported and at what stage of participation. Commenting that many data elements in the PIRL are unlikely to apply to all program and participant circumstances, an advocacy organization recommended that the Department develop an intelligent reporting system that uses logic models to streamline questions so they are only relevant to each program's and participant's circumstances. A commenter asked how the NFJP grantees will report on the elements that are not currently required for NFJP grants and only required for the main WIOA programs and asked whether such data elements would be "blocked" for the NJFP grantees.

Department Response: The Department notes that the PIRL is expected to be utilized by multiple programs. Not all data elements will be required for all programs. Some data elements are program-specific and, as noted by commenters, will not apply to their programs. In addition, data elements pertaining to characteristics are expected to be captured at the point of

participation. The data reporting solution will be flexible enough to accommodate only NFJP variables, or additional variables if the grantee choses to report on those.

Comments: Regarding burden estimates, a commenter recommended that workforce agencies that will be submitting data to the Department should determine a governance structure before moving forward with data projects. The commenter explained that data governance refers to the operating discipline for managing data and information as a key enterprise asset, asserting that a data governance plan should consider: decision-making authority, compliance monitoring, policies and standards, data inventories, full lifecycle management, preservation, data quality, data classification, data security and access, data risk management, and data validation. As an initial step in developing a data governance plan, this commenter recommended that workforce agencies determine the value and sensitivity of the information they seek to collect. Also, the commenter asserted that training on data quality, roles and responsibilities, prevention of mistakes, and correction of data quality should be offered and required for those with data input responsibilities. Finally, to enable government information sharing and to enhance the utility of collected data, this commenter recommended that workforce agencies begin exploring the National Information Exchange Model (NIEM).

Department Response: The Department agrees on the importance of the items mentioned in the comment. For purposes of the Paperwork Reduction Act, associated burden is limited to the data collection and data submission components. Additionally, it would be very difficult to assign specific burden estimates on each element listed above.

Work Application and Job Order Recordkeeping

Agency: DOL-ETA.

Title of Collection: Work Application and Job Order Recordkeeping.

Type of Review: Revision.

OMB Control Number: 1205-0001.

Affected Public: State Governments.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 121).

Total Estimated Number of Respondents Annually: 52.

Total Estimated Number of Annual Responses: 52.

Frequency of Responses: Quarterly.

Total Estimated Annual Time Burden: 417 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations sections: § 652.8.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: The Final Rule would not affect the burden hours associated with creating work application and job order records. However, the rule would change the record retention requirements for work applications and job orders from 1 year to 3 years in order to align with other Wagner-Peyser Act record retention requirements.

The Department received no comments concerning this information collection.

Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form

Agency: DOL-ETA.

Title of Collection: Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form.

Type of Review: Revision.

OMB Control Number: 1205-0039.

Affected Public: State and Local Governments; Individuals or Households.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 167).

Total Estimated Number of Respondents Annually: 3,552.

Total Estimated Number of Annual Responses: 7,416.

Frequency of Responses: On Occasion.

Total Estimated Annual Time Burden: 9,706 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations sections: § 653.107, § 653.108(g)(6), § 653.108(s), § 653.108(i), § 653.108(m), § 653.109, § 658.601.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: This information collection package includes the ETA Form 5148 (Services to Migrant and Seasonal Farmworkers Report) and the ETA Form 8429 (Complaint/Apparent Violation Form). SWAs must submit (pursuant to § 653.109) ETA Form 5148 quarterly to report the level of services provided to MSFWs through the one-stop centers and through outreach staff to demonstrate the degree to which MSFWs are serviced and to ensure that such services are provided on a basis that is "qualitatively equivalent and quantitatively proportionate" to the services provided to non-MSFWs, as required in the Judge Richey Court Order. The Department requires SWAs to use ETA Form 8429 when logging and referring complaints and/or apparent violations pursuant to part 658, subpart E.

ETA Forms 5148 and 8429 were updated to reflect the new requirements in the Wagner-Peyser Act regulations. Additionally, the Department modified Form 5148 by eliminating parts

3 and 4 and replacing part 3 with the Annual Summary that the SWAs will now need to submit at the end of the fourth quarter. Form 8429 was modified to include the submission of apparent violations.

The Department anticipates there will be no changes in the estimated total number of burden hours with the changes to these forms.

Comments: During the NPRM, the Department received comments on the data collection section (§ 653.109, Data Collection and Performance Accountability Measures). A few commenters recommended the Department revise the references to the pre-WIOA performance indicators. Another commenter noted that some of the proposed performance indicators in § 653.109 are not in line with the WIOA measures to track participants in unsubsidized employment in the second quarter after exit, participants in unsubsidized employment in the fourth quarter after exit, and median earnings. Therefore, this commenter recommended the Department bring those measures in line with WIOA to ensure consistency across all programs.

Department Response: The Department agrees and has changed § 653.109(a) to be consistent with the WIOA performance indicators listed in WIOA sec. 116.

Standard Job Corps Contractor Gathering Information

Agency: DOL-ETA.

Title of Collection: Standard Job Corps Contractor Gathering Information.

Type of Review: Revision.

OMB Control Number: 1205-0219.

Affected Public: Private Sector.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 147).

Total Estimated Number of Respondents Annually: 2,543.

Total Estimated Number of Annual Responses: 197,459.

Frequency of Responses: Weekly.

Total Estimated Annual Time Burden: 54,442 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations sections: § 686.945.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: The Final Rule retains the same information collection requirements as those previously found at 20 CFR 670.960, but relocated the requirements to 20 CFR 686.945. Consistent with the WIA regulations, the DOL WIOA Final Rule requires the Department to provide guidelines for maintaining records for each student during enrollment and for disposition of records after separation. As a result, the Department does not anticipate any changes in the information collection.

Comments: The Department received no comments concerning this information collection.

Placement Verification and Follow-up of Job Corps Participants

Agency: DOL-ETA.

Title of Collection: Placement Verification and Follow-up of Job Corps Participants.

Type of Review: Revision.

OMB Control Number: 1205-0426.

Affected Public: Individuals or Households; Private Sector.

Obligation to Respond: Voluntary.

Total Estimated Number of Respondents Annually: 49,200.

Total Estimated Number of Annual Responses: 93,400.

Frequency of Responses: On occasion.

Total Estimated Annual Time Burden: 21,700.

Total Estimated Annual Other Costs Burden: $0.

Regulations sections: § 686.945, § 686.955, § 686.1000, § 686.1010, § 686.1020, § 686.1030, § 686.1040.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: Job Corps' performance management system, which includes the OMS, is a well-established measurement system the Job Corps community has been using to track performance of centers and service providers for many years. It will be updated to reflect the new requirements of WIOA, including the new primary indicators of performance, but may also include breakouts of data that will help program managers target interventions in order to achieve the primary indicators. As a result, additional information would be collected from respondents.

Comments: The Department received two comments in response to the ICR. Both comments concerned the use of administrative data, such as UI wage data, and surveys to collect performance information under the WIOA.

Commenters stated that, as WIOA requires wage records be used as a primary source of information for performance reporting, the proposal to continue relying on surveys through the Post Enrollment Data Collection System (PEDCS) is unnecessary and inefficient. The commenters recommended that the Department utilize UI wage data through the WRIS, and

consider the use of State longitudinal data systems to augment credential attainment. One commenter, however, clearly pointed out the various limitations of the currently available administrative data.

Department Response: The Department notes that, currently, no source of administrative data exists that can meet the specific data reporting requirements of WIOA. Such records, in their current form, do not include information sufficient to support reporting at this time on all the different indicators required. For example, the data available from records collected by UI do not include individual information about wage rates, hours worked, or earnings at the individual student level. In addition, UI wage records do not provide any information about enrollment in school or training programs or attainment of secondary or postsecondary credentials, which are key program outcomes, and needed for accurately calculating several of the six primary WIOA measures. Finally, UI wage record information available to Job Corps through national data bases such as the Common Reporting Information System (CRIS) on employer identification number are not consistently available across States, which would lead Job Corps to underreport on the proposed effectiveness in serving employers measure.

Job Corps has revised the PEDCS to collect data and information about post-enrollment placements to align with specific WIOA reporting requirements. The revised PEDC will collect information to report on five of the six WIOA required primary performance indicators,

Ultimately, Job Corps intends to incorporate the use of administrative data (State wage records) to track student outcomes under WIOA. Adding administrative data to its current methods will allow Job Corps to correlate information in a more efficient, accurate, and repeatable manner. Enhanced data collection and reporting process will be highly useful for

program operators and program leadership in understanding the outcomes of all youth who interact with the Job Corps program.

National Dislocated Workers Emergency Grant Application and Reporting Procedures

Agency: DOL-ETA.

Title of Collection: National Dislocated Workers Emergency Grant Application and Reporting Procedures.

Type of Review: Revision.

OMB Control Number: 1205-0439.

Affected Public: State, Local, and Tribal Governments.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 170).

Total Estimated Number of Respondents Annually: 159.

Total Estimated Number of Annual Responses: 1,587.

Frequency of Responses: On Occasion.

Total Estimated Annual Time Burden: 1,086 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations sections: § 687.150.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: Specified activities must be conducted before an application for a NDWG is submitted. The NPRM required that a project implementation plan, which is already required for all NEGs under WIA, be submitted post-NDWG award. However, the Final Rule requires that a project implementation plan be submitted after receiving a DWG unless otherwise specified. The Department has retained the essence of proposed § 687.150, but made changes to the Final

Rule that better allow the Department to appraise the variety of needs and services under the new statute and tailor application requirements accordingly. The Department has added a sentence to this section reflecting that the application requirements may vary based on the category of DWG. The project implementation plan requirement may not apply to all DWGs at all times. Requirements will be noted in grant terms and conditions.

Comments: The Department received no comments concerning this information collection.

Employment and Training Administration Financial Reporting Form ETA-9130

Agency: DOL-ETA.

Title of Collection: Employment and Training Administration Financial Reporting Form ETA-9130.

Type of Review: Revision.

OMB Control Number: 1205-0461.

Affected Public: State, Local, and Tribal Governments.

Obligation to Respond: Required to obtain or retain a benefit (2 CFR 200.327).

Total Estimated Number of Respondents Annually: 1,000.

Total Estimated Number of Annual Responses: 20,000.

Frequency of Responses: Quarterly.

Total Estimated Annual Time Burden: 15,001 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations sections: secs. 184(c), 184(d), and 185 of WIOA, 2 CFR parts 200 and 2900 and § 681.430, § 683.150, § 683.200, § 683.300, § 683.730, § 683.740, § 683.750.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: DOL-ETA awards approximately $8 billion in formula and discretionary grants each year to an average of 1,000 recipients. Financial reports for each of these grants must be submitted quarterly on the financial report form ETA-9130. Recipients include but are not limited to: State Employment Security Agencies which are comprised of three components: Wagner-Peyser Act ES, Unemployment Insurance program, and Trade Program Grant Agreements; as well as WIOA Youth, Adult, and Dislocated Worker programs; National Dislocated Worker Grants; National Farmworker Jobs Program (NFJP); Indian and Native American programs; the Senior Community Service Employment Program; WIOA discretionary grants; and H-1B Job Training Grants. The Final Rule reflects OMB's Uniform Guidance, which standardizes the administrative, cost, and audit provisions for all grants and cooperative agreements provided under part 683. The Final Rule establishes consistent and uniform guidance that increases accountability and transparency, promotes fiscal integrity, and reduces duplication in the quarterly financial reports. This information collection supports secs. 184(c), 184(d), and 185 of WIOA and 2 CFR parts 200 and 2900.

Changes in the time and burden were made from the NPRM to the Final Rule. There was a significant increase since this information collection package covers all of the grant programs that ETA administers and not simply WIOA ETA-9130 forms.

Comments: On August 4, 2015, a request for comment for the Employment and Training Administration Financial Report Form #9130 (OMB Control No. 1205-0461) published in the Federal Register (Vol. 80, p. 46337). This provided a 60-day period, ending on October 5, 2015, for the public to submit comments to DOL on the proposed change to the collection of information. A total of eight comments were received from four commenters.

One commenter suggested breaking out the activities that make up statewide administrative funds and having a separate report for each. The same commenter requested viewing access to the e-Grants Federal Reporting System for entities to review the reports. The commenter described only having access to scans of the proposed submissions to review for approval.

Department Response: The Department made no changes to the report in response to the comment. The Statewide Youth, Statewide Adult, and Statewide Dislocated Worker ETA-9130 reports break out administrative expenditures in line 10f (Total Administrative Expenditures). To minimize the burden on grantees, a separate report solely for administrative expenditures (as one expenditure line item) is not required.

Regarding the second comment, for internal control reasons, only one password and one PIN are assigned to each grantee. The password is needed to enter data into the e-Grants Federal Reporting System. The PIN takes the place of the authorized signature and is needed to certify data. Only one person can sign and submit financial reports. It is at the grantees' discretion which staff members are tasked with these responsibilities. Once the reporting quarter is locked from further modification, WIA/WIOA summary obligation and expenditure reports are published at http://www.doleta.gov/budget/ . These sites are available to the public.

Comments: A commenter further commented that, for WIOA alone, there are over 15 reports. The commenter asked why the Adult and Dislocated Worker first and second increments cannot be merged into one report.

Department Response: The yearly base and advance funds in each individual funding stream are considered separate appropriations. To be in compliance with generally accepted accounting principles, the Department must assign a separate accounting code to each

appropriation. Therefore, the Department must require a separate financial report for each accounting line on a grant. Additionally, auditors must be able to determine whether an entity has over or underspent funds available, which is not possible if awards made under different appropriations are merged.

Comments: A commenter noted that the instructions for reporting/line item 10j (Total Recipient Share Required) for Statewide Rapid Response and other WIOA reports indicate that this line item must include the amount of non-Federal share that employers are required to provide, based on incumbent worker training contracts. The commenter stated that, although grantees implemented reporting and programming changes to accommodate the implementation of WIOA, not all grantees are obtaining this information, as it was not required in the past and that obtaining this information would require programming and accounting changes at both the State and local area levels. The commenter indicated that there is no match requirement listed in the 2015 WIOA grant agreements and thinks this requirement should be eliminated or made voluntary until the start of the next program year.

Department Response: The Department explains that the 2015 grant agreement outlines that funds must be expended in accordance with all applicable Federal statutes, regulations, and policies. Per WIOA sec. 134(d)(4)(C), employers participating in a local area incumbent worker training (IWT) program shall be required to pay for the non-Federal share of the cost of providing the training to incumbent workers of the employers. WIOA sec. 134(d)(4)(D)(ii) specifies that such contributions shall not be less than 10 percent of the cost, for employers with not more than 50 employees; 25 percent of the cost, for employers with more than 50 employees but not more than 100 employees; and 50 percent of the cost, for employers with more than 100 employees. The Department noted that in the 60-day public comment notice (80 FR 46337), this

requirement was mistakenly included in the National Dislocated Worker Grants ETA-9130 (G) and the Statewide Rapid Response ETA-9130 (H). Consequentially, the condition to report employers' non-Federal share of the cost of providing IWT was eliminated in these two reports.

Comments: The same commenter noted that throughout the reporting instructions for WIOA grants and also in the supporting statement made available with the notice published at 80 FR 46337, there were numerous references to WIOA cost limitations or baselines that apply on a fiscal year basis. The regulations stated that they apply on a program year basis. The commenter requested that this be corrected or clarified.

Department Response: The numbers cited in the supporting statement, including the corresponding time frames, are solely to demonstrate grantee reporting cost and time burden calculations. They are not related to the statutory cost limitations and baselines. The fiscal year references within the instructions are changed to program year, where applicable.

Comments: Some commenters noted that the proposed Indirect Expenditures reporting/line item instructions only refer to an indirect cost rate and asked for further instructions for States using a cost allocation plan.

Department Response: It is allowable for States to continue to use Statewide Cost Allocation Plans (SWCAP). For States using SWCAPs, it will not be required to report indirect expenditures. The instructions are modified and also, will be included in ETA's financial reporting training.

Comments: A commenter questioned whether the reporting/line item 11b (Transitional Jobs Expenditures) was intentionally included on the National Dislocated Worker Grants (ETA-9130 (G)) or not. It was further suggested that ETA-9130 (G) capture the temporary employment wages to align with the ETA-9104 Quarterly Progress Report.

Department Response: Transitional jobs are intentionally included because an NDWG grantee may choose to use this strategy to serve a dislocated worker who has been separated for a long period of time or has inconsistent work history. The Department concludes that including this resource ensures that NDWG grantees have the flexibility and available tools necessary to provide people with the services they need to return to work. It is not related to wages for temporary jobs in disaster grants.

Comments: Another commenter requested additional guidance for single-area States where WIOA is administered by a single agency and functions as both the State and local levels with no subrecipients. The commenter specifically requested guidance about the Indirect Expenditures reporting/line items required for the State level WIOA reporting, but not for local level reporting.

Department Response: Single-area States report indirect expenditures for the statewide reports only, and only if they have an indirect cost rate. If using a SWCAP, no indirect cost reporting is required. This information also will be included in ETA's financial reporting training.

E. Executive Order 13132 (Federalism)

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be

consulted before any such action is implemented. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. The Department has reviewed this Final Rule in light of these requirements and has determined that, with the enactment of WIOA and its clear requirement to publish national implementing regulations, E.O. sec. 3(b) has been reviewed fully and its requirement satisfied.

Accordingly, the Department has reviewed this WIOA-required Final Rule and has determined that the rulemaking has no Federalism implications. The DOL WIOA Final Rule, as noted above, has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. The Department has determined that this Final Rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

F. Unfunded Mandates Reform Act of 1995

This Act directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty on the private sector that is not voluntary.

Comments: In response to the NPRM, the Department received some comments that addressed unfunded mandates. One commenter said that the Department usually establishes a set funding level regardless of the level of services performed and that providing insufficient funding for a required program without an option for increasing the funding essentially creates an unfunded mandate. Another commenter asserted that because WOIA did not mandate a shared performance tracking system, the required collaboration across agencies represents an

unfunded mandate. This commenter said that most of the reason that systems are not already in place is due to financial constraints. Another commenter asserted that WIOA implementation costs are an unfunded mandate for many States due to an actual decrease in funding for some States, and because the costs used in the NPRM's cost-benefit analysis looked only at incremental implementation costs, and were significantly below actual costs. This commenter urged the Department to grant waivers from required tasks to match the States' allotments, and to provide additional funding and technical assistance for States to develop sustainable systems for meeting the requirements. One commenter similarly asserted that the new requirements are a de facto unfunded mandate, and provided a policy paper that concluded that Federal funds are insufficient to cover required activities. The commenter suggested that unless additional funds are provided, waivers would be needed to give States flexibility to prioritize activities. Another commenter also expressed concern that new WIOA requirements are not accompanied by implementation funding.

Department Response: The Department acknowledges the commenters' concerns and has detailed the cost burden associated with this Final Rule in section VI.A (Executive Orders 12866 and 13563: Regulatory Planning and Review). Grant funding is provided annually to all programs authorized under WIOA and that funding will be used to cover the costs of implementing this rule.

As noted above, under the Unfunded Mandates Reform Act of 1995, a Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector that is not voluntary. WIOA contains specific language supporting employment and training activities for Indian, Alaska Natives, and Native Hawaiian individuals. These program requirements are supported, as is the WIOA

workforce development system generally, by Federal formula grant funds, and, accordingly, are not considered unfunded mandates. Similarly, Migrant and Seasonal Farmworker activities are authorized and funded under the WIOA program as is currently done under the WIA program. The States are mandated to perform certain activities for the Federal government under WIOA and will be reimbursed (grant funding) for the resources required to perform those activities. The same process and grant relationship exists between States and Local WDBs under the WIA program and must continue under the WIOA program as identified in this NPRM.

WIOA contains language establishing procedures regarding the eligibility of training providers to receive funds under the WIOA program and contains clear State information collection requirements for eligible training providers (e.g., submission of appropriate, accurate, and timely information). A decision by a private training entity to participate as a provider under the WIOA program is purely voluntary and, therefore, information collection burdens do not impose a duty on the private sector that is not voluntarily assumed.

Following consideration of these factors, the Department has determined that the DOL WIOA Final Rule contains no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate."

G. Plain Language

E.O. 12866 and E.O. 13563 require regulations to be written in a manner that is easy to understand.

Comments: One commenter stated that the NPRM's commitment that the Department has included the relevant WIOA provisions in the proposed regulations for completeness was not fulfilled and cited examples of missing statutory language. While acknowledging that adding the statutory text would extend the length of the rules, this commenter said that it would help the

reader in not having to flip back and forth between two documents to understand what is required.

Department Response: To the extent practicable, the Department has attempted to address this commenter's concern in the Final Rule. In particular, many of the regulations in this Final Rule are verbatim implementations of WIOA's directives. However, because in some places it would be confusing, distracting, and excessive to add all of the relevant WIOA statutory language, some references to WIOA remain. The overall format of these WIOA regulations reflects the Department's commitment to writing regulations that are reader-friendly. The Department has attempted to make this Final Rule easy to understand. For example, the regulatory text is presented in a "question and answer" format and organized consistent with WIOA. In consideration of the foregoing, the Department has concluded that it has drafted this Final Rule in plain language.

H. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Department has assessed this Final Rule in light of this requirement and determined that the DOL WIOA Final Rule will not have a negative effect on families.

I. Executive Order 13175 (Indian Tribal Governments)

The Department reviewed this Final Rule under the terms of E.O. 13175 and the Department's Tribal Consultation Policy and has determined that the rule will have tribal implications as the final regulations have substantial direct effects on one or more Indian tribes,

the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes. As described in the preamble to the NPRM, the Department carried out several consultations with tribal institutions, including tribal officials, that allowed the tribal officials to provide meaningful and timely input into the Department's proposal. Additionally, through the notice and comment rulemaking process, the Department received comments on the programs and provisions in WIOA that have tribal implications and we have responded to these comments in the section-by-section discussions in this Final Rule and in the Joint WIOA Final Rule.

In addition to the comments received through its notice and comment rulemaking process, the Department received feedback from the Indian and Native American (INA) community and the public prior to the publication of the NPRM. This feedback was summarized in the NPRM at 80 FR 20832–20833.

J. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)

The Department has determined that this Final Rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

K. Executive Order 12988 (Civil Justice Reform)

This DOL WIOA Final Rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and the Department has determined that the Final Rule will not unduly burden the Federal court system. The WIOA regulations were written to minimize litigation and, to the extent feasible, provide a clear legal standard for affected conduct. In addition, the WIOA regulations have been reviewed carefully to eliminate drafting errors and ambiguities.

L. Executive Order 13211 (Energy Supply)

This DOL WIOA Final Rule was drafted and reviewed in accordance with E.O. 13211, Energy Supply. The Department has determined that this Final Rule will not have a significant adverse effect on the supply, distribution, or use of energy and is not subject to E.O. 13211.

List of Subjects

20 CFR Part 603

Grant programs-labor, Privacy, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

20 CFR Part 651

Employment, Grant programs-labor.

20 CFR Part 652

Employment, Grant programs-labor, Reporting and recordkeeping requirements.

20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Grant programs-labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 654

Employment, Government procurement, Housing standards, Manpower, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 658

Administrative practice and procedure, Employment, Grant programs-labor, Reporting and recordkeeping requirements.

20 CFR Part 675

Employment, Grant programs-labor.

20 CFR Parts 679-680

Employment, Grant programs-labor.

20 CFR Part 681

Employment, Grant programs-labor, Youth.

20 CFR Part 682

Employment, Grant programs-labor.

20 CFR Part 683

Employment, Grant programs-labor, Reporting and recordkeeping requirements.

20 CFR Part 684

Employment, Grant programs-labor, Indians, Reporting and recordkeeping requirements.

20 CFR Part 685

Employment, Grant programs-labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 686

Employment, Grant programs-labor, Job Corps.

20 CFR Part 687

Employment, Grant programs-labor.

20 CFR Part 688

Employment, Grant programs-labor, Youth, YouthBuild.

For the reasons stated in the preamble, ETA amends title 20 CFR, chapter V, as follows:

PART 603 – FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF STATE UC INFORMATION

1. Revise the authority citation for part 603 to read as follows:

Authority: Secs. 116, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014); 20 U.S.C 1232g.

2. Amend § 603.2 by revising paragraph (d) to read as follows:

§ 603.2 What definitions apply to this part?

* * * * *

(d) Public official means:

(1) An official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

(2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State WDB, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local area as defined in WIOA sec. 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

* * * * *

3. Amend § 603.5 by revising paragraph (e) to read as follows:

§ 603.5 What are the exceptions to the confidentiality requirement?

* * * * *

(e) Public official. Disclosure of confidential UC information to a public official for use in the performance of his or her official duties is permissible.

(1) "Performance of official duties" means administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(2) For purposes of § 603.2(d)(2) through (5), "performance of official duties" includes, in addition to the activities set out in paragraph (e)(1) of this section, use of the confidential UC information for the following limited purposes:

(i) State and local performance accountability under WIOA sec. 116, including eligible training provider performance accountability under WIOA secs. 116(d) and 122;

(ii) The requirements of discretionary Federal grants awarded under WIOA; or

(iii) As otherwise required for education or workforce training program performance accountability and reporting under Federal or State law.

* * * * *

4. Amend § 603.6 by adding paragraph (b)(8) to read as follows:

§ 603.6 What disclosures are required by this subpart?

* * * * *

(b) * * *

(8) To comply with WIOA sec. 116(e)(4), States must, to the extent practicable, cooperate in the conduct of evaluations (including related research projects) provided for by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA sec. 116(e)(1); WIOA secs. 169 and 242(c)(2)(D); sec. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 et seq.)); and the investigations provided for by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)). For purposes of this part, States must disclose confidential UC information to a Federal official (or an agent or contractor of a Federal official) requesting such information in the course of such evaluations. This disclosure must be done in accordance with appropriate privacy and confidentiality protections established in this part. This disclosure must be made to the "extent

practicable", which means that the disclosure would not interfere with the efficient administration of the State UC law, as required by § 603.5.

* * * * *

5. Add part 675 to read as follows:

PART 675 – INTRODUCTION TO THE REGULATIONS FOR THE WORKFORCE DEVELOPMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.
675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?
675.200 What do the regulations for workforce development systems under title I of the Workforce Innovation and Opportunity Act cover?
675.300 What definitions apply to these regulations?

Authority: Secs. 2, 3, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

§ 675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?

The purposes of title I of the Workforce Innovation and Opportunity Act (WIOA) include:

(a) Increasing access to, and opportunities for individuals to receive, the employment, education, training, and support services necessary to succeed in the labor market, with a particular focus on those individuals with disabilities or other barriers to employment including out of school youth with the goal of improving their outcomes;

(b) Enhancing the strategic role for States and elected officials, and Local Workforce Development Boards (WDBs) in the public workforce system by increasing flexibility to tailor services to meet employer and worker needs at State, regional, and local levels;

(c) Streamlining service delivery across multiple programs by requiring colocation, coordination, and integration of activities and information to make the system understandable and accessible for individuals, including individuals with disabilities and those with other barriers to employment, and businesses.

(d) Supporting the alignment of the workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system at the Federal, State, and local and regional levels;

(e) Improving the quality and labor market relevance of workforce investment, education, and economic development efforts by promoting the use of industry and sector partnerships, career pathways, and regional service delivery strategies in order to both provide America's workers with the skills and credentials that will enable them to secure and advance in employment with family-sustaining wages, and to provide America's employers with the skilled workers the employers need to succeed in a global economy;

(f) Promoting accountability using core indicators of performance measured across all WIOA authorized programs, sanctions, and high quality evaluations to improve the structure and delivery of services through the workforce development system to address and improve the employment and skill needs of workers, job seekers, and employers;

(g) Increasing the prosperity and economic growth of workers, employers, communities, regions, and States; and

(h) Providing workforce development activities through statewide and local workforce development systems to increase employment, retention and earnings of participants and to increase industry-recognized postsecondary credential attainment to improve the quality of the

workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

§ 675.200 What do the regulations for workforce development systems under title I of the Workforce Innovation and Opportunity Act cover?

The regulations found in parts 675 through 688 of this chapter set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIOA. This part 675 describes the purpose of that Act, explains the format of these regulations, and sets forth definitions for terms that apply to each part. Parts 676, 677 and 678 of this chapter contain regulations relating to Unified and Combined State Plans, performance accountability, and the one-stop delivery system and the roles of one-stop partners, respectively. Part 679 of this chapter contains regulations relating to statewide and local governance of the workforce development system. Part 680 of this chapter sets forth requirements applicable to WIOA title I programs serving adults and dislocated workers. Part 681 of this chapter sets forth requirements applicable to WIOA title I programs serving youth. Part 682 of this chapter contains regulations relating to statewide activities. Part 683 of this chapter sets forth the administrative requirements applicable to programs funded under WIOA title I. Parts 684 and 685 of this chapter contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 686 and 687 of this chapter describe the particular requirements applicable to the Job Corps and the national dislocated worker grant programs, respectively. Part 688 of this chapter contains the regulations governing the YouthBuild program. In addition, part 603 of this chapter provides the requirements regarding confidentiality and disclosure of State Unemployment Compensation program data under WIOA.

Finally, parts 651 through 658 of this chapter address provisions for the Wagner-Peyser Act Employment Service, as amended by WIOA title III. Specifically, part 651 of this chapter contains general provisions and definitions of terms used in parts 651 through 658 of this chapter; part 652 of this chapter establishes the State Employment Service and describes its operation and services; part 653 of this chapter describes employment services to migrant and seasonal farmworkers and the role of the State Monitor Advocate; part 654 of this chapter addresses the special responsibilities of the Employment Service regarding housing for farmworkers; and part 658 of this chapter contains the administrative provisions that apply to the Wagner-Peyser Act Employment Service.

29 CFR part 38 contains the Department's nondiscrimination regulations implementing WIOA sec. 188.

§ 675.300 What definitions apply to these regulations?

In addition to the definitions set forth in WIOA and those set forth in specific parts of this chapter, the following definitions apply to the regulations in parts 675 through 688 of this chapter:

Consultation means the process by which State and/or local stakeholders convene to discuss changes to the public workforce system and constitutes a robust conversation in which all parties are given an opportunity to share their thoughts and opinions.

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward as defined in this section.

Contractor means an entity that receives a contract as defined in this section.

Cooperative Agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass- through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

Department means the U.S. Department of Labor, including its agencies and organizational units.

Employment and training activity means a workforce investment activity that is carried out for an adult or dislocated worker under part 678 of this chapter.

Equal opportunity data or EO data means data on race and ethnicity, age, sex, and disability required by 29 CFR part 38 of the Department of Labor regulations implementing sec. 188 of WIOA, governing nondiscrimination.

Employment and Training Administration or ETA means the Employment and Training Administration of the U.S. Department of Labor, or its successor organization.

Family means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

(1) A married couple and dependent children;

(2) A parent or guardian and dependent children; or

(3) A married couple.

Federal Award means:

(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR 200.101 Applicability;

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR 200.101 Applicability; and

(3) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of 2 CFR 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(4) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

Federal Financial Assistance means

(1) For grants and cooperative agreements, assistance in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance, except assistance listed in paragraph (2) of this definition.

(2) For purposes of the audit requirements at 2 CFR part 200, subpart F, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(3) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in 2 CFR 200.502, which outlines the basis for determining Federal awards expended.

Grant or Grant Agreement means a legal instrument of financial assistance between a Federal awarding agency and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) Grant agreement does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

Grantee means the direct recipient of grant funds from the Department of Labor under a grant or grant agreement. A grantee also may be referred to as a recipient.

Individual with a disability means an individual with any disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102). For purposes of WIOA sec. 188, this term is defined at 29 CFR 38.4.

Labor Federation means an alliance of two or more organized labor unions for the purpose of mutual support and action.

Literacy means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

Local WDB means a Local Workforce Development Board (WDB) established under WIOA sec. 107, to set policy for the local workforce development system.

Non-Federal entity, as defined in 2 CFR 2900.2, means a State, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Obligations when used in connection with a non-Federal entity's utilization of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non- Federal entity during the same or a future period.

Outlying area means:

(1) The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands; and

(2) The Republic of Palau, except during a period that the Secretaries determine both that a Compact of Free Association is in effect and that the Compact contains provisions for training and education assistance prohibiting the assistance provided under WIOA.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

Register means the process for collecting information, including identifying information, to determine an individual's eligibility for services under WIOA title I. Individuals may be registered in a variety ways, as described in § 680.110 of this chapter.

Secretary means the Secretary of the U.S. Department of Labor, or their designee.

Secretaries means the Secretaries of the U.S. Department Labor and the U.S. Department of Education, or their designees.

Self-certification means an individual's signed attestation that the information they submit to demonstrate eligibility for a program under title I of WIOA is true and accurate.

State means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. The term “State” does not include outlying areas.

State WDB means a State Workforce Development Board (WDB) established under WIOA sec. 101.

Subgrant or subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a

beneficiary of such program. A subrecipient also may be a recipient of other Federal awards directly from a Federal awarding agency.

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non- Federal entity to obligate.

Wagner-Peyser Act means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 et seq.

WIA Regulations mean the regulations in parts 660 through 672 of this chapter, the Wagner-Peyser Act regulations in part 652, subpart C of this chapter, and the regulations implementing WIA sec. 188 in 29 CFR part 37.

WIOA regulations mean the regulations in parts 675 through 687 of this chapter, the Wagner-Peyser Act regulations in part 652, subpart C of this chapter, and the regulations implementing WIA sec. 188 in 29 CFR part 38.

Workforce investment activities mean the array of activities permitted under title I of WIOA, which include employment and training activities for adults and dislocated workers, as described in WIOA sec. 134, and youth activities, as described in WIOA sec. 129.

Youth Workforce Investment Activity means a workforce investment activity that is carried out for eligible youth under part 679 of this chapter.

6. Add part 679 to read as follows:

PART 679 – STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE DEVELOPMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—State Workforce Development Board

Sec.
679.100 What is the purpose of the State Workforce Development Board?
679.110 What is the State Workforce Development Board?
679.120 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?
679.130 What are the functions of the State Workforce Development Board?
679.140 How does the State Workforce Development Board meet its requirement to conduct business in an open manner under "sunshine provision" of the Workforce Innovation and Opportunity Act?
679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?
679.160 Under what circumstances may the State Workforce Development Board hire staff?

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

Sec.
679.200 What is the purpose of requiring States to identify regions?
679.210 What are the requirements for identifying a region?
679.220 What is the purpose of the local area?
679.230 What are the general procedural requirements for designation of local areas?
679.240 What are the substantive requirements for designation of local areas that were not designated as local areas under the Workforce Investment Act of 1998?
679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?
679.260 What do the terms "performed successfully" and "sustained fiscal integrity" mean for purposes of designating local areas?
679.270 What are the special designation provisions for single-area States?
679.280 How does the State fulfill the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area?

679.290 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce development area?

Subpart C—Local Workforce Development Boards

Sec.
679.300 What is the vision and purpose of the Local Workforce Development Board?
679.310 What is the Local Workforce Development Board?
679.320 Who are the required members of the Local Workforce Development Board?
679.330 Who must chair a Local Workforce Development Board?
679.340 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?
679.350 What criteria will be used to establish the membership of the Local Workforce Development Board?
679.360 What is a standing committee, and what is its relationship to the Local Workforce Development Board?
679.370 What are the functions of the Local Workforce Development Board?
679.380 How does the Local Workforce Development Board satisfy the consumer choice requirements for career services and training services?
679.390 How does the Local Workforce Development Board meet its requirement to conduct business in an open manner under the "sunshine provision" of the Workforce Innovation and Opportunity Act?
679.400 Who are the staff to the Local Workforce Development Board and what is their role?
679.410 Under what conditions may a Local Workforce Development Board directly be a provider of career services, or training services, or act as a one-stop operator?
679.420 What are the functions of the local fiscal agent?
679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Subpart D—Regional and Local Plan

Sec.
679.500 What is the purpose of the regional and local plan?
679.510 What are the requirements for regional planning?
679.520 What are the requirements for approval of a regional plan?
679.530 When must the regional plan be modified?
679.540 How are local planning requirements reflected in a regional plan?
679.550 What are the requirements for the development of the local plan?
679.560 What are the contents of the local plan?
679.570 What are the requirements for approval of a local plan?
679.580 When must the local plan be modified?

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

Sec.

679.600 What is the purpose of the General Statutory and Regulatory Waiver Authority in the Workforce Innovation and Opportunity Act?
679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?
679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?
679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?
679.640 What limitations apply to the State's Workforce Flexibility Plan authority under the Workforce Innovation and Opportunity Act?

Authority: Secs. 101, 106, 107, 108, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—State Workforce Development Board

§ 679.100 What is the purpose of the State Workforce Development Board?

The purpose of the State Workforce Development Board (WDB) is to convene State, regional, and local workforce system and partners, to –

(a) Enhance the capacity and performance of the workforce development system;

(b) Align and improve the outcomes and effectiveness of Federally-funded and other workforce programs and investments; and

(c) Through these efforts, promote economic growth.

(d) Engage public workforce system representatives, including businesses, education providers, economic development, labor representatives, and other stakeholders to help the workforce development system achieve the purpose of the Workforce Innovation and Opportunity Act (WIOA); and

(e) Assist to achieve the State's strategic and operational vision and goals as outlined in the State Plan.

§ 679.110 What is the State Workforce Development Board?

(a) The State WDB is a board established by the Governor in accordance with the requirements of WIOA sec. 101 and this section.

(b) The membership of the State WDB must meet the requirements of WIOA sec. 101(b) and must represent diverse geographic areas of the State, including urban, rural, and suburban areas. The WDB membership must include:

(1) The Governor;

(2) A member of each chamber of the State legislature, appointed by the appropriate presiding officers of such chamber, as appropriate under State law; and

(3) Members appointed by the Governor, which must include:

(i) A majority of representatives of businesses or organizations in the State who:

(A) Are the owner or chief executive officer for the business or organization, or is an executive with the business or organization with optimum policy-making or hiring authority, and also may be members of a Local WDB as described in WIOA sec. 107(b)(2)(A)(i);

(B) Represent businesses, or organizations that represent businesses described in § 679.110(b)(3)(i), that, at a minimum, provide employment and training opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the State; and

(C) Are appointed from a list of potential members nominated by State business organizations and business trade associations; and

(D) At a minimum, one member representing small businesses as defined by the U.S. Small Business Administration.

(ii) Not less than 20 percent who are representatives of the workforce within the State, which:

(A) Must include two or more representatives of labor organizations nominated by State labor federations;

(B) Must include one representative who must be a member of a labor organization or training director from a joint labor-management registered apprenticeship program, or, if no such joint program exists in the State, a member of a labor organization or training director who is a representative of an registered apprenticeship program;

(C) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive, integrated employment for individuals with disabilities; and

(D) May include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

(iii) The balance of the members:

(A) Must include representatives of the Government including:

(1) The lead State officials with primary responsibility for the following core programs –

(i) The adult, dislocated worker, and youth programs authorized under title I of WIOA and the Wagner-Peyser Act;

(ii) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA; and

(iii) The State Vocational Rehabilitation (VR) program authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA.

Where the lead official represents more than one core program, that official must ensure adequate representation of the needs of all core programs under his or her jurisdiction.

(2) Two or more chief elected officials (collectively representing both cities and counties, where appropriate).

(B) May include other appropriate representatives and officials designated by the Governor, such as, but not limited to, State agency officials responsible for one-stop partner programs, economic development or juvenile justice programs in the State, individuals who represent an Indian tribe or tribal organization as defined in WIOA sec. 166(b), and State agency officials responsible for education programs in the State, including chief executive officers of community colleges and other institutions of higher education.

(c) The Governor must select a chairperson for the State WDB from the business representatives on the WDB described in paragraph (b)(3)(i) of this section).

(d) The Governor must establish by-laws that at a minimum address:

(1) The nomination process used by the Governor to select the State WDB chair and members;

(2) The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;

(3) The process to notify the Governor of a WDB member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a WDB member is unable to attend a meeting and assigns a designee as per the following requirements:

(i) If the alternative designee is a business representative, he or she must have optimum policy-making hiring authority.

(ii) Other alternative designees must have demonstrated experience and expertise and optimum policy-making authority.

(5) The use of technology, such as phone and Web-based meetings, that must be used to promote WDB member participation;

(6) The process to ensure members actively participate in convening the workforce development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and

(7) Other conditions governing appointment or membership on the State WDB as deemed appropriate by the Governor.

(e) Members who represent organizations, agencies or other entities described in paragraphs (b)(3)(ii) through (iii) of this section must be individuals who have optimum policy-making authority in the organization or for the core program that they represent.

(f)(1) A State WDB member may not represent more than one of the categories described in:

(i) Paragraph (b)(3)(i) of this section (business representatives);

(ii) Paragraph (b)(3)(ii) of this section (workforce representatives); or

(iii) Paragraph (b)(3)(iii) of this section (government representatives).

(2) A State WDB member may not serve as a representative of more than one subcategory under paragraph (b)(3)(ii) of this section.

(3) A State WDB member may not serve as a representative of more than one subcategory under paragraph (b)(3)(iii) of this section, except that where a single government agency is responsible for multiple required programs, the head of the agency may represent each of the required programs.

(g) All required WDB members must have voting privileges. The Governor also may convey voting privileges to non-required members.

§ 679.120 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

For purposes of § 679.110:

(a) A representative with "optimum policy-making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with "demonstrated experience and expertise" means an individual with documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function. Demonstrated experience and expertise may include individuals with experience in education or training of job seekers with barriers to employment as described in § 679.110(b)(3)(ii)(C) and (D).

§ 679.130 What are the functions of the State Workforce Development Board?

Under WIOA sec. 101(d), the State WDB must assist the Governor in the:

(a) Development, implementation, and modification of the 4-year State Plan;

(b) Review of statewide policies, programs, and recommendations on actions that must be taken by the State to align workforce development programs to support a comprehensive and streamlined workforce development system. Such review of policies, programs, and recommendations must include a review and provision of comments on the State Plans, if any, for programs and activities of one-stop partners that are not core programs.

(c) Development and continuous improvement of the workforce development system, including—

(1) Identification of barriers and means for removing barriers to better coordinate, align, and avoid duplication among programs and activities;

(2) Development of strategies to support career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment, including individuals with disabilities, with workforce investment activities, education, and supportive services to enter or retain employment;

(3) Development of strategies to provide effective outreach to and improved access for individuals and employers who could benefit from workforce development system;

(4) Development and expansion of strategies to meet the needs of employers, workers, and job seekers particularly through industry or sector partnerships related to in-demand industry sectors and occupations;

(5) Identification of regions, including planning regions for the purposes of WIOA sec. 106(a), and the designation of local areas under WIOA sec. 106, after consultation with Local WDBs and chief elected officials;

(6) Development and continuous improvement of the one-stop delivery system in local areas, including providing assistance to Local WDBs, one-stop operators, one-stop partners, and providers. Such assistance includes assistance with planning and delivering services, including training and supportive services, to support effective delivery of services to workers, job seekers, and employers; and

(7) Development of strategies to support staff training and awareness across the workforce development system and its programs.

(d) Development and updating of comprehensive State performance and accountability measures to assess core program effectiveness under WIOA sec. 116(b).

(e) Identification and dissemination of information on best practices, including best practices for –

(1) The effective operation of one-stop centers, relating to the use of business outreach, partnerships, and service delivery strategies, including strategies for serving individuals with barriers to employment;

(2) The development of effective Local WDBs, which may include information on factors that contribute to enabling Local WDBs to exceed negotiated local levels of performance, sustain fiscal integrity, and achieve other measures of effectiveness; and

(3) Effective training programs that respond to real-time labor market analysis, that effectively use direct assessment and prior learning assessment to measure an individual's prior knowledge, skills, competencies, and experiences for adaptability, to support efficient placement into employment or career pathways.

(f) Development and review of statewide policies affecting the coordinated provision of services through the State's one-stop delivery system described in WIOA sec. 121(e), including the development of –

(1) Objective criteria and procedures for use by Local WDBs in assessing the effectiveness, physical and programmatic accessibility and continuous improvement of one-stop centers. Where a Local WDB serves as the one-stop operator, the State WDB must use such criteria to assess and certify the one-stop center;

(2) Guidance for the allocation of one-stop center infrastructure funds under 121(h); and

(3) Policies relating to the appropriate roles and contributions of entities carrying out one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the system.

(g) Development of strategies for technological improvements to facilitate access to, and improve the quality of services and activities provided through the one-stop delivery system, including such improvements to –

(1) Enhance digital literacy skills (as defined in sec. 202 of the Museum and Library Service Act, 20 U.S.C. 9101);

(2) Accelerate acquisition of skills and recognized postsecondary credentials by participants;

(3) Strengthen professional development of providers and workforce professionals; and

(4) Ensure technology is accessible to individuals with disabilities and individuals residing in remote areas;

(h) Development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures, including design implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes and the incorporation of local input into such design and implementation to improve coordination of services across one-stop partner programs;

(i) Development of allocation formulas for the distribution of funds for employment and training activities for adults and youth workforce investment activities, to local areas as permitted under WIOA secs. 128(b)(3) and 133(b)(3);

(j) Preparation of the annual reports described in paragraphs (1) and (2) of WIOA sec. 116(d);

(k) Development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act; and

(l) Development of other policies as may promote statewide objectives for and enhance the performance of the workforce development system in the State.

§ 679.140 How does the State Workforce Development Board meet its requirement to conduct business in an open manner under the "sunshine provision" of the Workforce Innovation and Opportunity Act?

(a) The State WDB must conduct business in an open manner as required by WIOA sec. 101(g).

(b) The State WDB must make available to the public, on a regular basis through electronic means and open meetings, information about the activities and functions of the State WDB, including:

(1) The State Plan, or modification to the State Plan, prior to submission of the State Plan or modification of the State Plan;

(2) Information regarding membership;

(3) Minutes of formal meetings of the State WDB upon request;

(4) State WDB by-laws as described at § 679.110(d).

§ 679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?

(a) The State may use any State entity that meets the requirements of WIOA sec. 101(e) to perform the functions of the State WDB. This may include:

(1) A State council;

(2) A State WDB within the meaning of the Workforce Investment Act of 1998, as in effect on the day before the date of enactment of WIOA; or

(3) A combination of regional WDBs or similar entity.

(b) If the State uses an alternative entity, the State Plan must demonstrate that the alternative entity meets all three of the requirements of WIOA sec. 101(e)(1):

(1) Was in existence on the day before the date of enactment of the Workforce Investment Act of 1998 (WIA);

(2) Is substantially similar to the State WDB described in WIOA secs. 101(a)-(c) and § 679.110; and

(3) Includes representatives of business and labor organizations in the State.

(c) If the alternative entity does not provide representatives for each of the categories required under WIOA sec. 101(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce development system. The State WDB must maintain an ongoing and meaningful role for an unrepresented membership group, including entities carrying out the core programs, by such methods as:

(1) Regularly scheduled consultations with entities within the unrepresented membership groups;

(2) Providing an opportunity for input into the State Plan or other policy development by unrepresented membership groups, and

(3) Establishing an advisory committee of unrepresented membership groups.

(d) In parts 675 through 687 of this chapter, all references to the State WDB also apply to an alternative entity used by a State.

§ 679.160 Under what circumstances may the State Workforce Development Board hire staff?

(a) The State WDB may hire a director and other staff to assist in carrying out the functions described in WIOA sec. 101(d) and § 679.130 using funds described in WIOA sec. 129(b)(3) or sec. 134(a)(3)(B)(i).

(b) The State WDB must establish and apply a set of objective qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in effectively carrying out the functions of the State WDB.

(c) The director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

§ 679.200 What is the purpose of requiring States to identify regions?

The purpose of identifying regions is to align workforce development activities and resources with larger regional economic development areas and available resources to provide coordinated and efficient services to both job seekers and employers.

§ 679.210 What are the requirements for identifying a region?

(a) The Governor must assign local areas to a region prior to submission of the State Unified or Combined Plan, in order for the State to receive WIOA title I, subtitle B adult, dislocated worker, and youth allotments.

(b) The Governor must develop a policy and process for identifying regions. Such policy must include:

(1) Consultation with the Local WDBs and chief elected officials (CEOs) in the local area(s) as required in WIOA sec. 102(b)(2)(D)(i)(II) and WIOA sec. 106(a)(1); and

(2) Consideration of the extent to which the local areas in a proposed region:

(i) Share a single labor market;

(ii) Share a common economic development area; and

(iii) Possess the Federal and non-Federal resources, including appropriate education and training institutions, to administer activities under WIOA subtitle B.

(c) In addition to the required criteria described in paragraph (b)(2) of this section, other factors the Governor also may consider include:

(1) Population centers

(2) Commuting patterns

(3) Land ownership

(4) Industrial composition

(5) Location quotients

(6) Labor force conditions

(7) Geographic boundaries

(8) Additional factors as determined by the Secretary

(d) Regions must consist of:

(1) One local area;

(2) Two or more contiguous local areas in a single State; or

(3) Two or more contiguous local areas in two or more States.

(e) Planning regions are those regions described in paragraph (d)(2) or (3) of this section. Planning regions are subject to the regional planning requirements in § 679.510.

§ 679.220 What is the purpose of the local area?

(a) The purpose of a local area is to serve as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the State. Such areas may be aligned with a region identified in WIOA sec. 106(a)(1) or may be components of a planning region, each with its own Local WDB. Also, significantly, local areas are the areas within which Local WDBs oversee their functions, including strategic planning, operational alignment and service delivery design, and a jurisdiction where partners align resources at a sub-State level to design and implement overall service delivery strategies.

(b) The Governor must designate local areas (local areas) in order for the State to receive adult, dislocated worker, and youth funding under title I, subtitle B of WIOA.

§ 679.230 What are the general procedural requirements for designation of local areas?

As part of the process of designating or redesignating a local area, the Governor must develop a policy for designation of local areas that must include:

(a) Consultation with the State WDB;

(b) Consultation with the chief elected officials and affected Local WDBs; and

(c) Consideration of comments received through a public comment process which must:

(1) Offer adequate time for public comment prior to designation of the local area; and

(2) Provide an opportunity for comment by representatives of Local WDBs, chief elected officials, businesses, institutions of higher education, labor organizations, other primary stakeholders, and the general public regarding the designation of the local area.

§ 679.240 What are the substantive requirements for designation of local areas that were not designated as local areas under the Workforce Investment Act of 1998?

(a) Except as provided in § 679.250, the Governor may designate or redesignate a local area in accordance with policies and procedures developed by the Governor, which must include at a minimum consideration of the extent to which the proposed area:

(1) Is consistent with local labor market areas;

(2) Has a common economic development area; and

(3) Has the Federal and non-Federal resources, including appropriate education and training institutions, to administer activities under WIOA subtitle B.

(b) The Governor may approve a request at any time for designation as a workforce development area from any unit of general local government, including a combination of such units, if the State WDB determines that the area meets the requirements of paragraph (a)(1) of this section and recommends designation.

(c) Regardless of whether a local area has been designated under this section or § 679.250, the Governor may redesignate a local area if the redesignation has been requested by a local area and the Governor approves the request.

§ 679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?

(a) If the chief elected official and Local WDB in a local area submits a request for initial designation, the Governor must approve the request if, for the 2 program years preceding the date of enactment of WIOA, the following criteria are met:

(1) The local area was designated as a local area for purposes of WIA;

(2) The local area performed successfully; and

(3) The local area sustained fiscal integrity.

(b) Subject to paragraph (c) of this section, after the period of initial designation, if the chief elected official and Local WDB in a local area submits a request for subsequent designation, the Governor must approve the request if the following criteria are met for the 2 most recent program years of initial designation:

(1) The local area performed successfully;

(2) The local area sustained fiscal integrity; and

(3) In the case of a local area in a planning region, the local area met the regional planning requirements described in WIOA sec.106(c)(1).

(c) No determination of subsequent eligibility may be made before the conclusion of Program Year (PY) 2017.

(d) The Governor:

(1) May review a local area designated under paragraph (b) of this section at any time to evaluate whether that the area continues to meet the requirements for subsequent designation under that paragraph; and

(2) Must review a local area designated under paragraph (b) of this section before submitting its State Plan during each 4-year State planning cycle to evaluate whether the area continues to meet the requirements for subsequent designation under that paragraph.

(e) For purposes of subsequent designation under paragraphs (b) and (d) of this section, the local area and chief elected official must be considered to have requested continued designation unless the local area and chief elected official notify the Governor that they no longer seek designation.

(f) Local areas designated under § 679.240 or States designated as single-area States under § 679.270 are not subject to the requirements described in paragraph (b) of this section related to the subsequent designation of a local area.

(g) The Governor may approve, under paragraph (c) of this section, a request for designation as a local area from areas served by rural concentrated employment programs as described in WIOA sec. 107(c)(1)(C).

§ 679.260 What do the terms "performed successfully" and "sustained fiscal integrity" mean for purposes of designating local areas?

(a) For the purpose of initial local area designation, the term "performed successfully" means that the local area met or exceeded the levels of performance the Governor negotiated with the Local WDB and chief elected official under WIA sec. 136(c) for the last 2 full program years before the enactment of WIOA, and that the local area has not failed any individual measure for the for the last 2 consecutive program years before the enactment of WIOA.

(b) For the purpose of determining subsequent local area designation, the term "performed successfully" means that the local area met or exceeded the levels of performance the Governor negotiated with the Local WDB and chief elected official for core indicators of performance as provided in paragraphs (b)(1) and (2) of this section as appropriate, and that the local area has not failed any individual measure for the last 2 consecutive program years in accordance with a State-established definition, provided in the State Plan, of met or exceeded performance.

(1) For subsequent designation determinations made at the conclusion of PY 2017, a finding of whether a local area performed successfully must be limited to having met or exceeded the negotiated levels for the Employment Rate 2nd Quarter after Exit and the Median

Earnings indicators of performance, as described at §§ 677.155(a)(1)(i) and 677.155(a)(1)(iii) of this chapter respectively, for PY 2016 and PY 2017.

(2) For subsequent designation determinations made at the conclusion of PY 2018, or at any point thereafter, a finding of whether a local area performed successfully must be based on all six of the WIOA indicators of performance as described at §§ 677.155(a)(1)(i) through 677.155(a)(1)(vi) of this chapter for the 2 most recently completed program years.

(c) For the purpose of determining initial and subsequent local area designation under § 679.250(a) and (b), the term "sustained fiscal integrity" means that the Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

§ 679.270 What are the special designation provisions for single-area States?

(a) The Governor of any State that was a single-State local area under the WIA as in effect on July 1, 2013 may designate the State as a single-State local area under WIOA.

(b) The Governor of a State local area under paragraph (a) of this section who seeks to designate the State as a single-State local area under WIOA must:

(1) Identify the State as a single-area State in the Unified or Combined State Plan; and

(2) Include the local plan for approval as part of the Unified or Combined State Plan.

(c) The State WDB for a single-area State must act as the Local WDB and carry out the functions of the Local WDB in accordance with WIOA sec. 107 and § 679.370, except that the State is not required to meet and report on a set of local performance accountability measures.

(d) Single-area States must conduct the functions of the Local WDB as outlined in paragraph (c) of this section to achieve the incorporation of local interests but may do so in a manner that reduces unnecessary burden and duplication of processes.

(e) States must carry out the duties of State and Local WDBs in accordance with guidance issued by the Secretary of Labor.

§ 679.280 How does the State fulfill the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area?

(a) When the chief elected officials and Local WDBs of each local area within a planning region make a request to the Governor to redesignate into a single local area, the State WDB must authorize statewide adult, dislocated worker, and youth program funds to facilitate such redesignation.

(b) When statewide funds are not available, the State may provide funds for redesignation in the next available program year.

(c) Redesignation activities that may be carried out by the local areas include:

(1) Convening sessions and conferences;

(2) Renegotiation of contracts and agreements; and

(3) Other activities directly associated with the redesignation as deemed appropriate by the State WDB.

§ 679.290 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce development area?

(a) A unit of local government (or combination of units) or a local area which has requested but has been denied its request for designation as a workforce development area under

§ 679.250 may appeal the decision to the State WDB, in accordance with appeal procedures established in the State Plan and § 683.630(a) of this chapter.

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State WDB does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at § 683.640 of this chapter.

Subpart C—Local Workforce Development Boards

§ 679.300 What is the vision and purpose of the Local Workforce Development Board?

(a) The vision for the Local WDB is to serve as a strategic leader and convener of local workforce development system stakeholders. The Local WDB partners with employers and the workforce development system to develop policies and investments that support public workforce system strategies that support regional economies, the development of effective approaches including local and regional sector partnerships and career pathways, and high quality, customer centered service delivery and service delivery approaches;

(b) The purpose of the Local WDB is to –

(1) Provide strategic and operational oversight in collaboration with the required and additional partners and workforce stakeholders to help develop a comprehensive and high-quality workforce development system in the local area and larger planning region;

(2) Assist in the achievement of the State's strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan; and

(3) Maximize and continue to improve the quality of services, customer satisfaction, effectiveness of the services provided.

§ 679.310 What is the Local Workforce Development Board?

(a) The Local WDB is appointed by the chief elected official(s) in each local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2).

(b) In partnership with the chief elected official(s), the Local WDB sets policy for the portion of the statewide workforce development system within the local area and consistent with State policies.

(c) The Local WDB and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.

(d) The Local WDB, in partnership with the chief elected official(s), develops the local plan and performs the functions described in WIOA sec. 107(d) and § 679.370.

(e) If a local area includes more than one unit of general local government in accordance with WIOA sec. 107(c)(1)(B), the chief elected officials of such units may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. If the chief elected officials are unable to reach agreement after a reasonable effort, the Governor may appoint the members of the Local WDB from individuals nominated or recommended as specified in WIOA sec. 107(b).

(f) If the State Plan indicates that the State will be treated as a local area under WIOA, the State WDB must carry out the roles of the Local WDB in accordance with WIOA sec. 107, except that the State is not required to meet and report on a set of local performance accountability measures.

(g) The CEO must establish by-laws, consistent with State policy for Local WDB membership, that at a minimum address:

(1) The nomination process used by the CEO to select the Local WDB chair and members;

(2) The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;

(3) The process to notify the CEO of a WDB member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a WDB member is unable to attend a meeting and assigns a designee as per the requirements at § 679.110(d)(4);

(5) The use of technology, such as phone and Web-based meetings, that will be used to promote WDB member participation;

(6) The process to ensure WDB members actively participate in convening the workforce development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and

(7) A description of any other conditions governing appointment or membership on the Local WDB as deemed appropriate by the CEO.

§ 679.320 Who are the required members of the Local Workforce Development Board?

(a) For each local area in the State, the members of Local WDB must be selected by the chief elected official consistent with criteria established under WIOA sec. 107(b)(1) and criteria established by the Governor, and must meet the requirements of WIOA sec. 107(b)(2).

(b) A majority of the members of the Local WDB must be representatives of business in the local area. At a minimum, two members must represent small business as defined by the U.S. Small Business Administration. Business representatives serving on Local WDBs also may serve on the State WDB. Each business representative must meet the following criteria:

(1) Be an owner, chief executive officer, chief operating officer, or other individual with optimum policy-making or hiring authority; and

(2) Provide employment opportunities in in-demand industry sectors or occupations, as those terms are defined in WIOA sec. 3(23).

(c) At least 20 percent of the members of the Local WDB must be workforce representatives. These representatives:

(1) Must include two or more representatives of labor organizations, where such organizations exist in the local area. Where labor organizations do not exist, representatives must be selected from other employee representatives;

(2) Must include one or more representatives of a joint labor-management, or union affiliated, registered apprenticeship program within the area who must be a training director or a member of a labor organization. If no union affiliated registered apprenticeship programs exist in the area, a representative of a registered apprenticeship program with no union affiliation must be appointed, if one exists;

(3) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive integrated employment for individuals with disabilities; and

(4) May include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

(d) The Local WDB also must include:

(1) At least one eligible training provider administering adult education and literacy activities under WIOA title II;

(2) At least one representative from an institution of higher education providing workforce investment activities, including community colleges; and

(3) At least one representative from each of the following governmental and economic and community development entities:

(i) Economic and community development entities;

(ii) The State Employment Service office under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) serving the local area; and

(iii) The programs carried out under title I of the Rehabilitation Act of 1973, other than sec. 112 or part C of that title;

(e) The membership of Local WDBs may include individuals or representatives of other appropriate entities in the local area, including:

(1) Entities administering education and training activities who represent local educational agencies or community-based organizations with demonstrated expertise in addressing the education or training needs for individuals with barriers to employment;

(2) Governmental and economic and community development entities who represent transportation, housing, and public assistance programs;

(3) Philanthropic organizations serving the local area; and

(4) Other appropriate individuals as determined by the chief elected official.

(f) Members must be individuals with optimum policy-making authority within the entities they represent.

(g) Chief elected officials must establish a formal nomination and appointment process, consistent with the criteria established by the Governor and State WDB under sec. 107(b)(1) of WIOA for appointment of members of the Local WDBs, that ensures:

(1) Business representatives are appointed from among individuals who are nominated by local business organizations and business trade associations.

(2) Labor representatives are appointed from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees); and

(3) When there is more than one local area provider of adult education and literacy activities under title II, or multiple institutions of higher education providing workforce investment activities as described in WIOA sec. 107(b)(2)(C)(i) or (ii), nominations are solicited from those particular entities.

(h) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (c) through (g) of this section, for each entity.

(i) All required WDB members must have voting privilege. The chief elected official may convey voting privileges to non-required members.

§ 679.330 Who must chair a Local Workforce Development Board?

The Local WDB must elect a chairperson from among the business representatives on the WDB.

§ 679.340 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

For purposes of selecting representatives to Local WDBs:

(a) A representative with "optimum policy-making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with "demonstrated experience and expertise" means an individual who:–

(1) Is a workplace learning advisor as defined in WIOA sec. 3(70);

(2) Contributes to the field of workforce development, human resources, training and development, or a core program function; or

(3) The Local WDB recognizes for valuable contributions in education or workforce development related fields.

§ 679.350 What criteria will be used to establish the membership of the Local Workforce Development Board?

The Local WDB is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2).

§ 679.360 What is a standing committee, and what is its relationship to the Local Workforce Development Board?

(a) Standing committees may be established by the Local WDB to provide information and assist the Local WDB in carrying out its responsibilities under WIOA sec. 107. Standing committees must be chaired by a member of the Local WDB, may include other members of the Local WDB, and must include other individuals appointed by the Local WDB who are not members of the Local WDB and who have demonstrated experience and expertise in accordance with § 679.340(b) and as determined by the Local WDB. Standing committees may include each

of the following:

(1) A standing committee to provide information and assist with operational and other issues relating to the one-stop delivery system, which may include representatives of the one-stop partners.

(2) A standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth, which must include community-based organizations with a demonstrated record of success in serving eligible youth.

(3) A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to compliance with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) regarding providing programmatic and physical access to the services, programs, and activities of the one-stop delivery system, as well as appropriate training for staff on providing supports for or accommodations to, and finding employment opportunities for, individuals with disabilities.

(b) The Local WDB may designate other standing committees in addition to those specified in paragraph (a) of this section.

(c) Local WDBs may designate an entity in existence as of the date of the enactment of WIOA, such as an effective youth council, to serve as a standing committee as long as the entity meets the requirements of WIOA sec. 107(b)(4).

§ 679.370 What are the functions of the Local Workforce Development Board?

As provided in WIOA sec. 107(d), the Local WDB must:

(a) Develop and submit a 4-year local plan for the local area, in partnership with the chief elected official and consistent with WIOA sec. 108;

(b) If the local area is part of a planning region that includes other local areas, develop and submit a regional plan in collaboration with other local areas. If the local area is part of a planning region, the local plan must be submitted as a part of the regional plan;

(c) Conduct workforce research and regional labor market analysis to include:

(1) analyses and regular updates of economic conditions, needed knowledge and skills, workforce, and workforce development (including education and training) activities to include an analysis of the strengths and weaknesses (including the capacity to provide) of such services to address the identified education and skill needs of the workforce and the employment needs of employers;

(2) Assistance to the Governor in developing the statewide workforce and labor market information system under the Wagner-Peyser Act for the region;

(3) Other research, data collection, and analysis related to the workforce needs of the regional economy as the WDB, after receiving input from a wide array of stakeholders, determines to be necessary to carry out its functions.

(d) Convene local workforce development system stakeholders to assist in the development of the local plan under § 679.550 and in identifying non-Federal expertise and resources to leverage support for workforce development activities. Such stakeholders may assist the Local WDB and standing committees in carrying out convening, brokering, and leveraging functions at the direction of the Local WDB;

(e) Lead efforts to engage with a diverse range of employers and other entities in the region in order to:

(1) Promote business representation (particularly representatives with optimum policy-making or hiring authority from employers whose employment opportunities reflect existing and

emerging employment opportunities in the region) on the Local WDB;

(2) Develop effective linkages (including the use of intermediaries) with employers in the region to support employer utilization of the local workforce development system and to support local workforce investment activities;

(3) Ensure that workforce investment activities meet the needs of employers and support economic growth in the region by enhancing communication, coordination, and collaboration among employers, economic development entities, and service providers; and

(4) Develop and implement proven or promising strategies for meeting the employment and skill needs of workers and employers (such as the establishment of industry and sector partnerships), that provide the skilled workforce needed by employers in the region, and that expand employment and career advancement opportunities for workforce development system participants in in-demand industry sectors or occupations.

(f) With representatives of secondary and postsecondary education programs, lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment.

(g) Lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers and job seekers, and identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs.

(h) Develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, and workers and job seekers, by:

(1) Facilitating connections among the intake and case management information systems of the one-stop partner programs to support a comprehensive workforce development system in the local area;

(2) Facilitating access to services provided through the one-stop delivery system involved, including access in remote areas;

(3) Identifying strategies for better meeting the needs of individuals with barriers to employment, including strategies that augment traditional service delivery, and increase access to services and programs of the one-stop delivery system, such as improving digital literacy skills; and

(4) Leveraging resources and capacity within the local workforce development system, including resources and capacity for services for individuals with barriers to employment.

(i) In partnership with the chief elected official for the local area:

(1) Conduct oversight of youth workforce investment activities authorized under WIOA sec. 129(c), adult and dislocated worker employment and training activities under WIOA secs. 134(c) and (d); and entire one-stop delivery system in the local area; and

(2) Ensure the appropriate use and management of the funds provided under WIOA subtitle B for the youth, adult, and dislocated worker activities and one-stop delivery system in the local area; and

(3) Ensure the appropriate use management, and investment of funds to maximize performance outcomes under WIOA sec. 116.

(j) Negotiate and reach agreement on local performance indicators with the chief elected official and the Governor.

(k) Negotiate with CEO and required partners on the methods for funding the

infrastructure costs of one-stop centers in the local area in accordance with § 678.715 of this chapter or must notify the Governor if they fail to reach agreement at the local level and will use a State infrastructure funding mechanism.

(l) Select the following providers in the local area, and where appropriate terminate such providers in accordance with 2 CFR part 200:

(1) Providers of youth workforce investment activities through competitive grants or contracts based on the recommendations of the youth standing committee (if such a committee is established); however, if the Local WDB determines there is an insufficient number of eligible training providers in a local area, the Local WDB may award contracts on a sole-source basis as per the provisions at WIOA sec. 123(b);

(2) Providers of training services consistent with the criteria and information requirements established by the Governor and WIOA sec. 122;

(3) Providers of career services through the award of contracts, if the one-stop operator does not provide such services; and

(4) One-stop operators in accordance with §§ 678.600 through 678.635 of this chapter.

(m) In accordance with WIOA sec. 107(d)(10)(E) work with the State to ensure there are sufficient numbers and types of providers of career services and training services serving the local area and providing the services in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities.

(n) Coordinate activities with education and training providers in the local area, including:

(1) Reviewing applications to provide adult education and literacy activities under title II

for the local area to determine whether such applications are consistent with the local plan;

(2) Making recommendations to the eligible agency to promote alignment with such plan; and

(3) Replicating and implementing cooperative agreements to enhance the provision of services to individuals with disabilities and other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination.

(o) Develop a budget for the activities of the Local WDB, with approval of the chief elected official and consistent with the local plan and the duties of the Local WDB.

(p) Assess, on an annual basis, the physical and programmatic accessibility of all one-stop centers in the local area, in accordance with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(q) Certification of one-stop centers in accordance with § 678.800 of this chapter.

§ 679.380 How does the Local Workforce Development Board satisfy the consumer choice requirements for career services and training services?

(a) In accordance with WIOA sec. 122 and in working with the State, the Local WDB satisfies the consumer choice requirement for training services by:

(1) Determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers, and considering the possible termination of an eligible training provider due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA;

(2) Working with the State to ensure there are sufficient numbers and types of providers of training services, including eligible training providers with expertise in assisting individuals

with disabilities and eligible training providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area;

(3) Ensuring the dissemination and appropriate use of the State list through the local one-stop delivery system.

(4) Receiving performance and cost information from the State and disseminating this information through the one-stop delivery systems within the State; and

(5) Providing adequate access to services for individuals with disabilities.

(b) Working with the State, the Local WDB satisfies the consumer choice requirement for career services by:

(1) Determining the career services that are best performed by the one-stop operator consistent with §§ 678.620 and 678.625 of this chapter and career services that require contracting with a career service provider;

(2) Identifying a wide-array of potential career service providers and awarding contracts where appropriate including to providers to ensure:

(i) Sufficient access to services for individuals with disabilities, including opportunities that lead to integrated, competitive employment for individuals with disabilities ;

(ii) Sufficient access for adult education and literacy activities.

§ 679.390 How does the Local Workforce Development Board meet its requirement to conduct business in an open manner under the "sunshine provision" of the Workforce Innovation and Opportunity Act?

The Local WDB must conduct its business in an open manner as required by WIOA sec. 107(e), by making available to the public, on a regular basis through electronic means and open meetings, information about the activities of the Local WDB. This includes:

(a) Information about the Local Plan, or modification to the Local Plan, before submission of the plan;

(b) List and affiliation of Local WDB members;

(c) Selection of one-stop operators;

(d) Award of grants or contracts to eligible training providers of workforce investment activities including providers of youth workforce investment activities;

(e) Minutes of formal meetings of the Local WDB; and

(f) Local WDB by-laws, consistent with § 679.310(g).

§ 679.400 Who are the staff to the Local Workforce Development Board and what is their role?

(a) WIOA sec. 107(f) grants Local WDBs authority to hire a director and other staff to assist in carrying out the functions of the Local WDB.

(b) Local WDBs must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in carrying out the functions of the Local WDB.

(c) The Local WDB director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

(d) In general, Local WDB staff only may assist the Local WDB fulfill the required functions at WIOA sec. 107(d).

(e) Should the WDB select an entity to staff the WDB that provides additional workforce functions beyond the functions described at WIOA sec. 107(d), such an entity is required to enter into a written agreement with the Local WDB and chief elected official(s) to clarify their roles and responsibilities as required by § 679.430.

§ 679.410 Under what conditions may a Local Workforce Development Board directly be a provider of career services, or training services, or act as a one-stop operator?

(a)(1) A Local WDB may be selected as a one-stop operator:

(i) Through sole source procurement in accordance with § 678.610 of this chapter; or

(ii) Through successful competition in accordance with § 678.615 of this chapter.

(2) The chief elected official in the local area and the Governor must agree to the selection described in paragraph (a)(1) of this section.

(3) Where a Local WDB acts as a one-stop operator, the State must ensure certification of one-stop centers in accordance with § 678.800 of this chapter.

(b) A Local WDB may act as a provider of career services only with the agreement of the chief elected official in the local area and the Governor.

(c) A Local WDB is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIOA sec. 107(g)(1).

(1) The State must develop a procedure for approving waivers that includes the criteria at WIOA sec. 107(g)(1)(B)(i):

(i) Satisfactory evidence that there is an insufficient number of eligible training providers of such a program of training services to meet local demand in the local area;

(ii) Information demonstrating that the WDB meets the requirements for eligible training provider services under WIOA sec. 122; and

(iii) Information demonstrating that the program of training services prepares participants for an in-demand industry sector or occupation in the local area.

(2) The local area must make the proposed request for a waiver available to eligible training providers and other interested members of the public for a public comment period of not less than 30 days and includes any comments received during this time in the final request for the waiver.

(3) The waiver must not exceed the duration of the local plan and may be renewed by submitting a new waiver request consistent with paragraphs (c)(1) and (2) of this section for additional periods, not to exceed the durations of such subsequent plans.

(4) The Governor may revoke the waiver if the Governor determines the waiver is no longer needed or that the Local WDB involved has engaged in a pattern of inappropriate referrals to training services operated by the Local WDB.

(d) The restrictions on the provision of career and training services by the Local WDB, as one-stop operator, also apply to staff of the Local WDB.

§ 679.420 What are the functions of the local fiscal agent?

(a) In order to assist in administration of the grant funds, the chief elected official or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local fiscal agent. Designation of a fiscal agent does not relieve the chief elected official or Governor of liability for the misuse of grant funds. If the CEO designates a fiscal agent, the CEO must ensure this agent has clearly defined roles and responsibilities.

(b) In general the fiscal agent is responsible for the following functions:

(1) Receive funds

(2) Ensure sustained fiscal integrity and accountability for expenditures of funds in accordance with Office of Management and Budget circulars, WIOA and the corresponding Federal Regulations and State policies

(3) Respond to audit financial findings

(4) Maintain proper accounting records and adequate documentation

(5) Prepare financial reports

(6) Provide technical assistance to subrecipients regarding fiscal issues

(c) At the direction of the Local WDB or the State WDB in single-area States, the fiscal agent may have the following additional functions:

(1) Procure contracts or obtain written agreements

(2) Conduct financial monitoring of service providers

(3) Ensure independent audit of all employment and training programs

§ 679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Local organizations often function simultaneously in a variety of roles, including local fiscal agent, Local WDB staff, one-stop operator, and direct provider of services. Any organization that has been selected or otherwise designated to perform more than one of these functions must develop a written agreement with the Local WDB and CEO to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy.

Subpart D—Regional and Local Plan

§ 679.500 What is the purpose of the regional and local plan?

(a) The local plan serves as 4-year action plan to develop, align, and integrate service delivery strategies and to support the State's vision and strategic and operational goals. The local plan sets forth the strategy to:

(1) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(2) Apply job-driven strategies in the one-stop delivery system;

(3) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs; and

(4) Incorporate the local plan into the regional plan per § 679.540.

(b) In the case of planning regions, a regional plan is required to meet the purposes described in paragraph (a) of this section and to coordinate resources among multiple WDBs in a region.

(c) The Governor must establish and disseminate to Local WDBs and regional planning areas a policy for the submission of local and regional plans. The policy must set a deadline for the submission of the regional and local plans that accounts for the activities required in plan development outlined in §§ 679.510 and 679.550.

§ 679.510 What are the requirements for regional planning?

(a) Local WDBs and chief elected officials within an identified planning region (as defined in WIOA secs. 106(a)(2)(B)-(C) and § 679.200) must:

(1) Participate in a regional planning process that results in:

(i) The preparation of a regional plan, as described in paragraph (a)(2) of this section and consistent with any guidance issued by the Department;

(ii) The establishment of regional service strategies, including use of cooperative service delivery agreements;

(iii) The development and implementation of sector initiatives for in-demand industry sectors or occupations for the planning region;

(iv) The collection and analysis of regional labor market data (in conjunction with the State) which must include the local planning requirements at § 679.560(a)(1)(i) and (ii);

(v) The coordination of administrative cost arrangements, including the pooling of funds for administrative costs, as appropriate;

(vi) The coordination of transportation and other supportive services as appropriate;

(vii) The coordination of services with regional economic development services and providers; and

(viii) The establishment of an agreement concerning how the planning region will collectively negotiate and reach agreement with the Governor on local levels of performance for, and report on, the performance accountability measures described in WIOA sec. 116(c) for local areas or the planning region.

(2) Prepare, submit, and obtain approval of a single regional plan that:

(i) Includes a description of the activities described in paragraph (a)(1) of this section; and

(ii) Incorporates local plans for each of the local areas in the planning region, consistent with § 679.540(a).

(b) Consistent with § 679.550(b), the Local WDBs representing each local area in the planning region must provide an opportunity for public comment on the development of the regional plan or subsequent plan modifications before submitting the plan to the Governor. To provide adequate opportunity for public comment, the Local WDBs must:

(1) Make copies of the proposed regional plan available to the public through electronic and other means, such as public hearings and local news media;

(2) Include an opportunity for comment by members of the public, including representatives of business, labor organizations, and education;

(3) Provide no more than a 30-day period for comment on the plan before its submission to the Governor, beginning on the date on which the proposed plan is made available; and

(4) The Local WDBs must submit any comments that express disagreement with the plan to the Governor along with the plan.

(5) Consistent with WIOA sec. 107(e), the Local WDB must make information about the plan available to the public on a regular basis through electronic means and open meetings.

(c) The State must provide technical assistance and labor market data, as requested by local areas, to assist with regional planning and subsequent service delivery efforts.

(d) As they relate to regional areas and regional plans, the terms local area and local plan are defined in WIOA secs. 106(c)(3)(A)-(B).

§ 679.520 What are the requirements for approval of a regional plan?

Consistent with the requirements of § 679.570, the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after receipt of the plan unless the Governor determines in writing that:

(a) There are deficiencies in workforce investment activities that have been identified through audits and the local area has not made acceptable progress in implementing plans to address deficiencies; or

(b) The plan does not comply with applicable provisions of WIOA and the WIOA regulations, including the required consultations and public comment provisions, and the nondiscrimination requirements of 29 CFR part 38.

(c) The plan does not align with the State Plan, including with regard to the alignment of the core programs to support the strategy identified in the State Plan in accordance with WIOA sec. 102(b)(1)(E) and § 676.105 of this chapter.

§ 679.530 When must the regional plan be modified?

(a) Consistent with § 679.580, the Governor must establish procedures governing the modification of regional plans.

(b) At the end of the first 2-year period of the 4-year local plan, the Local WDBs within a planning region, in partnership with the appropriate chief elected officials, must review the regional plan and prepare and submit modifications to the regional plan to reflect changes:

(1) In regional labor market and economic conditions; and

(2) Other factors affecting the implementation of the local plan, including but not limited to changes in the financing available to support WIOA title I and partner-provided WIOA services.

§ 679.540 How are local planning requirements reflected in a regional plan?

(a) The regional plan must address the requirements at WIOA secs. 106(c)(1)(A)-(H), and incorporate the local planning requirements identified for local plans at WIOA secs. 108(b)(1)-(22).

(b) The Governor may issue regional planning guidance that allows Local WDBs and chief elected officials in a planning region to address any local plan requirements through the regional plan where there is a shared regional responsibility.

§ 679.550 What are the requirements for the development of the local plan?

(a) Under WIOA sec. 108, each Local WDB must, in partnership with the appropriate chief elected officials, develop and submit a comprehensive 4-year plan to the Governor.

(1) The plan must identify and describe the policies, procedures, and local activities that are carried out in the local area, consistent with the State Plan.

(2) If the local area is part of a planning region, the Local WDB must comply with WIOA sec. 106(c) and §§ 679.510 through 679.540 in the preparation and submission of a regional plan.

(b) Consistent with § 679.510(b), the Local WDB must provide an opportunity for public comment on the development of the local plan or subsequent plan modifications before submitting the plan to the Governor. To provide adequate opportunity for public comment, the Local WDB must:

(1) Make copies of the proposed local plan available to the public through electronic and other means, such as public hearings and local news media;

(2) Include an opportunity for comment by members of the public, including representatives of business, labor organizations, and education;

(3) Provide no more than a 30-day period for comment on the plan before its submission to the Governor, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and

(4) The Local WDB must submit any comments that express disagreement with the plan to the Governor along with the plan.

(5) Consistent WIOA sec. 107(e), the Local WDB must make information about the plan available to the public on a regular basis through electronic means and open meetings.

§ 679.560 What are the contents of the local plan?

(a) The local workforce investment plan must describe strategic planning elements, including:

(1) A regional analysis of:

(i) Economic conditions including existing and emerging in-demand industry sectors and occupations; and

(ii) Employment needs of employers in existing and emerging in-demand industry sectors and occupations.

(iii) As appropriate, a local area may use an existing analysis, which is a timely current description of the regional economy, to meet the requirements of paragraphs (a)(1)(i) and (ii) of this section.

(2) Knowledge and skills needed to meet the employment needs of the employers in the region, including employment needs in in-demand industry sectors and occupations;

(3) An analysis of the regional workforce, including current labor force employment and unemployment data, information on labor market trends, and educational and skill levels of the workforce, including individuals with barriers to employment;

(4) An analysis of workforce development activities, including education and training, in the region. This analysis must include the strengths and weaknesses of workforce development activities and capacity to provide the workforce development activities to address the education

and skill needs of the workforce, including individuals with barriers to employment, and the employment needs of employers;

(5) A description of the Local WDB's strategic vision to support regional economic growth and economic self-sufficiency. This must include goals for preparing an educated and skilled workforce (including youth and individuals with barriers to employment), and goals relating to the performance accountability measures based on performance indicators described in § 677.155(a)(1) of this chapter; and

(6) Taking into account analyses described in paragraphs (a)(1) through (4) of this section, a strategy to work with the entities that carry out the core programs and required partners to align resources available to the local area, to achieve the strategic vision and goals described in paragraph (a)(5) of this section;

(b) The plan must include a description of the following requirements at WIOA secs. 108(b)(2)-(21):

(1) The workforce development system in the local area that identifies:

(i) The programs that are included in the system; and

(ii) How the Local WDB will support the strategy identified in the State Plan under § 676.105 of this chapter and work with the entities carrying out core programs and other workforce development programs, including programs of study authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) to support service alignment.

(2) How the Local WDB will work with entities carrying out core programs to:

(i) Expand access to employment, training, education, and supportive services for eligible individuals, particularly eligible individuals with barriers to employment;

(ii) Facilitate the development of career pathways and co-enrollment, as appropriate, in core programs; and

(iii) Improve access to activities leading to a recognized postsecondary credential (including a credential that is an industry-recognized certificate or certification, portable, and stackable);

(3) The strategies and services that will be used in the local area:

(i) To facilitate engagement of employers in workforce development programs, including small employers and employers in in-demand industry sectors and occupations;

(ii) To support a local workforce development system that meets the needs of businesses in the local area;

(iii) To better coordinate workforce development programs and economic development;

(iv) To strengthen linkages between the one-stop delivery system and unemployment insurance programs; and

(v) That may include the implementation of initiatives such as incumbent worker training programs, on-the-job training programs, customized training programs, industry and sector strategies, career pathways initiatives, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of regional employers. These initiatives must support the strategy described in paragraph (b)(3) of this section.

(4) An examination of how the Local WDB will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and how the Local WDB will promote entrepreneurial skills training and microenterprise services;

(5) The one-stop delivery system in the local area, including:

(i) How the Local WDB will ensure the continuous improvement of eligible providers

through the system and that such providers will meet the employment needs of local employers, workers, and job seekers;

(ii) How the Local WDB will facilitate access to services provided through the one-stop delivery system, including in remote areas, through the use of technology and other means;

(iii) How entities within the one-stop delivery system, including one-stop operators and the one-stop partners, will comply with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) regarding the physical and programmatic accessibility of facilities, programs and services, technology, and materials for individuals with disabilities, including providing staff training and support for addressing the needs of individuals with disabilities; and

(iv) The roles and resource contributions of the one-stop partners;

(6) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area;

(7) A description of how the Local WDB will coordinate workforce investment activities carried out in the local area with statewide rapid response activities;

(8) A description and assessment of the type and availability of youth workforce investment activities in the local area including activities for youth who are individuals with disabilities, which must include an identification of successful models of such activities;

(9) How the Local WDB will coordinate relevant secondary and postsecondary education programs and activities with education and workforce investment activities to coordinate strategies, enhance services, and avoid duplication of services;

(10) How the Local WDB will coordinate WIOA title I workforce investment activities with the provision of transportation and other appropriate supportive services in the local area;

(11) Plans, assurances, and strategies for maximizing coordination, improving service delivery, and avoiding duplication of Wagner-Peyser Act (29 U.S.C. 49 et seq.) services and other services provided through the one-stop delivery system;

(12) How the Local WDB will coordinate WIOA title I workforce investment activities with adult education and literacy activities under WIOA title II. This description must include how the Local WDB will carry out the review of local applications submitted under title II consistent with WIOA secs. 107(d)(11)(A) and (B)(i) and WIOA sec. 232;

(13) Copies of executed cooperative agreements which define how all local service providers, including additional providers, will carry out the requirements for integration of and access to the entire set of services available in the local one-stop delivery system. This includes cooperative agreements (as defined in WIOA sec. 107(d)(11)) between the Local WDB or other local entities described in WIOA sec. 101(a)(11)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)(B)) and the local office of a designated State agency or designated State unit administering programs carried out under title I of the Rehabilitation Act(29 U.S.C. 720 et seq.) (other than sec. 112 or part C of that title (29 U.S.C. 732, 741) and subject to sec. 121(f)) in accordance with sec. 101(a)(11) of the Rehabilitation Act (29 U.S.C. 721(a)(11)) with respect to efforts that will enhance the provision of services to individuals with disabilities and to other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination;

(14) An identification of the entity responsible for the disbursal of grant funds described in WIOA sec. 107(d)(12)(B)(i)(III), as determined by the chief elected official or the Governor under WIOA sec. 107(d)(12)(B)(i).

(15) The competitive process that will be used to award the subgrants and contracts for WIOA title I activities;

(16) The local levels of performance negotiated with the Governor and chief elected official consistent with WIOA sec. 116(c), to be used to measure the performance of the local area and to be used by the Local WDB for measuring the performance of the local fiscal agent (where appropriate), eligible providers under WIOA title I subtitle B, and the one-stop delivery system in the local area;

(17) The actions the Local WDB will take toward becoming or remaining a high-performing WDB, consistent with the factors developed by the State WDB;

(18) How training services outlined in WIOA sec. 134 will be provided through the use of individual training accounts, including, if contracts for training services will be used, how the use of such contracts will be coordinated with the use of individual training accounts under that chapter, and how the Local WDB will ensure informed customer choice in the selection of training programs regardless of how the training services are to be provided;

(19) The process used by the Local WDB, consistent with WIOA sec. 108(d), to provide a 30-day public comment period prior to submission of the plan, including an opportunity to have input into the development of the local plan, particularly for representatives of businesses, education, and labor organizations;

(20) How one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop partners; and

(21) The direction given by the Governor and the Local WDB to the one-stop operator to ensure priority for adult career and training services will be given to recipients of public

assistance, other low-income individuals, and individuals who are basic skills deficient consistent with WIOA sec. 134(c)(3)(E) and § 680.600 of this chapter.

(c) The local plan must include any additional information required by the Governor.

(d) The local plan must identify the portions that the Governor has designated as appropriate for common response in the regional plan where there is a shared regional responsibility, as permitted by § 679.540(b).

(e) Comments submitted during the public comment period that represent disagreement with the plan must be submitted with the local plan.

§ 679.570 What are the requirements for approval of a local plan?

(a) Consistent with the requirements at § 679.520 the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after the Governor receives the plan unless the Governor determines in writing that:

(1) There are deficiencies in workforce investment activities that have been identified through audits and the local area has not made acceptable progress in implementing plans to address deficiencies; or

(2) The plan does not comply with applicable provisions of WIOA and the WIOA regulations, including the required consultations and public comment provisions, and the nondiscrimination requirements of 29 CFR part 38.

(3) The plan does not align with the State Plan, including with regard to the alignment of the core programs to support the strategy identified in the State Plan in accordance with WIOA sec. 102(b)(1)(E) and § 676.105 of this chapter.

(b) In cases where the State is a single local area:

(1) The State must incorporate the local plan into the State's Unified or Combined State Plan and submit it to the U.S. Department of Labor in accordance with the procedures described in § 676.105 of this chapter.

(2) The Secretary of Labor performs the roles assigned to the Governor as they relate to local planning activities.

(3) The Secretary of Labor will issue planning guidance for such States.

§ 679.580 When must the local plan be modified?

(a) Consistent with the requirements at § 679.530, the Governor must establish procedures governing the modification of local plans.

(b) At the end of the first 2-year period of the 4-year local plan, each Local WDB, in partnership with the appropriate chief elected officials, must review the local plan and prepare and submit modifications to the local plan to reflect changes:

(1) In labor market and economic conditions; and

(2) Other factors affecting the implementation of the local plan, including but not limited to:

(i) Significant changes in local economic conditions,

(ii) Changes in the financing available to support WIOA title I and partner-provided WIOA services;

(iii) Changes to the Local WDB structure; and

(iv) The need to revise strategies to meet local performance goals.

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

§ 679.600 What is the purpose of the General Statutory and Regulatory Waiver Authority in the Workforce Innovation and Opportunity Act?

(a) The purpose of the general statutory and regulatory waiver authority provided at sec. 189(i)(3) of the WIOA is to provide flexibility to States and local areas and enhance their ability to improve the statewide workforce development system to achieve the goals and purposes of WIOA.

(b) A waiver may be requested to address impediments to the implementation of a Unified or Combined State Plan, including the continuous improvement strategy, consistent with the purposes of title I of WIOA as identified in § 675.100 of this chapter.

§ 679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

(a) The Secretary may waive for a State, or local area in a State, any of the statutory or regulatory requirements of subtitles A, B and E of title I of WIOA, except for requirements relating to:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and Local WDBs;

(10) Procedures for review and approval of State and Local plans;

(11) The funding of infrastructure costs for one-stop centers; and

(12) Other requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter.

(b) The Secretary may waive for a State, or local area in a State, any of the statutory or regulatory requirements of secs. 8 through 10 of the Wagner- Peyser Act (29 U.S.C. 49g–49i) except for requirements relating to:

(1) The provision of services to unemployment insurance claimants and veterans; and

(2) Universal access to the basic labor exchange services without cost to job seekers.

§ 679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?

(a) The Secretary will issue guidelines under which the States may request general waivers of WIOA and Wagner-Peyser Act requirements.

(b) A Governor may request a general waiver in consultation with appropriate chief elected officials:

(1) By submitting a waiver plan which may accompany the State's WIOA 4-year Unified or Combined State Plan or 2-year modification; or

(2) After a State's WIOA Plan is approved, by separately submitting a waiver plan.

(c) A Governor's waiver request may seek waivers for the entire State or for one or more local areas within the State.

(d) A Governor requesting a general waiver must submit to the Secretary a plan to improve the statewide workforce development system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Unified or Combined State Plan;

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes how the waiver will align with the Department's policy priorities, such as:

(i) Supporting employer engagement;

(ii) Connecting education and training strategies;

(iii) Supporting work-based learning;

(iv) Improving job and career results, and

(v) Other priorities as articulated in guidance.

(5) Describes the individuals affected by the waiver, including how the waiver will impact services for disadvantaged populations or individuals with multiple barriers to employment; and

(6) Describes the processes used to:

(i) Monitor the progress in implementing the waiver;

(ii) Provide notice to any Local WDB affected by the waiver;

(iii) Provide any Local WDB affected by the waiver an opportunity to comment on the request;

(iv) Ensure meaningful public comment, including comment by business and organized labor, on the waiver; and

(v) Collect and report information about waiver outcomes in the State's WIOA Annual Report.

(7) The Secretary may require that States provide the most recent data available about the outcomes of the existing waiver in cases where the State seeks renewal of a previously approved waiver.

(e) The Secretary will issue a decision on a waiver request within 90 days after the receipt of the original waiver request.

(f) The Secretary will approve a waiver request if and only to the extent that:

(1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's Plan to improve the statewide workforce development system;

(2) The Secretary determines that the waiver plan meets all of the requirements of WIOA sec. 189(i)(3) and §§ 679.600 through 679.620; and

(3) The State has executed a memorandum of understanding (MOU) with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(g) A waiver may be approved for as long as the Secretary determines appropriate, but for not longer than the duration of the State's existing Unified or Combined State Plan.

(h) The Secretary may revoke a waiver granted under this section if the Secretary determines that the State has failed to meet the agreed upon outcomes, measures, failed to comply with the terms and conditions in the MOU described in paragraph (f) of this section or any other document establishing the terms and conditions of the waiver, or if the waiver no longer meets the requirements of §§ 679.600 through 679.620.

§ 679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?

(a) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (workflex) plan under which the State is authorized to waive, in accordance with the plan:

(1) Any of the statutory or regulatory requirements under title I of WIOA applicable to local areas, if the local area requests the waiver in a waiver application, except for:

(i) Requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter;

(ii) Wage and labor standards;

(iii) Grievance procedures and judicial review;

(iv) Nondiscrimination;

(v) Eligibility of participants;

(vi) Allocation of funds to local areas;

(vii) Establishment and functions of local areas and Local WDBs;

(viii) Procedures for review and approval of local plans; and

(ix) Worker rights, participation, and protection.

(2) Any of the statutory or regulatory requirements applicable to the State under secs. 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g-49i), except for requirements relating to:

(i) The provision of services to unemployment insurance claimants and veterans; and

(ii) Universal access to basic labor exchange services without cost to job seekers.

(3) Any of the statutory or regulatory requirements applicable under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 et seq.), to State agencies on aging with respect

to activities carried out using funds allotted under OAA sec. 506(b) (42 U.S.C. 3056d(b)), except for requirements relating to:

(i) The basic purposes of OAA;

(ii) Wage and labor standards;

(iii) Eligibility of participants in the activities; and

(iv) Standards for grant agreements.

(b) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:

(1) The process by which local areas in the State may submit and obtain State approval of applications for waivers of requirements under title I of WIOA;

(2) A description of the criteria the State will use to approve local area waiver requests and how such requests support implementation of the goals identified State Plan;

(3) The statutory and regulatory requirements of title I of WIOA that are likely to be waived by the State under the workforce flexibility plan;

(4) The statutory and regulatory requirements of secs. 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(5) The statutory and regulatory requirements of the OAA that are proposed for waiver, if any;

(6) The outcomes to be achieved by the waivers described in paragraphs (b)(1) to (b)(5) of this section including, where appropriate, revisions to adjusted levels of performance included in the State or local plan under title I of WIOA, and a description of the data or other information the State will use to track and assess outcomes; and

(7) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(c) A State's workforce flexibility plan may accompany the State's Unified or Combined State Plan, 2-year modification, or may be submitted separately as a modification to that plan.

(d) The Secretary may approve a workforce flexibility plan consistent with the period of approval of the State's Unified or Combined State Plan, and not for more than 5 years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State. These guidelines may require a State to implement an evaluation of the impact of work-flex in the State.

§ 679.640 What limitations apply to the State's Workforce Flexibility Plan authority under the Workforce Innovation and Opportunity Act?

(a)(1) Under work-flex waiver authority a State must not waive the WIOA, Wagner-Peyser Act or OAA requirements which are excepted from the work-flex waiver authority and described in § 679.630(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIOA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests only may be granted by the Secretary under the general waiver authority described at §§ 679.610 through 679.620.

(b) As required in § 679.630(b)(6), States must address the outcomes to result from work-flex waivers as part of its workforce flexibility plan. The Secretary may terminate a State's

work-flex designation if the State fails to meet agreed-upon outcomes or other terms and conditions contained in its workforce flexibility plan.

7. Add part 680 to read as follows:

PART 680 – ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

Sec.
680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?
680.110 When must adults and dislocated workers be registered and considered a participant?
680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?
680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?
680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Workforce Development Boards required and permitted to provide?
680.150 What career services must be provided to adults and dislocated workers?
680.160 How are career services delivered?
680.170 What is the individual employment plan?
680.180 What is an internship or work experience for adults and dislocated workers?
680.190 What is a transitional job?
680.195 What funds may be used for transitional jobs?

Subpart B—Training Services

Sec.
680.200 What are training services for adults and dislocated workers?
680.210 Who may receive training services?
680.220 Are there particular career services an individual must receive before receiving training services under the Workforce Innovation and Opportunity Act?
680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

Subpart C—Individual Training Accounts

Sec.

680.300 How are training services provided?
680.310 Can the duration and amount of Individual Training Accounts be limited?
680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?
680.330 How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?
680.340 What are the requirements for consumer choice?
680.350 May title I adult and dislocated worker funds be used to directly support adult education and literacy activities?

Subpart D—Eligible Training Providers

Sec.
680.400 What is the purpose of this subpart?
680.410 What is an eligible training provider?
680.420 What is a "program of training services"?
680.430 Who is responsible for managing the training provider eligibility process?
680.440 What are the transition procedures for Workforce Investment Act-eligible providers to become eligible under the Workforce Innovation and Opportunity Act?
680.450 What is the initial eligibility process for new providers and programs?
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680.470 What are the procedures for including and removing registered apprenticeship programs on a State list of eligible training providers and programs?
680.480 May an eligible training provider lose its eligibility?
680.490 What kind of performance and cost information must eligible training providers other than registered apprenticeship programs provide for each program of training services?
680.500 How is the State list of eligible training providers and programs disseminated?
680.510 In what ways can a Local Workforce Development Board supplement the information available from the State list of eligible training providers and programs?
680.520 May individuals choose training providers and programs located outside of the local area or outside of the State?
680.530 What eligibility requirements apply to providers of on-the-job-training, customized training, incumbent worker training, and other training exceptions?

Subpart E—Priority and Special Populations

680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?
680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?
680.630 How does a displaced homemaker qualify for services under title I?
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Subpart F—Work-Based Training

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680.770 What are the requirements for customized training for employed workers?
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680.790 What is incumbent worker training?
680.800 What funds may be used for incumbent worker training?
680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?
680.820 Are there cost sharing requirements for local area incumbent worker training?
680.830 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?
680.840 May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?

Subpart G—Supportive Services

680.900 What are supportive services for adults and dislocated workers?
680.910 When may supportive services be provided to participants?
680.920 Are there limits on the amount or duration of funds for supportive services?
680.930 What are needs-related payments?
680.940 What are the eligibility requirements for adults to receive needs-related payments?

680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?
680.960 May needs-related payments be paid while a participant is waiting to start training classes?
680.970 How is the level of needs-related payments determined?

Authority: Secs. 122, 134, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

§ 680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

(a) The one-stop delivery system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are classified as career and training services.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required one-stop partner and is subject to the provisions relating to such partners described in part 678 of this chapter. Consistent with those provisions:

(1) Career services for adults and dislocated workers must be made available in at least one one-stop center in each local area. Services also may be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) Through the one-stop delivery system, adults and dislocated workers needing training are provided Individual Training Accounts (ITAs) and access to lists of eligible training providers and programs of training. These lists contain quality consumer information, including

cost and performance information for each of the providers' programs, so that participants can make informed choices on where to use their ITAs. (ITAs are more fully discussed in subpart C of this part.)

§ 680.110 When must adults and dislocated workers be registered and considered a participant?

(a) Registration is the process for collecting information to support a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application. Individuals are considered participants when they have received a Workforce Innovation and Opportunity Act of 2014 (WIOA) service other than self-service or information-only activities and have satisfied all applicable programmatic requirements for the provision of services, such as eligibility determination (see § 677.150(a) of this chapter).

(b) Adults and dislocated workers who receive services funded under title I other than self-service or information-only activities must be registered and must be a participant.

(c) EO data, as defined in § 675.300 of this chapter, must be collected on every individual who is interested in being considered for WIOA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the grant recipient or designated service provider.

§ 680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?

To be eligible to receive career services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older. To be eligible for any dislocated

worker programs, an eligible adult must meet the criteria of § 680.130. Eligibility criteria for training services are found at § 680.210.

§ 680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?

(a) To be eligible to receive career services as a dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of "dislocated worker" at WIOA sec. 3(15). Eligibility criteria for training services are found at § 680.210.

(b) Governors and Local Workforce Development Boards (WDBs) may establish policies and procedures for one-stop centers to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIOA sec. 3(15). These policies and procedures may address such conditions as:

(1) What constitutes a "general announcement" of plant closing under WIOA sec. 3(15)(B)(ii) or (iii);

(2) What constitutes "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters" for determining the eligibility of self-employed individuals, including family members and farm workers or ranch hands, under WIOA sec. 3(15)(C); and

(3) What constitutes "unlikely to return to a previous industry or occupation" under WIOA sec. 3(15)(A)(iii), consistent with § 680.660.

§ 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Workforce Development Boards required and permitted to provide?

(a) WIOA title I formula funds allocated to local areas for adults and dislocated workers must be used to provide career and training services through the one-stop delivery system. Local WDBs determine the most appropriate mix of these services, but both types must be available for eligible adults and dislocated workers. Different eligibility criteria apply for each type of services. See §§ 680.120, 680.130, and 680.210.

(b) WIOA title I funds also may be used to provide the additional services described in WIOA sec. 134(d), including:

(1) Job seeker services, such as:

(i) Customer support to enable individuals with barriers to employment (including individuals with disabilities) and veterans, to navigate among multiple services and activities;

(ii) Training programs for displaced homemakers and for individuals training for nontraditional employment (as defined in WIOA sec. 3(37) as occupations or fields of work in which individuals of one gender comprise less than 25 percent of the individuals so employed), in conjunction with programs operated in the local area;

(iii) Work support activities for low-wage workers, in coordination with one-stop partners, which will provide opportunities for these workers to retain or enhance employment. These activities may include any activities available under the WIOA adult and dislocated worker programs in coordination with activities and resources available through partner programs. These activities may be provided in a manner that enhances the worker's ability to participate, for example by providing them at nontraditional hours or providing on-site child care;

(iv) Supportive services, including needs-related payments, as described in subpart G of this part; and

(v) Transitional jobs, as described in § 680.190, to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history;

(2) Employer services, such as:

(i) Customized screening and referral of qualified participants in training services to employers;

(ii) Customized employment-related services to employers, employer associations, or other such organization on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act Employment Service;

(iii) Activities to provide business services and strategies that meet the workforce investment needs of area employers, as determined by the Local WDB and consistent with the local plan (see § 678.435 of this chapter and WIOA sec. 134(d)(1)(A)(ix)); and

(3) Coordination activities, such as:

(i) Employment and training activities in coordination with child support enforcement activities, as well as child support services and assistance activities, of the State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

(ii) Employment and training activities in coordination with cooperative extension programs carried out by the Department of Agriculture;

(iii) Employment and training activities in coordination with activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology;

(iv) Improving coordination between workforce investment activities and economic development activities carried out within the local area involved, and to promote entrepreneurial skills training and microenterprise services;

(v) Improving services and linkages between the local workforce development system (including the local one-stop delivery system) and employers, including small employers, in the local area;

(vi) Strengthening linkages between the one-stop delivery system and the unemployment insurance programs; and

(vii) Improving coordination between employment and training activities and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to intellectual disabilities and developmental disabilities, activities carried out by Statewide Independent Living Councils established under sec. 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), programs funded under part B of chapter 1 of title VII of such Act (29 U.S.C. 796e et seq.), and activities carried out by centers for independent living, as defined in sec. 702 of such Act (29 U.S.C. 796a).

(4) Implementing a Pay-for-Performance contract strategy for training services in accordance with §§ 683.500 through 683.530 of this chapter for which up to 10 percent of the Local WDB's total adult and dislocated worker funds may be used.

(5) Technical assistance for one-stop centers, partners, and eligible training providers (ETPs) on the provision of service to individuals with disabilities in local areas, including staff training and development, provision of outreach and intake assessments, service delivery, service coordination across providers and programs, and development of performance accountability measures.

(6) Activities to adjust the economic self-sufficiency standards referred to in WIOA sec. 134(a)(3)(A)(xii) for local factors or activities to adopt, calculate or commission for approval, economic self-sufficiency standards for the local areas that specify the income needs of families,

by family size, the number and ages of children in the family, and sub-State geographical considerations.

(7) Implementing promising service to workers and businesses, which may include support for education, training, skill upgrading, and statewide networking for employees to become workplace learning advisors and maintain proficiency in carrying out the activities associated with such advising.

(8) Incumbent worker training programs, as described in subpart F of this part.

§ 680.150 What career services must be provided to adults and dislocated workers?

(a) At a minimum, all of the basic career services described in WIOA secs. 134(c)(2)(A)(i)-(xi) and § 678.430(a) of this chapter must be provided in each local area through the one-stop delivery system.

(b) Individualized career services described in WIOA sec. 134(c)(2)(A)(xii) and § 678.430(b) of this chapter must be made available, if determined appropriate in order for an individual to obtain or retain employment.

(c) Follow-up services, as described in WIOA sec. 134(c)(2)(A)(xiii) and § 678.430(c) of this chapter, must be made available, as determined appropriate by the Local WDB, for a minimum of 12 months following the first day of employment, to participants who are placed in unsubsidized employment.

§ 680.160 How are career services delivered?

Career services must be provided through the one-stop delivery system. Career services may be provided directly by the one-stop operator or through contracts with service providers that are approved by the Local WDB. The Local WDB only may be a provider of career services

when approved by the chief elected official and the Governor in accordance with the requirements of WIOA sec. 107(g)(2) and § 679.410 of this chapter.

§ 680.170 What is the individual employment plan?

The individual employment plan (IEP) is an individualized career service, under WIOA sec. 134(c)(2)(A)(xii)(II), that is developed jointly by the participant and career planner when determined appropriate by the one-stop center or one-stop partner. The plan is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of services for the participant to achieve the employment goals.

§ 680.180 What is an internship or work experience for adults and dislocated workers?

For the purposes of WIOA sec. 134(c)(2)(A)(xii)(VII), an internship or work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Internships and other work experience may be paid or unpaid, as appropriate and consistent with other laws, such as the Fair Labor Standards Act. An internship or other work experience may be arranged within the private for profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists. Transitional jobs are a type of work experience, as described in §§ 680.190 and 680.195.

§ 680.190 What is a transitional job?

A transitional job is one that provides a time-limited work experience, that is wage-paid and subsidized, and is in the public, private, or non-profit sectors for those individuals with barriers to employment who are chronically unemployed or have inconsistent work history, as determined by the Local WDB. These jobs are designed to enable an individual to establish a

work history, demonstrate work success in an employee-employer relationship, and develop the skills that lead to unsubsidized employment.

§ 680.195 What funds may be used for transitional jobs?

The local area may use up to 10 percent of their combined total of adult and dislocated worker allocations for transitional jobs as described in § 680.190. Transitional jobs must be combined with comprehensive career services (see § 680.150) and supportive services (see § 680.900).

Subpart B—Training Services

§ 680.200 What are training services for adults and dislocated workers?

Types of training services are listed in WIOA sec. 134(c)(3)(D) and below. This list is not all-inclusive and additional training services may be provided.

(a) Occupational skills training, including training for nontraditional employment;

(b) On-the-job training (OJT) (see §§ 680.700, 680.710, 680.720, and 680.730);

(c) Incumbent worker training, in accordance with WIOA sec. 134(d)(4) and §§ 680.780, 680.790, 680.800, 680.810, and 680.820;

(d) Programs that combine workplace training with related instruction, which may include cooperative education programs;

(e) Training programs operated by the private sector;

(f) Skills upgrading and retraining;

(g) Entrepreneurial training;

(h) Transitional jobs in accordance with WIOA sec 134(d)(5) and §§ 680.190 and 680.195;

(i) Job readiness training provided in combination with services listed in paragraphs (a) through (h) of this section;

(j) Adult education and literacy activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with training services listed in paragraphs (a) through (g) of this section;

(k) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training (see §§ 680.760 and 680.770).

§ 680.210 Who may receive training services?

Under WIOA sec. 134(c)(3)(A) training services may be made available to employed and unemployed adults and dislocated workers who:

(a) A one-stop center or one-stop partner determines, after an interview, evaluation, or assessment, and career planning, are:

(1) Unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services;

(2) In need of training services to obtain or retain employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment; and

(3) Have the skills and qualifications to participate successfully in training services;

(b) Select a program of training services that is directly linked to the employment opportunities in the local area or the planning region, or in another area to which the individuals are willing to commute or relocate;

(c) Are unable to obtain grant assistance from other sources to pay the costs of such training, including such sources as State-funded training funds, Trade Adjustment Assistance (TAA), and Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIOA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at § 680.230 and WIOA sec. 134(c)(3)(B)); and

(d) If training services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system in effect for adults under WIOA sec. 134(c)(3)(E) and § 680.600.

§ 680.220 Are there particular career services an individual must receive before receiving training services under the Workforce Innovation and Opportunity Act?

(a) Yes, except as provided by paragraph (b) of this section, an individual must at a minimum receive either an interview, evaluation, or assessment, and career planning or any other method through which the one-stop center or partner can obtain enough information to make an eligibility determination to be determined eligible for training services under WIOA sec. 134(c)(3)(A)(i) and § 680.210. Where appropriate, a recent interview, evaluation, or assessment, may be used for the assessment purpose.

(b) The case file must contain a determination of need for training services under § 680.210 as determined through the interview, evaluation, or assessment, and career planning informed by local labor market information and training provider performance information, or through any other career service received. There is no requirement that career services be provided as a condition to receipt of training services; however, if career services are not provided before training, the Local WDB must document the circumstances that justified its

determination to provide training without first providing the services described in paragraph (a) of this section.

(c) There is no Federally required minimum time period for participation in career services before receiving training services.

§ 680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

(a) WIOA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Programs and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section. In making the determination under this paragraph, one-stop centers may take into account the full cost of participating in training services, including the cost of support services and other appropriate costs.

(b) One-stop centers must coordinate training funds available and make funding arrangements with one-stop partners and other entities to apply the provisions of paragraph (a) of this section. One-stop centers must consider the availability of other sources of grants to pay for training costs such as Temporary Assistance for Needy Families (TANF), State-funded training funds, and Federal Pell Grants, so that WIOA funds supplement other sources of training grants.

(c) A WIOA participant may enroll in WIOA-funded training while his/her application for a Pell Grant is pending as long as the one-stop center has made arrangements with the training provider and the WIOA participant regarding allocation of the Pell Grant, if it is

subsequently awarded. In that case, the training provider must reimburse the one-stop center the WIOA funds used to underwrite the training for the amount the Pell Grant covers, including any education fees the training provider charges to attend training. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIOA participant for education-related expenses.

Subpart C—Individual Training Accounts

§ 680.300 How are training services provided?

Training services for eligible individuals are typically provided by training providers who receive payment for their services through an ITA. The ITA is a payment agreement established on behalf of a participant with a training provider. WIOA title I adult and dislocated workers purchase training services from State eligible training providers they select in consultation with the career planner, which includes discussion of program quality and performance information on the available eligible training providers. Payments from ITAs may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments also may be made incrementally, for example, through payment of a portion of the costs at different points in the training course. Under limited conditions, as provided in § 680.320 and WIOA sec. 134(d)(3)(G), a Local WDB may contract for these services, rather than using an ITA for this purpose. In some limited circumstances, the Local WDB may itself provide the training services, but only if it obtains a waiver from the Governor for this purpose, and the Local WDB meets the other requirements of § 679.410 of this chapter and WIOA sec. 107(g)(1).

§ 680.310 Can the duration and amount of Individual Training Accounts be limited?

(a) Yes, the State or Local WDB may impose limits on ITAs, such as limitations on the dollar amount and/or duration.

(b) Limits to ITAs may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the IEP, such as the participant's occupational choice or goal and the level of training needed to succeed in that goal; or

(2) There may be a policy decision by the State WDB or Local WDB to establish a range of amounts and/or a maximum amount applicable to all ITAs.

(c) Limitations established by State or Local WDB policies must be described in the State or Local Plan, respectively, but must not be implemented in a manner that undermines WIOA's requirement that training services are provided in a manner that maximizes customer choice in the selection of an ETP. Exceptions to ITA limitations may be provided for individual cases and must be described in State or Local WDB policies.

(d) An individual may select training that costs more than the maximum amount available for ITAs under a State or local policy when other sources of funds are available to supplement the ITA. These other sources may include: Pell Grants; scholarships; severance pay; and other sources.

§ 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?

(a) Contracts for services may be used instead of ITAs only when one or more of the following five exceptions apply, and the local area has fulfilled the consumer choice requirements of § 680.340:

(1) When the services provided are on-the-job-training (OJT), customized training, incumbent worker training, or transitional jobs;

(2) When the Local WDB determines that there are an insufficient number of eligible training providers in the local area to accomplish the purpose of a system of ITAs. The determination process must include a public comment period for interested providers of at least 30 days, and be described in the Local Plan;

(3) When the Local WDB determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization or another private organization to serve individuals with barriers to employment, as described in paragraph (b) of this section. The Local WDB must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in the delivery of services to individuals with barriers to employment through such means as program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(4) When the Local WDB determines that it would be most appropriate to contract with an institution of higher education (see WIOA sec. 3(28)) or other provider of training services in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations, provided that the contract does not limit consumer choice.

(5) When the Local WDB is considering entering into a Pay-for-Performance contract, and the Local WDB ensures that the contract is consistent with § 683.510 of this chapter.

(b) Under paragraph (a)(3) of this section, individuals with barriers to employment include those individuals in one or more of the following categories, as prescribed by WIOA sec. 3(24):

(1) Displaced homemakers;

(2) Low-income individuals;

(3) Indians, Alaska Natives, and Native Hawaiians;

(4) Individuals with disabilities;

(5) Older individuals, i.e., those aged 55 or over;

(6) Ex-offenders;

(7) Homeless individuals;

(8) Youth who are in or have aged out of the foster care system;

(9) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers;

(10) Eligible migrant and seasonal farmworkers, defined in WIOA sec. 167(i);

(11) Individuals within 2 years of exhausting lifetime eligibility under TANF (part A of title IV of the Social Security Act);

(12) Single-parents (including single pregnant women);

(13) Long-term unemployed individuals;

(14) Other groups determined by the Governor to have barriers to employment.

(c) The Local Plan must describe the process to be used in selecting the providers under a contract for services.

§ 680.330 How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?

Registered apprenticeships automatically qualify to be a on a State's eligible training provider list (ETPL) as described in § 680.470.

(a) ITAs can be used to support placing participants in registered apprenticeship through:

(1) Pre-apprenticeship training, as defined in § 681.480 of this chapter; and

(2) Training services provided under a registered apprenticeship program.

(b) Supportive services may be provided as described in §§ 680.900 and 680.910.

(c) Needs-related payments may be provided as described in §§ 680.930, 680.940, 680.950, 680.960, and 680.970.

(d) Work-based training options also may be used to support participants in registered apprenticeship programs (see §§ 680.740 and 680.750).

§ 680.340 What are the requirements for consumer choice?

(a) Training services, whether under ITAs or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local WDB, through the one-stop center, must make available to customers the State list of eligible training providers required in WIOA sec. 122(d). The list includes a description of the programs through which the providers may offer the training services, and the performance and cost information about those providers described in WIOA sec. 122(d). Additionally, the Local WDB must make available information identifying eligible providers as may be required by the Governor under WIOA sec. 122(h) (where applicable).

(c) An individual who has been determined eligible for training services under § 680.210 may select a provider described in paragraph (b) of this section after consultation with a career planner. Unless the program has exhausted training funds for the program year, the one-stop center must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph, a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIOA.

(e) Each Local WDB, through the one-stop center, may coordinate funding for ITAs with funding from other Federal, State, local, or private job training programs or sources to assist the individual in obtaining training services.

(f) Consistent with paragraph (a) of this section, priority consideration must be given to programs that lead to recognized postsecondary credentials (defined at WIOA sec. 3(52)) that are aligned with in-demand industry sectors or occupations in the local area.

§ 680.350 May title I adult and dislocated worker funds be used to directly support adult education and literacy activities?

Yes, under WIOA sec. 134(c)(3)(D)(x), title I funds may provide adult education and literacy activities if they are provided concurrently or in combination with one or more of the following training services:

(a) Occupational skills training, including training for nontraditional employment;

(b) OJT;

(c) Incumbent worker training (as described in §§ 680.780, 680.790, 680.800, 680.810, and 680.820);

(d) Programs that combined workplace training and related instruction, which may include cooperative education programs;

(e) Training programs operated by the private sector;

(f) Skill upgrading and retraining; or

(g) Entrepreneurial training.

Subpart D—Eligible Training Providers

§ 680.400 What is the purpose of this subpart?

(a) This subpart describes the process for determining eligible training providers and programs for WIOA title I, subtitle B adult, dislocated worker, and out-of-school youth (OSY) aged 16-24 training participants and for publicly disseminating the list of these providers with relevant information about their programs. The workforce development system established under WIOA emphasizes informed consumer choice, job-driven training, provider performance, and continuous improvement. The quality and selection of providers and programs of training services is vital to achieving these core principles.

(b) The State list of eligible training providers and programs and the related eligibility procedures ensure the accountability, quality and labor-market relevance of programs of training services that receive funds through WIOA title I, subtitle B. The State list of eligible training providers and programs also is a means for ensuring informed customer choice for individuals eligible for training. In administering the eligible training provider eligibility process, States and local areas must work to ensure that qualified providers offering a wide variety of job-driven programs of training services are available. The State list of eligible training providers and programs is made publicly available online through Web sites and searchable databases as well

as any other means the State uses to disseminate information to consumers, including formats accessible to individuals with disabilities. The list must be accompanied by relevant performance and cost information and must be presented in a way that is easily understood, in order to maximize informed consumer choice and serve all significant population groups, and also must be available in an electronic format. The State eligible training provider performance reports, as required under WIOA sec. 116(d)(4), are addressed separately in § 677.230 of this chapter.

§ 680.410 What is an eligible training provider?.

An ETP:

(a) Is the only type of entity that receives funding for training services, as defined in § 680.200, through an individual training account;

(b) Must be included on the State list of eligible training providers and programs under this subpart;

(c) Must provide a program of training services; and

(d) Must be one of the following types of entities:

(1) Institutions of higher education that provide a program which leads to a recognized postsecondary credential;

(2) Entities that carry out programs registered under the National Apprenticeship Act (29 U.S.C. 50 et seq.); or

(3) Other public or private providers of training services, which may include:

(i) Community-based organizations,

(ii) Joint labor-management organizations; and

(iii) Eligible providers of adult education and literacy activities under title II of WIOA if such activities are provided in combination with training services described at § 680.350.

§ 680.420 What is a "program of training services"?

A program of training services is one or more courses or classes, or a structured regimen, that provides the services in § 680.200 and leads to:

(a) An industry-recognized certificate or certification, a certificate of completion of a registered apprenticeship, a license recognized by the State involved or the Federal government, an associate or baccalaureate degree;

(b) Consistent with § 680.350, a secondary school diploma or its equivalent;

(c) Employment; or

(d) Measurable skill gains toward a credential described in paragraph (a) or (b) of this section or employment.

§ 680.430 Who is responsible for managing the training provider eligibility process?

(a) The Governor, in consultation with the State WDB, establishes the criteria, information requirements, and procedures, including procedures identifying the respective roles of the State and local areas, governing the eligibility of providers and programs of training services to receive funds through ITAs.

(b) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the process and procedures for determining the eligibility of training providers and programs of training services. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Ensuring the development and maintenance of the State list of eligible training providers and programs, as described in §§ 680.450 (initial eligibility), 680.460 (continued eligibility), and 680.490 (performance and cost information reporting requirements);

(2) Ensuring that programs meet eligibility criteria and performance levels established by the State, including verifying the accuracy of the information;

(3) Removing programs that do not meet State-established program criteria or performance levels, as described in § 680.480(c);

(4) Taking appropriate enforcement actions against providers that intentionally provide inaccurate information, or that substantially violate the requirements of WIOA, as described in § 680.480(a) and (b); and

(5) Disseminating the State list of eligible training providers and programs, accompanied by performance and cost information relating to each program, to the public and the Local WDBs throughout the State, as further described in § 680.500.

(c) The Local WDB must:

(1) Carry out the procedures assigned to the Local WDB by the State, such as determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers and programs, and considering the possible termination of an eligible training provider due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA requirements;

(2) Work with the State to ensure there are sufficient numbers and types of providers of training services, including eligible providers with expertise in assisting individuals with disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area; and

(3) Ensure the dissemination and appropriate use of the State list of eligible training providers and programs through the local one-stop delivery system, including formats accessible to individuals with disabilities.

(d) The Local WDB may make recommendations to the Governor on the procedure used in determining eligibility of providers and programs.

(e) The Local WDB may, except with respect to registered apprenticeship programs:

(1) Require additional criteria and information from local providers as criteria to become or remain eligible in that local area; and

(2) Set higher levels of performance than those required by the State as criteria for local programs to become or remain eligible to provide services in that local area.

§ 680.440 What are the transition procedures for Workforce Investment Act-eligible training providers to become eligible under the Workforce Innovation and Opportunity Act?

(a) The Governor may establish a transition procedure under which providers eligible to provide a program of training services under WIA may continue to be eligible to provide such services until June 30, 2016, or such earlier date as the Governor determines to be appropriate.

(b) After this transition period, which may extend no later than June 30, 2016, the eligibility of these providers and programs will be determined under the application procedure for continued eligibility established by the Governor as described in § 680.460.

(c) Programs that were previously eligible under WIA are not subject to the initial eligibility procedures described under § 680.450.

§ 680.450 What is the initial eligibility process for new providers and programs?

(a) All providers and programs that have not previously been eligible to provide training services under WIOA sec. 122 or WIA sec. 122, except for registered apprenticeship programs, must submit required information to be considered for initial eligibility in accordance with the Governor's procedures.

(b) Apprenticeship programs registered under the National Apprenticeship Act are exempt from initial eligibility procedures. Registered apprenticeship programs must be included and maintained on the State list of eligible training providers and programs as long as the program remains registered, unless the registered apprenticeship program is removed from the list for a reason set forth in § 680.470. Procedures for registered apprenticeship programs to be included and maintained on the list are described in § 680.470.

(c) In establishing the State requirements described in paragraph (e) of this section, the Governor must, in consultation with the State WDB, develop a procedure for determining the eligibility of training providers and programs. This procedure, which must be described in the State Plan, must be developed after:

(1) Soliciting and taking into consideration recommendations from Local WDBs and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local WDBs and providers, and for providing an opportunity for public comment.

(d) For institutions of higher education that provide a program that leads to a recognized postsecondary credential and for other public or private providers of programs of training

services, including joint labor-management organizations, and providers of adult education and literacy activities, the Governor must establish criteria and State requirements for providers and programs seeking initial eligibility.

(e) The Governor must require providers and programs seeking initial eligibility to provide verifiable program specific performance information. At a minimum, these criteria must require applicant providers to:

(1) Describe each program of training services to be offered;

(2) Provide information addressing a factor related to the indicators of performance, as described in WIOA secs. 116(b)(2)(A)(i)(I)-(IV) and § 680.460(g)(1) through (4) which include unsubsidized employment during the second quarter after exit, unsubsidized employment during the fourth quarter after exit, median earnings and credentials attainment;

(3) Describe whether the provider is in a partnership with a business;

(4) Provide other information the Governor may require in order to demonstrate high quality programs of training services, which may include information related to training services that lead to a recognized postsecondary credential; and

(5) Provide information that addresses alignment of the training services with in-demand industry sectors and occupations, to the extent possible.

(f) In establishing the initial eligibility procedures and criteria, the Governor may establish minimum performance standards, based on the performance information described in paragraph (e) of this section.

(g) Under WIOA sec. 122(b)(4)(B), eligible training providers receive initial eligibility for only 1 year for a particular program.

(h) After the initial eligibility expires, these initially eligible training providers are subject to the Governor's application procedures for continued eligibility, described at § 680.460, in order to remain eligible.

§ 680.460 What is the application procedure for continued eligibility?

(a) The Governor must establish an application procedure for eligible training providers and programs to maintain their continued eligibility. The application procedure must take into account the program's prior eligibility status.

(1) Training providers and programs that were previously eligible under WIA will be subject to the application procedure for continued eligibility after the close of the Governor's transition period for implementation, described in § 680.440.

(2) Training providers and programs that were not previously eligible under WIA and have been determined to be initially eligible under WIOA, under the procedures described at § 680.450, will be subject to the application procedure for continued eligibility after their initial eligibility expires.

(b) The Governor must develop this procedure after:

(1) Soliciting and taking into consideration recommendations from Local WDBs and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local WDBs and providers, and for providing an opportunity for public comment.

(c) Procedures for registered apprenticeship programs to be included and maintained on the list are described in § 680.470. Apprenticeship programs registered under the National Apprenticeship Act must be included and maintained on the State list of eligible training providers and programs as long as the program remains registered, unless the registered apprenticeship program is removed from the list for a reason set forth in § 680.470.

(d) The application procedure must describe the roles of the State and local areas in receiving and reviewing provider applications and in making eligibility determinations.

(e) The application procedure must be described in the State Plan.

(f) In establishing eligibility criteria, the Governor must take into account:

(1) The performance of the eligible training provider's program on:

(i) The performance accountability measures described in WIOA secs. 116(b)(2)(A)(i)(I)-(IV) and the other matters required by WIOA sec. 122(b)(2);

(ii) Other appropriate measures of performance outcomes determined by the Governor for program participants receiving training services under WIOA title I, subtitle B, taking into consideration the characteristics of the population served and relevant economic conditions; and

(iii) Outcomes of the program for students in general with respect to employment and earnings as defined in WIOA sec. 116(b)(2).

(iv) All of these measures may include minimum performance standards.

(v) Until data from the conclusion of each performance indicator's first data cycle are available, the Governor may take into account alternate factors related to the measures described in paragraphs (f)(1)(i) through (iv) of this section.

(2) Ensuring access to training services throughout the State, including in rural areas, and through the use of technology;

(3) Information reported to State agencies on Federal and State training programs other than programs within WIOA title I, subtitle B;

(4) The degree to which programs of training services relate to in-demand industry sectors and occupations in the State;

(5) State licensure requirements of training providers;

(6) Encouraging the use of industry-recognized certificates and credentials;

(7) The ability of providers to offer programs of training services that lead to postsecondary credentials;

(8) The quality of the program of training services including a program that leads to a recognized postsecondary credential;

(9) The ability of the providers to provide training services to individuals who are employed and individuals with barriers to employment;

(10) Whether the providers timely and accurately submitted all of the information required for completion of eligible training provider performance reports required under WIOA sec. 116(d)(4) and all of the information required for initial and continued eligibility in this subpart; and

(11) Other factors that the Governor determines are appropriate in order to ensure: the accountability of providers; that one-stop centers in the State will meet the needs of local employers and participants; and, that participants will be given an informed choice among providers.

(g) The information requirements that the Governor establishes under paragraph (f)(1) of this section must require eligible training providers to submit appropriate, accurate, and timely

information for participants receiving training under WIOA title I, subtitle B. That information must include:

(1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program;

(5) Information on recognized postsecondary credentials received by program participants;

(6) Information on cost of attendance, including costs of tuition and fees, for program participants;

(7) Information on the program completion rate for such participants.

(h) The eligibility criteria must require that:

(1) Providers submit performance and cost information as described in paragraph (g) of this section and in the Governor's procedures for each program of training services for which the provider has been determined to be eligible, in a timeframe and manner determined by the State, but at least every 2 years; and

(2) That the collection of information required to demonstrate compliance with the criteria is not unduly burdensome or costly to providers.

(i) The procedure for continued eligibility also must provide for the State biennially to review provider eligibility information to assess the renewal of training provider eligibility. Such procedures may establish minimum levels of training provider performance as criteria for continued eligibility.

(j) The procedure for biennial review of the provider eligibility must include verification of the registration status of registered apprenticeship programs and removal of any registered apprenticeship programs as described in § 680.470.

(k) The Governor may establish procedures and timeframes for providing technical assistance to eligible training providers who are not intentionally supplying inaccurate information or who have not substantially violated any of the requirements under this section but are failing to meet the criteria and information requirements due to undue cost or burden.

(l) The Governor's procedures must include what the Governor considers to be a substantial violation of the requirement to timely and accurately submit all of the information required for completion of the eligible training provider performance reports required under WIOA sec. 116(d)(4) and all of the information required for initial and continued eligibility in this subpart.

(1) The Governor's procedures on determining a substantial violation must take into account exceptional circumstances beyond the provider's control, such as natural disasters, unexpected personnel transitions, and unexpected technology-related issues.

(2) Providers who substantially violate the requirement in paragraph (g) of this section to timely and accurately submit all required information must be removed from the State list of eligible training providers and programs, as provided in § 680.480(b).

§ 680.470 What are the procedures for including and removing registered apprenticeship programs on a State list of eligible training providers and programs?

(a) All registered apprenticeship programs that are registered with the U.S. Department of Labor, Office of Apprenticeship, or a recognized State apprenticeship agency, are automatically eligible to be included in the State list of eligible training providers and programs. All registered apprenticeship programs must be informed of their automatic eligibility to be included on the list, and must be provided an opportunity to consent to their inclusion, before being placed on the State list of eligible training providers and programs. The Governor must establish a mechanism for registered apprenticeship program sponsors in the State to be informed of their automatic eligibility and to indicate that the program sponsor wishes to be included on the State list of eligible training providers and programs. This mechanism must place minimal burden on registered apprenticeship program sponsors and must be developed in accordance with guidance from the U.S. Department of Labor Office of Apprenticeship or with the assistance of the recognized State apprenticeship agency, as applicable.

(b) Once on the State list of eligible training providers and programs, registered apprenticeship programs will remain on the list:

(1) Until they are deregistered;

(2) Until the registered apprenticeship program notifies the State that it no longer wants to be included on the list; or

(3) Until the registered apprenticeship program is determined to have intentionally supplied inaccurate information or to have substantially violated any provision of title I of WIOA or the WIOA regulations, including 29 CFR part 38.

(c) A registered apprenticeship program whose eligibility is terminated under paragraph (b)(3) of this section must be terminated for not less than 2 years and is liable to repay all youth, adult, and dislocated worker training funds it received during the period of noncompliance. The Governor must specify in the procedures required by § 680.480 which individual or entity is responsible for making these determinations and the process by which the determination will be made, which must include an opportunity for a hearing that meets the requirements of § 683.630(b) of this chapter.

(d) Inclusion of a registered apprenticeship in the State list of eligible training providers and programs allows an individual who is eligible to use WIOA title I, subtitle B funds to use those funds toward registered apprenticeship training, consistent with their availability and limitations as prescribed by § 680.300. The use of ITAs and other WIOA title I, subtitle B funds toward registered apprenticeship training is further described in § 680.330.

(e) The Governor is encouraged to consult with the State and Local WDBs, ETA's Office of Apprenticeship, recognized State apprenticeship agencies (where they exist in the Governor's State) or other State agencies, to establish voluntary reporting of performance information.

(f) Pre-apprenticeship providers that wish to provide training services to participants using WIOA title I, subtitle B funds are subject to the eligibility procedures of this subpart.

§ 680.480 May an eligible training provider lose its eligibility?

(a) Yes. A training provider must meet the Governors requirements for eligibility and provide accurate information in order to retain its status as an eligible training provider.

(b) Providers determined to have intentionally supplied inaccurate information or to have substantially violated any provision of title I of WIOA or the WIOA regulations, including 29

CFR part 38, must be removed from the State list of eligible training providers and programs in accordance with the enforcement provisions of WIOA sec. 122(f). A provider whose eligibility is terminated under these conditions must be terminated for not less than 2 years and is liable to repay all youth, adult, and dislocated worker training funds it received during the period of noncompliance. The Governor must specify in the procedures which individual or entity is responsible for making these determinations and the process by which the determination will be made, which must include an opportunity for a hearing that meets the requirements of § 683.630(b) of this chapter.

(c) As a part of the biennial review of eligibility established by the Governor, the State must remove programs of training services that fail to meet criteria established by the Governor to remain eligible, which may include failure to meet established minimum performance levels. Registered apprenticeship programs only may be removed for the reasons set forth in § 680.470.

(d) The Governor must establish an appeals procedure for providers of training services to appeal a denial of eligibility under this subpart that meets the requirements of § 683.630(b) of this chapter, which explains the appeals process for denial or termination of eligibility of a provider of training services.

(e) Where a Local WDB has established higher minimum performance standards, according to § 680.430(e), the Local WDB may remove a program of training services from the eligible programs in that local area for failure to meet those higher performance standards. Training providers may appeal a denial of eligibility under § 683.630(b) of this chapter.

§ 680.490 What kind of performance and cost information must eligible training providers other than registered apprenticeship programs provide for each program of training services?

(a) In accordance with the State procedure under § 680.460(i), eligible training providers, except registered apprenticeship programs, must submit, at least every 2 years, appropriate, timely, and accurate performance and cost information.

(b) Program-specific performance information must include:

(1) The information described in WIOA sec. 122(b)(2)(A) for individuals participating in the programs of training services who are receiving assistance under WIOA. This information includes indicators of performance as described in WIOA secs. 116(b)(2)(I)-(IV) and § 680.460(g)(1) through (4);

(2) Information identifying the recognized postsecondary credentials received by such participants in §680.460(g)(5);

(3) Program cost information, including tuition and fees, for WIOA participants in the program in § 680.460(g)(6); and

(4) Information on the program completion rate for WIOA participants in § 680.460(g)(7).

(c) Governors may require any additional performance information (such as the information described at WIOA sec. 122(b)(1)) that the Governor determines to be appropriate to determine, maintain eligibility, or better to inform consumers.

(d) Governors must establish a procedure by which a provider can demonstrate that providing additional information required under this section would be unduly burdensome or costly. If the Governor determines that providers have demonstrated such extraordinary costs or undue burden:

(1) The Governor must provide access to cost-effective methods for the collection of the information;

(2) The Governor may provide additional resources to assist providers in the collection of the information from funds for statewide workforce investment activities reserved under WIOA secs. 128(a) and 133(a)(1); or

(3) The Governor may take other steps to assist eligible training providers in collecting and supplying required information such as offering technical assistance.

§ 680.500 How is the State list of eligible training providers and programs disseminated?

(a) In order to assist participants in choosing employment and training activities, the Governor or State agency must disseminate the State list of eligible training providers and programs and accompanying performance and cost information to Local WDBs in the State and to members of the public online, including through Web sites and searchable databases, and through whatever other means the State uses to disseminate information to consumers, including the one-stop delivery system and its program partners throughout the State.

(b) The State list of eligible training providers and programs and information must be updated regularly and provider and program eligibility must be reviewed biennially according to the procedures established by the Governor in § 680.460(i).

(c) In order to ensure informed consumer choice, the State list of eligible training providers and programs and accompanying information must be widely available to the public through electronic means, including Web sites and searchable databases, as well as through any other means the State uses to disseminate information to consumers. The list and accompanying information must be available through the one-stop delivery system and its partners including the State's secondary and postsecondary education systems. The list must be accessible to individuals seeking information on training outcomes, as well as participants in employment and training activities funded under WIOA, including those under § 680.210, and other programs. In

accordance with WIOA sec. 188, the State list also must be accessible to individuals with disabilities.

(d) The State list of eligible training providers and programs must be accompanied by appropriate information to assist participants in choosing employment and programs of training services. Such information must include:

(1) Recognized postsecondary credential(s) offered;

(2) Provider information supplied to meet the Governor's eligibility procedure as described in §§ 680.450 and 680.460;

(3) Performance and cost information as described in § 680.490; and

(4) Additional information as the Governor determines appropriate.

(e) The State list of eligible training providers and programs and accompanying information must be made available in a manner that does not reveal personally identifiable information about an individual participant. In addition, in developing the information to accompany the State list described in § 680.490(b), disclosure of personally identifiable information from an education record must be carried out in accordance with the Family Educational Rights and Privacy Act, including the circumstances relating to prior written consent.

§ 680.510 In what ways can a Local Workforce Development Board supplement the information available from the State list of eligible training providers and programs?

(a) Local WDBs may supplement the criteria and information requirements established by the Governor in order to support informed consumer choice and the achievement of local performance indicators. However, the Local WDB may not do so for registered apprenticeship programs.

(b) This additional information may include:

(1) Information on programs of training services that are linked to occupations in demand in the local area;

(2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible training providers;

(3) Information that shows how programs are responsive to local requirements; and

(4) Other appropriate information related to the objectives of WIOA.

§ 680.520 May individuals choose training providers and programs located outside of the local area or outside of the State?

(a) An individual may choose training providers and programs outside of the local area provided the training program is on the State list, in accordance with local policies and procedures.

(b) An individual may choose eligible training providers and programs outside of the State consistent with State and local policies and procedures. State policies and procedures may provide for reciprocal or other agreements established with another State to permit eligible training providers in a State to accept ITAs provided by the other State.

§ 680.530 What eligibility requirements apply to providers of on-the-job-training, customized training, incumbent worker training, and other training exceptions?

(a) Providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional jobs are not subject to the requirements applicable to entities listed on the eligible training provider list, and are not included on the State list of eligible training providers and programs.

(b) For providers of training described in paragraph (a) of this section, the Governor may establish performance criteria those providers must meet to receive funds under the adult or dislocated worker programs pursuant to a contract as provided in § 680.320.

(c) One-stop operators in a local area must collect such performance information as the Governor may require and determine whether the providers meet any performance criteria the Governor may establish under paragraph (b) of this section.

(d) One-stop operators must disseminate information identifying providers and programs that have met the Governor's performance criteria, along with the relevant performance information about them, through the one-stop delivery system.

Subpart E—Priority and Special Populations

§ 680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?

(a) WIOA sec. 134(c)(3)(E) states that priority for individualized career services (see § 678.430(b) of this chapter) and training services funded with title I adult funds must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient (as defined in WIOA sec. 3(5)(B)) in the local area.

(b) States and local areas must establish criteria by which the one-stop center will apply the priority under WIOA sec. 134(c)(3)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) The priority established under paragraph (a) of this section does not necessarily mean that these services only may be provided to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. The Local WDB and the Governor may establish a process that also gives priority to other individuals eligible to receive such services, provided that it is consistent with priority of service for veterans (see § 680.650) and the priority provisions of WIOA sec. 134(c)(3)(E), discussed above in paragraphs (a) and (b) of this section.

§ 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

No, the statutory priority only applies to adult funds and only applies to providing individualized career services, as described in § 680.150(b), and training services. Funds allocated for dislocated workers are not subject to this requirement.

§ 680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?

The local TANF program is a required partner in the one-stop delivery system. Part 678 describes the roles of such partners in the one-stop delivery system and it applies to the TANF program. TANF serves individuals who also may be served by the WIOA programs and, through appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the TANF program in the one-stop delivery system. TANF participants, who are determined to be WIOA eligible, and who need occupational skills training may be referred through the one-stop delivery system to receive WIOA training, when TANF grant and other grant funds are not available to the individual in accordance with § 680.230(a).

WIOA participants who also are determined TANF eligible may be referred to the TANF program for assistance.

§ 680.630 How does a displaced homemaker qualify for services under title I?

(a) Individuals who meet the definitions of a "displaced homemaker" (see WIOA sec. 3(16)) qualify for career and training services with dislocated worker title I funds.

(b) Displaced homemakers also may qualify for career and training services with adult funds under title I if the requirements of this part are met (see §§ 680.120 and 680.600).

(c) Displaced homemakers also may be served in statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in § 682.210(c) of this chapter.

(d) The definition of displaced homemaker includes the dependent spouse of a member of the Armed Forces on active duty (as defined in sec. 101(d)(1) of title 10, United States Code) and whose family income is significantly reduced because of a deployment, a call or order to active duty under a provision of law referred to in sec. 101(a)(13)(B) of title 10, United State Code, a permanent change of station, or the service-connected death or disability of the member.

§ 680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Workforce Innovation and Opportunity Act be eligible for priority as a low-income adult?

Yes, even if the family of an individual with a disability does not meet the income eligibility criteria, the individual with a disability is to be considered a low-income individual if the individual's own income:

(a) Meets the income criteria established in WIOA sec. 3(36)(A)(vi); or

(b) Meets the income eligibility criteria for payments under any Federal, State or local public assistance program (see WIOA sec. 3(36)(A)(i)).

§ 680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?

Yes, veterans, as defined under WIOA sec. 3(63)(A) and 38 U.S.C. 101, receive priority of service in all Department of Labor-funded training programs under 38 U.S.C. 4215 and described in 20 CFR part 1010. A veteran still must meet each program's eligibility criteria to receive services under the respective employment and training program. For income-based eligibility determinations, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income, in accordance with 38 U.S.C. 4213 and § 683.230 of this chapter.

§ 680.660 Are separating military service members eligible for dislocated worker activities under the Workforce Innovation and Opportunity Act?

If the separating service member is separating from the Armed Forces with a discharge that is anything other than dishonorable, the separating service member qualifies for dislocated worker activities based on the following criteria:

(a) The separating service member has received a notice of separation, a DD-214 from the Department of Defense, or other documentation showing a separation or imminent separation from the Armed Forces to satisfy the termination or layoff part of the dislocated worker eligibility criteria in WIOA sec. 3(15)(A)(i);

(b) The separating service member qualifies for the dislocated worker eligibility criteria on eligibility for or exhaustion of unemployment compensation in WIOA sec. 3(15)(A)(ii)(I) or (II); and,

(c) As a separating service member, the individual meets the dislocated worker eligibility criteria that the individual is unlikely to return to a previous industry or occupation in WIOA sec. 3(15)(A)(iii).

Subpart F—Work-based Training

§ 680.700 What are the requirements for on-the-job training?

(a) OJT is defined at WIOA sec. 3(44). OJT is provided under a contract with an employer or registered apprenticeship program sponsor in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and supervision related to the training. In limited circumstances, as provided in WIOA sec. 134(c)(3)(h) and § 680.730, the reimbursement may be up to 75 percent of the wage rate of the participant.

(b) OJT contracts under WIOA title I, must not be entered into with an employer who has received payments under previous contracts under WIOA or WIA if the employer has exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's IEP.

§ 680.710 What are the requirements for on-the-job training contracts for employed workers?

OJT contracts may be written for eligible employed workers when:

(a) The employee is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, as determined by Local WDB policy;

(b) The requirements in § 680.700 are met; and

(c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local WDB.

§ 680.720 What conditions govern on-the-job training payments to employers?

(a) OJT payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and potentially lower productivity of the participants while in the OJT.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in § 680.730, for the extraordinary costs of providing the training and additional supervision related to the OJT.

(c) Employers are not required to document such extraordinary costs.

§ 680.730 Under what conditions may a Governor or Local Workforce Development Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?

(a) The Governor may increase the reimbursement rate for OJT contracts funded through the statewide employment and training activities described in § 682.210 of this chapter up to 75 percent, and the Local WDB also may increase the reimbursement rate for OJT contracts described in § 680.320(a)(1) up to 75 percent, when taking into account the following factors:

(1) The characteristics of the participants taking into consideration whether they are "individuals with barriers to employment," as defined in WIOA sec. 3(24);

(2) The size of the employer, with an emphasis on small businesses;

(3) The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and

(4) Other factors the Governor or Local WDB may determine to be appropriate, which may include the number of employees participating, wage and benefit levels of the employees (both at present and after completion), and relation of the training to the competitiveness of the participant.

(b) Governors or Local WDBs must document the factors used when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent.

§ 680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?

(a) OJT contracts may be entered into with registered apprenticeship program sponsors or participating employers in registered apprenticeship programs for the OJT portion of the registered apprenticeship program consistent with § 680.700. Depending on the length of the

registered apprenticeship and State and local OJT policies, these funds may cover some or all of the registered apprenticeship training.

(b) If the apprentice is unemployed at the time of participation, the OJT must be conducted as described in § 680.700. If the apprentice is employed at the time of participation, the OJT must be conducted as described in § 680.710.

§ 680.750 Can Individual Training Account and on-the-job training funds be combined to support placing participants into a registered apprenticeship program?

There is no Federal prohibition on using both ITA and OJT funds when placing participants into a registered apprenticeship program. See § 680.330 on using ITAs to support participants in registered apprenticeship.

§ 680.760 What is customized training?

Customized training is training:

(a) That is designed to meet the special requirements of an employer (including a group of employers);

(b) That is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and

(c) For which the employer pays for a significant cost of the training, as determined by the Local WDB in accordance with the factors identified in WIOA sec. 3(14).

§ 680.770 What are the requirements for customized training for employed workers?

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, as determined by Local WDB policy;

(b) The requirements in § 680.760 are met; and

(c) The customized training relates to the purposes described in § 680.710(c) or other appropriate purposes identified by the Local WDB.

§ 680.780 Who is an "incumbent worker" for purposes of statewide and local employment and training activities?

States and local areas must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services. To qualify as an incumbent worker, the incumbent worker needs to be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history with the employer for 6 months or more, with the following exception: In the event that the incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for 6 months or more as long as a majority of those employees being trained do meet the employment history requirement. An incumbent worker does not have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA, unless they also are enrolled as a participant in the WIOA adult or dislocated worker program.

§ 680.790 What is incumbent worker training?

Incumbent worker training must satisfy the requirements in WIOA sec. 134(d)(4) and increase the competitiveness of the employee or employer. For purposes of WIOA sec. 134(d)(4)(B), incumbent worker training is training:

(a) Designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment.

(b) Conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker(s) trained.

§ 680.800 What funds may be used for incumbent worker training?

(a) The local area may reserve up to 20 percent of their combined total of adult and dislocated worker allocations for incumbent worker training as described in § 680.790;

(b) The State may use their statewide activities funds (per WIOA sec. 134(a)(3)(A)(i)) and Rapid Response funds for statewide incumbent worker training activities (see §§ 682.210(b) and 682.320(b)(4) of this chapter).

§ 680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker training funds?

The Local WDB must consider under WIOA sec. 134(d)(4)(A)(ii):

(a) The characteristics of the individuals in the program;

(b) The relationship of the training to the competitiveness of an individual and the employer; and

(c) Other factors the Local WDB determines appropriate, including number of employees trained, wages and benefits including post training increases, and the existence of other training opportunities provided by the employer.

§ 680.820 Are there cost sharing requirements for local area incumbent worker training?

Yes. Under WIOA secs. 134(d)(4)(C) and 134(d)(4)(D)(i)-(iii), employers participating in incumbent worker training are required to pay the non-Federal share of the cost of providing training to their incumbent workers. The amount of the non-Federal share depends upon the limits established under WIOA secs. 134(d)(4)(ii)(C) and (D).

§ 680.830 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?

No. Funds provided to employers for work-based training, as described in this subpart, must not be used to directly or indirectly assist, promote, or deter union organizing.

§ 680.840 May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?

No. Funds provided to employers for work-based training, as described in this subpart and in subpart A of this part, may not be used to directly or indirectly aid in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

Subpart G—Supportive Services

§ 680.900 What are supportive services for adults and dislocated workers?

Supportive services for adults and dislocated workers are defined at WIOA sec. 3(59) and secs. 134(d)(2) and (3). Local WDBs, in consultation with the one-stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. The policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the career services that must be available to adults and dislocated workers through the one-stop delivery system. (WIOA sec. 134(c)(2)(A)(ix) and § 678.430 of this chapter). Local WDBs must ensure that

needs-related payments are made in a manner consistent with §§ 680.930, 680.940, 680.950, 680.960, and 680.970. Supportive services are services that are necessary to enable an individual to participate in activities authorized under WIOA sec. 134(c)(2) and (3). These services may include, but are not limited to, the following:

(a) Linkages to community services;

(b) Assistance with transportation;

(c) Assistance with child care and dependent care;

(d) Assistance with housing;

(e) Needs-related payments, as described at §§ 680.930, 680.940, 680.950, 680.960, and 680.970;

(f) Assistance with educational testing;

(g) Reasonable accommodations for individuals with disabilities;

(h) Legal aid services;

(i) Referrals to health care;

(j) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(k) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(l) Payments and fees for employment and training-related applications, tests, and certifications.

§ 680.910 When may supportive services be provided to participants?

(a) Supportive services may only be provided to individuals who are:

(1) Participating in career or training services as defined in WIOA secs. 134(c)(2) and (3); and

(2) Unable to obtain supportive services through other programs providing such services.

(b) Supportive services only may be provided when they are necessary to enable individuals to participate in career service or training activities.

§ 680.920 Are there limits on the amount or duration of funds for supportive services?

(a) Local WDBs may establish limits on the provision of supportive services or provide the one-stop center with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures also may be established to allow one-stop centers to grant exceptions to the limits established under paragraph (a) of this section.

§ 680.930 What are needs-related payments?

Needs-related payments provide financial assistance to participants for the purpose of enabling them to participate in training and are a supportive service authorized by WIOA sec. 134(d)(3). Unlike other supportive services, in order to qualify for needs-related payments a participant must be enrolled in training.

§ 680.940 What are the eligibility requirements for adults to receive needs-related payments?

Adults must:

(a) Be unemployed,

(b) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under WIOA sec. 134(c)(3).

§ 680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?

To receive needs-related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment allowance under TAA; and

(2) Be enrolled in a program of training services under WIOA sec. 134(c)(3) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA and be enrolled in a program of training services under WIOA sec. 134(c)(3).

§ 680.960 May needs-related payments be paid while a participant is waiting to start training classes?

Yes, payments may be provided if the participant has been accepted in a training program that will begin within 30 calendar days. The Governor may authorize local areas to extend the 30-day period to address appropriate circumstances.

§ 680.970 How is the level of needs-related payments determined?

(a) The payment level for adults must be established by the Local WDB. For statewide projects, the payment level for adults must be established by the State WDB.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) The applicable weekly level of the unemployment compensation benefit, for participants who were eligible for unemployment compensation as a result of the qualifying dislocation; or

(2) The poverty level for an equivalent period, for participants who did not qualify for unemployment compensation as a result of the qualifying layoff. The weekly payment level must be adjusted to reflect changes in total family income, as determined by Local WDB policies.

8. Add part 681 to read as follows:

PART 681 – YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Standing Youth Committees

Sec.
681.100 What is a standing youth committee?
681.110 Who is included on a standing youth committee?
681.120 What does a standing youth committee do?

Subpart B—Eligibility for Youth Services

Sec.
681.200 Who is eligible for youth services?
681.210 Who is an “out-of-school youth”?
681.220 Who is an “in-school youth”?
681.230 What does “school” refer to in the “not attending or attending any school” in the out-of-school and in-school eligibility criteria?
681.240 When do local youth programs verify dropout status?
681.250 Who does the low-income eligibility requirement apply to?
681.260 How does the Department define “high poverty area” for the purposes of the special regulation for low-income youth in the Workforce Innovation and Opportunity Act?

681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?
681.280 Is a youth with a disability eligible for youth services under the Workforce Innovation and Opportunity Act if his or her family income exceeds the income eligibility criteria?
681.290 How does the Department define the "basic skills deficient" criterion this part?
681.300 How does the Department define the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion in this part for OSY?
681.310 How does the Department define the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in this part for ISY?
681.320 Must youth participants enroll to participate in the youth program?

Subpart C—Youth Program Design, Elements, and Parameters

Sec.

681.400 What is the process used to select eligible youth providers?
681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?
681.420 How must Local Workforce Development Boards design Workforce Innovation and Opportunity Act youth programs?
681.430 May youth participate in both the Workforce Innovation and Opportunity Act (WIOA) youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the WIOA youth and adult programs?
681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act (WIOA) youth program or the WIOA adult program?
681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?
681.460 What services must local programs offer to youth participants?
681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act funds for each of the 14 program elements?
681.480 What is a pre-apprenticeship program?
681.490 What is adult mentoring?
681.500 What is financial literacy education?
681.510 What is comprehensive guidance and counseling?
681.520 What are leadership development opportunities?
681.530 What are positive social and civic behaviors?
681.540 What is occupational skills training?
681.550 Are Individual Training Accounts permitted for youth participants?
681.560 What is entrepreneurial skills training and how is it taught?
681.570 What are supportive services for youth?
681.580 What are follow-up services for youth?

681.590 What is the work experience priority and how will local youth programs track the work experience priority?
681.600 What are work experiences?
681.610 Does the Workforce Innovation and Opportunity Act require Local Workforce Development Boards to offer summer employment opportunities in the local youth program?
681.620 How are summer employment opportunities administered?
681.630 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?
681.640 Are incentive payments to youth participants permitted?
681.650 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

Subpart D—One-Stop Services to Youth

Sec.
681.700 What is the connection between the youth program and the one-stop delivery system?
681.710 Do Local Workforce Development Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

Authority: Secs. 107, 121, 123, 129, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Standing Youth Committees

§ 681.100 What is a standing youth committee?

The Workforce Innovation and Opportunity Act of 2014 (WIOA) eliminates the requirement for Local Workforce Development Boards (WDBs) to establish a youth council. However, the Department encourages Local WDBs to establish a standing committee to provide information and to assist with planning, operational, oversight, and other issues relating to the provision of services to youth. If the Local WDB does not designate a standing youth committee, it retains responsibility for all aspects of youth formula programs.

§ 681.110 Who is included on a standing youth committee?

(a) If a Local WDB decides to form a standing youth committee, the committee must include a member of the Local WDB, who chairs the committee, members of community-based organizations with a demonstrated record of success in serving eligible youth, and other individuals with appropriate expertise and experience who are not members of the Local WDB.

(b) The committee must reflect the needs of the local area. The committee members appointed for their experience and expertise may bring their expertise to help the committee address the employment, training, education, human and supportive service needs of eligible youth including out-of-school youth (OSY). Members may represent agencies such as secondary and postsecondary education, training, health, disability, mental health, housing, public assistance, and justice, or be representatives of philanthropic or economic and community development organizations, and employers. The committee may also include parents, participants, and youth.

(c) A Local WDB may designate an existing entity such as an effective youth council as the standing youth committee if it fulfills the requirements above in paragraph (a) of this section.

§ 681.120 What does a standing youth committee do?

Under the direction of the Local WDB, a standing youth committee may:

(a) Recommend policy direction to the Local WDB for the design, development, and implementation of programs that benefit all youth;

(b) Recommend the design of a comprehensive community workforce development system to ensure a full range of services and opportunities for all youth, including disconnected youth;

(c) Recommend ways to leverage resources and coordinate services among schools, public programs, and community-based organizations serving youth;

(d) Recommend ways to coordinate youth services and recommend eligible youth service providers;

(e) Provide on-going leadership and support for continuous quality improvement for local youth programs;

(f) Assist with planning, operational, and other issues relating to the provision of services to youth; and

(g) If so delegated by the Local WDB after consultation with the chief elected official (CEO), oversee eligible youth providers, as well as other youth program oversight responsibilities.

Subpart B—Eligibility for Youth Services

§ 681.200 Who is eligible for youth services?

Both in-school youth (ISY) and OSY are eligible for youth services.

§ 681.210 Who is an "out-of-school youth"?

An OSY is an individual who is:

(a) Not attending any school (as defined under State law);

(b) Not younger than age 16 or older than age 24 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 24 once they are enrolled in the program; and

(c) One or more of the following:

(1) A school dropout;

(2) A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter. School year calendar

quarter is based on how a local school district defines its school year quarters. In cases where schools do not use quarters, local programs must use calendar year quarters;

(3) A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is either basic skills deficient or an English language learner;

(4) An offender;

(5) A homeless individual aged 16 to 24 who meets the criteria defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), a homeless child or youth aged 16 to 24 who meets the criteria defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)) or a runaway;

(6) An individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement;

(7) An individual who is pregnant or parenting;

(8) An individual with a disability; or

(9) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment.

§ 681.220 Who is an "in-school youth"?

An ISY is an individual who is:

(a) Attending school (as defined by State law), including secondary and postsecondary school;

(b) Not younger than age 14 or (unless an individual with a disability who is attending school under State law) older than age 21 at time of enrollment. Because age eligibility is based

on age at enrollment, participants may continue to receive services beyond the age of 21 once they are enrolled in the program;

(c) A low-income individual; and

(d) One or more of the following:

(1) Basic skills deficient;

(2) An English language learner;

(3) An offender;

(4) A homeless individual aged 14 to 21 who meets the criteria defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6))), a homeless child or youth aged 14 to 21 who meets the criteria defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), or a runaway;

(5) An individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement;

(6) An individual who is pregnant or parenting;

(7) An individual with a disability; or

(8) An individual who requires additional assistance to complete an educational program or to secure or hold employment.

§ 681.230 What does "school" refer to in the "not attending or attending any school" in the out-of-school and in-school eligibility criteria?

In general, the applicable State law for secondary and postsecondary institutions defines "school." However, for purposes of WIOA, the Department does not consider providers of adult

education under title II of WIOA, YouthBuild programs, the Job Corps program, high school equivalency programs, or dropout re-engagement programs to be schools. Therefore, in all cases except the one provided below, WIOA youth programs may consider a youth to be an OSY for purposes of WIOA youth program eligibility if he or she attend adult education provided under title II of WIOA, YouthBuild, Job Corps, high school equivalency programs, or dropout re-engagement programs regardless of the funding source of those programs. Youth attending high school equivalency programs funded by the public K-12 school system who are classified by the school system as still enrolled in school are an exception; they are considered ISY.

§ 681.240 When do local youth programs verify dropout status?

Local WIOA youth programs must verify a youth's dropout status at the time of WIOA youth program enrollment. An individual who is out of school at the time of enrollment, and subsequently placed in any school, is an OSY for the purposes of the 75 percent expenditure requirement for OSY throughout his/her participation in the program.

§ 681.250 Who does the low-income eligibility requirement apply to?

(a) For OSY, only those youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner, and youth who require additional assistance to enter or complete an educational program or to secure or hold employment, must be low-income. All other OSY meeting OSY eligibility under § 681.210(c)(1), (2), (4), (5), (6), (7), and (8) are not required to be low-income.

(b) All ISY must be low-income to meet the ISY eligibility criteria, except those that fall under the low-income exception.

(c) WIOA allows a low-income exception where five percent of WIOA youth may be participants who ordinarily would be required to be low-income for eligibility purposes and meet

all other eligibility criteria for WIOA youth except the low-income criteria. A program must calculate the five percent based on the percent of newly enrolled youth in the local area's WIOA youth program in a given program year who would ordinarily be required to meet the low-income criteria.

(d) In addition to the criteria in the definition of "low-income individual" in WIOA sec. 3(36), a youth is low-income if he or she receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq. or if he or she lives in a high poverty area.

§ 681.260 How does the Department define "high poverty area" for the purposes of the special regulation for low-income youth in the Workforce Innovation and Opportunity Act?

A youth who lives in a high poverty area is automatically considered to be a low-income individual. A high poverty area is a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other tribal land as defined by the Secretary in guidance or county that has a poverty rate of at least 25 percent as set every 5 years using American Community Survey 5-Year data.

§ 681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?

Yes, WIOA sec. 3(36) defines a low-income individual to include an individual who receives (or is eligible to receive) a free or reduced price lunch under the Richard B. Russell National School Lunch Act.

§ 681.280 Is a youth with a disability eligible for youth services under the Workforce Innovation and Opportunity Act if his or her family income exceeds the income eligibility criteria?

Yes, for an individual with a disability, income level for eligibility purposes is based on the individual's own income rather than his or her family's income. WIOA sec. 3(36)(A)(vi) states that an individual with a disability whose own income meets the low-income definition in clause (ii) (income that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level), but who is a member of a family whose income exceeds this income requirement is eligible for youth services. Furthermore, only ISY with a disability must be low income. OSY with a disability are not required to be low-income.

§ 681.290 How does the Department define the "basic skills deficient" criterion in this part?

(a) As defined in § 681.210(c)(3), a youth is "basic skills deficient" if he or she:

(1) Have English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or

(2) Are unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society.

(b) The State or Local WDB must establish its policy on paragraph (a)(2) of this section in its respective State or local plan.

(c) In assessing basic skills, local programs must use assessment instruments that are

valid and appropriate for the target population, and must provide reasonable accommodation in the assessment process, if necessary, for individuals with disabilities .

§ 681.300 How does the Department define the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion in this part for OSY?

Either the State or the local level may establish definitions and eligibility documentation requirements for the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion of § 681.210(c)(9). In cases where the State WDB establishes State policy on this criterion, the State WDB must include the definition in the State Plan. In cases where the State WDB does not establish a policy, the Local WDB must establish a policy in its local plan if using this criterion.

§ 681.310 How does the Department define the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in this part for ISY?

(a) Either the State or the local level may establish definitions and eligibility documentation requirements for the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion of § 681.220(d)(8). In cases where the State WDB establishes State policy on this criterion, the State WDB must include the definition in the State Plan. In cases where the State WDB does not establish a policy, the Local WDB must establish a policy in its local plan if using this criterion.

(b) In each local area, not more than five percent of the ISY newly enrolled in a given program year may be eligible based on the "requires additional assistance to complete an educational program or to secure or hold employment" criterion.

§ 681.320 Must youth participants enroll to participate in the youth program?

(a) Yes, to participate in youth programs, participants must enroll in the WIOA youth program.

(b) In order to be a participant in the WIOA youth program, all of the following must occur:

(1) The collection of information to support an eligibility determination;

(2) The provision of an objective assessment; and

(3) Participation in any of the 14 WIOA youth program elements.

Subpart C—Youth Program Design, Elements, and Parameters

§ 681.400 What is the process used to select eligible youth service providers?

(a) The grant recipient/fiscal agent has the option to provide directly some or all of the youth workforce investment activities.

(b) However, as provided in WIOA sec. 123, if a Local WDB chooses to award grants or contracts to youth service providers to carry out some or all of the youth workforce investment activities, the Local WDB must award such grants or contracts on a competitive basis, subject to the exception explained below at paragraph (b)(4) of this section:

(1) The Local WDB must identify youth service providers based on criteria established in the State Plan (including such quality criteria established by the Governor for a training program that leads to a recognized postsecondary credential) and take into consideration the ability of the provider to meet performance accountability measures based on the primary indicators of performance for youth programs.

(2) The Local WDB must procure the youth service providers in accordance with the Uniform Guidance at 2 CFR parts 200 and 2900, in addition to applicable State and local procurement laws.

(3) If the Local WDB establishes a standing youth committee under § 681.100 it may assign the committee the function of selecting of grants or contracts.

(4) Where the Local WDB determines there are an insufficient number of eligible youth providers in the local area, such as a rural area, the Local WDB may award grants or contracts on a sole source basis.

§ 681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?

Yes. The 75 percent requirement applies to both statewide youth activities funds and local youth funds with 2 exceptions.

(a) Only statewide funds spent on direct services to youth are subject to the OSY expenditure requirement. Funds spent on statewide youth activities that do not provide direct services to youth, such as most of the required statewide youth activities listed in WIOA sec. 129(b)(1), are not subject to the OSY expenditure requirement. For example, administrative costs, monitoring, and technical assistance are not subject to OSY expenditure requirement; while funds spent on direct services to youth such as statewide demonstration projects, are subject to the OSY expenditure requirement.

(b) For a State that receives a small State minimum allotment under WIOA sec. 127(b)(1)(C)(iv)(II) for youth or WIOA sec. 132(b)(1)(B)(iv)(II) for adults, the State may submit a request to the Secretary to decrease the percentage to not less than 50 percent for a local area in

the State, and the Secretary may approve such a request for that program year, if the State meets the following requirements:

(1) After an analysis of the ISY and OSY populations in the local area, the State determines that the local area will be unable to use at least 75 percent of the local area WIOA youth funds to serve OSY due to a low number of OSY; and

(2) The State submits to the Secretary, for the local area, a request including a proposed percentage decreased to not less than 50 percent to provide workforce investment activities for OSY.

(c) In the exercise of discretion afforded by WIOA sec. 129(a)(4), the Secretary has determined that requests to decrease the percentage of funds used to provide youth workforce investment activities for OSY will not be granted to States that received 90 percent of the allotment percentage for the past year. Therefore, when the Secretary receives such a request from a State, the request will be denied.

(d) For local area funds, the administrative costs of carrying out local workforce investment activities described in WIOA sec. 128(b)(4) are not subject to the OSY expenditure requirement. All other local area youth funds beyond the administrative costs are subject to the OSY expenditure requirement.

§ 681.420 How must Local Workforce Development Boards design Workforce Innovation and Opportunity Act youth programs?

(a) The design framework services of local youth programs must:

(1) Provide for an objective assessment of each youth participant that meets the requirements of WIOA sec. 129(c)(1)(A), and includes a review of the academic and occupational skill levels, as well as the service needs and strengths, of each youth for the purpose

of identifying appropriate services and career pathways for participants and informing the individual service strategy;

(2) Develop, and update as needed, an individual service strategy based on the needs of each youth participant that is directly linked to one or more indicators of performance described in WIOA sec. 116(b)(2)(A)(ii), that identifies career pathways that include education and employment goals, that considers career planning and the results of the objective assessment and that prescribes achievement objectives and services for the participant; and

(3) Provide case management of youth participants, including follow-up services.

(b) The local plan must describe the design framework for youth programs in the local area, and how the 14 program elements required in § 681.460 are to be made available within that framework.

(c) Local WDBs must ensure appropriate links to entities that will foster the participation of eligible local area youth. Such links may include connections to:

(1) Local area justice and law enforcement officials;

(2) Local public housing authorities;

(3) Local education agencies;

(4) Local human service agencies;

(5) WIOA title II adult education providers;

(6) Local disability-serving agencies and providers and health and mental health providers;

(7) Job Corps representatives; and

(8) Representatives of other area youth initiatives, such as YouthBuild, and including those that serve homeless youth and other public and private youth initiatives.

(d) Local WDBs must ensure that WIOA youth service providers meet the referral requirements in WIOA sec. 129(c)(3)(A) for all youth participants, including:

(1) Providing these participants with information about the full array of applicable or appropriate services available through the Local WDBs or other eligible providers, or one-stop partners; and

(2) Referring these participants to appropriate training and educational programs that have the capacity to serve them either on a sequential or concurrent basis.

(e) If a youth applies for enrollment in a program of workforce investment activities and either does not meet the enrollment requirements for that program or cannot be served by that program, the eligible training provider of that program must ensure that the youth is referred for further assessment, if necessary, or referred to appropriate programs to meet the skills and training needs of the youth.

(f) In order to meet the basic skills and training needs of applicants who do not meet the eligibility requirements of a particular program or who cannot be served by the program, each youth provider must ensure that these youth are referred:

(1) For further assessment, as necessary, and

(2) To appropriate programs, in accordance with paragraph (d)(2) of this section.

(g) Local WDBs must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are involved in both the design and implementation of its youth programs.

(h) The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the

program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program.

(i) The Local WDBs may implement a WIOA Pay-for-Performance contract strategy for program elements described at § 681.460, for which the Local WDB may reserve and use not more than 10 percent of the total funds allocated to the local area under WIOA sec. 128(b). For additional regulations on WIOA Pay-for-Performance contract strategies, see § 683.500 of this chapter.

§ 681.430 May youth participate in both the Workforce Innovation and Opportunity Act (WIOA) youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the WIOA youth and adult programs?

(a) Yes, individuals who meet the respective program eligibility requirements may participate in adult and youth programs concurrently. Such individuals must be eligible under the youth or adult eligibility criteria applicable to the services received. Local program operators may determine, for these individuals, the appropriate level and balance of services under the youth and adult programs.

(b) Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult programs concurrently, and ensure no duplication of services.

(c) Individuals who meet the respective program eligibility requirements for WIOA youth title I and title II may participate in title I youth and title II concurrently.

§ 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act (WIOA) youth program or the WIOA adult program?

A local program must determine the appropriate program for the participant based on the service needs of the participant and if the participant is career-ready based on an assessment of their occupational skills, prior work experience, employability, and the participant's needs.

§ 681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?

Local youth programs must provide service to a participant for the amount of time necessary to ensure successful preparation to enter postsecondary education and/or unsubsidized employment. While there is no minimum or maximum time a youth can participate in the WIOA youth program, programs must link participation to the individual service strategy and not the timing of youth service provider contracts or program years.

§ 681.460 What services must local programs offer to youth participants?

(a) Local programs must make each of the following 14 services available to youth participants:

(1) Tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized postsecondary credential;

(2) Alternative secondary school services, or dropout recovery services, as appropriate;

(3) Paid and unpaid work experiences that have academic and occupational education as a component of the work experience, which may include the following types of work experiences:

(i) Summer employment opportunities and other employment opportunities available throughout the school year;

(ii) Pre-apprenticeship programs;

(iii) Internships and job shadowing; and

(iv) On-the-job training opportunities;

(4) Occupational skill training, which includes priority consideration for training programs that lead to recognized postsecondary credentials that align with in-demand industry sectors or occupations in the local area involved, if the Local WDB determines that the programs meet the quality criteria described in WIOA sec. 123;

(5) Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(6) Leadership development opportunities, including community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors;

(7) Supportive services, including the services listed in § 681.570;

(8) Adult mentoring for a duration of at least 12 months, that may occur both during and after program participation;

(9) Follow-up services for not less than 12 months after the completion of participation, as provided in § 681.580;

(10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth;

(11) Financial literacy education;

(12) Entrepreneurial skills training;

(13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(14) Activities that help youth prepare for and transition to postsecondary education and training.

(b) Local programs have the discretion to determine what specific program services a youth participant receives, based on each participant's objective assessment and individual service strategy. Local programs are not required to provide every program service to each participant.

(c) When available, the Department encourages local programs to partner with existing local, State, or national entities that can provide program element(s) at no cost to the local youth program.

§ 681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act funds for each of the 14 program elements?

No. The Department does not require local programs to use WIOA youth funds for each of the program elements. Local programs may leverage partner resources to provide some of the readily available program elements. However, the local area must ensure that if a program element is not funded with WIOA title I youth funds, the local program has an agreement in place with a partner organization to ensure that the program element will be offered. The Local WDB must ensure that the program element is closely connected and coordinated with the WIOA youth program.

§ 681.480 What is a pre-apprenticeship program?

A pre-apprenticeship is a program designed to prepare individuals to enter and succeed in an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat.664, chapter 663; 29 U.S.C. 50 et. seq.) (referred to in this part as a "registered apprenticeship" or "registered apprenticeship program") and includes the following elements:

(1) Training and curriculum that aligns with the skill needs of employers in the economy of the State or region involved;

(2) Access to educational and career counseling and other supportive services, directly or indirectly;

(3) Hands-on, meaningful learning activities that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career;

(4) Opportunities to attain at least one industry-recognized credential; and

(5) A partnership with one or more registered apprenticeship programs that assists in placing individuals who complete the pre-apprenticeship program in a registered apprenticeship program.

§ 681.490 What is adult mentoring?

(a) Adult mentoring for youth must:

(1) Last at least 12 months and may take place both during the program and following exit from the program;

(2) Be a formal relationship between a youth participant and an adult mentor that includes structured activities where the mentor offers guidance, support, and encouragement to develop the competence and character of the mentee; and

(3) While group mentoring activities and mentoring through electronic means are allowable as part of the mentoring activities, at a minimum, the local youth program must match the youth with an individual mentor with whom the youth interacts on a face-to-face basis.

(b) Mentoring may include workplace mentoring where the local program matches a youth participant with an employer or employee of a company.

§ 681.500 What is financial literacy education?

The financial literacy education program element may include activities which:

(a) Support the ability of participants to create budgets, initiate checking and savings accounts at banks, and make informed financial decisions;

(b) Support participants in learning how to effectively manage spending, credit, and debt, including student loans, consumer credit, and credit cards;

(c) Teach participants about the significance of credit reports and credit scores; what their rights are regarding their credit and financial information; how to determine the accuracy of a credit report and how to correct inaccuracies; and how to improve or maintain good credit;

(d) Support a participant's ability to understand, evaluate, and compare financial products, services, and opportunities and to make informed financial decisions;

(e) Educate participants about identity theft, ways to protect themselves from identify theft, and how to resolve cases of identity theft and in other ways understand their rights and protections related to personal identity and financial data;

(f) Support activities that address the particular financial literacy needs of non-English speakers, including providing the support through the development and distribution of multilingual financial literacy and education materials;

(g) Support activities that address the particular financial literacy needs of youth with disabilities, including connecting them to benefits planning and work incentives counseling;

(h) Provide financial education that is age appropriate, timely, and provides opportunities to put lessons into practice, such as by access to safe and affordable financial products that enable money management and savings; and

(i) Implement other approaches to help participants gain the knowledge, skills, and confidence to make informed financial decisions that enable them to attain greater financial health and stability by using high quality, age-appropriate, and relevant strategies and channels, including, where possible, timely and customized information, guidance, tools, and instruction.

§ 681.510 What is comprehensive guidance and counseling?

Comprehensive guidance and counseling provides individualized counseling to participants. This includes drug and alcohol abuse counseling, mental health counseling, and referral to partner programs, as appropriate. When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service.

§ 681.520 What are leadership development opportunities?

Leadership development opportunities are opportunities that encourage responsibility, confidence, employability, self-determination, and other positive social behaviors such as:

(a) Exposure to postsecondary educational possibilities;

(b) Community and service learning projects;

(c) Peer-centered activities, including peer mentoring and tutoring;

(d) Organizational and team work training, including team leadership training;

(e) Training in decision-making, including determining priorities and problem solving;

(f) Citizenship training, including life skills training such as parenting and work behavior training;

(g) Civic engagement activities which promote the quality of life in a community; and

(h) Other leadership activities that place youth in a leadership role such as serving on youth leadership committees, such as a Standing Youth Committee.

§ 681.530 What are positive social and civic behaviors?

Positive social and civic behaviors are outcomes of leadership opportunities, which are incorporated by local programs as part of their menu of services. Positive social and civic behaviors focus on areas that may include the following:

(a) Positive attitudinal development;

(b) Self-esteem building;

(c) Openness to work with individuals from diverse backgrounds;

(d) Maintaining healthy lifestyles, including being alcohol- and drug-free;

(e) Maintaining positive social relationships with responsible adults and peers, and contributing to the well-being of one's community, including voting;

(f) Maintaining a commitment to learning and academic success;

(g) Avoiding delinquency; and

(h) Positive job attitudes and work skills.

§ 681.540 What is occupational skills training?

(a) The Department defines occupational skills training as an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced

levels. Local areas must give priority consideration to training programs that lead to recognized postsecondary credentials that align with in-demand industry sectors or occupations in the local area. Such training must:

(1) Be outcome-oriented and focused on an occupational goal specified in the individual service strategy;

(2) Be of sufficient duration to impart the skills needed to meet the occupational goal; and

(3) Lead to the attainment of a recognized postsecondary credential.

(b) The chosen occupational skills training must meet the quality standards in WIOA sec. 123.

§ 681.550 Are Individual Training Accounts permitted for youth participants?

Yes. In order to enhance individual participant choice in their education and training plans and provide flexibility to service providers, the Department allows WIOA Individual Training Accounts (ITAs) for OSY, ages 16 to 24 using WIOA youth funds when appropriate.

§ 681.560 What is entrepreneurial skills training and how is it taught?

Entrepreneurial skills training provides the basics of starting and operating a small business.

(a) Such training must develop the skills associated with entrepreneurship. Such skills may include, but are not limited to, the ability to:

(1) Take initiative;

(2) Creatively seek out and identify business opportunities;

(3) Develop budgets and forecast resource needs;

(4) Understand various options for acquiring capital and the trade-offs associated with each option; and

(5) Communicate effectively and market oneself and one's ideas.

(b) Approaches to teaching youth entrepreneurial skills include, but are not limited to, the following:

(1) Entrepreneurship education that provides an introduction to the values and basics of starting and running a business. Entrepreneurship education programs often guide youth through the development of a business plan and also may include simulations of business start-up and operation.

(2) Enterprise development which provides supports and services that incubate and help youth develop their own businesses. Enterprise development programs go beyond entrepreneurship education by helping youth access small loans or grants that are needed to begin business operation and by providing more individualized attention to the development of viable business ideas.

(3) Experiential programs that provide youth with experience in the day-to-day operation of a business. These programs may involve the development of a youth-run business that young people participating in the program work in and manage. Or, they may facilitate placement in apprentice or internship positions with adult entrepreneurs in the community.

§ 681.570 What are supportive services for youth?

Supportive services for youth, as defined in WIOA sec. 3(59), are services that enable an individual to participate in WIOA activities. These services include, but are not limited to, the following:

(a) Linkages to community services;

(b) Assistance with transportation;

(c) Assistance with child care and dependent care;

(d) Assistance with housing;

(e) Needs-related payments;

(f) Assistance with educational testing;

(g) Reasonable accommodations for youth with disabilities;

(h) Legal aid services;

(i) Referrals to health care;

(j) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(k) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(l) Payments and fees for employment and training-related applications, tests, and certifications.

§ 681.580 What are follow-up services for youth?

(a) Follow-up services are critical services provided following a youth's exit from the program to help ensure the youth is successful in employment and/or postsecondary education and training. Follow-up services may include regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise.

(b) Follow-up services for youth also may include the following program elements:

(1) Supportive services;

(2) Adult mentoring;

(3) Financial literacy education;

(4) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(5) Activities that help youth prepare for and transition to postsecondary education and training.

(c) All youth participants must be offered an opportunity to receive follow-up services that align with their individual service strategies. Furthermore, follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted. Follow-up services may be provided beyond 12 months at the State or Local WDB's discretion. The types of services provided and the duration of services must be determined based on the needs of the individual and therefore, the type and intensity of follow-up services may differ for each participant. Follow-up services must include more than only a contact attempted or made for securing documentation in order to report a performance outcome.

§ 681.590 What is the work experience priority and how will local youth programs track the work experience priority?

(a) Local youth programs must expend not less than 20 percent of the funds allocated to them to provide ISY and OSY with paid and unpaid work experiences that fall under the categories listed in § 681.460(a)(3) and further defined in § 681.600.

(b) Local WIOA youth programs must track program funds spent on paid and unpaid work experiences, including wages and staff costs for the development and management of work experiences, and report such expenditures as part of the local WIOA youth financial reporting. The percentage of funds spent on work experience is calculated based on the total local area

youth funds expended for work experience rather than calculated separately for ISY and OSY. Local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement.

§ 681.600 What are work experiences?

(a) Work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience may take place in the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act or applicable State law, exists. Consistent with § 680.840 of this chapter, funds provided for work experiences may not be used to directly or indirectly aid in the filling of a job opening that is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage. Work experiences provide the youth participant with opportunities for career exploration and skill development.

(b) Work experiences must include academic and occupational education. The educational component may occur concurrently or sequentially with the work experience. Further academic and occupational education may occur inside or outside the work site.

(c) The types of work experiences include the following categories:

(1) Summer employment opportunities and other employment opportunities available throughout the school year;

(2) Pre-apprenticeship programs;

(3) Internships and job shadowing; and

(4) On-the-job training (OJT) opportunities as defined in WIOA sec. 3(44) and in § 680.700 of this chapter.

§ 681.610 Does the Workforce Innovation and Opportunity Act require Local Workforce Development Boards to offer summer employment opportunities in the local youth program?

No, WIOA does not require Local WDBs to offer summer youth employment opportunities as summer employment is no longer its own program element under WIOA. However, WIOA does require Local WDBs to offer work experience opportunities using at least 20 percent of their funding, which may include summer employment.

§ 681.620 How are summer employment opportunities administered?

Summer employment opportunities are a component of the work experience program element. If youth service providers administer the work experience program element, they must be selected by the Local WDB according to the requirements of WIOA sec. 123 and § 681.400, based on criteria contained in the State Plan. However, the summer employment administrator does not need to select the employers who are providing the employment opportunities through a competitive process.

§ 681.630 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?

This program element reflects an integrated education and training model and describes how workforce preparation activities, basic academic skills, and hands-on occupational skills training are to be taught within the same time frame and connected to training in a specific occupation, occupational cluster, or career pathway.

§ 681.640 Are incentive payments to youth participants permitted?

Yes, incentive payments to youth participants are permitted for recognition and achievement directly tied to training activities and work experiences. The local program must have written policies and procedures in place governing the award of incentives and must ensure that such incentive payments are:

(a) Tied to the goals of the specific program;

(b) Outlined in writing before the commencement of the program that may provide incentive payments;

(c) Align with the local program's organizational policies; and

(d) Accord with the requirements contained in 2 CFR part 200.

§ 681.650 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

Local WDBs and programs must provide opportunities for parents, participants, and other members of the community with experience working with youth to be involved in the design and implementation of youth programs. Parents, youth participants, and other members of the community can get involved in a number of ways, including serving on youth standing committees, if they exist and they are appointed by the Local WDB. They also can get involved by serving as mentors, serving as tutors, and providing input into the design and implementation of other program design elements. Local WDBs also must make opportunities available to successful participants to volunteer to help participants as mentors, tutors, or in other activities.

Subpart D—One-Stop Services to Youth

§ 681.700 What is the connection between the youth program and the one-stop delivery system?

(a) WIOA sec. 121(b)(1)(B)(i) requires that the youth program function as a required one-stop partner and fulfill the roles and responsibilities of a one-stop partner described in WIOA sec. 121(b)(1)(A).

(b) In addition to the provisions of part 678 of this chapter, connections between the youth program and the one-stop delivery system may include those that facilitate:

(1) The coordination and provision of youth activities;

(2) Linkages to the job market and employers;

(3) Access for eligible youth to the information and services required in § 681.460;

(4) Services for non-eligible youth such as basic labor exchange services, other self-service activities such as job searches, career exploration, use of one-stop center resources, and referral as appropriate; and

(5) Other activities described in WIOA sec. 129(b)-(c).

(c) Local WDBs must either colocate WIOA youth program staff at one-stop centers and/or ensure one-stop centers and staff are trained to serve youth and equipped to advise youth to increase youth access to services and connect youth to the program that best aligns with their needs.

§ 681.710 Do Local Workforce Development Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

Yes. However, Local WDBs must ensure one-stop centers fund services for non-eligible youth through programs authorized to provide services to such youth. For example, one-stop centers may provide basic labor exchange services under the Wagner-Peyser Act to any youth.

9. Add part 682 to read as follows:

PART 682 – STATEWIDE ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—General Description

Sec.
682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?
682.110 How are statewide employment and training activities funded?

Subpart B—Required and Allowable Statewide Employment and Training Activities

Sec.
682.200 What are required statewide employment and training activities?
682.210 What are allowable statewide employment and training activities?
682.220 What are States' responsibilities in regard to evaluations?

Subpart C—Rapid Response Activities

Sec.
682.300 What is rapid response, and what is its purpose?
682.302 Under what circumstances must rapid response services be delivered?
682.305 How does the Department define the term "mass layoff" for the purposes of rapid response?
682.310 Who is responsible for carrying out rapid response activities?
682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?
682.330 What rapid response activities are required?
682.340 May other activities be undertaken as part of rapid response?
682.350 What is meant by "provision of additional assistance" in the Workforce Innovation and Opportunity Act?
682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?
682.370 What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?

Authority: Secs. 129, 134, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—General Description

§ 682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?

Statewide employment and training activities include those activities for adults and dislocated workers, as described in WIOA sec. 134(a), and statewide youth activities, as described in the Workforce Innovation and Opportunity Act (WIOA) sec. 129(b). They include both required and allowable activities. In accordance with the requirements of this subpart, the State may develop policies and strategies for use of statewide employment and training funds. Descriptions of these policies and strategies must be included in the State Plan.

§ 682.110 How are statewide employment and training activities funded?

(a) Except for the statewide rapid response activities described in paragraph (c) of this section, statewide employment and training activities are supported by funds reserved by the Governor under WIOA sec. 128(a).

(b) Funds reserved by the Governor for statewide workforce investment activities may be combined and used for any of the activities authorized in WIOA sec. 129(b), 134(a)(2)(B), or 134(a)(3)(A) (which are described in §§ 682.200 and 682.210), regardless of whether the funds were allotted through the youth, adult, or dislocated worker funding streams.

(c) Funds for statewide rapid response activities are reserved under WIOA sec.133(a)(2) and may be used to provide the activities authorized at WIOA sec. 134(a)(2)(A) (which are described in §§ 682.310 through 682.330).

Subpart B—Required and Allowable Statewide Employment and Training Activities

§ 682.200 What are required statewide employment and training activities?

Required statewide employment and training activities are:

(a) Required rapid response activities, as described in § 682.310;

(b) Disseminating by various means, as provided by WIOA sec. 134(a)(2)(B):

(1) The State list of eligible training providers (including those providing non-traditional training services), for adults and dislocated workers and eligible training providers of registered apprenticeship programs;

(2) Information identifying eligible providers of on-the-job training (OJT), customized training, incumbent worker training (see § 680.790 of this chapter), internships, paid or unpaid work experience opportunities (see § 680.180 of this chapter) and transitional jobs (see § 680.190 of this chapter);

(3) Information on effective outreach and partnerships with business;

(4) Information on effective service delivery strategies and promising practices to serve workers and job seekers;

(5) Performance information and information on the cost of attendance, including tuition and fees, consistent with the requirements of §§ 680.490 and 680.530 of this chapter;

(6) A list of eligible providers of youth activities as described in WIOA sec. 123; and

(7) Information of physical and programmatic accessibility for individuals with disabilities.

(c) States must assure that the information listed in paragraphs (b)(1) through (b)(7) of this section is widely available;

(d) Conducting evaluations under WIOA sec. 116(e), consistent with the requirements found under § 682.220;

(e) Providing technical assistance to State entities and agencies, local areas, and one-stop partners in carrying out activities described in the State Plan, including coordination and alignment of data systems used to carry out the requirements of this Act;

(f) Assisting local areas, one-stop operators, one-stop partners, and eligible providers, including development of staff, including staff training to provide opportunities for individuals with barriers to employment to enter in-demand industry sectors or occupations and nontraditional occupations, and the development of exemplary program activities;

(g) Assisting local areas for carrying out the regional planning and service delivery efforts required under WIOA sec. 106(c);

(h) Assisting local areas by providing information on and support for the effective development, convening, and implementation of industry and sector partnerships;

(i) Providing technical assistance to local areas that fail to meet worthe adjusted levels of performance agreed to under § 677.210 of this chapter;

(j) Carrying out monitoring and oversight of activities for services to youth, adults, and dislocated workers under WIOA title I, and which may include a review comparing the services provided to male and female youth;

(k) Providing additional assistance to local areas that have a high concentration of eligible youth; and

(l) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary.

§ 682.210 What are allowable statewide employment and training activities?

Allowable statewide employment and training activities may include:

(a) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at WIOA sec. 134(a)(3)(B) and § 683.205(a)(1) of this chapter;

(b) Developing and implementing innovative programs and strategies designed to meet the needs of all employers (including small employers) in the State, including the programs and strategies referenced in WIOA sec. 134(a)(3)(A)(i);

(c) Developing strategies for serving individuals with barriers to employment, and for coordinating programs and services among one-stop partners;

(d) Development or identification of education and training programs that have the characteristics referenced in WIOA sec. 134(a)(3)(A)(iii);

(e) Implementing programs to increase the number of individuals training for and placed in non-traditional employment;

(f) Conducting research and demonstrations related to meeting the employment and education needs of youth, adults and dislocated workers;

(g) Supporting the development of alternative, evidence-based programs, and other activities that enhance the choices available to eligible youth and which encourage youth to reenter and complete secondary education, enroll in postsecondary education and advanced training, progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency;

(h) Supporting the provision of career services in the one-stop delivery system in the State as described in § 678.430 of this chapter and WIOA secs. 129(b)(2)(C) and 134(c)(2);

(i) Supporting financial literacy activities as described in § 681.500 of this chapter and WIOA sec. 129(b)(2)(D);

(j) Providing incentive grants to local areas for performance by the local areas on local performance accountability measures;

(k) Providing technical assistance to Local Workforce Development Boards (WDBs), chief elected officials, one-stop operators, one-stop partners, and eligible providers in local areas on the development of exemplary program activities and on the provision of technology to facilitate remote access to services provided through the one-stop delivery system in the State;

(l) Providing technical assistance to local areas that are implementing WIOA Pay-for-Performance contract strategies and conducting evaluations of such strategies. Technical assistance may include providing assistance with data collections, meeting data entry requirements, and identifying level of performance;

(m) Carrying out activities to facilitate remote access to training services provided through the one-stop delivery system;

(n) Activities that include:

(1) Activities to improve coordination of workforce investment activities, with economic development activities; and

(2) Activities to improve coordination of employment and training activities with child support services and activities, cooperative extension programs carried out by the Department of Agriculture, programs carried out by local areas for individuals with disabilities (including the programs identified in WIOA sec. 134(a)(3)(A)(viii)(II)(cc)), adult education and literacy activities including those provided by public libraries, activities in the correction systems to assist ex-offenders in reentering the workforce and financial literacy activities; and

(3) Developing and disseminating workforce and labor market information.

(o) Implementation of promising practices for workers and businesses as described in WIOA sec. 134(a)(3)(A)(x);

(p) Adopting, calculating, or commissioning for approval an economic self-sufficiency standard for the State that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations;

(q) Developing and disseminating common intake procedures and related items, including registration processes, across core and partner programs; and

(r) Coordinating activities with the child welfare system to facilitate provision of services for children and youth who are eligible for assistance under sec. 477 of the Social Security Act.

§ 682.220 What are States' responsibilities in regard to evaluations?

(a) As required by § 682.200(d), States must use funds reserved by the Governor for statewide activities to conduct evaluations of activities under the WIOA title I core programs in order to promote continuous improvement, research and test innovative services and strategies, and achieve high levels of performance and outcomes.

(b) Evaluations conducted under paragraph (a) must:

(1) Be coordinated with and designed in conjunction with State and Local WDBs and with State agencies responsible for the administration of all core programs;

(2) When appropriate, include analysis of customer feedback and outcome and process measures in the statewide workforce development system;

(3) Use designs that employ the most rigorous analytical and statistical methods that are reasonably feasible, such as the use of control groups; and

(4) To the extent feasible, be coordinated with the evaluations provided for by the Secretary of Labor and the Secretary of Education under WIOA sec. 169 (regarding title I

programs and other employment-related programs), WIOA sec. 242(c)(2)(D) (regarding adult education), sec. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 et seq.)), and the investigations provided by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)).

(c) States must annually prepare, submit to the State WDB and Local WDBs in the State, and make available to the public (including by electronic means) reports containing the results, as available, of the evaluations described in paragraph (a) of this section.

(d) States must cooperate, to the extent practicable, in evaluations and related research projects conducted by the Secretaries of Labor and Education under the laws cited in paragraph (b)(4) of this section. Such cooperation must, at a minimum, meet the following requirements:

(1) The timely provision of:

(i) Data, in accordance with appropriate privacy protections established by the Secretary of Labor,

(ii) Responses to surveys,

(iii) Site visits, and

(iv) Data and survey responses from local subgrantees and State and Local WDBs, and assuring that subgrantees and WDBs allow timely site visits;

(2) Encouraging other one-stop partners at local level to cooperate in timely provision of data, survey responses and site visits as listed in paragraphs (d)(1)(i) through (iv) of this section; and

(3) If a State determines that timely cooperation in data provision as described in paragraph (d)(1) of this section is not practicable, the Governor must inform the Secretary in

writing and explain the reasons why it is not practicable. In such circumstances, the State must cooperate with the Department in developing a plan or strategy to mitigate or overcome the problems preventing timely provision of data, survey responses, and site visits.

(e) In fulfilling the requirements under paragraphs (a) through (c) of this section, States are permitted, but not required, to:

(1) Conduct evaluations that jointly examine title I core program activities and activities under other core programs in titles II-IV, as determined through the processes associated with paragraph (b)(1) of this section;

(2) Conduct any type of evaluation similar to those authorized for, or conducted by, the Department of Labor or the Department of Education under the laws cited in paragraph (b)(4) of this section, including process and outcome studies, pilot and demonstration projects that have an evaluative component, analyses of administrative and programmatic data, impact and benefit-cost analyses, and use of rigorous designs to test the efficacy of various interventions; and

(3) Conduct evaluations over multiple program years, involving multiple phases and such tasks and activities as necessary for an evaluation, such as a literature or evidence review, feasibility study, planning, research, coordination, design, data collection, analysis, and report preparation, clearance, and dissemination.

(f) In funding evaluations conducted under paragraph (a), States are permitted, but not required to:

(1) Use funds from any WIOA title I-IV core program to conduct evaluations, as determined through the processes associated with paragraph (b)(1) of this section; and

(2) Use or combine funds, consistent with Federal and State law, regulation and guidance, from other public or private sources, to conduct evaluations relating to activities under the

WIOA title I-IV core programs. Such projects may include those funded by the Department of Labor and other Federal agencies, among other sources.

Subpart C—Rapid Response Activities

§ 682.300 What is rapid response, and what is its purpose?

(a) Rapid response is described in §§ 682.300 through 682.370, and encompasses the strategies and activities necessary to:

(1) Plan for and respond to as quickly as possible following an event described in § 682.302; and

(2) Deliver services to enable dislocated workers to transition to new employment as quickly as possible.

(b) The purpose of rapid response is to promote economic recovery and vitality by developing an ongoing, comprehensive approach to identifying, planning for, responding to layoffs and dislocations, and preventing or minimizing their impacts on workers, businesses, and communities. A successful rapid response system includes:

(1) Informational and direct reemployment services for workers, including but not limited to information and support for filing unemployment insurance claims, information on the impacts of layoff on health coverage or other benefits, information on and referral to career services, reemployment-focused workshops and services, and training;

(2) Delivery of solutions to address the needs of businesses in transition, provided across the business lifecycle (expansion and contraction), including comprehensive business engagement and layoff aversion strategies and activities designed to prevent or minimize the duration of unemployment;

(3) Convening, brokering, and facilitating the connections, networks and partners to ensure the ability to provide assistance to dislocated workers and their families such as home heating assistance, legal aid, and financial advice; and

(4) Strategic planning, data gathering and analysis designed to anticipate, prepare for, and manage economic change.

§ 682.302 Under what circumstances must rapid response services be delivered?

Rapid response must be delivered when one or more of the following circumstances occur:

(a) Announcement or notification of a permanent closure, regardless of the number of workers affected;

(b) Announcement or notification of a mass layoff as defined in § 682.305;

(c) A mass job dislocation resulting from a natural or other disaster; or

(d) The filing of a Trade Adjustment Assistance (TAA) petition.

§ 682.305 How does the Department define the term "mass layoff" for the purposes of rapid response?

For the purposes of rapid response, the term "mass layoff" used throughout this subpart will have occurred when at least one of the following conditions have been met:

(a) A layoff meets the State's definition of mass layoff, as long as the definition does not exceed a minimum threshold of 50 affected workers;

(b) Where a State has not defined a minimum threshold for mass layoff meeting the requirements of paragraph (a) of this section, layoffs affecting 50 or more workers; or

(c) When a Worker Adjustment and Retraining Notification (WARN) Act notice has been filed, regardless of the number of workers affected by the layoff announced.

§ 682.310 Who is responsible for carrying out rapid response activities?

(a) Rapid response activities must be carried out by the State or an entity designated by the State, in conjunction with the Local WDBs, chief elected officials, and other stakeholders, as provided by WIOA secs. 133(a)(2) and 134(a)(2)(A).

(b) States must establish and maintain a rapid response unit to carry out statewide rapid response activities and to oversee rapid response activities undertaken by a designated State entity, Local WDB, or the chief elected officials for affected local areas, as provided under WIOA sec. 134(a)(2)(A)(i)(I).

§ 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?

(a) Layoff aversion consists of strategies and activities, including those provided in paragraph (b) of this section and §§ 682.330 and 682.340, to prevent or minimize the duration of unemployment resulting from layoffs.

(b) Layoff aversion activities may include:

(1) Providing assistance to employers in managing reductions in force, which may include early identification of firms at risk of layoffs, assessment of the needs of and options for at-risk firms, and the delivery of services to address these needs, as provided by WIOA sec. 134(d)(1)(A)(ix)(II)(cc);

(2) Ongoing engagement, partnership, and relationship-building activities with businesses in the community, in order to create an environment for successful layoff aversion efforts and to enable the provision of assistance to dislocated workers in obtaining reemployment as soon as possible;

(3) Funding feasibility studies to determine if a company's operations may be sustained through a buyout or other means to avoid or minimize layoffs;

(4) Developing, funding, and managing incumbent worker training programs or other worker upskilling approaches as part of a layoff aversion strategy or activity;

(5) Connecting companies to:

(i) Short-time compensation or other programs designed to prevent layoffs or to reemploy dislocated workers quickly, available under Unemployment Insurance programs;

(ii) Employer loan programs for employee skill upgrading; and

(iii) Other Federal, State, and local resources as necessary to address other business needs that cannot be funded with resources provided under this title.

(6) Establishing linkages with economic development activities at the Federal, State, and local levels, including Federal Department of Commerce programs and available State and local business retention and expansion activities;

(7) Partnering or contracting with business-focused organizations to assess risks to companies, propose strategies to address those risks, implement services, and measure impacts of services delivered;

(8) Conducting analyses of the suppliers of an affected company to assess their risks and vulnerabilities from a potential closing or shift in production of their major customer;

(9) Engaging in proactive measures to identify opportunities for potential economic transition and training needs in growing industry sectors or expanding businesses; and

(10) Connecting businesses and workers to short-term, on-the-job, or customized training programs and registered apprenticeships before or after layoff to help facilitate rapid reemployment.

§ 682.330 What rapid response activities are required?

Rapid response activities must include:

(a) Layoff aversion activities as described in § 682.320, as applicable.

(b) Immediate and on-site contact with the employer, representatives of the affected workers, and the local community, including an assessment of and plans to address the:

(1) Layoff plans and schedule of the employer;

(2) Background and probable assistance needs of the affected workers;

(3) Reemployment prospects for workers; and

(4) Available resources to meet the short and long-term assistance needs of the affected workers.

(c) The provision of information and access to unemployment compensation benefits and programs, such as Short-Time Compensation, comprehensive one-stop delivery system services, and employment and training activities, including information on the TAA program (19 U.S.C. 2271 et seq.), Pell Grants, the GI Bill, and other resources;

(d) The delivery of other necessary services and resources including workshops and classes, use of worker transition centers, and job fairs, to support reemployment efforts for affected workers;

(e) Partnership with the Local WDB(s) and chief elected official(s) to ensure a coordinated response to the dislocation event and, as needed, obtain access to State or local economic development assistance. Such coordinated response may include the development of an application for a national dislocated worker grant as provided under part 687 of this chapter;

(f) The provision of emergency assistance adapted to the particular layoff or disaster;

(g) As appropriate, developing systems and processes for:

(1) Identifying and gathering information for early warning of potential layoffs or opportunities for layoff aversion;

(2) Analyzing, and acting upon, data and information on dislocations and other economic activity in the State, region, or local area; and

(3) Tracking outcome and performance data and information related to the activities of the rapid response program.

(h) Developing and maintaining partnerships with other appropriate Federal, State and local agencies and officials, employer associations, technical councils, other industry business councils, labor organizations, and other public and private organizations, as applicable, in order to:

(1) Conduct strategic planning activities to develop strategies for addressing dislocation events and ensuring timely access to a broad range of necessary assistance; and

(2) Develop mechanisms for gathering and exchanging information and data relating to potential dislocations, resources available, and the customization of layoff aversion or rapid response activities, to ensure the ability to provide rapid response services as early as possible;

(i) Delivery of services to worker groups for which a petition for Trade Adjustment Assistance has been filed;

(j) The provision of additional assistance, as described in § 682.350, to local areas that experience disasters, mass layoffs, or other dislocation events when such events exceed the capacity of the local area to respond with existing resources as provided under WIOA sec. 134(a)(2)(A)(i)(II);

(k) Provision of guidance and financial assistance as appropriate, in establishing a labor-management committee if voluntarily agreed to by the employee's bargaining representative and management. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to this committee may include:

(1) The provision of training and technical assistance to members of the committee; and

(2) Funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and in the design and delivery of WIOA-authorized services to affected workers.

§ 682.340 May other activities be undertaken as part of rapid response?

(a) Yes, in order to conduct layoff aversion activities, or to prepare for and respond to dislocation events, in addition to the activities required under § 682.330, a State or designated entity may devise rapid response strategies or conduct activities that are intended to minimize the negative impacts of dislocation on workers, businesses, and communities and ensure rapid reemployment for workers affected by layoffs.

(b) When circumstances allow, rapid response may provide guidance and/or financial assistance to establish community transition teams to assist the impacted community in organizing support for dislocated workers and in meeting the basic needs of their families, including heat, shelter, food, clothing and other necessities and services that are beyond the resources and ability of the one-stop delivery system to provide.

§ 682.350 What is meant by "provision of additional assistance" in the Workforce Innovation and Opportunity Act?

As stated in WIOA sec. 133(a)(2), a State may reserve up to 25 percent of its allotted dislocated worker funds for rapid response activities. Once the State has reserved adequate funds for rapid response activities, such as those described in §§ 682.310, 682.320, and 682.330, any of the remaining funds reserved may be provided to local areas that experience increases of unemployment due to natural disasters, mass layoffs or other events, for provision of direct career services to participants if there are not adequate local funds available to assist the

dislocated workers. States may wish to establish the policies or procedures governing the provision of additional assistance as described in § 682.340.

§ 682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?

(a) Where a WIOA individual record exists for an individual served under programs reporting through the WIOA individual record, States must report information regarding the receipt of services under subpart C of this part for such an individual. This information must be reported in the WIOA individual record.

(b) States must comply with these requirements as explained in guidance issued by the Department of Labor.

§ 682.370 What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?

Funds reserved by the Governor for rapid response activities that remain unobligated after the first program year for which such funds were allotted may be used by the Governor to carry out statewide activities under §§ 682.200 and 682.210. Statewide activities for which these funds may be used include prioritizing the planning for and delivery of activities designed to prevent job loss, increasing the rate of reemployment, building relationships with businesses and other stakeholders, building and maintaining early warning networks and systems, and otherwise supporting efforts to allow long-term unemployed workers to return to work.

10. Add part 683 to read as follows:

PART 683 – ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Funding and Closeout

Sec.
683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?
683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?
683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.115 What planning information must a State submit in order to receive a formula grant?
683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?
683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?
683.130 Does a Local Workforce Development Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?
683.135 What reallotment procedures does the Secretary use?
683.140 What reallocation procedures must the Governors use?
683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under the Workforce Innovation and Opportunity Act title I, subtitle D?
683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

Subpart B—Administrative Rules, Costs, and Limitations

Sec.
683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?
683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?
683.220 What are the internal controls requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.225 What requirements relate to the enforcement of the Military Selective Service Act?
683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?
683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?

683.240 What are the instructions for using real property with Federal equity?
683.245 Are employment generating activities, or similar activities, allowable under title I of the Workforce Innovation and Opportunity Act?
683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?
683.255 What are the limitations related to religious activities of title I of the Workforce Innovation and Opportunity Act?
683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?
683.265 What procedures and sanctions apply to violations of this part?
683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?
683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?
683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?
683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?
683.290 Are there salary and bonus restrictions in place for the use of title I and Wagner-Peyser Act funds?
683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

Subpart C—Reporting Requirements

Sec.
683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

Subpart D—Oversight and Resolution of Findings

Sec.
683.400 What are the Federal and State monitoring and oversight responsibilities?
683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?
683.420 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?
683.430 How does the Secretary resolve investigative and monitoring findings?
683.440 What is the Grant Officer resolution process?

Subpart E—Pay-for-Performance Contract Strategies

Sec.

683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?
683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?
683.520 What funds can be used to support Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?
683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?
683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

Sec.
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Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 189, 195, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Funding and Closeout

§ 683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?

(a) Title I. Except as provided in paragraph (b) of this section or in the applicable fiscal year appropriation, fiscal year appropriations for programs and activities carried out under title I are available for obligation on the basis of a program year. A program year begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(b) Youth funds. Fiscal year appropriations for a program year's youth activities, authorized under chapter 2, subtitle B, title I of WIOA may be made available for obligation beginning on April 1 of the fiscal year for which the appropriation is made.

(c) Wagner-Peyser Act Employment Service. Fiscal year appropriations for activities authorized under sec. 6 of the Wagner-Peyser Act, 29 U.S.C. 49e, are available for obligation on the basis of a program year. A program year begins July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(d) Discretionary Grants. Discretionary grant funds are available for obligation in accordance with the fiscal year appropriation.

§ 683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

(a) Agreement. All WIOA title I and Wagner-Peyser Act funds are awarded by grant or cooperative agreement, as defined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations at 2 CFR 200.51 and 2 CFR 200.24 respectively, or contract, as defined in 2 CFR 200.22. All grant or cooperative agreements are awarded by the Grant Officer through negotiation with the recipient (the non-Federal entity). The agreement describes the terms and conditions applicable to the award of WIOA title I and Wagner-Peyser Act funds and will conform to the requirements of 2 CFR 200.210. Contracts are issued by the Contracting Officer in compliance with the Federal Acquisition Regulations.

(b) Grant funds awarded to States and outlying areas. The Federal funds allotted to the States and outlying areas each program year in accordance with secs. 127(b) and 132(b) of WIOA will be obligated by grant agreement.

(c) Native American programs. Awards of grants, contracts, or cooperative agreements for the WIOA Native American program will be made to eligible entities on a competitive basis every 4 program years for a 4-year period, in accordance with the provisions of sec. 166 of WIOA.

(d) Migrant and seasonal farmworker programs. Awards of grants or contracts for the Migrant and Seasonal Farmworker Program will be made to eligible entities on a competitive basis every 4 program years for a 4-year period, in accordance with the provisions of sec. 167 of WIOA.

(e) Awards for evaluation and research under sec. 169 of WIOA. (1) Awards of grants, contracts, or cooperative agreements will be made to eligible entities for programs or activities authorized under WIOA sec. 169. These funds are for:

(i) Evaluations;

(ii) Research;

(iii) Studies;

(iv) Multi-State projects; and

(v) Dislocated worker projects.

(2) Awards of grants, contracts, or cooperative agreements under paragraphs (e)(1)(ii) through (iv) of this section in amounts that exceed $100,000 will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of the assistance under the grant, contract, or cooperative agreement for the project.

(3) Awards of grants, contracts, or cooperative agreements for carrying out projects in paragraphs (e)(1)(ii) through (iv) of this section may not be awarded to the same organization for more than 3 consecutive years unless:

(i) Such grant, contract, or cooperative agreement is competitively reevaluated within such period;

(ii) The initial grant, contract, or cooperative agreement was issued on a non-competitive basis because it was for less than $100,000, and:

(A) The non-competitive continuation is for less than $100,000;

(B) The scope of work is essentially the same as the initial grant, contract, or cooperative agreement;

(C) Progress in meeting performance objectives is satisfactory; and

(D) Other terms and conditions established by the Department have been met; or

(iii) The initial grant, contract, or cooperative agreement was issued on a non-competitive basis because the project was funded jointly with other public or private sector entities that provide a substantial portion of the assistance, and:

(A) The non-competitive continuation maintains a substantial portion of joint funding;

(B) The scope of work is essentially the same as the initial grant, contract, or cooperative agreement;

(C) Progress in meeting performance objectives is satisfactory; and

(D) Other terms and conditions established by the Department have been met.

(4) Entities with recognized expertise in the methods, techniques, and knowledge of workforce investment activities will be provided priority in awarding funds for the projects under paragraphs (e)(1)(ii) through (iv) of this section. The duration of such projects will be specified in the grant, contract, or cooperative agreement.

(5) A peer review process will be used to review and evaluate projects under this paragraph (e) for grants, contracts, or cooperative agreements that exceed $500,000, and to designate exemplary and promising programs.

(f) Termination. Each grant, cooperative agreement, or contract terminates as indicated in the terms of the agreement or when the period of performance has expired. The grants and cooperative agreements must be closed in accordance with the closeout provisions at 2 CFR 200.343 and 2 CFR 2900 as applicable.

§ 683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) The statutory period of availability for expenditure for WIOA title I grants will be established as the period of performance for such grants unless otherwise provided in the grant agreement or cooperative agreement. All funds must be fully expended by the expiration of the period of performance or they risk losing their availability. Unless otherwise authorized in a grant or cooperative agreement or subsequent modification, recipients must expend funds with the shortest period of availability first.

(b) Grant funds expended by States. Funds allotted to States under WIOA secs. 127(b) and 132(b) for any program year are available for expenditure by the State receiving the funds only during that program year and the 2 succeeding program years as identified in § 683.100.

(c) Grant funds expended by local areas as defined in WIOA sec. 106. (1)(i) Funds allocated by a State to a local area under WIOA secs. 128(b) and 133(b), for any program year are available for expenditure only during that program year and the succeeding program year;

(ii) Pay-for-Performance exception. Funds used to carry out WIOA Pay-for-Performance contract strategies will remain available until expended in accordance with WIOA sec. 189(g)(2)(D).

(2) Funds which are not expended by a local area(s) in the 2-year period described in paragraph (c)(1)(i) of this section, must be returned to the State. Funds so returned are available for expenditure by State and local recipients and subrecipients only during the third program year of availability in accordance with WIOA secs. 128(c) and 132(c). These funds are available for only the following purposes:

(i) For statewide projects; or

(ii) For distribution to local areas which had fully expended their allocation of funds for the same program year within the 2-year period.

(d) Native American programs. Funds awarded by the Department under WIOA sec. 166(c) are available for expenditure for the period identified in the grant or contract award document, which will not exceed 4 years.

(e) Migrant and seasonal farmworker programs. Funds awarded by the Department under WIOA sec. 167 are available for expenditure for the period identified in the grant award document, which will not exceed 4 years.

(f) Evaluations and research. Funds awarded by the Department under WIOA sec. 169 are available for expenditure for any program or activity authorized under sec. 169 of WIOA and will remain available until expended or as specified in the award document.

(g) Other programs under title I of WIOA, including secs. 170 and 171, and all other grants, contracts and cooperative agreements. Funds are available for expenditure for a period of performance identified in the grant or contract agreement.

(h) Wagner-Peyser Act. Funds allotted to States for grants under secs. 3 and 15 of the Wagner-Peyser Act for any program year are available for expenditure by the State receiving the funds only during that program year and the 2 succeeding program years. The program year begins on July 1 of the fiscal year for which the appropriation is made.

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

Each State seeking financial assistance under subtitle B, chapter 2 (youth) or chapter 3 (adults and dislocated workers), of title I of WIOA, or under the Wagner-Peyser Act must submit a Unified State Plan under sec. 102 of WIOA or a Combined State Plan under WIOA sec. 103. The requirements for the plan content and the plan review process are described in secs. 102 and

103 of WIOA, sec. 8 of Wagner-Peyser Act, and §§ 676.100 through 676.145 of this chapter and §§ 652.211 through 652.214 of this chapter.

§ 683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?

(a) General. The Governor must allocate WIOA formula funds allotted for services to youth, adults and dislocated workers in accordance with secs. 128 and 133 of WIOA and this section.

(1) State WDBs must assist Governors in the development of any youth or adult discretionary within-State allocation formulas.

(2) Within-State allocations must be made:

(i) In accordance with the allocation formulas contained in secs. 128(b) and 133(b) of WIOA and in the State Plan;

(ii) After consultation with chief elected officials and Local WDBs in each of the local areas; and

(iii) In accordance with sec. 182(e) of WIOA, available to local areas not later than 30 days after the date funds are made available to the State or 7 days after the date the local plan for the area is approved, whichever is later.

(b) State reserve. Of the WIOA formula funds allotted for services to youth, adults and dislocated workers, the Governor must reserve not more than 15 percent of the funds from each of these sources to carry out statewide activities. Funds reserved under this paragraph may be combined and spent on statewide activities under WIOA sec. 129(b) and statewide employment and training activities under WIOA sec. 134(a), for adults and dislocated workers, and youth

activities, as described in §§ 682.200 and 682.210 of this chapter, without regard to the funding source of the reserved funds.

(c) Youth allocation formula. (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (c)(2) of this section, the remainder of youth funds not reserved under paragraph (b) of this section must be allocated:

(i) $33\frac{1}{3}$ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each local area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(ii) $33\frac{1}{3}$ percent on the basis of the relative excess number of unemployed individuals in each local area, compared to the total excess number of unemployed individuals in the State; and

(iii) $33\frac{1}{3}$ percent on the basis of the relative number of disadvantaged youth in each local area, compared to the total number of disadvantaged youth in the State except for local areas as described in sec. 107(c)(1)(C) of WIOA where the allotment must be based on the greater of either the number of individuals aged 16 to 21 in families with an income below the low-income level for the area or the number of disadvantaged youth in the area.

(2) Discretionary youth allocation formula. In lieu of making the formula allocation described in paragraph (c)(1) of this section, the State may allocate youth funds under a discretionary formula. Under this discretionary formula, the State must allocate a minimum of 70 percent of youth funds not reserved under paragraph (b) of this section on the basis of the formula in paragraph (c)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (c)(1) of this section) relating to:

(A) Excess youth poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State WDB and approved by the Secretary of Labor as part of the State Plan.

(d) Adult allocation formula. (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (d)(2) of this section, the remainder of adult funds not reserved under paragraph (b) of this section must be allocated:

(i) $33\frac{1}{3}$ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each local area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(ii) $33\frac{1}{3}$ percent on the basis of the relative excess number of unemployed individuals in each local area, compared to the total excess number of unemployed individuals in the State; and

(iii) $33\frac{1}{3}$ percent on the basis of the relative number of disadvantaged adults in each local area, compared to the total number of disadvantaged adults in the State. Except for local areas as described in sec. 107(c)(1)(C) of WIOA where the allotment must be based on the higher of either the number of adults with an income below the low-income level for the area or the number of disadvantaged adults in the area.

(2) Discretionary adult allocation formula. In lieu of making the formula allocation described in paragraph (d)(1) of this section, the State may allocate adult funds under a

discretionary formula, Under this discretionary formula, the State must allocate a minimum of 70 percent of adult funds not reserved under paragraph (b) of this section on the basis of the formula in paragraph (d)(1), and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (d)(1) of this section) relating to:

(A) Excess poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State WDB and approved by the Secretary of Labor as part of the State Plan.

(e) Dislocated worker allocation formula. (1) The remainder of dislocated worker funds not reserved under paragraph (b) of this section must be allocated on the basis of a formula prescribed by the Governor that distributes funds in a manner that addresses the State's dislocated worker needs. Funds so distributed must not be less than 60 percent of the State's formula allotment.

(2) The Governor's dislocated worker formula must use the most appropriate information available to the Governor, including information on:

(i) Insured unemployment data,

(ii) Unemployment concentrations,

(iii) Plant closings and mass layoff data,

(iv) Declining industries data,

(v) Farmer-rancher economic hardship data, and

(vi) Long-term unemployment data.

(3) The Governor may not amend the dislocated worker formula more than once for any program year.

(f) Rapid response. (1) Of the WIOA formula funds allotted for services to dislocated workers in sec. 132(b)(2)(B) of WIOA, the Governor must reserve not more than 25 percent of the funds for statewide rapid response activities described in WIOA sec. 134(a)(2)(A) and §§ 682.300 through 682.370 of this chapter.

(2) Unobligated funds. Funds reserved by a Governor for rapid response activities under sec. 133(a)(2) of WIOA, and sec. 133(a)(2) of the Workforce Investment Act (as in effect on the day before the date of enactment of WIOA), to carry out sec. 134(a)(2)(A) of WIOA that remain unobligated after the first program year for which the funds were allotted, may be used by the Governor to carry out statewide activities authorized under paragraph (b) of this section and §§ 682.200 and 682.210 of this chapter.

(g) Special Rule. For the purpose of the formula in paragraphs (c)(1) and (d)(1) of this section, the State must, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth and disadvantaged adults.

§ 683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?

(a) For funding authorized by secs. 128(b)(2), 133(b)(2)(A), and 133(b)(2)(B) of WIOA, which are youth, adult, and dislocated worker funds, a local area must not receive an allocation percentage for a fiscal year that is less than 90 percent of the average allocation percentage of the local area for the 2 preceding fiscal years.

(b) The Department's annual fiscal year appropriation provides funding for programs and activities described in paragraph (a) of this section under separate appropriations with various periods of availability. These periods of availability are described in § 683.100 as a program year. A program year for funds allocated under secs. 133(b)(2)(A) and 133(b)(2)(B) of WIOA begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year. A program year for funds available under WIOA sec. 128(b)(2) is available from April 1 of the fiscal year in which the appropriation is made and ends on June 30 of the following year. Therefore, when grantees are calculating the minimum funding percentage they must do so on a program year basis.

(c) When a new local area is designated under sec. 106 of WIOA the State must develop a methodology to apply the minimum funding provision specified in paragraph (a) of this section to local area allocations of WIOA youth, adult, and dislocated worker funds.

(d) Amounts necessary to increase allocations to local areas to comply with paragraph (a) of this section must be obtained by ratably reducing the allocations to be made to other local areas.

(e) If the amounts of WIOA funds appropriated in a fiscal year are not sufficient to provide the amount specified in paragraph (a) of this section to all local areas, the amounts allocated to each local area must be ratably reduced.

§ 683.130 Does a Local Workforce Development Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?

(a) A Local WDB may transfer up to 100 percent of a program year allocation for adult employment and training activities, and up to 100 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Local WDBs may not transfer funds to or from the youth program.

(c) Before making any transfer described in paragraph (a) of this section, a Local WDB must obtain the Governor's written approval. The Governor's written approval must be based on criteria or factors that the Governor must establish in a written policy, such as the State Unified or Combined Plan or other written policy.

§ 683.135 What reallotment procedures does the Secretary use?

(a) The Secretary determines, during the second quarter of each program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under secs. 127 and 132 of WIOA for programs serving youth, adults, and dislocated workers for the prior program year, as separately determined for each of the three funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under secs. 127 and 132 of WIOA for programs serving youth, adults, or dislocated workers, less any amount reserved (up to five percent at the State level) for the costs of administration. The recapture amount, if any, is separately determined for each funding stream.

(b) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of secs. 127(c) and 132(c) of WIOA, respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year's allotment, less any amount reserved for the costs of administration at the State level of youth, adult, or

dislocated worker funds. A State's eligibility to receive a reallotment is separately determined for each funding stream.

(c) The term “obligation” is defined at 2 CFR 200.71.

(d) Obligations must be reported on the required Department of Labor (the Department) financial form, such as the ETA-9130 form, unless otherwise noted in guidance.

§ 683.140 What reallocation procedures must the Governors use?

(a) The Governor, after consultation with the State WDB, may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of secs. 128(c) and 133(c) of WIOA. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year’s unobligated balance of allocated funds exceeds 20 percent of that year’s allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. The amount to be recaptured, if any, must be separately determined for each funding stream. The term “obligation” is defined at 2 CFR 200.71.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

§ 683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under Workforce Innovation and Opportunity Act title I, subtitle D?

(a) For competitive awards, the Department will design and execute a merit review process for applications as prescribed under 2 CFR 200.204 when issuing Federal financial assistance awards made under WIOA title I, subtitle D. This process will be described or incorporated by reference in the applicable funding opportunity announcement.

(b) Prior to issuing a Federal financial assistance award under WIOA title I, subtitle D, the Department will conduct a risk assessment to assess the organization's overall ability to administer Federal funds as required under 2 CFR 200.205. As part of this assessment, the Department may consider any information that has come to its attention and will consider the organization's history with regard to the management of other grants, including Department of Labor grants.

(c) In evaluating risks posed by applicants, the Department will consider the following:

(1) Financial stability;

(2) Quality of management systems and ability to meet the management standards prescribed in this part;

(3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(4) Reports and findings from audits; and

(5) The applicant's ability to implement effectively statutory, regulatory, or other requirements imposed on non-Federal entities.

§ 683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) After the expiration of the period of performance, the Department will closeout the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the grant recipient. This section specifies the actions the grant recipient and the Department must take to complete this process.

(1) The grant recipient must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

(2) The Department may approve extensions when requested by the grant recipient.

(b) Unless otherwise noted in the terms and conditions of the award or an extension, grant recipients must comply with 2 CFR 200.343(b) and 2 CFR 2900.15 in regards to closeout.

(c) The Department must make prompt payments to the grant recipient for allowable reimbursable costs under the Federal award being closed out.

(d) The grant recipient must promptly refund any balances of unobligated cash that the Department paid in advance or paid and that is not authorized to be retained by the grant recipient. See Office of Management and Budget Circular A-129, 2 CFR 200.345, and 2 CFR part 2900 for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Department must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The grant recipient must account for any real and personal property acquired with Federal funds or received from the Federal government in accordance with 2 CFR 200.310 to 200.316, and 200.329.

(g) The Department should complete all closeout actions for Federal awards no later than 1 year after receipt and acceptance of all required final reports.

(h) The closeout of an award does not affect any of the following:

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the grant recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements as described in 2 CFR part 200, subpart F.

(4) Property management requirements in 2 CFR 200.310 to 200.316.

(5) Records retention as required in 2 CFR 200.333 to 200.337.

(i) After closeout of an award, a relationship created under the award may be modified or ended in whole or in part with the consent of the Department and the grant recipient, provided the responsibilities of the grant recipient referred to in 2 CFR 200.344(a) and 2 CFR 200.310 to 200.316 are considered, and provisions are made for continuing responsibilities of the grant recipient, as appropriate.

(j) Grant recipients that award WIOA funds to subrecipients must institute a timely closeout process after the end of performance to ensure a timely closeout in accordance with 2 CFR 200.343 to 200.344.

Subpart B—Administrative Rules, Costs, and Limitations

§ 683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) Uniform Guidance. Recipients and subrecipients of a Federal award under title I of WIOA and the Wagner-Peyser Act must follow the Uniform Guidance at 2 CFR parts 200, 215, 225, 230, including any exceptions identified by the Department at 2 CFR part 2900.

(1) Commercial organizations, for-profit entities, and foreign entities that are recipients and subrecipients of a Federal award must adhere to 2 CFR part 200, including any exceptions identified by the Department under 2 CFR part 2900;

(2) Commercial organizations, for-profit entities, and foreign entities that are contractors or subcontractors must adhere to the Federal Acquisition Regulations (FAR), including 48 CFR part 31.

(b) Allowable costs and cost principles. (1) Recipients and subrecipients of a Federal award under title I of WIOA and the Wagner-Peyser Act must follow the cost principles at subpart E and Appendices III through IX of 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.

(2) Prior approval: Unless specified in the grant agreement, for those items requiring prior approval in the Uniform Guidance (e.g., selected items of cost, budget realignment), the authority to grant or deny approval is delegated to the Governor for programs funded under sec. 127 or 132 of WIOA or under the Wagner-Peyser Act.

(3) Costs of workforce councils, advisory councils, Native American Employment and Training Councils, and Local WDB committees established under title I of WIOA are allowable.

(c) Uniform administrative requirements. (1) Except as provided in paragraphs (c)(3) through (6) of this section, all recipients and subrecipients of a Federal award under title I of

WIOA and under the Wagner-Peyser Act must follow 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.

(2) Unless otherwise specified in the grant agreement, expenditures must be reported on accrual basis.

(3) In accordance with the requirements at 2 CFR 200.400(g), subrecipients may not earn or keep any profit resulting from Federal financial assistance, unless expressly authorized by the terms and conditions of the Federal award.

(4) In addition to the requirements at 2 CFR 200.317 through 200.326 (as appropriate), all procurement contracts between Local WDBs and units of State or local governments must be conducted only on a cost reimbursement basis.

(5) In addition to the requirements at 2 CFR 200.318, which address codes of conduct and conflict of interest the following applies:

(i) A State WDB member, Local WDB member, or WDB standing committee member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or that member's immediate family.

(ii) Neither membership on the State WDB, the Local WDB, or a WDB standing committee, nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(iii) In accordance with the requirements at 2 CFR 200.112, recipients of Federal awards must disclose in writing any potential conflict of interest to the Department. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

(6) The addition method, described at 2 CFR 200.307, must be used for all program income earned under title I of WIOA and Wagner-Peyser Act grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the program in which it was earned. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the program.

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

(8) Interest income earned on funds received under title I of WIOA and the Wagner-Peyser Act must be included in program income.

(9) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIOA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(d) Government-wide debarment and suspension, and government-wide drug-free workplace requirements. All WIOA title I and Wagner-Peyser Act grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988, 41 U.S.C. 8103 et seq., and 2 CFR 182.

(e) Restrictions on lobbying. All WIOA title I and Wagner-Peyer grant recipients and subrecipients must comply with the restrictions on lobbying specified in WIOA sec. 195 and codified in the Department regulations at 29 CFR part 93.

(f) Buy-American. As stated in sec. 502 of WIOA, all funds authorized in title I of WIOA and the Wagner-Peyser Act must be expended in compliance with secs. 8301 through 8303 of the Buy American Act (41 U.S.C. 8301-8305).

(g) Nepotism. (1) No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

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

(h) Mandatory disclosures. All WIOA title I and Wagner-Peyser Act recipients of Federal awards must disclose as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.

§ 683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?

(a) State formula grants. (1) As part of the 15 percent that a State may reserve for statewide activities, the State may spend up to 5 percent of the amount allotted under secs. 127(b)(1), 132(b)(1), and 132(b)(2) of WIOA for the administrative costs of statewide activities.

(2) Local area expenditures for administrative purposes under WIOA formula grants are limited to no more than 10 percent of the amount allocated to the local area under secs. 128(b) and 133(b) of WIOA.

(3) The 5 percent reserved for statewide administrative costs and the 10 percent reserved for local administrative costs may be used for administrative costs for any of the statewide youth workforce investment activities or statewide employment and training activities under secs. 127(b)(1), 128(b), 132(b), and 133(b) of WIOA.

(4) In a one-stop environment, administrative costs borne by other sources of funds, such as the Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities are chargeable to its own grant and subject to its own administrative cost limitations.

(5) Costs of negotiating a MOU or infrastructure funding agreement under title I of WIOA are excluded from the administrative cost limitations.

(b) Discretionary grants. Limits on administrative costs, if any, for programs operated under subtitle D of title I of WIOA will be identified in the grant or cooperative agreement.

§ 683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a)(1) All recipients of WIOA title I and Wagner-Peyser Act funds that expend more than the minimum amounts specified in 2 CFR part 200, subpart F in Federal awards during their fiscal year must have a program specific or single audit conducted in accordance with 2 CFR part 200, subpart F.

(2) Commercial or for-profit. Grant recipients and subrecipients of title I and Wagner-Peyser Act funds that are commercial or for-profit entities must adhere to the requirements contained in 2 CFR part 200, subpart F.

(3) Subrecipients and contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Federal awards expended as a recipient or subrecipient are subject to audit requirements under 2 CFR part 200, subpart F.

(4) Contractors. The payments received for goods or services provided as a contractor are not Federal awards. Subrecipient and contractor determinations made under 2 CFR 200.330 must be considered in determining whether payments constitute a Federal award or a payment for goods and services provided as a contractor.

§ 683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?

(a) The costs of administration are expenditures incurred by State and Local WDBs, Regions, direct grant recipients, including State grant recipients under subtitle B of title I of WIOA, and recipients of awards under subtitle D of title I, as well as local grant recipients, local grant subrecipients, local fiscal agents and one-stop operators that are associated with those specific functions identified in paragraph (b) of this section and which are not related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect.

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

(1) Performing the following overall general administrative functions and coordination of those functions under title I of WIOA:

(i) Accounting, budgeting, financial and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports;

(vii) Audit functions;

(viii) General legal services functions;

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

(x) Fiscal agent responsibilities;

(2) Performing oversight and monitoring responsibilities related to WIOA administrative functions;

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

(4) Travel costs incurred for official business in carrying out administrative activities; 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.

(c)(1) Awards to subrecipients or contractors that are solely for the performance of administrative functions are classified as administrative costs.

(2) Personnel and related non-personnel costs of staff that perform both administrative functions specified in paragraph (b) of this section and programmatic services or activities must be allocated as administrative or program costs to the benefitting cost objectives/categories.

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

(4) Except as provided at paragraph (c)(1) of this section, all costs incurred for functions and activities of subrecipients, other than those subrecipients listed in paragraph (a) of this section, and contractors are program costs.

(5) Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

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

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

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

(iii) Performance and program cost information on eligible training providers, youth activities, and appropriate education activities;

(iv) Local area performance information; and

(v) Information relating to supportive services and unemployment insurance claims for program participants.

(d) Where possible, entities identified in paragraph (a) of this section must make efforts to streamline the services in paragraphs (b)(1) through (5) of this section to reduce administrative costs by minimizing duplication and effectively using information technology to improve services.

§ 683.220 What are the internal controls requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) Recipients and subrecipients of WIOA title I and Wagner-Peyser Act funds must have an internal control structure and written policies in place that provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market, or that the Department or the recipient or subrecipient considers to be sensitive, consistent with applicable Federal, State and local privacy and confidentiality laws. Internal controls also must include reasonable assurance that the entity is:

(1) Managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(2) Complying with Federal statutes, regulations, and the terms and conditions of the Federal awards;

(3) Evaluating and monitoring the recipient's and subrecipient's compliance with WIOA , regulations and the terms and conditions of Federal awards; and

(4) Taking prompt action when instances of noncompliance are identified.

(b) Internal controls should be in compliance with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). See 2 CFR 200.303.

§ 683.225 What requirements relate to the enforcement of the Military Selective Service Act?

The requirements relating to the enforcement of the Military Selective Service Act are found at WIOA sec. 189(h).

§ 683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

Yes, under 38 U.S.C. 4213, when past income is an eligibility determinant for Federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded for the veteran and for other individuals for whom those amounts would normally be applied in making an eligibility determination. This applies when determining if a person is a "low-income individual" for eligibility purposes (for example, in the WIOA youth, or NFJP programs). Also, it applies when income is used as a factor when a local area provides priority of service for "low-income individuals" with title I WIOA funds (see §§ 680.600 and 680.650 of this chapter). A veteran must still meet each program's eligibility criteria to receive services under the respective employment and training program.

§ 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?

WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings, except with the prior written approval of the Secretary.

§ 683.240 What are the instructions for using real property with Federal equity?

(a) SESA properties. Federal equity acquired in real property through grants to States awarded under title III of the Social Security Act or the Wagner-Peyser Act, including State Employment Security Agency (SESA) real property, is transferred to the States that used the grant to acquire such equity.

(1) The portion of any real property that is attributable to the Federal equity transferred under this section must be used to carry out activities authorized under WIOA, title III of the Social Security Act (Unemployment Compensation program), or the Wagner-Peyser Act.

(2) When such real property is no longer needed for the activities described in paragraph (a)(1) of this section, the States must request disposition instructions from the Grant Officer prior to disposition or sale of the property. The portion of the proceeds from the disposition of the real property that is attributable to the Federal equity transferred under this section must be used to carry out activities authorized under WIOA, title III of the Social Security Act, or the Wagner-Peyser Act.

(3) Limitation on use of funds. States must not use funds awarded under WIOA, title III of the Social Security Act, or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after February 15, 2007, the date of enactment of the Revised Continuing Appropriations Resolution, 2007.

(4) Properties occupied by the Wagner-Peyser Act Employment Service must be colocated with one-stop centers.

(b) Reed Act-funded properties. Properties with Reed Act equity may be used for the one-stop service delivery system to the extent that the proportionate share of Reed Act equity is less than or equal to the proportionate share of occupancy by the Unemployment Compensation and Wagner-Peyser Act programs in such properties. When such real property is no longer needed for authorized purposes, the State must request disposition instructions from the Grant Officer prior to disposition or sale. The portion of the proceeds from the disposition or sale of the real property that is attributable to the Reed Act equity must be returned to the State's account in the Unemployment Trust Fund (UTF) and used in accordance with Department-issued guidance.

(c) Job Training Partnership Act and Workforce Investment Act-funded properties. Real property that was purchased with WIA funds or that was transferred to WIA now is transferred to the WIOA title I programs and must be used for WIOA purposes. When such real property is no longer needed for the activities of WIOA, the recipient or subrecipient must seek instructions from the Grant Officer or State (in the case of a subrecipient) prior to disposition or sale.

§ 683.245 Are employment generating activities, or similar activities, allowable under title I of the Workforce Innovation and Opportunity Act?

(a) Under sec. 181(e) of WIOA, title I funds must not be spent on employment generating activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, unless they are directly related to training for eligible individuals. For purposes of this

prohibition, employer outreach and job development activities are directly related to training for eligible individuals.

(b) These employer outreach and job development activities may include:

(1) Contacts with potential employers for the purpose of placement of WIOA participants;

(2) Participation in business associations (such as chambers of commerce); joint labor management committees, labor associations, and resource centers;

(3) WIOA staff participation on economic development boards and commissions, and work with economic development agencies to:

(i) Provide information about WIOA programs,

(ii) Coordinate activities in a region or local area to promote entrepreneurial training and microenterprise services,

(iii) Assist in making informed decisions about community job training needs, and

(iv) Promote the use of first source hiring agreements and enterprise zone vouchering services;

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small businesses and new businesses to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information on WIOA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and

(9) Other allowable WIOA activities in the private sector.

§ 683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?

(a) WIOA title I funds must not be spent on:

(1) The wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system;

(2) Public service employment, except as specifically authorized under title I of WIOA.

(3) Expenses prohibited under any other Federal, State or local law or regulation.

(4) Subawards or contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities.

(5) Contracts with persons falsely labeling products made in America.

(b) WIOA formula funds available to States and local areas under title I, subtitle B must not be used for foreign travel.

§ 683.255 What are the limitations related to religious activities of title I of the Workforce Innovation and Opportunity Act?

(a) Section 188(a)(3) of WIOA prohibits the use of funds to employ participants to carry out the construction, operation, or maintenance of any part of any facility used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or worship and are operated by organizations providing services to WIOA participants.

(b) 29 CFR part 2, subpart D governs the circumstances under which Department support, including WIOA title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment

Clause of the U.S. Constitution, and not when the assistance is provided directly. That subpart also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries. (29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries).

§ 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?

(a) Section 181(d) of WIOA states that funds must not be used or proposed to be used for:

(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(2) Customized training, skill training, on-the-job training, incumbent worker training, transitional employment, or company specific assessments of job applicants for or employees of any business or part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) Pre-award review. To verify that a business establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area and the business establishment as a prerequisite to WIOA assistance.

(1) The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

(2) The review may include consultations with labor organizations and others in the affected local area(s).

§ 683.265 What procedures and sanctions apply to violations of this part?

(a) The Grant Officer will promptly review and take appropriate action on alleged violations of the provisions relating to:

(1) Construction (§ 683.235);

(2) Employment generating activities (§ 683.245);

(3) Other prohibited activities (§ 683.250);

(4) The limitation related to religious activities (§ 683.255); and

(5) The use of WIOA title I funds to encourage business relocation (§ 683.260).

(b) Procedures for the investigation and resolution of the violations are provided under the Grant Officer's resolution process at § 683.440.

(c) Sanctions and remedies are provided for under sec. 184(c) of WIOA for violations of the provisions relating to:

(1) Construction (§ 683.235);

(2) Employment generating activities (§ 683.245);

(3) Other prohibited activities (§ 683.250); and

(4) The limitation related to religious activities (§ 683.255(b)).

(d) Sanctions and remedies are provided for in sec. 181(d)(3) of WIOA for violations of § 683.260, which addresses business relocation.

(e) Violations of § 683.255(a) will be handled in accordance with the Department's nondiscrimination regulations implementing sec. 188 of WIOA, codified at 29 CFR part 38.

§ 683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?

(a) A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIOA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIOA may not be employed in or assigned to a job if:

(1) Any other individual is on layoff from the same or any substantially equivalent job;

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

(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 683.600.

§ 683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIOA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

(b) The reference in paragraph (a) of this section to sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is not applicable for individuals in territorial jurisdictions in which sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) does not apply.

(c) Individuals in on-the-job training or individuals employed in programs and activities under title I of WIOA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(d) Allowances, earnings, and payments to individuals participating in programs under title I of WIOA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

§ 683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under title I of WIOA.

(b) (1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under title I of WIOA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available for injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

§ 683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

(a)(1) Recipients, as defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations, codified at 29 CFR part 38. Under that definition, the term “recipients” includes State and Local WDBs, one-stop operators, service providers, Job Corps contractors, and subrecipients, as well as other types of individuals and entities.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing

sec. 188 of WIOA, codified at 29 CFR part 38, and are administered and enforced by the Department of Labor Civil Rights Center.

(3) Financial assistance provided under title I of WIOA may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIOA program, as required by sec. 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; sec. 188 of WIOA; and the regulations implementing these statutory provisions.

(4) No person may discriminate against an individual who is a participant in a program or activity that receives funds under title I of WIOA, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.

(5) Participation in programs and activities or receiving funds under title I of WIOA must be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Secretary of Homeland Security or the Secretary's designee to work in the United States.

(b)(1) 29 CFR part 2, subpart D governs the circumstances under which recipients may use Department support, including WIOA title I and Wagner-Peyser Act financial assistance, to employ or train participants in religious activities. As explained in that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms also may be considered indirect. See also § 683.255 and 29 CFR 37.6(f)(1).

(2) 29 CFR part 2, subpart D also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty for Department of Labor social service providers and beneficiaries. Limitations on the employment of participants under WIOA title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place of religious worship are described at 29 CFR 37.6(f)(2). See also WIOA sec. 188(a)(3).

§ 683.290 Are there salary and bonus restrictions in place for the use of title I and Wagner-Peyser Act funds?

(a) No funds available under title I of WIOA or the Wagner-Peyser Act may be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of the annual rate of basic pay prescribed for level II of the Executive Schedule under 5 U.S.C. 5313, which can be found at https://www.opm.gov/.

(b) In instances where funds awarded under title I of WIOA or the Wagner-Peyser Act pay only a portion of the salary or bonus, the WIOA title I or Wagner-Peyser Act funds may only be charged for the share of the employee's salary or bonus attributable to the work performed on the WIOA title I or Wagner-Peyser Act grant. That portion cannot exceed the proportional Executive level II rate. The restriction applies to the sum of salaries and bonuses charged as either direct costs or indirect costs under title I of WIOA and the Wagner-Peyser Act.

(c) The limitation described in paragraph (a) of this section will not apply to contractors (as defined in 2 CFR 200.23) providing goods and services. In accordance with 2 CFR part 200.330, characteristics indicative of contractor are the following:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(d) If a State is a recipient of such funds, the State may establish a lower limit than is provided in paragraph (a) of this section for salaries and bonuses of those receiving salaries and bonuses from a subrecipient of such funds, taking into account factors including the relative cost of living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer the Federal programs involved.

(e) When an individual is working for the same recipient or subrecipient in multiple offices that are funded by title I of WIOA or the Wagner-Peyser Act, the recipient or subrecipient must ensure that the sum of the individual's salary and bonus does not exceed the prescribed limit in paragraph (a) of this section.

§ 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

(a)(1) Under secs. 121(d), 122(a) and 134(b) of WIOA, for-profit entities are eligible to be one-stop operators, service providers, and eligible training providers.

(2) Where for-profit entities are one-stop operators, service providers, and eligible training providers, and those entities are recipients of Federal financial assistance, the recipient or subrecipient and the for-profit entity must follow 2 CFR 200.323.

(b) For programs authorized by other sections of WIOA, 2 CFR 200.400(g) prohibits earning and keeping of profit in Federal financial assistance unless expressly authorized by the terms and conditions of the Federal award.

(c) Income earned by a public or private nonprofit entity may be retained by such entity only if such income is used to continue to carry out the program.

Subpart C—Reporting Requirements

§ 683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

(a) General. All States and other direct grant recipients must report financial, participant, and other performance data in accordance with instructions issued by the Secretary. Reports, records, plans, or any other data required to be submitted or made available must, to the extent practicable, be submitted or made available through electronic means. Reports will not be required to be submitted more frequently than quarterly within a time period specified in the reporting instructions.

(b) Subrecipient reporting. (1) For the annual eligible training provider performance reports described in § 677.230 of this chapter and local area performance reports described in § 677.205 of this chapter, the State must require the template developed under WIOA sec. 116(d)(1) to be used.

(2) For financial reports and performance reports other than those described in paragraph (b)(1) of this section, a State or other grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients.

(3) If a State intends to impose different reporting requirements on subrecipients, it must describe those reporting requirements in its State WIOA Plan.

(c) Financial reports. (1) Each grant recipient must submit financial reports on a quarterly basis.

(2) Local WDBs will submit quarterly financial reports to the Governor.

(3) Each State will submit to the Secretary a summary of the reports submitted to the Governor pursuant to paragraph (c)(2) of this section.

(4) Reports must include cash on hand, obligations, expenditures, any income or profits earned, including such income or profits earned by subrecipients, indirect costs, recipient share of expenditures and any expenditures incurred (such as stand-in costs) by the recipient that are otherwise allowable except for funding limitations.

(5) Reported expenditures, matching funds, and program income, including any profits earned, must be reported on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual information through an analysis of the documentation on hand.

(d) Performance reports. (1) States must submit an annual performance report for each of the core workforce programs administered under WIOA as required by sec. 116(d) of WIOA and in accordance with part 677, subpart A of this chapter.

(2) For all programs authorized under subtitle D of WIOA, each grant recipient must complete reports on performance indicators or goals specified in its grant agreement.

(e) Due date. (1) For the core programs, performance reports are due on the date set forth in guidance.

(2) Financial reports and all performance and data reports not described in paragraph (e)(1) of this section are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. Closeout financial reports are required no later than 90 calendar days after the expiration of a period of performance or period of fund availability (whichever comes first) and/or termination of the grant. If required by the terms and conditions of the grant, closeout performance reports are required no later than 90 calendar days after the expiration of a period of performance or period of fund availability (whichever comes first) and/or termination of the grant.

(f) Format. All reports whenever practicable should be collected, transmitted, and stored in open and machine readable formats.

(g) Systems compatibility. States and grant recipients will develop strategies for aligning data systems based upon guidelines issued by the Secretary of Labor and the Secretary of Education.

(h) At the Grant Officer's or Secretary's discretion, reporting may be required more frequently of its grant recipients. Such requirement is consistent with 2 CFR part 200 and 2 CFR part 2900.

Subpart D—Oversight and Resolution of Findings

§ 683.400 What are the Federal and State monitoring and oversight responsibilities?

(a) The Secretary is authorized to monitor all recipients and subrecipients of all Federal financial assistance awarded and funds expended under title I of WIOA and the Wagner-Peyser Act to determine compliance with these statutes and Department regulations, and may

investigate any matter deemed necessary to determine such compliance. Federal oversight will be conducted primarily at the recipient level.

(b) As funds allow, in each fiscal year, the Secretary also will conduct in-depth reviews in several States, including financial and performance monitoring, to assure that funds are spent in accordance with WIOA and the Wagner-Peyser Act.

(c)(1) Each recipient and subrecipient must monitor grant-supported activities in accordance with 2 CFR part 200.

(2) In the case of grants under secs. 128 and 133 of WIOA, the Governor must develop a State monitoring system that meets the requirements of § 683.410(b). The Governor must monitor Local WDBs and regions annually for compliance with applicable laws and regulations in accordance with the State monitoring system. Monitoring must include an annual review of each local area's compliance with 2 CFR part 200.

(d) Documentation of monitoring, including monitoring reports and audit work papers, conducted under paragraph (c) of this section, along with corrective action plans, must be made available for review upon request of the Secretary, Governor, or a representative of the Federal government authorized to request the information.

§ 683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

(a) Each recipient and subrecipient of funds under title I of WIOA and under the Wagner-Peyser Act must conduct regular oversight and monitoring of its WIOA and Wagner-Peyser Act program(s) and those of its subrecipients and contractors as required under title I of

WIOA and the Wagner-Peyser Act, as well as under 2 CFR part 200, including 2 CFR 200.327, 200.328, 200.330, 200.331, and Department exceptions at 2 CFR part 2900, in order to:

(1) Determine that expenditures have been made against the proper cost categories and within the cost limitations specified in WIOA and the regulations in this part;

(2) Determine whether there is compliance with other provisions of WIOA and the WIOA regulations and other applicable laws and regulations;

(3) Assure compliance with 2 CFR part 200; and

(4) Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(b) State roles and responsibilities for grants under secs. 128 and 133 of WIOA:

(1) The Governor is responsible for the development of the State monitoring system. The Governor must be able to demonstrate, through a monitoring plan or otherwise, that the State monitoring system meets the requirements of paragraph (b)(2) of this section.

(2) The State monitoring system must:

(i) Provide for annual on-site monitoring reviews of local areas' compliance with 2 CFR part 200, as required by sec. 184(a)(3) of WIOA;

(ii) Ensure that established policies to achieve program performance and outcomes meet the objectives of WIOA and the WIOA regulations;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance with WIOA and Wagner-Peyser Act requirements;

(iv) Enable the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies, as required in sec. 108(e) of WIOA; and

(v) Enable the Governor to ensure compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(3) The State must conduct an annual on-site monitoring review of each local area's compliance with 2 CFR part 200, as required by sec. 184(a)(4) of WIOA.

(4) The Governor must require that prompt corrective action be taken if any substantial violation of standards identified in paragraphs (b)(2) or (3) of this section is found.

(5) The Governor must impose the sanctions provided in secs. 184(b)-(c) of WIOA in the event of a subrecipient's failure to take required corrective action required under paragraph (b)(4) of this section.

(6) The Governor may issue additional requirements and instructions to subrecipients on monitoring activities.

(7) The Governor must certify to the Secretary every 2 years that:

(i) The State has implemented 2 CFR part 200;

(ii) The State has monitored local areas to ensure compliance with 2 CFR part 200, including annual certifications and disclosures as outlined in 2 CFR 200.113, Mandatory Disclosures. Failure to do so may result in remedies described under 2 CFR 200.338, including suspension and debarment; and

(iii) The State has taken appropriate corrective action to secure such compliance.

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

(a) Resolution of subrecipient-level findings. (1) The Governor or direct grant recipient is responsible for resolving findings that arise from the monitoring reviews, investigations, other Federal monitoring reviews, and audits (including under 2 CFR part 200) of subrecipients awarded funds through title I of WIOA or the Wagner-Peyser Act.

(i) A State or direct grant recipient must utilize the written monitoring and audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(ii) If a State or direct grant recipient does not have such written procedures, it must prescribe standards and procedures to be used for this grant program.

(2) For subrecipients awarded funds through a recipient of grant funds under subtitle D of title I of WIOA, the direct recipient of the grant funds must have written monitoring and resolution procedures in place that are consistent with 2 CFR part 200.

(b) Resolution of State and other direct recipient-level findings. (1) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and audits under 2 CFR part 200 for direct recipients of Federal awards under title I of WIOA and the Wagner-Peyser Act, as amended by WIOA title III.

(2) The Secretary will use the Department audit resolution process, consistent with 2 CFR part 200 (and Department modifications at 2 CFR part 2900), and Grant Officer Resolution provisions of § 683.440, as appropriate.

(3) A final determination issued by a Grant Officer under this process may be appealed to the Department of Labor Office of Administrative Law Judges under the procedures at § 683.800.

(c) Resolution of nondiscrimination findings. Findings arising from investigations or reviews conducted under nondiscrimination laws will be resolved in accordance with WIOA sec. 188 of WIOA and the Department of Labor nondiscrimination regulations implementing sec. 188 of WIOA, codified at 29 CFR part 38.

§ 683.430 How does the Secretary resolve investigative and monitoring findings?

(a) As a result of an investigation, on-site visit, other monitoring, or an audit (i.e., Single Audit, OIG Audit, GAO Audit, or other audit), the Secretary will notify the direct recipient of the Federal award of the findings of the investigation and give the direct recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(1) Adequate resolution. The Grant Officer in conjunction with the Federal project officer, reviews the complete file of the monitoring review, monitoring report, or final audit report and the recipient's response and actions under paragraph (a) of this section. The Grant Officer's review takes into account the sanction provisions of secs. 184(b)-(c) of WIOA. If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer so notifies the recipient. This notification constitutes final agency action.

(2) Inadequate resolution. If the direct recipient's response and actions to resolve the findings are found to be inadequate, the Grant Officer will begin the Grant Officer resolution process under § 683.440.

(b) Audits from 2 CFR part 200 will be resolved through the Grant Officer resolution process, as discussed in § 683.440.

§ 683.440 What is the Grant Officer resolution process?

(a) General. When the Grant Officer is dissatisfied with the a recipient's disposition of an audit or other resolution of findings (including those arising out of site visits, incident reports

or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring reports, the initial and final determination process as set forth in this section is used to resolve the matter.

(b) Initial determination. The Grant Officer makes an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. This initial determination is based upon the requirements of WIOA, the Wagner-Peyser Act, and applicable regulations, and the terms and conditions of the grants or other agreements under the award.

(c) Informal resolution. Except in an emergency situation, when the Secretary invokes the authority described in sec. 184(e) of WIOA, the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in dispute contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) Final determination. (1) Upon completion of the informal resolution process, the Grant Officer provides each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIOA funds directly from the Department, ordinarily, the final determination is issued not later than 180 days from the date that the Office of Inspector General (OIG) issues the final approved audit

report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) must:

(i) Indicate whether efforts to resolve informally matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;

(iv) Establish a debt, if appropriate;

(v) Require corrective action, when needed;

(vi) Determine liability, method of restitution of funds, and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with § 683.800.

(3) Unless a hearing is requested, a final determination under this paragraph (d) is final agency action and is not subject to further review.

Subpart E—Pay-for-Performance Contract Strategies

§ 683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?

(a) A WIOA Pay-for-Performance contract strategy is a specific type of performance-based contract strategy that has four distinct characteristics:

(1) It is a strategy to use WIOA Pay-for-Performance contracts as they are described in § 683.510;

(2) It must include the identification of the workforce development problem and target populations for which a local area will pursue a WIOA Pay-for-Performance contract strategy; the outcomes the local area would hope to achieve through a Pay-for-Performance contract relative to baseline performance; and the acceptable cost to government associated with achieving these outcomes;

(3) It must include a strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to payment occurring;

(4) It must include a description of how the State or local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA Pay-for-Performance contract.

(b) Prior to the implementation of a WIOA Pay-for-Performance contract strategy, a local area must conduct a feasibility study to determine whether the intervention is suitable for a WIOA Pay-for-Performance contract strategy.

(c) The WIOA Pay-for-Performance contract strategy must be developed in accordance with guidance issued by the Secretary.

§ 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?

(a) Pay-for-Performance contract. A WIOA Pay-for-Performance contract is a type of Performance-Based contract.

(b) Applicability. WIOA Pay-for-Performance contracts may only be entered into when they are a part of a WIOA Pay-for-Performance contract strategy described in § 683.500.

(c) Cost-plus a percentage of cost contracts. Use of cost plus a percentage of cost contracts is prohibited. (2 CFR 200.323.)

(d) Services provided. WIOA Pay-for-Performance contracts must be used to provide adult training services described in sec. 134(c)(3) of WIOA or youth activities described in sec. 129(c)(2) of WIOA.

(e) Structure of payment. WIOA Pay-for-Performance contracts must specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of performance on the performance outcomes in sec. 116(b)(2)(A) of WIOA for target populations within a defined timetable. Outcomes must be independently validated, as described in §§ 683.500 and 683.510(j), prior to disbursement of funds.

(f) Eligible service providers. WIOA Pay-for-Performance contracts may be entered into with eligible service providers, which may include local or national community-based organizations or intermediaries, community colleges, or other training providers that are eligible under sec. 122 or 123 of WIOA (as appropriate).

(g) Target populations. WIOA Pay-for-Performance contracts must identify target populations as specified by the Local WDB, which may include individuals with barriers to employment.

(h) Bonus payments. WIOA Pay-for-Performance contracts may include bonus payments for the contractor based on achievement of specified levels of performance. Bonus payments for achieving outcomes above and beyond those specified in the contract must be used by the service provider to expand capacity to provide effective training.

(i) Performance reporting. Performance outcomes achieved under the WIOA Pay-for-Performance contract, measured against the levels of performance specified in the contract, must be tracked by the local area and reported to the State pursuant to WIOA sec. 116(d)(2)(K) and § 677.160 of this chapter.

(j) Validation. WIOA Pay-for-Performance contracts must include independent validation of the contractor's achievement of the performance benchmarks specified in the contract. This validation must be based on high-quality, reliable, and verified data.

(k) Guidance. The Secretary may issue additional guidance related to use of WIOA Pay-for-Performance contracts.

§ 683.520 What funds can be used to support Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

(a) For WIOA Pay-for-Performance contract strategies providing adult and dislocated worker training services, funds allocated under secs. 133(b)(2)-(3) of WIOA can be used. For WIOA Pay-for-Performance contract strategies providing youth activities, funds allocated under WIOA sec. 128(b) can be used.

(b) No more than 10 percent of the total local adult and dislocated worker allocations can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allocation can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(2) of WIOA.

§ 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

Section 189(g)(2)(D) of WIOA authorizes funds used for WIOA Pay-for-Performance contract strategies to be available until expended. Under WIOA sec. 3(47)(C), funds that are obligated but not expended due to a contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to

WIOA Pay-for-Performance contract strategies only. The Secretary will issue additional guidance related to the funds availability and reallocation.

§ 683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

(a) Using funds from the Governor's Reserve the State may:

(1) Provide technical assistance to local areas including assistance with structuring WIOA Pay-for-Performance contracting strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance.

(2) Conduct evaluations of local WIOA Pay-for-Performance contracting strategies, if appropriate.

(3) Conduct other activities that comply with limitations on the use of the Governor's Reserve.

(b) Using non-Federal funds, Governors may establish incentives for Local WDBs to implement WIOA Pay-for-Performance contract strategies as described in this subpart.

(c) In the case of a State in which local areas are implementing WIOA Pay-for-Performance contract strategies, the State must:

(1) Collect and report to the Department data on the performance of service providers entering into WIOA Pay-for-Performance contracts, measured against the levels of performance benchmarks specified in the contracts, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 of this chapter and in accordance with any additional guidance issued by the Secretary.

(2) Collect and report to the Department State and/or local evaluations of the design and performance of the WIOA Pay-for-Performance contract strategies, and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the

strategies, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 of this chapter, and in accordance with any guidance issued by the Secretary.

(3) Monitor local areas' use of WIOA Pay-for-Performance contract strategies to ensure compliance with § 683.500 and the contract specifications in § 683.510, and State procurement policies.

(4) Monitor local areas' expenditures to ensure that no more than 10 percent of a local area's adult and dislocated worker allotments and no more than 10 percent of a local area's youth allotment is reserved and used on WIOA Pay-for-Performance contract strategies.

(d) The Secretary will issue additional guidance on State roles in WIOA Pay-for-Performance contract strategies.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

§ 683.600 What local area, State, and direct recipient grievance procedures must be established?

(a) Each local area, State, outlying area, and direct recipient of funds under title I of WIOA, except for Job Corps, must establish and maintain a procedure for participants and other interested parties to file grievances and complaints alleging violations of the requirements of title I of WIOA, according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at §§ 686.960 and 686.965 of this chapter.

(b) Each local area, State, and direct recipient must:

(1) Provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local workforce development system, including one-stop partners and service providers;

(2) Require that every entity to which it awards title I funds provide the information referred to in paragraph (b)(1) of this section to participants receiving title I-funded services from such entities; and

(3) Must make reasonable efforts to assure that the information referred to in paragraph (b)(1) of this section will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

(c) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local workforce development system, including one-stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(d) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (c)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Innovation and Opportunity Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and

(5) An opportunity for appeal to the Secretary under the circumstances described in § 683.610(a).

(e) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Innovation and Opportunity Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(f) The remedies that may be imposed under local, State, and direct recipient grievance procedures are enumerated at WIOA sec. 181(c)(3).

(g)(1) The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIOA sec. 188 and/or 29 CFR part 38. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIOA sec. 188 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C. 20210, for processing.

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law.

§ 683.610 What processes does the Secretary use to review grievances and complaints of title I recipients?

(a) The Secretary investigates allegations arising through the grievance procedures described in § 683.600 when:

(1) A decision on a grievance or complaint under § 683.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision on a grievance or complaint under § 683.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

(c) Appeals made under paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIOA sec. 184(f) or sec. 188, grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless the Department notifies the parties that the

Department of Labor will investigate the grievance under the procedures at § 683.430. Discrimination complaints brought under WIOA sec. 184(f) or sec. 188 or 29 CFR part 38 will be referred to the Director of the Civil Rights Center.

(e) Complaints and grievances from participants receiving services under the Wagner-Peyser Act will follow the procedures outlined at part 658 of this chapter.

§ 683.620 How are complaints and reports of criminal fraud and abuse addressed under the Workforce Innovation and Opportunity Act?

(a) Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the Department of Labor Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, D.C. 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756. The Web site is http://www.oig.dol.gov/contact.htm.

(b) Complaints of a non-criminal nature may be handled under the procedures set forth in § 683.600 or through the Department's Incident Reporting System.

§ 683.630 What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?

(a) Non-designation of local areas:

(1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State WDB for a unit of general local government (including a combination of such units) or grant recipient that requests, but is not granted, initial or

subsequent designation of an area as a local area under WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter.

(2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State WDB does not result in designation, the appellant may request review by the Secretary under § 683.640.

(b) Denial or termination of eligibility as a training provider:

(1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local WDB or the designated State agency under WIOA sec. 122(b), 122(c), or 122(d).

(ii) Termination of eligibility or other action by a Local WDB or State agency under WIOA sec. 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a one-stop operator under WIOA sec. 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) Testing and sanctioning for use of controlled substances.

(1) A State must establish due process procedures, in accordance with WIOA sec. 181(f), which provide expeditious appeal for:

(i) Participants in programs under title I, subtitle B of WIOA subject to testing for use of controlled substances, imposed under a State policy established under WIOA sec. 181(f)(1); and

(ii) Participants in programs under title I, subtitle B of WIOA who are sanctioned, in accordance with WIOA sec. 181(f)(2), after testing positive for the use of controlled substances, under the policy described in paragraph (c)(1)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

§ 683.640 What procedures apply to the appeals of non-designation of local areas?

(a) A unit of general local government (including a combination of such units) or grant recipient whose appeal of the denial of a request for initial or subsequent designation as a local area to the State WDB has not resulted in such designation, may appeal the State WDB's denial to the Secretary.

(b) Appeals made under paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State WDB, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave NW, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State WDB.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter, the Secretary may require that the area be designated as a local area. In making this determination, the Secretary may consider any comments submitted by the State WDB in response to the appeal made under paragraph (a) of this section.

(e) The Secretary must issue a written decision to the Governor and the appellant.

§ 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

(a) A local area which has been found in substantial violation of WIOA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIOA sec. 184(b). The appeal must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization.

(b) The sanctions described in paragraph (a) of this section do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued the decision described in paragraph (e) of this section.

(c) A local area which has failed to meet local performance indicators for 3 consecutive program years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal to the Governor to rescind or revise such plan, in accordance with § 677.225 of this chapter.

(d) Appeals to the Secretary made under paragraph (a) of this section must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. In making

this determination, the Secretary may consider any comments submitted by the Governor in response to the appeals.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

§ 683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?

(a)(1) Except for actions under WIOA secs. 116 and 188(a) or 29 CFR parts 31, 32, 35, 38 and 49 CFR part 25, the Grant Officer must use the procedures outlined in § 683.440 before imposing a sanction on, or requiring corrective action by, recipients of funds under title I of WIOA.

(2) To impose a sanction or corrective action for a violation of WIOA sec. 188(a) the Department will use the procedures set forth in 29 CFR part 38.

(3) To impose a sanction or corrective action for a violation of WIOA sec. 116 the Department will use the procedures set forth in part 677 of this chapter.

(b) States. When a Grant Officer determines that the Governor has not fulfilled its requirements under 2 CFR part 200, an audit, or a monitoring compliance review set forth at sec. 184(a)(4) of WIOA and § 683.410, or has not taken corrective action to remedy a violation as required by WIOA secs. 184(a)(5) and 184(b)(1), the Grant Officer must require the Governor to impose the necessary corrective actions set forth at WIOA secs. 184(a)(5) and 184(b)(1), or may require repayment of funds under WIOA sec. 184(c). If the Secretary determines it is necessary to protect the funds or ensure the proper operation of a program or activity, the Secretary may immediately suspend or terminate financial assistance in accordance with WIOA sec. 184(e).

(c) Local areas. If the Governor fails to promptly take the actions specified in WIOA sec. 184(b)(1) when it determines that a local area has failed to comply with the requirements described in § 683.720(a), and that the local area has not taken the necessary corrective action, the Grant Officer may impose such actions directly against the local area.

(d) Direct grant recipients. When the Grant Officer determines that a direct grant recipient of subtitle D of title I of WIOA has not taken corrective action to remedy a substantial violation as the result of noncompliance with 2 CFR part 200, the Grant Officer may impose sanctions against the grant recipient.

(e) Subrecipients. The Grant Officer may impose a sanction directly against a subrecipient, as authorized in WIOA sec. 184(d)(3) and 2 CFR 200.338. In such a case, the Grant Officer will inform the direct grant recipient of the action.

§ 683.710 Who is responsible for funds provided under title I and the Wagner-Peyser Act?

(a) The recipient of the funds is responsible for all funds under its grant(s) awarded under WIOA title I and the Wagner-Peyser Act.

(b)(1) The local government's chief elected official(s) in a local area is liable for any misuse of the WIOA grant funds allocated to the local area under WIOA secs. 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(2) When a local workforce area or region is composed of more than one unit of general local government, the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

(3) When there is a change in the chief elected official(s), the Local WDB is required to inform the new chief elected official(s), in a timely manner, of their responsibilities and

liabilities as well as the need to review and update any written agreements among the chief elected official(s).

(4) The use of a fiscal agent does not relieve the chief elected official, or Governor if designated under paragraph (b)(1) of this section, of responsibility for any misuse of grant funds allocated to the local area under WIOA secs. 128 and 133.

§ 683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

(a) If, as part of the annual on-site monitoring of local areas, the Governor determines that a local area is not in compliance with 2 CFR part 200, including the failure to make the required disclosures in accordance with 2 CFR 200.113 or the failure to disclose all violations of Federal criminal law involving fraud, bribery or gratuity violations, the Governor must:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for at WIOA sec. 184(b) if the Governor finds that the local area has failed to take timely corrective action.

(b) An action by the Governor to impose a sanction against a local area, in accordance with this section, may be appealed to the Secretary in accordance with § 683.650.

(c)(1) If the Secretary finds that the Governor has failed to monitor and certify compliance of local areas with the administrative requirements under WIOA sec. 184(a), or that the Governor has failed to take the actions promptly required upon a determination under paragraph (a) of this section, the Secretary must take the action described in § 683.700(b).

(2) If the Governor fails to take the corrective actions required by the Secretary under paragraph (c)(1) of this section, the Secretary may immediately suspend or terminate financial assistance under WIOA sec. 184(e).

§ 683.730 When can the Secretary waive the imposition of sanctions?

(a)(1) A recipient of title I funds may request that the Secretary waive the imposition of sanctions authorized under WIOA sec. 184.

(2) A Grant officer may approve the waiver described in paragraph (a)(1) of this section if the grant officer finds that the recipient has demonstrated substantial compliance with the requirements of WIOA sec. 184(d)(2).

(b)(1) When the debt for which a waiver request was established in a non-Federal resolution proceeding, the resolution report must accompany the waiver request.

(2) When the waiver request is made during the ETA Grant Officer resolution process, the request must be made during the informal resolution period described in § 683.440(c).

(c) A waiver of the recipient's liability must be considered by the Grant Officer only when:

(1) The misexpenditure of WIOA funds occurred at a subrecipient's level;

(2) The misexpenditure was not due to willful disregard of the requirements of title I of WIOA, gross negligence, failure to observe accepted standards of administration, and did not constitute fraud or failure to make the required disclosures in accordance with 2 CFR part 200.113 addressing all violations of Federal criminal law involving fraud, bribery or gratuity violations (2 CFR part 180 and 31 U.S.C 3321)

(3) If fraud did exist, was perpetrated against the recipient/subrecipients, and:

(i) The recipient/subrecipients discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(ii) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient provides documentation to demonstrate that it has substantially complied with the requirements of WIOA sec. 184(d)(2) and this section.

(d) The recipient will not be released from liability for misspent funds under the determination required by WIOA sec. 184(d) unless the Grant Officer determines that further collection action, either by the recipient or subrecipient(s), would be inappropriate or would prove futile.

§ 683.740 What is the procedure to handle a recipient of title I Workforce Innovation and Opportunity Act funds' request for advance approval of contemplated corrective actions?

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request must include a description and an assessment of all actions taken to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain debt collection actions against a subrecipient when:

(1) The subrecipient meets the criteria set forth in WIOA sec. 184(d)(2);

(2) The misexpenditure of funds:

(i) Was not made by that subrecipient but by an entity that received WIOA funds from that subrecipient;

(ii) Was not a violation of WIOA sec. 184(d)(1), did not constitute fraud, or failure to disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award; or

(iii) If fraud did exist,

(A) It was perpetrated against the subrecipient;

(B) The subrecipient discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(C) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(3) A determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level; and,

(4) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

§ 683.750 What procedure must be used for administering the offset/deduction provisions of the Workforce Innovation and Opportunity Act?

(a)(1) For misexpenditures by direct recipients of title I and Wagner-Peyser Act formula funds the Grant Officer may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant Officer. Generally, the Grant Officer will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (a)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of WIOA and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient misexpenditures that were not due to willful disregard of the requirements of WIOA and regulations, fraud, gross negligence, failure to observe accepted

standards of administration or a pattern of misexpenditure, if the Grant Officer has required the State to repay or offset such amount, the State may deduct an amount equal to the misexpenditure from the subrecipient's allocation of the program year after the determination was made. Deductions are to be made from funds reserved for the administrative costs of the local programs involved, as appropriate.

(c) If offset is granted, the debt will not be fully satisfied until the Grant Officer reduces amounts allotted to the recipient by the amount of the misexpenditure.

(d) For recipients of funds under title I and Wagner-Peyser Act funds, a direct recipient may not make a deduction under paragraph (b) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIOA funds.

Subpart H—Administrative Adjudication and Judicial Review

§ 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIOA who is dissatisfied by a determination not to award Federal financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a contractor against which the Grant Officer has directly imposed a sanction or corrective action under sec. 184 of WIOA, including a sanction against a State under part 677 of this chapter, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this subpart must specifically state those issues or findings in the final determination upon which review is requested. Issues or findings in the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of WIOA, its regulations, the grant or other agreement under WIOA raised in the final determination and the request for hearing are subject to review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The procedures in this subpart apply in the case of a complainant who has engaged in the alternative dispute resolution process set forth in § 683.840, if neither a settlement was reached nor a decision issued within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period provided in § 683.840. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

§ 683.810 What rules of procedure apply to hearings conducted under this subpart?

(a) Rules of practice and procedure. The rules of practice and procedure promulgated by the OALJ at subpart A of 29 CFR part 18, govern the conduct of hearings under this subpart. However, a request for hearing under this subpart is not considered a complaint to which the filing of an answer by the Department or a Department agency or official is required. Technical rules of evidence will not apply to hearings conducted pursuant to this part. However, rules or

principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination will apply.

(b) Prehearing procedures. In all cases, the Administrative Law Judge (ALJ) should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(c) Subpoenas. Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in WIOA sec. 183(c), incorporating 15 U.S.C. 49.

(d) Timely submission of evidence. The ALJ must not permit the introduction at the hearing of any documentation if it has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) Burden of production. The Grant Officer has the burden of production to support her or his decision. This burden is satisfied once the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

§ 683.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

(a) In ordering relief the ALJ has the full authority of the Secretary under WIOA, except as described in paragraph (b) of this section.

(b) In grant selection appeals of awards funded under WIOA title I, subtitle D:

(1) If the Administrative Law Judge rules, under § 683.800, that the appealing organization should have been selected for an award, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the organization

continues to meet the requirements of the applicable solicitation, whether the funds which are the subject of the ALJ's decision will be awarded to the organization, and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees, and the operational needs of the program.

(2) If the Administrative Law Judge rules that additional application review is required, the Grant Officer must implement that review and, if a new organization is selected, follow the steps laid out in paragraph (b)(1) of this section to determine whether the grant funds will be awarded to that organization.

(3) In the event that the Grant Officer determines that the funds will not be awarded to the appealing organization for the reasons discussed in paragraph (b)(1) of this section, an organization which does not have an approved Negotiated Indirect Cost Rate Agreement will be awarded its reasonable application preparation costs.

(4) If funds are awarded to the appealing organization, the Grant Officer will notify the current grantee within 10 days. In addition, the appealing organization is not entitled to the full grant amount but only will receive the funds remaining in the grant that have not been obligated by the current grantee through its operation of the grant and its subsequent closeout.

(5) In the event that an organization, other than the appealing organization, is adversely effected by the Grant Officer's determination upon completion of the additional application review under paragraph (b)(2) of this section, that organization may appeal that decision to the Office of Administrative Law Judges by following the procedures set forth in § 683.800.

(6) Any organization selected and/or funded under WIOA title I, subtitle D, is subject to having its award removed if an ALJ decision so orders. As part of this process, the Grant Officer will provide instructions on transition and closeout to both the newly selected grantee and to the

grantee whose position is affected or which is being removed. All awardees must agree to the provisions of this paragraph as a condition of accepting a grant award.

§ 683.830 When will the Administrative Law Judge issue a decision?

(a) The ALJ should render a written decision not later than 90 days after the closing of the record.

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 02-2012), specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review also must be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. 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, the decision of the ALJ constitutes final agency action. 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.

§ 683.840 Is there an alternative dispute resolution process that may be used in place of an Office of Administrative Law Judges hearing?

(a) The parties to a complaint which has been filed according to the requirements of § 683.800 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 described in paragraph (a) of this section will automatically be revoked if a settlement has not been reached or a written 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 under WIOA sec. 186(b).

§ 683.850 Is there judicial review of a final order of the Secretary issued under WIOA?

(a) Any party to a proceeding which resulted in a Secretary's final order under WIOA sec. 186 in which the Secretary awards, declines to award, or only conditionally awards financial assistance or with respect to a corrective action or sanction imposed under WIOA sec. 184 may obtain a review in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days of the issuance of the Secretary's final order in accordance with WIOA sec. 187.

(b) The court has jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary, in whole or in part.

(c) No objection to the Secretary's order may be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review is limited to questions of law, and the findings of fact of the Secretary are conclusive if supported by substantial evidence.

(d) The judgment of the court is final, subject to certiorari review by the United States Supreme Court.

11. Add part 684 to read as follows:

PART 684 – INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Purposes and Policies

Sec.
684.100 What is the purpose of the programs established to serve Indians and Native Americans under of the Workforce Innovation and Opportunity Act?
684.110 How must Indian and Native American programs be administered?
684.120 What obligation does the Department have to consult with the Indian and Native American program grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?
684.130 What definitions apply to terms used in this part?

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Sec.
684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?
684.210 What priority for awarding grants is given to eligible organizations?
684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?
684.230 What appeal rights are available to entities that are denied a grant award?
684.240 Are there any other ways in which an entity may be awarded a Workforce Innovation and Opportunity Act grant?
684.250 Can an Indian and Native American program grantee's grant award be terminated?
684.260 Does the Department have to award a grant for every part of the country?
684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian and Native American program grantees?

Subpart C—Services to Customers

Sec.
684.300 Who is eligible to receive services under the Indian and Native American program?
684.310 What are Indian and Native American program grantee allowable activities?
684.320 Are there any restrictions on allowable activities?
684.330 What is the role of Indian and Native American program grantees in the one-stop delivery system?
684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?
684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?

Subpart D—Supplemental Youth Services

Sec.
684.400 What is the purpose of the supplemental youth services program?
684.410 What entities are eligible to receive supplemental youth services funding?
684.420 What are the planning requirements for receiving supplemental youth services funding?
684.430 What individuals are eligible to receive supplemental youth services?
684.440 How is funding for supplemental youth services determined?
684.450 How will supplemental youth services be provided?
684.460 What performance indicators are applicable to the supplemental youth services program?

Subpart E—Services to Communities

Sec.
684.500 What services may Indian and Native American program grantees provide to or for employers under the Workforce Innovation and Opportunity Act?
684.510 What services may Indian and Native American program grantees provide to the community at large under the Workforce Innovation and Opportunity Act?
684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?
684.530 What rules govern the issuance of contracts and/or subgrants?

Subpart F—Accountability for Services and Expenditures

Sec.
684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of Indian and Native American funds?
684.610 How is this accountability documented and fulfilled?
684.620 What performance indicators are in place for the Indian and Native American program?
684.630 What are the requirements for preventing fraud and abuse under the WIOA?
684.640 What grievance systems must an Indian and Native American program grantee provide?
684.650 Can Indian and Native American program grantees exclude segments of the eligible population?

Subpart G—Section 166 Planning/Funding Process

Sec.
684.700 What is the process for submitting a 4-year plan?
684.710 What information must be included in the 4-year plans as part of the competitive application?
684.720 When must the 4-year plan be submitted?
684.730 How will the Department review and approve such plans?

684.740 Under what circumstances can the Department or the Indian and Native American program grantee modify the terms of the grantee's plan(s)?

Subpart H—Administrative Requirements

Sec.
684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?
684.810 What types of costs are allowable expenditures under the Indian and Native American program?
684.820 What rules apply to administrative costs under the Indian and Native American program?
684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to WIOA grants?
684.840 How must Indian and Native American program grantees classify costs?
684.850 What cost principles apply to Indian and Native American funds?
684.860 What audit requirements apply to Indian and Native American grants?
684.870 What is "program income" and how is it regulated in the Indian and Native American program?

Subpart I—Miscellaneous Program Provisions

Sec.
684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?
684.910 What information is required in a waiver request?
684.920 What provisions of law or regulations may not be waived?
684.930 May Indian and Native American program grantees combine or consolidate their employment and training funds?
684.940 What is the role of the Native American Employment and Training Council?
684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Authority: Secs. 134, 166, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purposes and Policies

§ 684.100 What is the purpose of the programs established to serve Indians and Native Americans under the Workforce Innovation and Opportunity Act?

(a) The purpose of WIOA Indian and Native American (INA) programs in sec. 166 is to support employment and training activities for INAs in order to:

(1) Develop more fully the academic, occupational, and literacy skills of such individuals;

(2) Make such individuals more competitive in the workforce and to equip them with entrepreneurial skills necessary for successful self-employment; and

(3) Promote the economic and social development of INA communities in accordance with the goals and values of such communities.

(b) The principal means of accomplishing these purposes is to enable tribes and Native American organizations to provide employment and training services to INAs and their communities. Services should be provided in a culturally appropriate manner, consistent with the principles of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

§ 684.110 How must Indian and Native American programs be administered?

(a) INA programs will be administered to maximize the Federal commitment to support the growth and development of INAs and their communities as determined by representatives of such communities.

(b) In administering these programs, the Department will follow the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. 450a, as well as the Department of Labor's "American Indian and Alaska Native Policies."

(c) The regulations in this part are not intended to abrogate the trust responsibilities of the Federal government to Federally recognized tribes in any way.

(d) The Department will administer INA programs through a single organizational unit and consistent with the requirements in sec. 166(i) of WIOA. The Division of Indian and Native

American Programs (DINAP) within the Employment and Training Administration (ETA) is designated as this single organizational unit as required by sec. 166(i)(1) of WIOA.

(e) The Department will establish and maintain administrative procedures for the selection, administration, monitoring, and evaluation of INA employment and training programs authorized under this Act.

§ 684.120 What obligation does the Department have to consult with the Indian and Native American grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?

The Department's primary consultation vehicle for INA programs is the Native American Employment and Training Council. In addition, the Department will consult with the INA program grantee community in developing policies for the INA programs, actively seeking and considering the views of INA program grantees prior to establishing INA program policies and regulations. The Department will follow the Department of Labor's tribal consultation policy and Executive Order 13175 of November 6, 2000.

§ 684.130 What definitions apply to terms used in this part?

In addition to the definitions found in secs. 3 and 166 of WIOA, and § 675.300 of this chapter, the following definitions apply:

Alaska Native-Controlled Organization means an organization whose governing board is comprised of 51 percent or more of individuals who are Alaska Native as defined in secs. 3(b) and 3(r) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b), (r)).

Carry-in means the total amount of funds unobligated by a grantee at the end of a program year. If the amount of funds unobligated by a grantee at the end of a program year is

more than 20 percent of the grantee's "total funds available" for that program year, such excess amount is considered "excess carry-in."

DINAP means the Division of Indian and Native American Programs within the Employment and Training Administration of the U.S. Department of Labor.

Governing body means a body of representatives who are duly elected, appointed by duly elected officials, or selected according to traditional tribal means. A governing body must have the authority to provide services to and to enter into grants on behalf of the organization that selected or designated it.

Grant Officer means a U.S. Department of Labor official authorized to obligate Federal funds.

High-poverty area means a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area, Alaska Native Village Statistical Area, or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or county where the poverty rate for the INA population is at least 25 percent of the total INA population of such area using the most recent ACS 5-Year data. Alternatively, high-poverty also can mean, a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area, Alaska Native Village Statistical Area, or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or county where the poverty rate for the total population is at least 25 percent of such area using the most recent ACS 5-Year data. INA program grantees may use either definition when determining if a Census tract is a high-poverty area.

INA program grantee means an entity which is formally selected under subpart B of this part to operate an INA program and which has a grant agreement.

Incumbent grantee means an entity that is currently receiving a grant under sec. 166 of WIOA.

Indian and Native American or INA means, for the purpose of this part, an individual that is an American Indian, Native American, Native Hawaiian, or Alaska Native.

Indian-Controlled Organization means an organization whose governing board is comprised of 51 percent or more individuals who are members of one or more Federally recognized tribes. Incumbent grantees who were receiving INA funding as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and met the 51 percent threshold with the inclusion of members of "State recognized tribes" continue to be eligible for WIOA sec. 166 funds as an Indian-Controlled Organization, as long as they have been continuously funded under WIOA as recipients of INA program grantees since [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Tribal Colleges and Universities meet the definition of Indian-Controlled Organization for the purposes of this regulation.

Native Hawaiian-Controlled Organization means an organization whose governing board is comprised of 51 percent or more individuals who are Native Hawaiian as defined in sec. 7207 of the Native Hawaiian Education Act (20 U.S.C. 7517).

Total funds available means all funds that a grantee had "available" at the beginning of a program year.

Underemployed means an individual who is working part-time but desires full-time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational and/or skill achievement.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

§ 684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

(a) To be eligible to apply for a WIOA, sec. 166 grant, an entity must have legal status as a government or as an agency of a government, private non-profit corporation, or a consortium whose members all qualify as one of these entities.

(b) A new entity (which is not an incumbent grantee) must have a population within the designated geographic service area which would receive at least $100,000 under the funding formula found at § 684.270(b), including any amounts received for supplemental youth services under the funding formula at § 684.440(a).

(c) Incumbent grantees which do not meet this dollar threshold and were receiving INA funding of less than $100,000 as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be grandfathered into the program and are eligible to be awarded less than $100,000 so long as the grantees have continuously received less than $100,000 since [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(d) The Department will make an exception to the $100,000 minimum for applicants that apply for WIOA funding through Pub. L. 102-477, the Indian, Employment, Training, and Related Services demonstration program, if all resources to be consolidated under the Pub. L. 102-477 plan total at least $100,000, with at least $20,000 derived from sec. 166 funds. However, incumbent Pub. L. 102-477 grantees that were receiving INA funding of less than $20,000 as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be grandfathered into the program and are eligible to be awarded

less than $20,000 so long as the grantees have continuously received less than $20,000 since [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(e) To be eligible to apply as a consortium, each member of the consortium must meet the requirements of paragraph (a) of this section and must:

(1) Be in close proximity to one another, but may operate in more than one State;

(2) Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally-binding agreements; and

(3) Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

(f) Entities eligible under paragraph (a)(1) of this section are:

(1) Federally recognized Indian tribes;

(2) Tribal organizations, as defined in 25 U.S.C. 450b;

(3) Alaska Native-controlled organizations;

(4) Native Hawaiian-controlled organizations;

(5) Indian-controlled organizations serving INAs; and

(6) A consortium of eligible entities which meets the legal requirements for a consortium described in paragraph (b) of this section.

(g) State-recognized tribal organizations that meet the definition of an Indian-controlled organization are eligible to apply for WIOA sec. 166 grant funds. State-recognized tribes that do not meet this definition but were grantees under WIA as of July 1, 2015 will be grandfathered into WIOA as Indian-controlled organizations provided they meet the definition of Indian-controlled organization in § 684.130.

§ 684.210 What priority for awarding grants is given to eligible organizations?

(a) Federally recognized Indian tribes, Alaska Native entities, or a consortium of such entities will have priority to receive grants under this part for those geographic service areas in which they have legal jurisdiction, such as an Indian reservation, Oklahoma Tribal Service Area (OTSA), or Alaska Native Village Service Area (ANVSA).

(b) If the Department decides not to make an award to an Indian tribe or Alaska Native entity that has legal jurisdiction over a service area, it will consult with such tribe or Alaska Native entity that has jurisdiction before selecting another entity to provide services for such areas.

(c) The priority described in paragraphs (a) and (b) of this section does not apply to service areas outside the legal jurisdiction of an Indian tribe or Alaska Native entity.

§ 684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?

(a) Entities seeking a WIOA sec. 166 grant, including incumbent grantees, will be provided an opportunity to apply for a WIOA sec. 166 grant every 4 years through a competitive grant process.

(b) As part of the competitive application process, applicants will be required to submit a 4-year plan as described at § 684.710. The requirement to submit a 4-year plan does not apply to entities that have been granted approval to transfer their WIOA funds to the Department of the Interior pursuant to Pub. L. 102-477.

§ 684.230 What appeal rights are available to entities that are denied a grant award?

Any entity that is denied a grant award for which it applied in whole or in part may appeal the denial to the Office of the Administrative Law Judges using the procedures at

§ 683.800 of this chapter or the alternative dispute resolution procedures at § 683.840 of this chapter. The Grant Officer will provide an entity whose request for a grant award was denied, in whole or in part, with a copy of the appeal procedures.

§ 684.240 Are there any other ways in which an entity may be awarded a Workforce Innovation and Opportunity Act grant?

Yes. For areas that would otherwise go unserved, the Grant Officer may designate an entity, which has not submitted a competitive application, but which meets the qualifications for a grant award, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of INA leaders in the community that would otherwise go unserved before making the decision to designate the entity that would serve the community. DINAP will inform the Grant Officer of the INA leaders' views. The Grant Officer will accommodate views of INA leaders in such areas to the extent possible.

§ 684.250 Can an Indian and Native American grantee's grant award be terminated?

(a) Yes, the Grant Officer can terminate a grantee's award for cause, or the Secretary or another Department of Labor official confirmed by the Senate can terminate a grantee's award in emergency circumstances where termination is necessary to protect the integrity of Federal funds or ensure the proper operation of the program under sec. 184(e) of WIOA.

(b) The Grant Officer may terminate a grantee's award for cause only if there is a substantial or persistent violation of the requirements in WIOA or the WIOA regulations. The grantee must be provided with written notice 60 days before termination, stating the specific reasons why termination is proposed. The appeal procedures at § 683.800 of this chapter apply.

§ 684.260 Does the Department have to award a grant for every part of the country?

No, if there are no entities meeting the requirements for a grant award in a particular area, or willing to serve that area, the Department will not award funds for that service area. The funds that otherwise would have been allocated to that area under § 684.270 will be distributed to other INA program grantees, or used for other program purposes such as technical assistance and training (TAT). Unawarded funds used for TAT are in addition to, and not subject to the limitations on, amounts reserved under § 684.270(e). Areas which are unserved by the INA program may be restored during a subsequent grant award cycle, when and if a current grantee or other eligible entity applies for a grant award to serve that area.

§ 684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian and Native American program grantees?

(a) Except for reserved funds described in paragraph (e) of this section and funds used for other program purposes under § 684.260, all funds available for WIOA sec. 166(d)(2)(A)(i) comprehensive workforce investment services program at the beginning of a program year will be allocated to INA program grantees for the geographic service area(s) awarded to them through the grant competition.

(b) Each INA program grantee will receive the sum of the funds calculated using the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed American Indian, Alaska Native, and Native Hawaiian individuals in the grantee's geographic service area(s) compared to all such unemployed persons in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of American Indian, Alaska Native, and Native Hawaiian individuals in poverty in the grantee's geographic service area(s) as compared to all such persons in poverty in the United States.

(3) The data and definitions used to implement these formulas are provided by the U.S. Bureau of the Census.

(c) In years immediately following the use of new data in the formula described in paragraph (b) of this section, based upon criteria to be described in the Funding Opportunity Announcement (FOA), the Department may utilize a hold harmless factor to reduce the disruption in grantee services which would otherwise result from changes in funding levels. This factor will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The Department may reallocate funds from one INA program grantee to another if a grantee is unable to serve its area for any reason, such as audit or debt problems, criminal activity, internal (political) strife, failure to adhere to or meet grant terms and conditions, or lack of ability or interest. If a grantee has excess carry-in for a program year, the Department also may readjust the awards granted under the funding formula so that an amount that equals the previous program year's carry-in will be allocated to another INA program grantee(s).

(e) The Department may reserve up to one percent of the funds appropriated under WIOA sec. 166(d)(2)(A)(i) for any program year for TAT purposes. It will consult with the Native American Employment and Training Council in planning how the TAT funds will be used, designating activities to meet the unique needs of the INA communities served by the INA program. INA program grantees also will have access to resources available to other Department programs to the extent permitted under other law.

Subpart C—Services to Customers

§ 684.300 Who is eligible to receive services under the Indian and Native American program?

(a) A person is eligible to receive services under the INA program if that person is:

(1) An Indian, as determined by a policy of the INA program grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe; or

(2) An Alaska Native, as defined in WIOA sec. 166(b)(1); or

(3) A Native Hawaiian, as defined in WIOA sec. 166(b)(3).

(b) The person also must be any one of the following:

(1) Unemployed; or

(2) Underemployed, as defined in § 684.130; or

(3) A low-income individual, as defined in sec. 3(36) of WIOA; or

(4) The recipient of a bona fide lay-off notice which has taken effect in the last 6 months or will take effect in the following 6-month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

(c) If applicable, male applicants also must register or be registered for the Selective Service.

§ 684.310 What are Indian and Native American program grantee allowable activities?

(a) Generally, INA program grantees must make efforts to provide employment and training opportunities to eligible individuals (as described in § 684.300) who can benefit from, and who are most in need of, such opportunities. In addition, INA program grantees must make

efforts to develop programs that contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.

(b) Allowable activities for INA program grantees are any services consistent with the purposes of this part that are necessary to meet the needs of INAs preparing to enter, reenter, or retain unsubsidized employment leading to self-sufficiency.

(c) Examples of career services, which may be delivered in partnership with the one-stop delivery system, are described in sec. 134(c)(2) of WIOA and § 678.430 of this chapter.

(d) Follow-up services, including counseling and supportive services for up to 12 months after the date of exit to assist participants in obtaining and retaining employment.

(e) Training services include the activities described in WIOA sec. 134(c)(3)(D).

(f) Allowable activities specifically designed for youth, as listed in sec. 129 of WIOA, include:

(1) Tutoring, study skills training, instruction, and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized postsecondary credential;

(2) Alternative secondary school services, or dropout recovery services, as appropriate;

(3) Paid and unpaid work experiences that have as a component academic and occupational education, which may include:

(i) Summer employment opportunities and other employment opportunities available throughout the school year;

(ii) Pre-apprenticeship programs;

(iii) Internships and job shadowing; and

(iv) On-the-job training opportunities;

(4) Occupational skill training, which must include priority consideration for training programs that lead to recognized postsecondary credentials that are aligned with in-demand industry sectors or occupations in the local area involved;

(5) Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(6) Leadership development opportunities, which may include community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors, as appropriate;

(7) Supportive services as defined in WIOA sec. 3(59);

(8) Adult mentoring for the period of participation and a subsequent period, for a total of not less than 12 months;

(9) Follow-up services for not less than 12 months after the completion of participation, as appropriate;

(10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral, as appropriate;

(11) Financial literacy education;

(12) Entrepreneurial skills training;

(13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(14) Activities that help youth prepare for and transition to postsecondary education and training.

(g) In addition, allowable activities include job development and employment outreach, including:

(1) Support of the Tribal Employment Rights Office (TERO) program;

(2) Negotiation with employers to encourage them to train and hire participants;

(3) Establishment of linkages with other service providers to aid program participants;

(4) Establishment of management training programs to support tribal administration or enterprises; and

(5) Establishment of linkages with remedial education, such as adult basic education, basic literacy training, and training programs for limited English proficient (LEP) individuals, as necessary.

(h) Participants may be enrolled in more than one activity at a time and may be sequentially enrolled in multiple activities.

(i) Services may be provided to a participant in any sequence based on the particular needs of the participant.

§ 684.320 Are there any restrictions on allowable activities?

(a) Training services must be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which a participant receiving such services is willing to relocate.

(b) INA program grantees must provide on-the-job training (OJT) services consistent with the definition provided in WIOA sec. 3(44) and other limitations in WIOA. Individuals in OJT must:

(1) Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(2) Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(c) In addition, OJT contracts under this title must not be entered into with employers who have:

(1) Received payments under previous contracts under WIOA or the Workforce Investment Act of 1998 and have exhibited a pattern of failing to provide OJT participants with continued, long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work; or

(2) Have exhibited a pattern of violating paragraphs (b)(1) and/or (2) of this section.

(d) INA program grantees are prohibited from using funds to encourage the relocation of a business, as described in WIOA sec. 181(d) and § 683.260 of this chapter.

(e) INA program grantees must only use WIOA funds for activities that are in addition to those that would otherwise be available to the INA population in the area in the absence of such funds.

(f) INA program grantees must not spend funds on activities that displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing.

(g) Under § 683.255 of this chapter, sectarian activities involving WIOA financial assistance or participants are limited in accordance with the provisions of sec. 188(a)(3) of WIOA.

§ 684.330 What is the role of Indian and Native American program grantees in the one-stop delivery system?

(a) In those local areas where an INA program grantee conducts field operations or provides substantial services, the INA program grantee is a required partner in the local one-stop delivery system and is subject to the provisions relating to such partners described in part 678 of this chapter. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA program grantee and the Local Workforce Development Board (WDB) over the operation of the one-stop center(s) in the Local WDB's workforce development area also must be executed. Where the Local WDB is an alternative entity under § 679.150 of this chapter, the INA program grantee must negotiate with the alternative entity on the terms of its MOU and the scope of its on-going role in the local workforce development system, as specified in §§ 678.420, and 678.500 through 510 of this chapter. In local areas with a large concentration of potentially eligible INA participants, which are in an INA program grantee's service area but in which the grantee does not conduct operations or provide substantial services, the INA program grantee should encourage such individuals to participate in the one-stop delivery system in that area in order to receive WIOA services.

(b) At a minimum, the MOU must contain the provisions listed in WIOA sec. 121(c) and:

(1) The exchange of information on the services available and accessible through the one-stop delivery system and the INA program;

(2) As necessary to provide referrals and case management services, the exchange of information on INA participants in the one-stop delivery system and the INA program;

(3) Arrangements for the funding of services provided by the one-stop(s), consistent with the requirements that no expenditures may be made with INA program funds for individuals who are not eligible or for services not authorized under this part.

(c) Where the INA program grantee has failed to enter into a MOU with the Local WDB, the INA program grantee must describe in its 4-year plan the good-faith efforts made in order to negotiate an MOU with the Local WDB.

(d) Pursuant to WIOA sec. 121(h)(2)(D)(iv), INA program grantees will not be subject to the funding of the one-stop infrastructure unless otherwise agreed upon in the MOU under subpart C of part 678 of this chapter.

§ 684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

(a) INA program grantees may pay training allowances or stipends to participants for their successful participation in and completion of education or training services (except such allowance may not be provided to participants in OJT). Allowances or stipends may not exceed the Federal or State minimum wage, whichever is higher.

(b) INA program grantees may not pay a participant in a training activity when the person fails to participate without good cause.

(c) If a participant in a WIOA-funded activity, including participants in OJT, is involved in an employer-employee relationship, that participant must be paid wages and fringe benefits at the same rates as trainees or employees who have similar training, experience and skills and which are not less than the higher of the applicable Federal, State, or local minimum wage.

(d) In accordance with the policy described in the 4-year plan submitted as part of the competitive process, INA program grantees may pay incentive bonuses to participants who meet or exceed individual employability or training goals established in writing in the individual employment plan.

(e) INA program grantees must comply with other restrictions listed in WIOA secs. 181 through 195, which apply to all programs funded under title I of WIOA, including the provisions on labor standards in WIOA sec. 181(b).

§ 684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?

The Department will provide appropriate TAT, as necessary, to INA program grantees. This TAT will assist INA program grantees to improve program performance and improve the quality of services to the target population(s), as resources permit.

Subpart D—Supplemental Youth Services

§ 684.400 What is the purpose of the supplemental youth services program?

The purpose of this program is to provide supplemental employment and training and related services to low-income INA youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii.

§ 684.410 What entities are eligible to receive supplemental youth services funding?

Entities eligible to receive supplemental youth services funding are limited to: those tribal, Alaska Native, Native Hawaiian and Oklahoma tribal grantees funded under WIOA sec. 166(d)(2)(A)(i) or other grantees serving those areas, and entities serving the populations

specified in § 684.400 that received funding under sec. 166(d)(2)(A)(ii) of the Workforce Investment Act.

§ 684.420 What are the planning requirements for receiving supplemental youth services funding?

Applicants eligible to apply for supplemental youth funding must describe the supplemental youth services they intend to provide in the 4-year plan that they will submit as part of the competitive application process. The information on youth services will be incorporated into the overall 4-year plan, which is more fully described in §§ 684.700 and 684.710, and is required for both adult and youth funds. As indicated in § 684.710(c), additional planning information required for applicants requesting supplemental youth funding will be provided in the FOA. The Department envisions that the strategy for youth funds will not be extensive; however, grantees will be required to provide the number of youth it plans to serve and projected performance outcomes. The Department also supports youth activities that preserve INA culture and will support strategies that promote INA values.

§ 684.430 What individuals are eligible to receive supplemental youth services?

(a) Participants in supplemental youth services activities must be;

(1) American Indian, Alaska Native or Native Hawaiian as determined by the INA program grantee according to § 684.300(a);

(2) Between the age of 14 and 24; and

(3) A low-income individual as defined at WIOA sec. 3(36) except up to five percent of the participants during a program year in an INA youth program may not be low-income individuals provided they meet the eligibility requirements of paragraphs (a)(1) and (2) of this section.

(b) For the purpose of this section, the term "low-income," used with respect to an individual, also includes a youth living in a high-poverty area.

§ 684.440 How is funding for supplemental youth services determined?

(a) Supplemental youth funding will be allocated to eligible INA program grantees on the basis of the relative number of INA youth between the ages of 14 and 24 living in poverty in the grantee's geographic service area compared to the number of INA youth between the ages of 14 and 24 living in poverty in in all eligible geographic service areas. The Department reserves the right to redefine the supplemental youth funding stream in future program years, in consultation with the Native American Employment and Training Council, as program experience warrants and as appropriate data become available.

(b) The data used to implement this formula are provided by the U.S. Bureau of the Census.

(c) The hold harmless factor described in § 684.270(c) also applies to supplemental youth services funding. This factor also will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The reallocation provisions of § 684.270(d) also apply to supplemental youth services funding.

(e) Any supplemental youth services funds not allotted to a grantee or refused by a grantee may be used for the purposes outlined in § 684.270(e), as described in § 684.260. Any such funds are in addition to, and not subject to the limitations on, amounts reserved under § 684.270(e).

§ 684.450 How will supplemental youth services be provided?

(a) INA program grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks during the school year at their discretion;

(b) The Department encourages INA program grantees to work with local educational agencies to provide academic credit for youth activities whenever possible;

(c) INA program grantees may provide participating youth with the activities referenced in § 684.310(e).

§ 684.460 What performance indicators are applicable to the supplemental youth services program?

(a) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance indicators at WIOA sec. 116(b)(2)(A)(ii) apply to the INA youth program, which must include:

(1) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec. 116(b)(2)(A)(iii)) during participation in or within 1 year after exit from the program;

(5) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment;

(6) The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv).

(b) In addition to the performance indicators in paragraphs (a)(1) through (6) of this section, the Secretary, in consultation with the Native American Employment and Training Council, must develop a set of performance indicators and standards that is in addition to the primary indicators of performance that are applicable to the INA program under this section.

Subpart E—Services to Communities

§ 684.500 What services may Indian and Native American grantees provide to or for employers under the Workforce Innovation and Opportunity Act?

(a) INA program grantees may provide a variety of services to employers in their areas. These services may include:

(1) Workforce planning which involves the recruitment of current or potential program participants, including job restructuring services;

(2) Recruitment and assessment of potential employees, with priority given to potential employees who are or who might become eligible for program services;

(3) Pre-employment training;

(4) Customized training;

(5) OJT;

(6) Post-employment services, including training and support services to encourage job retention and upgrading;

(7) Work experience for public or private sector work sites;

(8) Other innovative forms of worksite training.

(b) In addition to the services listed in paragraph (a) of this section, other grantee-determined services (as described in the grantee's 4-year plan), which are intended to assist eligible participants to obtain or retain employment also may be provided to or for employers.

§ 684.510 What services may Indian and Native American grantees provide to the community at large under the Workforce Innovation and Opportunity Act?

(a) INA program grantees may provide services to the INA communities in their service areas by engaging in program development and service delivery activities which:

(1) Strengthen the capacity of Indian-controlled institutions to provide education and work-based learning services to INA youth and adults, whether directly or through other INA institutions such as tribal colleges;

(2) Increase the community's capacity to deliver supportive services, such as child care, transportation, housing, health, and similar services needed by clients to obtain and retain employment;

(3) Use program participants engaged in education, training, work experience, or similar activities to further the economic and social development of INA communities in accordance with the goals and values of those communities; and

(4) Engage in other community-building activities described in the INA program grantee's 4-year plan.

(b) INA program grantees should develop their 4-year plan in conjunction with, and in support of, strategic tribal planning and community development goals.

§ 684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?

Yes, INA program grantees must give as much preference as possible to Indian organizations and to Indian-owned economic enterprises, as defined in sec. 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), when awarding any contract or subgrant.

§ 684.530 What rules govern the issuance of contracts and/or subgrants?

In general, INA program grantees must follow the rules of Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards when awarding contracts and/or subgrants under WIOA sec. 166. These requirements are codified at 2 CFR part 200, subpart E (and Department modifications at 2 CFR part 2900), and covered in WIOA regulations at § 683.200 of this chapter. These rules do not apply to OJT contract awards.

Subpart F—Accountability for Services and Expenditures

§ 684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of Indian and Native American funds?

(a) The INA program grantee is responsible to the INA community to be served by INA funds.

(b) The INA program grantee also is responsible to the Department of Labor, which is charged by law with ensuring that all WIOA funds are expended:

(1) According to applicable laws and regulations;

(2) For the benefit of the identified INA client group; and

(3) For the purposes approved in the grantee's plan and signed grant document.

§ 684.610 How is this accountability documented and fulfilled?

(a) Each INA program grantee must establish its own internal policies and procedures to ensure accountability to the INA program grantee's governing body, as the representative of the

INA community(ies) served by the INA program. At a minimum, these policies and procedures must provide a system for governing body review and oversight of program plans and measures and standards for program performance.

(b) Accountability to the Department is accomplished in part through on-site program reviews (monitoring), which strengthen the INA program grantee's capability to deliver effective services and protect the integrity of Federal funds.

(c) In addition to audit information, as described at § 684.860 and program reviews, accountability to the Department is documented and fulfilled by the submission of quarterly financial and program reports, and compliance with the terms and conditions of the grant award.

§ 684.620 What performance indicators are in place for the Indian and Native American program?

(a) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance indicators at WIOA sec. 116(b)(2)(A)(i) apply to the INA program which must include:

(1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec. 116(b)(2)(A)(iii)) during participation in or within 1 year after exit from the program;

(5) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(6) The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv).

(b) In addition to the performance indicators at WIOA sec. 116(b)(2)(A)(i), the Department, in consultation with the Native American Employment and Training Council, must develop a set of performance indicators and standards that are applicable to the INA program.

§ 684.630 What are the requirements for preventing fraud and abuse under the WIOA?

(a) INA program grantees must establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds. Such procedures must ensure that all financial transactions are conducted and records maintained in accordance with generally accepted accounting principles.

(b) Each INA program grantee must have rules to prevent conflict of interest by its governing body. These conflict of interest rules must include a rule prohibiting any member of any governing body or council associated with the INA program grantee from voting on any matter which would provide a direct financial benefit to that member, or to a member of his or her immediate family, in accordance with § 683.200(c)(5)(iii) of this chapter and 2 CFR parts 200 and 2900.

(c) Officers or agents of the INA program grantee must not solicit or personally accept gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor, or participant. This rule also must apply to officers or agents of the grantee's contractors and/or subgrantees. This prohibition does not apply to:

(1) Any rebate, discount, or similar incentive provided by a vendor to its customers as a regular feature of its business;

(2) Items of nominal monetary value distributed consistent with the cultural practices of the INA community served by the grantee.

(d) No person who selects program participants or authorizes the services provided to them may select or authorize services to any participant who is such a person's spouse, parent, sibling, or child unless:

(1)(i) The participant involved is a low-income individual; or

(ii) The community in which the participant resides has a population of less than 1,000 INAs combined; and

(2) The INA program grantee has adopted and implemented the policy described in the 4-year plan to prevent favoritism on behalf of such relatives.

(e) INA program grantees are subject to the provisions of 41 U.S.C. 8702 relating to kickbacks.

(f) No assistance provided under WIOA may involve political activities.

(g) INA program grantees must comply with the restrictions on lobbying activities pursuant to sec. 195 of WIOA and the restrictions on lobbying codified in the Department regulations at 29 CFR part 93.

(h) The provisions of 18 U.S.C. 665 and 666 prohibiting embezzlement apply to programs under WIOA.

(i) Recipients of financial assistance under WIOA sec. 166 are prohibited from discriminatory practices as outlined at WIOA sec. 188, and the regulations implementing WIA sec. 188, at 29 CFR part 38. However, this does not affect the legal requirement that all INA

participants be INAs. Also, INA program grantees are not obligated to serve populations outside the geographic boundaries for which they receive funds. However, INA program grantees are not precluded from serving eligible individuals outside their geographic boundaries if the INA program grantee chooses to do so.

§ 684.640 What grievance systems must an Indian and Native American program grantee provide?

INA program grantees must establish grievance procedures consistent with the requirements of WIOA sec. 181(c) and § 683.600 of this chapter.

§ 684.650 Can Indian and Native American grantees exclude segments of the eligible population?

(a) No, INA program grantees cannot exclude segments of the eligible population except as otherwise provided in this part. INA program grantees must document in their 4-year plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated an equitable opportunity to receive WIOA services and activities.

(b) Nothing in this section restricts the ability of INA program grantees to target subgroups of the eligible population (for example, the disabled, substance abusers, TANF recipients, or similar categories), as outlined in an approved 4-year plan. However, it is unlawful to target services to subgroups on grounds prohibited by WIOA sec. 188 and 29 CFR part 38, including tribal affiliation (which is considered national origin). Outreach efforts, on the other hand, may be targeted to any subgroups.

Subpart G—Section 166 Planning/Funding Process

§ 684.700 What is the process for submitting a 4-year plan?

Every 4 years, INA program grantees must submit a 4-year strategy for meeting the needs of INAs in accordance with WIOA sec. 166(e). This plan will be part of, and incorporated with, the 4-year competitive process described in WIOA sec. 166(c) and § 684.220. Accordingly, specific requirements for the submission of a 4-year plan will be provided in a FOA and will include the information described at § 684.710.

§ 684.710 What information must be included in the 4-year plans as part of the competitive application?

(a) The 4-year plan, which will be submitted as part of the competitive process, must include the information required at WIOA secs. 166(e)(2)-(5) which are:

(1) The population to be served;

(2) The education and employment needs of the population to be served and the manner in which the activities to be provided will strengthen the ability of the individuals served to obtain or retain unsubsidized employment leading to self-sufficiency;

(3) A description of the activities to be provided and the manner in which such activities are to be integrated with other appropriate activities; and

(4) A description of the performance indicators and expected levels of performance.

(b) The 4-year plan also must include any additional information requested in the FOA.

(c) INA program grantees receiving supplemental youth funds will be required to provide additional information (at a minimum the number of youth it plans to serve and the projected performance outcomes) in the 4-year plan that describes a strategy for serving low-income, INA youth. Additional information required for supplemental youth funding will be identified in the FOA.

§ 684.720 When must the 4-year plan be submitted?

The 4-year plans will be submitted as part of the competitive FOA process described at § 684.220. Accordingly, the due date for the submission of the 4-year plan will be specified in the FOA.

§ 684.730 How will the Department review and approve such plans?

(a) It is the Department's intent to approve a grantee's 4-year strategic plan before the date on which funds for the program become available unless:

(1) The planning documents do not contain the information specified in the regulations in this part and/or the FOA; or

(2) The services which the INA program grantee proposes are not permitted under WIOA or applicable regulations.

(b) After competitive grant selections have been made, the DINAP office will assist INA program grantees in resolving any outstanding issues with the 4-year plan. However, the Department may delay funding to grantees until all issues have been resolved. If the issues with the application of an incumbent grantee cannot be solved, the Department will reallocate funds from the grantee to other grantees that have an approved 4-year plan. The Grant Officer may delay executing a grant agreement and obligating funds to an entity selected through the competitive process until all the required documents—including the 4-year plan—are in place and satisfactory.

(c) The Department may approve a portion of the plan and disapprove other portions.

(d) The grantee also has the right to appeal a nonselection decision or a decision by the Department to deny or reallocate funds based on unresolved issues with the applicant's

application or 4-year plan. Such an appeal would go to the Office of the Administrative Law Judges under procedures at § 683.800 or § 683.840 of this chapter in the case of a nonelection.

§ 684.740 Under what circumstances can the Department or the Indian and Native American grantee modify the terms of the grantee's plan(s)?

(a) The Department may unilaterally modify the INA program grantee's plan to add funds or, if required by Congressional action, to reduce the amount of funds available for expenditure.

(b) The INA program grantee may request approval to modify its plan to add, expand, delete, or diminish any service allowable under the regulations in this part. The INA program grantee may modify its plan without our approval, unless the modification reduces the total number of participants to be served annually under the grantee's program by a number which exceeds 25 percent of the participants previously proposed to be served, or by 25 participants, whichever is larger.

Subpart H—Administrative Requirements

§ 684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?

(a) Each INA program grantee must have a written system describing the procedures the grantee uses for:

(1) The hiring and management of personnel paid with program funds;

(2) The acquisition and management of property purchased with program funds;

(3) Financial management practices;

(4) A participant grievance system which meets the requirements in sec. 181(c) of WIOA and § 683.600 of this chapter; and

(5) A participant records system.

(b) Participant records systems must include:

(1) A written or computerized record containing all the information used to determine the person's eligibility to receive program services;

(2) The participant's signature certifying that all the eligibility information he or she provided is true to the best of his/her knowledge; and

(3) The information necessary to comply with all program reporting requirements.

§ 684.810 What types of costs are allowable expenditures under the Indian and Native American program?

Rules relating to allowable costs under WIOA are covered in §§ 683.200 through 683.215 of this chapter.

§ 684.820 What rules apply to administrative costs under the Indian and Native American program?

The definition and treatment of administrative costs are covered in §§ 683.205(b) and 683.215 of this chapter.

§ 684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to WIOA grants?

No, under § 683.205(b) of this chapter, limits on administrative costs for sec. 166 grants will be negotiated with the grantee and identified in the grant award document.

§ 684.840 How must Indian and Native American program grantees classify costs?

Cost classification is covered in the WIOA regulations at §§ 683.200 through 683.215 of this chapter. For purposes of the INA program, program costs also include costs associated with other activities such as TERO, and supportive services, as defined in WIOA sec. 3(59).

§ 684.850 What cost principles apply to Indian and Native American funds?

The cost principles at 2 CFR part 200 subpart E, implementing the Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards published December 26, 2013, and the Department's modifications to 2 CFR part 200 subpart E at 2 CFR part 2900, apply to INA program grantees.

§ 684.860 What audit requirements apply to Indian and Native American grants?

(a) WIOA sec. 166 grantees must follow the audit requirements at 2 CFR part 200, subpart F, implementing the Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards published December 26, 2013, and the Department's modifications to 2 CFR part 200 at 2 CFR part 2900.

(b) Grants made and contracts and cooperative agreements entered into under sec. 166 of WIOA are subject to the requirements of chapter 75 of subtitle V of title 31, United States Code, and charging of costs under this section are subject to appropriate circulars issued by the Office of Management and Budget and to 2 CFR part 200 and the Department's modifications to 2 CFR part 200 at 2 CFR part 2900.

§ 684.870 What is "program income" and how is it regulated in the Indian and Native American program?

(a) Program income is regulated by WIOA sec. 194(7)(A), §§ 683.200(c)(6) through (8) and 683.300(c)(5) of this chapter, and the applicable rules in 2 CFR parts 200 and 2900,

(b) For grants made under this part, program income does not include income generated by the work of a work experience participant in an enterprise, including an enterprise owned by an INA entity, whether in the public or private sector.

(c) Program income does not include income generated by the work of an OJT participant in an establishment under paragraph (b) of this section.

Subpart I—Miscellaneous Program Provisions

§ 684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?

Yes, WIOA sec. 166(i)(3) permits waivers of any statutory or regulatory requirement of title I of WIOA that are inconsistent with the specific needs of the INA program grantee (except for the areas cited in § 684.920). Such waivers may include those necessary to facilitate WIOA support of long-term community development goals.

§ 684.910 What information is required in a waiver request?

(a) To request a waiver, an INA program grantee must submit a waiver request indicating how the waiver will improve the grantee's WIOA program activities. The waiver process will be generally consistent with, but not identical to, the waiver requirements under sec. 189(i)(3)(B) of WIOA. INA program grantees may submit a waiver request as part of the 4-year strategic plan.

(b) A waiver may be requested at the beginning of a 4-year grant award cycle or anytime during a 4-year award cycle. However, all waivers expire at the end of the 4-year award cycle. INA program grantees seeking to continue an existing waiver in a new 4-year grant cycle must submit a new waiver request in accordance with § 684.910(a).

§ 684.920 What provisions of law or regulations may not be waived?

Requirements relating to:

(a) Wage and labor standards;

(b) Worker rights;

(c) Participation and protection of workers and participants;

(d) Grievance procedures;

(e) Judicial review;

(f) Non-discrimination may not be waived.

§ 684.930 May Indian and Native American program grantees combine or consolidate their employment and training funds?

Yes. INA program grantees may consolidate their employment and training funds under WIOA with assistance received from related programs in accordance with the provisions of the Pub. L. 102-477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended by Pub. L. 106-568, the Omnibus Indian Advancement Act of 2000 (25 U.S.C. 3401 et seq.). WIOA funds consolidated under Pub. L. 102-477 are administered by Department of the Interior (DOI). Accordingly, the administrative oversight for funds transferred to DOI, including the reporting of financial expenditures and program outcomes are the responsibility of DOI. However, the Department must review the initial 477 plan and ensure that all Departmental programmatic and financial obligations have been met before WIOA funds are approved to be transferred to DOI and consolidated with other related programs. The initial plan must meet the statutory requirements of WIOA. After approval of the initial plan, all subsequent plans that are renewed or updated from the initial plan may be approved by DOI without further review by the Department.

§ 684.940 What is the role of the Native American Employment and Training Council?

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on the operation and administration of the INA employment and training program. WIOA sec. 166(i)(4) continues the Council essentially as it is currently constituted. The Department continues to support the Council.

§ 684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Yes. Notwithstanding any other provision of law, the Secretary is authorized to award grants, on a competitive basis, to entities with demonstrated experience and expertise in developing and implementing programs for the unique populations who reside in Alaska or Hawaii, including public and private nonprofit organizations, tribal organizations, American Indian tribal colleges or universities, institutions of higher education, or consortia of such organizations or institutions, to improve job training and workforce investment activities for such unique populations.

12. Add part 685 to read as follows:

PART 685 – NATIONAL FARMWORKER JOBS PROGRAM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Purpose and Definitions

Sec.

685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?
685.110 What definitions apply to this program?
685.120 How does the Department administer the National Farmworker Jobs Program?

685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?
685.140 What Workforce Innovation and Opportunity Act (WIOA) regulations apply to the programs authorized under WIOA?

Subpart B—The Service Delivery System for the National Farmworker Jobs Program

Sec.
685.200 Who is eligible to receive a National Farmworker Jobs Program grant?
685.210 How does an eligible entity become a grantee?
685.220 What is the role of the grantee in the one-stop delivery system?
685.230 Can a grantee's designation be terminated?
685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

Sec.
685.300 What are the general responsibilities of grantees?
685.310 What are the basic components of a National Farmworker Jobs Program service delivery strategy?
685.320 Who is eligible to receive services under the National Farmworker Jobs Program?
685.330 How are services delivered to eligible migrant and seasonal farmworkers?
685.340 What career services may grantees provide to eligible migrant and seasonal farmworkers?
685.350 What training services may grantees provide to eligible migrant and seasonal farmworkers?
685.360 What housing services may grantees provide to eligible migrant and seasonal farmworkers?
685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14-24?
685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?
685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Subpart D—Performance Accountability, Planning, and Waiver Provisions

Sec.
685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?
685.410 What planning documents must a grantee submit?
685.420 What information is required in the grantee program plan?
685.430 Under what circumstances are the terms of the grantee's program plan modified by the grantee or the Department?
685.440 How are costs classified under the National Farmworker Jobs Program?

685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?
685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?
685.470 How can grantees request a waiver?

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act

Sec.
685.500 What is supplemental youth workforce investment activity funding?
685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?
685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?
685.530 What planning documents are required for grants funded by the Workforce Innovation and Opportunity Act?
685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity Act?
685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?

Authority: Secs. 167, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purpose and Definitions

§ 685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?

The purpose of the NFJP and the other services and activities established under WIOA sec. 167 is to strengthen the ability of eligible migrant and seasonal farmworkers (MSFWs) and their dependents to obtain or retain unsubsidized employment, stabilize their unsubsidized employment and achieve economic self-sufficiency, including upgraded employment in agriculture. This part provides the regulatory requirements applicable to the expenditure of WIOA secs. 167 and 127(a)(1) funds for such programs, services, and activities.

§ 685.110 What definitions apply to this program?

In addition to the definitions found in § 675.300 of this chapter, the following definitions apply to programs under this part:

Allowances means direct payments made to participants during their enrollment to enable them to participate in the career services described in WIOA sec. 134(c)(2)(A)(xii) or training services as appropriate.

Dependent means an individual who:

(1) Was claimed as a dependent on the eligible MSFW's Federal income tax return for the previous year; or

(2) Is the spouse of the eligible MSFW; or

(3) If not claimed as a dependent for Federal income tax purposes, is able to establish:

(i) A relationship as the eligible MSFW's;

(A) Child, grandchild, great grandchild, including legally adopted children;

(B) Stepchild;

(C) Brother, sister, half-brother, half-sister, stepbrother, or stepsister;

(D) Parent, grandparent, or other direct ancestor but not foster parent;

(E) Foster child;

(F) Stepfather or stepmother;

(G) Uncle or aunt;

(H) Niece or nephew;

(I) Father-in-law, mother-in-law, son-in-law; or

(J) Daughter-in-law, brother-in-law, or sister-in-law; and

(ii) The receipt of over half of his/her total support from the eligible MSFW's family during the eligibility determination period.

Eligibility determination period means any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW.

Eligible migrant farmworker means an eligible seasonal farmworker as defined in WIOA sec. 167(i)(3) whose agricultural labor requires travel to a job site such that the farmworker is unable to return to a permanent place of residence within the same day; and dependents of the migrant farmworker, as described in WIOA sec. 167(i)(2).

Eligible migrant and seasonal farmworker means an eligible migrant farmworker or an eligible seasonal farmworker, also referred to in this regulation as an "eligible MSFW," as defined in WIOA sec. 167(i).

Eligible MSFW youth means an eligible MSFW aged 14-24 who is individually eligible or is a dependent of an eligible MSFW. The term eligible MSFW youth is a subset of the term eligible MSFW defined in this section.

Eligible seasonal farmworker means a low-income individual who for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment; and faces multiple barriers to economic self-sufficiency; and dependents of the seasonal farmworker as described in WIOA sec. 167(i)(3).

Emergency assistance is a form of "related assistance" and means assistance provided by grantees that addresses immediate needs of eligible MSFWs and their dependents. An applicant's self-certification is accepted as sufficient documentation of eligibility for emergency assistance.

Family, for the purpose of reporting housing assistance grantee indicators of performance as described in in § 685.400, means the eligible MSFW(s) and all the individuals identified under the definition of dependent in this section who are living together in one physical residence.

Farmwork means work while employed in the occupations described in § 651.10 of this chapter.

Grantee means an entity to which the Department directly awards a WIOA grant to carry out programs to serve eligible MSFWs in a service area, with funds made available under WIOA sec. 167 or 127(a)(1).

Housing assistance means housing services which contribute to safe and sanitary temporary and permanent housing constructed, supplied, or maintained with NFJP funding.

Lower living standard income level means the income level as defined in WIOA sec. 3(36)(B).

Low-income individual means an individual as defined in WIOA sec. 3(36)(A).

MOU means Memorandum of Understanding.

National Farmworker Jobs Program (NFJP) is the Department of Labor-administered workforce investment program for eligible MSFWs established by WIOA sec. 167 as a required partner of the one-stop delivery system and includes both career services and training grants, and housing grants.

Recognized postsecondary credential means a credential as defined in WIOA sec. 3(52).

Related assistance means short-term forms of direct assistance designed to assist eligible MSFWs retain or stabilize their agricultural employment. Examples of related assistance may

include, but are not limited to, services such as transportation assistance or providing work clothing.

Self-certification means an eligible MSFW's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.

Service area means the geographical jurisdiction, which may be comprised of one or more designated State or sub-State areas, in which a WIOA sec. 167 grantee is designated to operate.

Supportive Services means the services defined in WIOA sec. 3(59).

Technical assistance means the guidance provided to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to eligible MSFWs.

§ 685.120 How does the Department administer the National Farmworker Jobs Program?

The Department's Employment and Training Administration (ETA) administers NFJP activities required under WIOA sec. 167 for eligible MSFWs. As described in § 685.210, the Department designates grantees using procedures consistent with standard Federal government competitive procedures.

§ 685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?

The Department provides guidance, administrative support, technical assistance, and training to grantees for the purposes of program implementation, and program performance management to enhance services and promote continuous improvement in the employment outcomes of eligible MSFWs.

§ 685.140 What Workforce Innovation and Opportunity Act (WIOA) regulations apply to the programs authorized under WIOA?

The regulations that apply to programs authorized under WIOA sec. 167 include but are not limited to:

(a) The regulations found in this part;

(b) The general administrative requirements found in part 683 of this chapter, including the regulations concerning Complaints, Investigations and Hearings found at part 683, subpart D through subpart H of this chapter, which cover programs under WIOA sec. 167;

(c) Uniform Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900 pursuant to the effective dates in 2 CFR part 200 and 2 CFR part 2900;

(d) The regulations on partnership responsibilities contained in parts 679 (Statewide and Local Governance) and 678 (the One-Stop System) of this chapter; and

(e) The Department's regulations at 29 CFR part 38, which implement the nondiscrimination provisions of WIOA sec. 188.

Subpart B—The Service Delivery System for the National Farmworker Jobs Program

§ 685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

To be eligible to receive a grant under this section, an entity must have:

(a) An understanding of the problems of eligible MSFWs;

(b) A familiarity with the agricultural industries and the labor market needs of the proposed service area;

(c) The ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities, including youth workforce investment activities, and related assistance for eligible MSFWs.

§ 685.210 How does an eligible entity become a grantee?

To become a grantee and receive a grant under this subpart, an applicant must respond to a Funding Opportunity Announcement (FOA). Under the FOA, grantees will be selected using standard Federal government competitive procedures. The entity's proposal must include a program plan, which is a 4-year strategy for meeting the needs of eligible MSFWs in the proposed service area, and a description of the entities experience working with the broader workforce delivery system. Unless specified otherwise in the FOA, grantees may serve eligible MSFWs, including eligible MSFW youth, under the grant. An applicant whose application for funding as a grantee under this section is denied in whole or in part may request an administrative review under § 683.800 of this chapter.

§ 685.220 What is the role of the grantee in the one-stop delivery system?

In those local areas where the grantee operates its NFJP as described in its grant agreement, the grantee is a required one-stop partner, and is subject to the provisions relating to such partners described in part 678 of this chapter. Consistent with those provisions, the grantee and Local Workforce Development Board (WDB) must develop and enter into an MOU which meets the requirements of § 678.500 of this chapter, and which sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop delivery system to eligible MSFWs.

§ 685.230 Can a grantee's designation be terminated?

Yes, a grantee's designation may be terminated by the Department for cause:

(a) In emergency circumstances when such action is necessary to protect the integrity of Federal funds or to ensure the proper operation of the program. Any grantee so terminated will be provided with written notice and an opportunity for a hearing within 30 days after the termination; or

(b) By the Department's Grant Officer, if the recipient materially fails to comply with the terms and conditions of the award. In such a case, the Grant Officer will follow the administrative regulations at § 683.440 of this chapter.

§ 685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

At least 99 percent of the funds appropriated each year for WIOA sec. 167 activities must be allocated to service areas, based on the distribution of the eligible MSFW population determined under a formula established by the Secretary. The Department will award grants pursuant to § 685.210 for the provision of services to eligible MSFWs within each service area. The Department will use a percentage of the funds allocated for State service areas for housing grants, specified in a FOA issued by the Department. The Department will use up to one percent of the appropriated funds for discretionary purposes, such as technical assistance to eligible entities and other activities prescribed by the Secretary.

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

§ 685.300 What are the general responsibilities of grantees?

(a) The Department awards career services and training grants and housing grants through the FOA process described in § 685.210. Career services and training grantees are

responsible for providing appropriate career services, training, and related assistance to eligible MSFWs. Housing grantees are responsible for providing housing assistance to eligible MSFWs.

(b) Grantees will provide these services in accordance with the service delivery strategy meeting the requirements of § 685.310 and as described in their approved program plan described in § 685.420. These services must reflect the needs of the MSFW population in the service area and include the services that are necessary to achieve each participant's employment goals or housing needs.

(c) Grantees are responsible for coordinating services, particularly outreach to MSFWs, with the State Workforce Agency as defined in § 651.10 of this chapter and the State's Monitor Advocate.

(d) Grantees are responsible for fulfilling the responsibilities of one-stop partners described in § 678.420 of this chapter.

§ 685.310 What are the basic components of a National Farmworker Jobs Program service delivery strategy?

The NFJP service delivery strategy must include:

(a) A customer-focused case management approach;

(b) The provision of workforce investment activities to eligible MSFWs which include career services and training, as described in WIOA secs. 167(d) and 134, and part 680 of this chapter.

(c) The provision of youth workforce investment activities described in WIOA sec. 129 and part 681 of this chapter may be provided to eligible MSFW youth;

(d) The arrangements under the MOUs with the applicable Local WDBs for the delivery of the services available through the one-stop delivery system to MSFWs; and

(e) Related assistance services.

§ 685.320 Who is eligible to receive services under the National Farmworker Jobs Program?

Eligible migrant farmworkers (including eligible MSFW youth) and eligible seasonal farmworkers (including eligible MSFW youth) as defined in § 685.110 are eligible for services funded by the NFJP.

§ 685.330 How are services delivered to eligible migrant and seasonal farmworkers?

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach emphasizing customer choice and may include: appropriate career services and training; related assistance, which includes emergency assistance; and supportive services, which includes allowance payments. The basic services and delivery of case-management activities are further described in §§ 685.340 through 685.390.

§ 685.340 What career services may grantees provide to eligible migrant and seasonal farmworkers?

(a) Grantees may provide the career services described in WIOA secs. 167(d) and 134(c)(2), and part 680 of this chapter to eligible MSFWs.

(b) Grantees may provide other services identified in the approved program plan.

(c) The delivery of career services to eligible MSFWs by the grantee and through the one-stop delivery system must be discussed in the required MOU between the Local WDB and the grantee.

§ 685.350 What training services may grantees provide to eligible migrant and seasonal farmworkers?

(a) Grantees may provide the training activities described in WIOA secs. 167(d) and 134(c)(3)(D), and part 680 of this chapter to eligible MSFWs. These activities include, but are not limited to, occupational-skills training and on-the-job training (OJT). Eligible MSFWs are not required to receive career services prior to receiving training services.

(1) When providing OJT services NFJP grantees may reimburse employers for the extraordinary costs of training by up to 50 percent of the wage rate of the participant for OJT.

(2) Grantees also may increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant under certain conditions, provided that such reimbursement is being provided consistent with the reimbursement rates used under WIOA sec. 134(c)(3)(H)(i) for the local area(s) in which the grantee operates its program.

(b) Training services must be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate.

(c) Training activities must encourage the attainment of recognized postsecondary credentials as defined in § 685.110 when appropriate for an eligible MSFW.

§ 685.360 What housing services may grantees provide to eligible migrant and seasonal farmworkers?

(a) Housing grantees must provide housing services to eligible MSFWs.

(b) Career services and training grantees may provide housing services to eligible MSFWs as described in their program plan.

(c) Housing services may include the following:

(1) Permanent housing that is owner-occupied, or occupied on a permanent, year-round basis (notwithstanding ownership) as the eligible MSFW's primary residence to which he/she returns at the end of the work or training day.

(i) Types of permanent housing may include rental units, single family homes, duplexes, and other multi-family structures, dormitories, group homes, and other housing types that provide short-term, seasonal, or year-round housing opportunities in permanent structures. Modular structures, manufactured housing, or mobile units placed on permanent foundations and supplied with appropriate utilities, and other infrastructure also are considered permanent housing.

(ii) Permanent housing services include but are not limited to: investments in development services, project management, and resource development to secure acquisition, construction/ renovation and operating funds, property management services, and program management. New construction, purchase of existing structures, and rehabilitation of existing structures, as well as the infrastructure, utilities, and other improvements necessary to complete or maintain those structures also may be considered part of managing permanent housing.

(2) Temporary housing that is not owner-occupied and is used by MSFWs whose employment requires occasional travel outside their normal commuting area.

(i) Types of temporary housing may include: housing units intended for temporary occupancy located in permanent structures, such as rental units in an apartment complex or in mobile structures that provide short-term, seasonal housing opportunities; temporary structures that may be moved from site to site, dismantled and re-erected when needed for farmworker occupancy, closed during the off-season, or handled through other similar arrangements; off-farm housing operated independently of employer interest in, or control of, the housing; or on-

farm housing located on property owned by an agricultural employer and operated by an entity such as an agricultural employer or a nonprofit organization; and other housing types that provide short-term, seasonal, or temporary housing opportunities in temporary structures.

(ii) Temporary housing services include but are not limited to: Managing temporary housing which may involve property management of temporary housing facilities, case management, and referral services, and emergency housing payments, including vouchers and cash payments for rent/lease and utilities.

(d) Permanent housing developed with NFJP funds must be promoted and made widely available to eligible MSFWs, but occupancy is not restricted to eligible MSFWs. Temporary housing services must only be provided to eligible MSFWs.

(e) Except as provided in paragraph (f) of this section, NFJP funds used for housing assistance must ensure the provision of safe and sanitary temporary and permanent housing that meets the Federal housing standards at part 654 of this chapter (ETA housing for farmworkers) or 29 CFR 1910.10 (OSHA housing standards).

(f) When NFJP grantees provide temporary housing assistance that allows the participant to select the housing, including vouchers and cash payments for rent, lease, and utilities, NFJP grantees are not required to ensure that such housing meets the Federal housing standards at part 654 of this chapter or 29 CFR 1910.10.

§ 685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14-24?

(a) Based on an evaluation and assessment of the needs of eligible MSFW youth, grantees may provide activities and services that include but are not limited to:

(1) Career services and training as described in §§ 685.340 and 685.350;

(2) Youth workforce investment activities specified in WIOA sec. 129;

(3) Life skills activities which may include self- and interpersonal skills development;

(4) Community service projects;

(b) Other activities and services that conform to the use of funds for youth activities described in part 681 of this chapter.

(c) Grantees may provide these services to any eligible MSFW youth, regardless of the participant's eligibility for WIOA title I youth activities as described in WIOA sec. 129(a).

§ 685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?

Related assistance may include short-term direct services and activities. Examples include emergency assistance, as defined in § 685.110, and those activities identified in WIOA sec. 167(d), such as: English language and literacy instruction; pesticide and worker safety training; housing (including permanent housing), as described in § 685.360 and as provided in the approved program plan; and school dropout prevention and recovery activities. Related assistance may be provided to eligible MSFWs not enrolled in career services, youth services, or training services.

§ 685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Eligible MSFWs may receive related assistance services when the grantee identifies and documents the need for the related assistance, which may include a statement by the eligible MSFW.

Subpart D—Performance Accountability, Planning, and Waiver Provisions

§ 685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?

(a) For grantees providing career services and training, the Department will use the indicators of performance common to the adult and youth programs, described in WIOA sec. 116(b)(2)(A).

(b) For grantees providing career services and training, the Department will reach agreement with individual grantees on the levels of performance for each of the primary indicators of performance, taking into account economic conditions, characteristics of the individuals served, and other appropriate factors, and using, to the extent practicable, the statistical adjustment model under WIOA sec. 116(b)(3)(A)(viii). Once agreement on the levels of performance for each of the primary indicators of performance is reached with individual grantees, the Department will incorporate the adjusted levels of performance in the grant plan. For the purposes of performance reporting, eligible MSFWs who receive any career services, youth services, training, or certain related assistance are considered participants as defined in § 677.150 of this chapter and must be included in performance calculations for the indicators of performance. Eligible MSFWs who receive only those services identified in § 677.150(a)(3)(ii) or (iii) of this chapter are not included in performance calculations for the indicators of performance described in WIOA sec. 116(b)(2)(A).

(c) For grantees providing housing services only, grantees will use the total number of eligible MSFWs served and the total number of eligible MSFW families served as indicators of performance. Additionally, grantees providing permanent housing development activities will

use the total number of individuals served and the total number of families served as indicators of performance.

(d) The Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve eligible MSFWs and which reflect the State service area economy, local demographics of eligible MSFWs, and other appropriate factors. If additional performance indicators are developed, the levels of performance for these additional indicators must be negotiated with the grantee and included in the approved program plan.

(e) Grantees may develop additional performance indicators and include them in the program plan or in periodic performance reports.

§ 685.410 What planning documents must a grantee submit?

Each grantee receiving WIOA sec. 167 program funds must submit to the Department a comprehensive program plan and a projection of participant services and expenditures in accordance with instructions issued by the Secretary.

§ 685.420 What information is required in the grantee program plan?

A grantee's 4-year program plan must describe:

(a) The service area that the applicant proposes to serve;

(b) The population to be served and the education and employment needs of the MSFW population to be served;

(c) The manner in which proposed services to eligible MSFWs will strengthen their ability to obtain or retain unsubsidized employment or stabilize their unsubsidized employment, including upgraded employment in agriculture;

(d) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be integrated and coordinated with other appropriate services;

(e) The performance accountability measures that will be used to assess the performance of the entity in carrying out the NFJP program activities, including the expected levels of performance for the primary indicators of performance described in § 685.400;

(f) The availability and accessibility of local resources, such as supportive services, services provided through one-stop delivery systems, and education and training activities, and how the resources can be made available to the population to be served;

(g) The plan for providing services including strategies and systems for outreach, career planning, assessment, and delivery through one-stop delivery systems;

(h) The methods the grantee will use to target its services on specific segments of the eligible population, as appropriate; and

(i) Such other information as required by the Secretary in instructions issued under § 685.410.

§ 685.430 Under what circumstances are the terms of the grantee's program plan modified by the grantee or the Department?

(a) Plans must be modified to reflect the funding level for each year of the grant. The Department will provide instructions annually on when to submit modifications for each year of funding, which will generally be no later than June 1 prior to the start of the subsequent year of the grant cycle.

(b) The grantee must submit a request to the Department for any proposed modifications to its plan to add, delete, expand, or reduce any part of the program plan or allowable activities.

The Department will consider the cost principles, uniform administrative requirements, and terms and conditions of award when reviewing modifications to program plans.

(c) If the grantee is approved for a regulatory waiver under §§ 685.460 and 685.470, the grantee must submit a modification of its grant plan to reflect the effect of the waiver.

§ 685.440 How are costs classified under the National Farmworker Jobs Program?

(a) Costs are classified as follows:

(1) Administrative costs, as defined in § 683.215 of this chapter; and

(2) Program costs, which are all other costs not defined as administrative.

(b) Program costs must be classified and reported in the following categories:

(1) Related assistance (including emergency assistance);

(2) Supportive services; and

(3) All other program services.

§ 685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?

Under § 683.205(b) of this chapter, limits on administrative costs for programs operated under subtitle D of WIOA title I will be identified in the grant or contract award document. Administrative costs will not exceed 15 percent of total grantee funding.

§ 685.460 Are there regulatory and/or statutory waiver provisions that apply to the National Farmworker Jobs Program?

(a) The statutory waiver provision at WIOA sec. 189(i) and discussed in § 679.600 of this chapter does not apply to any NFJP grant under WIOA sec. 167.

(b) Grantees may request waiver of any regulatory provisions only when such regulatory provisions are:

(1) Not required by WIOA;

(2) Not related to wage and labor standards, non-displacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the basic purposes of WIOA, described in § 675.100 of this chapter.

§ 685.470 How can grantees request a waiver?

To request a waiver, a grantee must submit to the Department a waiver plan that:

(a) Describes the goals of the waiver, the expected programmatic outcomes, and how the waiver will improve the provision of program activities;

(b) Is consistent with any guidelines the Department establishes;

(c) Describes the data that will be collected to track the impact of the waiver; and

(d) Includes a modified program plan reflecting the effect of the requested waiver.

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act

§ 685.500 What is supplemental youth workforce investment activity funding?

Pursuant to WIOA sec. 127(a)(1), if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used by the Department to provide workforce investment activities for eligible MSFW youth under WIOA sec. 167.

§ 685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?

The requirements in subparts A through D of this regulation apply to grants funded by WIOA sec. 127(a)(1), except that grants described in this subpart must be used only for workforce investment activities for eligible MSFW youth, as described in § 685.370 and WIOA sec. 167(d) (including related assistance and supportive services).

§ 685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?

The Department will issue a separate FOA for grants funded by WIOA sec. 127(a)(1). The selection will be made in accordance with the procedures described in § 685.210, except that the Department reserves the right to provide priority to applicants that are WIOA sec. 167 grantees.

§ 685.530 What planning documents are required for grants funded by the Workforce Innovation and Opportunity Act?

The required planning documents will be described in the FOA.

§ 685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity Act?

The allocation of funds will be based on the comparative merits of the applications, in accordance with criteria set forth in the FOA.

§ 685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?

Eligible MSFW youth as defined in § 685.110 are eligible to receive services through grants funded by WIOA sec. 127(a)(1).

13. Add part 686 to read as follows:

PART 686 – THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Scope and Purpose

Sec.
686.100 What is the scope of this part?
686.110 What is the Job Corps program?
686.120 What definitions apply to this part?

Subpart B—Site Selection and Protection and Maintenance of Facilities

Sec.
686.200 How are Job Corps center locations and sizes determined?
686.210 How are center facility improvements and new construction handled?
686.220 Who is responsible for the protection and maintenance of center facilities?

Subpart C—Funding and Selection of Center Operators and Service Providers

Sec.
686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?
686.310 How are entities selected to receive funding to operate centers?
686.320 What if a current center operator is deemed to be an operator of a high-performing center?
686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?
686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?
686.350 What conditions apply to the operation of a Civilian Conservation Center?
686.360 What are the requirements for award of contracts and payments to Federal agencies?

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

Sec.
686.400 Who is eligible to participate in the Job Corps program?
686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?
686.420 Are there any special requirements for enrollment related to the Military Selective Service Act?
686.430 What entities conduct outreach and admissions activities for the Job Corps program?

686.440 What are the responsibilities of outreach and admissions providers?
686.450 How are applicants who meet eligibility and selection criteria assigned to centers?
686.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?
686.470 May an individual who is determined to be ineligible or an individual who is denied enrollment appeal that decision?
686.480 At what point is an applicant considered to be enrolled in Job Corps?
686.490 How long may a student be enrolled in Job Corps?

Subpart E—Program Activities and Center Operations

Sec.
686.500 What services must Job Corps centers provide?
686.505 What types of training must Job Corps centers provide?
686.510 Are entities other than Job Corps center operators permitted to provide academic and career technical training?
686.515 What are advanced career training programs?
686.520 What responsibilities do the center operators have in managing work-based learning?
686.525 Are students permitted to hold jobs other than work-based learning opportunities?
686.530 What residential support services must Job Corps center operators provide?
686.535 Are Job Corps centers required to maintain a student accountability system?
686.540 Are Job Corps centers required to establish behavior management systems?
686.545 What is Job Corps' zero tolerance policy?
686.550 How does Job Corps ensure that students receive due process in disciplinary actions?
686.555 What responsibilities do Job Corps centers have in assisting students with child care needs?
686.560 What are the center's responsibilities in ensuring that students' religious rights are respected?
686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Subpart F—Student Support

Sec.
686.600 Are students provided with government-paid transportation to and from Job Corps centers?
686.610 When are students authorized to take leaves of absence from their Job Corps centers?
686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?
686.630 Are student allowances subject to Federal payroll taxes?
686.640 Are students provided with clothing?

Subpart G—Career Transition and Graduate Services

Sec.
686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?
686.710 What career transition services are provided for Job Corps enrollees?
686.720 Who provides career transition services?
686.730 What are the responsibilities of career transition service providers?
686.740 What services are provided for program graduates?
686.750 Are graduates provided with transition allowances?
686.760 What services are provided to former enrollees?

Subpart H—Community Connections

Sec.
686.800 How do Job Corps centers and service providers become involved in their local communities?
686.810 What is the makeup of a workforce council and what are its responsibilities?
686.820 How will Job Corps coordinate with other agencies?

Subpart I—Administrative and Management Provisions

Sec.
686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?
686.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?
686.910 If a student is injured in the performance of duty as a Job Corps student, what benefits may the student receive?
686.915 When is a Job Corps student considered to be in the performance of duty?
686.920 How are students protected from unsafe or unhealthy situations?
686.925 What are the requirements for criminal law enforcement jurisdiction on center property?
686.930 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?
686.935 What are the financial management responsibilities of Job Corps center operators and other service providers?
686.940 Are center operators and service providers subject to Federal audits?
686.945 What are the procedures for management of student records?
686.950 What procedures apply to disclosure of information about Job Corps students and program activities?
686.955 What are the reporting requirements for center operators and operational support service providers?
686.960 What procedures are available to resolve complaints and disputes?
686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?
686.970 How does Job Corps ensure that centers or other service providers comply with the Workforce Innovation and Opportunity Act and the WIOA regulations?

686.975 How does Job Corps ensure that contract disputes will be resolved?
686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding the operation of Job Corps centers?
686.985 What Department of Labor equal opportunity and nondiscrimination regulations apply to Job Corps?

Subpart J—Performance

Sec.
686.1000 How is the performance of the Job Corps program assessed?
686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?
686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?
686.1030 What are the indicators of performance for Job Corps career transition service providers?
686.1040 What information will be collected for use in the Annual Report?
686.1050 How are the expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers established?
686.1060 How are center rankings established?
686.1070 How and when will the Secretary use Performance Improvement Plans?

Authority: Secs. 142, 144, 146, 147, 159, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Scope and Purpose

§ 686.100 What is the scope of this part?

The regulations in this part outline the requirements that apply to the Job Corps program. More detailed policies and procedures are contained in a Policy and Requirements Handbook issued by the Secretary. Throughout this part, "instructions (procedures) issued by the Secretary" and similar references refer to the Policy and Requirements Handbook and other Job Corps directives.

§ 686.110 What is the Job Corps program?

Job Corps is a national program that operates in partnership with States and communities, Local Workforce Development Boards (WDBs), Youth Standing Committees where established, one-stop centers and partners, and other youth programs to provide academic, career and

technical education, service-learning, and social opportunities primarily in a residential setting, for low-income young people. The objective of Job Corps is to support responsible citizenship and provide young people with the skills they need to lead to successful careers that will result in economic self-sufficiency and opportunities for advancement in in-demand industry sectors or occupations or the Armed Forces, or to enrollment in postsecondary education.

§ 686.120 What definitions apply to this part?

The following definitions apply to this part:

Absent Without Official Leave (AWOL) means an adverse enrollment status to which a student is assigned based on extended, unapproved absence from his/her assigned center or off-center place of duty. Students do not earn Job Corps allowances while in AWOL status.

Applicable Local WDB means a Local WDB that:

(1) Works with a Job Corps center and provides information on local employment opportunities and the job skills and credentials needed to obtain the opportunities; and

(2) Serves communities in which the graduates of the Job Corps seek employment.

Applicable one-stop center means a one-stop center that provides career transition services, such as referral, assessment, recruitment, and placement, to support the purposes of the Job Corps.

Capital improvement means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a “fixed asset;” and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

Career technical training means career and technical education and training.

Career transition service provider means an organization acting under a contract or other agreement with Job Corps to provide career transition services for graduates and, to the extent possible, for former students.

Civilian Conservation Center (CCC) means a center operated on public land under an agreement between the Department of Labor (the Department) and the Department of Agriculture, which provides, in addition to other training and assistance, programs of work-based learning to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

Contract center means a Job Corps center operated under a contract with the Department.

Contracting officer means an official authorized to enter into contracts or agreements on behalf of the Department.

Enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate. Enrollees also are referred to as "students" in this part.

Enrollment means the process by which an individual formally becomes a student in the Job Corps program.

Former enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, but left the program prior to becoming a graduate.

Graduate means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program and who, as a result of participation in the program, has

received a secondary school diploma or recognized equivalent, or has completed the requirements of a career technical training program that prepares individuals for employment leading to economic self-sufficiency or entrance into postsecondary education or training.

Individual with a disability means an individual with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Interagency agreement means a formal agreement between the Department and another Federal agency administering and operating centers. The agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

Job Corps means the Job Corps program established within the Department of Labor and described in sec. 143 of the Workforce Innovation and Opportunity Act (WIOA).

Job Corps center means a facility and an organizational entity, including all of its parts, providing Job Corps training and designated as a Job Corps center, as described in sec. 147 of WIOA.

Job Corps Director means the chief official of the Job Corps or a person authorized to act for the Job Corps Director.

Low-income individual means an individual who meets the definition in WIOA sec. 3(36).

National Office means the national office of Job Corps.

National training contractor means a labor union, union-affiliated organization, business organization, association, or a combination of such organizations, which has a contract with the national office to provide career technical training, career transition services, or other services.

Operational support services means activities or services required to support the operation of Job Corps, including:

(1) Outreach and admissions services;

(2) Contracted career technical training and off-center training;

(3) Career transition services;

(4) Continued services for graduates;

(5) Certain health services; and

(6) Miscellaneous logistical and technical support.

Operator means a Federal, State or local agency, or a contractor selected under this subtitle to operate a Job Corps center under an agreement or contract with the Department.

Outreach and admissions provider means an organization that performs recruitment services, including outreach activities, and screens and enrolls youth under a contract or other agreement with Job Corps.

Participant, as used in this part, includes both graduates and enrollees and former enrollees that have completed their career preparation period. It also includes all enrollees and former enrollees who have remained in the program for at least 60 days.

Placement means student employment, entry into the Armed Forces, or enrollment in other training or education programs following separation from Job Corps.

Regional appeal board means the board designated by the Regional Director to consider student appeals of disciplinary discharges.

Regional Director means the chief Job Corps official of a regional office or a person authorized to act for the Regional Director.

Regional Office means a regional office of Job Corps.

Regional Solicitor means the chief official of a regional office of the Department of Labor Office of the Solicitor, or a person authorized to act for the Regional Solicitor.

Separation means the action by which an individual ceases to be a student in the Job Corps program, either voluntarily or involuntarily.

Service Provider means an entity selected under this subtitle to provide operational support services described in this subtitle to a Job Corps center.

Student means an individual enrolled in the Job Corps.

Unauthorized goods means:

(1) Firearms and ammunition;

(2) Explosives and incendiaries;

(3) Knives;

(4) Homemade weapons;

(5) All other weapons and instruments used primarily to inflict personal injury;

(6) Stolen property;

(7) Drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and

(8) Any other goods prohibited by the Secretary, center director, or center operator in a student handbook.

Subpart B—Site Selection and Protection and Maintenance of Facilities

§ 686.200 How are Job Corps center locations and sizes determined?

(a) The Secretary must approve the location and size of all Job Corps centers based on established criteria and procedures.

(b) The Secretary establishes procedures for making decisions concerning the establishment, relocation, expansion, or closing of contract centers.

§ 686.210 How are center facility improvements and new construction handled?

The Secretary establishes procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

§ 686.220 Who is responsible for the protection and maintenance of center facilities?

(a) The Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department of Labor, that are consistent with the current Federal Property Management Regulations.

(b) The U.S. Department of Agriculture, when operating Civilian Conservation Centers (CCC) on public land, is responsible for the protection and maintenance of CCC facilities.

(c) The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify needs such as correction of safety and health deficiencies, rehabilitation, and/or new construction.

Subpart C—Funding and Selection of Center Operators and Service Providers

§ 686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

(a) Center Operators. Entities eligible to receive funds under this subpart to operate centers include:

(1) Federal, State, and local agencies;

(2) Private organizations, including for-profit and non-profit corporations;

(3) Indian tribes and organizations; and

(4) Area career and technical education or residential career and technical schools.

(b) Service Providers. Entities eligible to receive funds to provide outreach and admissions, career transition services and other operational support services are local or other entities with the necessary capacity to provide activities described in this part to a Job Corps center, including:

(1) Applicable one-stop centers and partners;

(2) Organizations that have a demonstrated record of effectiveness in serving at-risk youth and placing them into employment, including community action agencies; business organizations, including private for-profit and non-profit corporations; and labor organizations; and

(3) Child welfare agencies that are responsible for children and youth eligible for benefits and services under sec. 477 of the Social Security Act (42 U.S.C. 677).

§ 686.310 How are entities selected to receive funding to operate centers?

(a) The Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, ETA issues requests for proposals (RFPs) for the operation of all contract centers according to the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Labor Acquisition Regulation (48 CFR chapter 29). ETA develops RFPs for center operators in consultation with the Governor, the center workforce council (if established), and the Local WDB for the workforce development area in which the center is located.

(b) The RFP for each contract center describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center.

(c) The Contracting Officer selects and funds Job Corps contract center operators on the basis of an evaluation of the proposals received using criteria established by the Secretary, and set forth in the RFP. The criteria include the following:

(1) The offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans;

(2) The offeror’s ability to offer career technical training that has been proposed by the workforce council and the degree to which the training reflects employment opportunities in the local areas in which most of the enrollees intend to seek employment;

(3) The degree to which the offeror demonstrates relationships with the surrounding communities, including employers, labor organizations, State WDBs, Local WDBs, applicable one-stop centers, and the State and region in which the center is located; and

(4) The offeror's past performance, if any, relating to operating or providing activities to a Job Corps center, including information regarding the offeror in any reports developed by the Office of the Inspector General of the Department of Labor and the offeror’s demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010.

(5) The offeror’s ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce, including providing them with intensive academics and career technical training.

(d) In order to be eligible to operate a Job Corps center, the offeror also must submit the following information at such time and in such manner as required by the Secretary:

(1) A description of the program activities that will be offered at the center and how the academics and career technical training reflect State and local employment opportunities, including opportunities in in-demand industry sectors and occupations recommended by the workforce council;

(2) A description of the counseling, career transition, and support activities that will be offered at the center, including a description of the strategies and procedures the offeror will use to place graduates into unsubsidized employment or education leading to a recognized postsecondary credential upon completion of the program;

(3) A description of the offeror's demonstrated record of effectiveness in placing at-risk youth into employment and postsecondary education, including past performance of operating a Job Corps center and as appropriate, the entity's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010;

(4) A description of the relationships that the offeror has developed with State WDBs, Local WDBs, applicable one-stop centers, employers, labor organizations, State and local educational agencies, and the surrounding communities in which the center is located;

(5) A description of the offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State Plan and local plans;

(6) A description of the strong fiscal controls the offeror has in place to ensure proper accounting of Federal funds and compliance with the Financial Management Information System established by the Secretary under sec. 159(a) of WIOA;

(7) A description of the steps to be taken to control costs in accordance with the Financial Management Information System established by the Secretary;

(8) A detailed budget of the activities that will be supported using Federal funds provided under this part and non-Federal resources;

(9) An assurance the offeror is licensed to operate in the State in which the center is located;

(10) An assurance that the offeror will comply with basic health and safety codes, including required disciplinary measures and Job Corps' Zero Tolerance Policy; and

(11) Any other information on additional selection factors required by the Secretary.

§ 686.320 What if a current center operator is deemed to be an operator of a high-performing center?

(a) If an offeror meets the requirements as an operator of a high-performing center as applied to a particular Job Corps center, that operator will be allowed to compete in any competitive selection process carried out for an award to operate that center.

(b) An offeror is considered to be an operator of a high-performing center if the Job Corps center operated by the offeror:

(1) Is ranked among the top 20 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(2) Meets the expected levels of performance established under § 686.1050 with respect to each of the primary indicators of performance for Job Corps centers:

(i) For the period of the most recent preceding 3 program years for which information is available at the time the determination is made, achieved an average of 100 percent, or higher, of the expected level of performance for the indicator; and

(ii) For the most recent preceding program year for which information is available at the time the determination is made, achieved 100 percent, or higher, of the expected level of performance established for the indicator.

(c) If any of the program years described in paragraphs (b)(2)(i) and (ii) of this section precedes the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers identified in § 686.1010, an entity is considered an operator of a high-performing center during that period if the Job Corps center operated by the entity:

(1) Meets the requirements of paragraph (b)(2) of this section with respect to such preceding program years using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system for –

(i) The 6-month follow-up placement rate of graduates in employment, the military, education, or training;

(ii) The 12-month follow-up placement rate of graduates in employment, the military, education, or training;

(iii) The 6-month follow-up average weekly earnings of graduates;

(iv) The rate of attainment of secondary school diplomas or their recognized equivalent;

(v) The rate of attainment of completion certificates for career technical training;

(vi) Average literacy gains; and

(vii) Average numeracy gains; or

(2) Is ranked among the top five percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060.

§ 686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?

(a) Agreements are for not more than a 2-year period. The Secretary may exercise any contractual option to renew the agreement in 1-year increments for not more than 3 additional years.

(b) The Secretary will establish procedures for evaluating the option to renew an agreement that includes: an assessment of the factors described in paragraph (c) of this section; a review of contract performance and financial reporting compliance; a review of the program management and performance data described in §§ 686.1000 and 686.1010; an assessment of whether the center is on a performance improvement plan as described § 686.1070 and if so, whether the center is making measureable progress in completing the actions described in the plan; and an evaluation of the factors described in paragraph (d) of this section.

(c) The Secretary only will renew the agreement of an entity to operate a Job Corps center if the entity:

(1) Has a satisfactory record of integrity and business ethics;

(2) Has adequate financial resources to perform the agreement;

(3) Has the necessary organization, experience, accounting and operational controls, and technical skills; and

(4) Is otherwise qualified and eligible under applicable laws and regulations, including that the contractor is not under suspension or debarred from eligibility for Federal contractors.

(d) The Secretary will not renew an agreement for an entity to operate a Job Corps center for any additional 1-year period if, for both of the 2 most recent preceding program years for

which information is available at the time the determination is made, or if a second program year is not available, the preceding year for which information is available, such center:

(1) Has been ranked in the lowest 10 percent of Job Corps centers according to the rankings calculated under § 686.1060; and

(2) Failed to achieve an average of 50 percent or higher of the expected level of performance established under § 686.1050 with respect to each of the primary indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010.

(e) Information Availability:

(1) Information will be considered to be available for a program year for purposes of paragraph (d) of this section if for each of the primary indicators of performance, all of the students included in the cohort being measured either began their participation under the current center operator or, if they began their participation under the previous center operator, were on center for at least 6 months under the current operator. If an operator assumes operation of a center that meets the criteria under paragraphs (d)(1) and (2) of this section, the first contractual option year will not be denied based on the application of paragraph (d) of this section provided that the operator otherwise meets the requirements for renewal described in paragraphs (a) through (c) of this section.

(2) If complete information for any of the indicators of performance described in paragraph (d)(2) of this section is not available for either of the 2 program years described in paragraph (d) of this section, the Secretary will review partial program year data from the most recent program year for those indicators, if at least two quarters of data are available, when making the determination required under paragraph (d)(2) of this section.

(f) If any of the program years described in paragraph (d) of this section precede the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers described in § 686.1010, the evaluation described in paragraph (d) of this section will be based on whether in its operation of the center the entity:

(1) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the ranking calculated under § 686.1060; and

(2) Meets the requirement of paragraph (d)(2) of this section with respect to such preceding program years using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system for –

(i) The 6-month follow-up placement rate of graduates in employment, the military, education, or training;

(ii) The 12-month follow-up placement rate of graduates in employment, the military, education, or training;

(iii) The 6-month follow-up average weekly earnings of graduates;

(iv) The rate of attainment of secondary school diplomas or their recognized equivalent;

(v) The rate of attainment of completion certificates for career technical training;

(vi) Average literacy gains; and

(vii) Average numeracy gains.

(g) Exception – the Secretary can exercise an option to renew the agreement with an entity notwithstanding the requirements in paragraph (d) of this section for no more than 2

additional years if the Secretary determines that a renewal would be in the best interest of the Job Corps program, taking into account factors including:

(1) Significant improvements in program performance in carrying out a performance improvement plan;

(2) That the performance is due to circumstances beyond the control of the entity, such as an emergency or disaster;

(3) A significant disruption in the operations of the center, including in the ability to continue to provide services to students, or significant increase in the cost of such operations; or

(4) A significant disruption in the procurement process with respect to carrying out a competition for the selection of a center operator.

(h) If the Secretary does make an exception and exercises the option to renew per paragraph (g) of this section, the Secretary will provide a detailed explanation of the rationale for exercising the option to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

§ 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?

(a) The Secretary selects eligible entities to provide outreach and admission, career transition, and operational services on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, ETA issues requests for proposals (RFP) for operational support services according to the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Labor Acquisition Regulation (48 CFR chapter 29). ETA develops RFPs for operational support services in consultation with the Governor, the center workforce council (if

established), and the Local WDB for the workforce development area in which the center is located.

(b) The RFP for each support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the specific required operational support services.

(c) The Contracting Officer selects and funds operational support service contracts on the basis of an evaluation of the proposals received using criteria established by the Secretary and set forth in the RFP. The criteria may include the following, as applicable:

(1) The ability of the offeror to coordinate the activities carried out in relation to the Job Corps center with related activities carried out under the appropriate State Plan and local plans;

(2) The ability of the entity to offer career technical training that has been proposed by the workforce council and the degree to which the training reflects employment opportunities in the local areas in which most of the students intend to seek employment;

(3) The degree to which the offeror demonstrates relationships with the surrounding communities, including employers, labor organizations, State WDBs, Local WDBs, applicable one-stop centers, and the State and region in which the services are provided;

(4) The offeror's past performance, if any, relating to providing services to a Job Corps center, including information regarding the offeror in any reports developed by the Office of the Inspector General of the Department of Labor and the offeror's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010;

(5) The offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce; and

(6) Any other information on additional selection factors required by the Secretary.

§ 686.350 What conditions apply to the operation of a Civilian Conservation Center?

(a) The Secretary of Labor may enter into an agreement with the Secretary of Agriculture to operate Job Corps centers located on public land, which are called Civilian Conservation Centers (CCCs). Located primarily in rural areas, in addition to academics, career technical training, and workforce preparation skills training, CCCs provide programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

(b) When the Secretary of Labor enters into an agreement with the Secretary of Agriculture for the funding, establishment, and operation of CCCs, provisions are included to ensure that the Department of Agriculture complies with the regulations under this part.

(c) Enrollees in CCCs may provide assistance in addressing national, State, and local disasters, consistent with current child labor laws. The Secretary of Agriculture must ensure that enrollees are properly trained, equipped, supervised, and dispatched consistent with the standards for the conservation and rehabilitation of wildlife established under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

(d) The Secretary of Agriculture must designate a Job Corps National Liaison to support the agreement between the Departments of Labor and Agriculture to operate CCCs.

(e) The Secretary of Labor, in consultation with the Secretary of Agriculture, may select an entity to operate a CCC in accordance with the requirements of § 686.310 if the Secretary of Labor determines appropriate.

(f) The Secretary of Labor has the discretion to close CCCs if the Secretary determines appropriate.

§ 686.360 What are the requirements for award of contracts and payments to Federal agencies?

(a) The requirements of the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; the Federal Acquisition Regulation (48 CFR chapter 1); and the Department of Labor Acquisition Regulation (48 CFR chapter 29) apply to the award of contracts and to payments to Federal agencies.

(b) Job Corps funding of Federal agencies that operate CCCs are made by a transfer of obligational authority from the Department to the respective operating agency.

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

§ 686.400 Who is eligible to participate in the Job Corps program?

(a) To be eligible to participate in the Job Corps, an individual must be:

(1) At least 16 and not more than 24 years of age at the time of enrollment, except that:

(i) The Job Corps Director may waive the maximum age limitation described in paragraph (a)(1) of this section, and the requirement in paragraph (a)(1)(ii) of this section for an individual with a disability if he or she is otherwise eligible according to the requirements listed in §§ 686.400 and 686.410; and

(ii) Not more than 20 percent of individuals enrolled nationwide may be individuals who are aged 22 to 24 years old;

(2) A low-income individual;

(3) An individual who is facing one or more of the following barriers to education and employment:

(i) Is basic skills deficient, as defined in WIOA sec. 3;

(ii) Is a school dropout;

(iii) Is homeless as defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)); is a homeless child or youth, as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)); or is a runaway, an individual in foster care; or an individual who was in foster care and has aged out of the foster care system.

(iv) Is a parent; or

(v) Requires additional education, career technical training, or workforce preparation skills in order to obtain and retain employment that leads to economic self-sufficiency; and

(4) Meets the requirements of § 686.420, if applicable.

(b) Notwithstanding paragraph (a)(2) of this section, a veteran is eligible to become an enrollee if the individual:

(1) Meets the requirements of paragraphs (a)(1) and (3) of this section; and

(2) Does not meet the requirement of paragraph (a)(2) of this section because the military income earned by the individual within the 6-month period prior to the individual's application for Job Corps prevents the individual from meeting that requirement.

§ 686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

Yes, in accordance with procedures issued by the Secretary, an eligible applicant may be selected for enrollment only if:

(a) A determination is made, based on information relating to the background, needs, and interests of the applicant, that the applicant's educational and career and technical needs can best be met through the Job Corps program;

(b) A determination is made that there is a reasonable expectation the applicant can participate successfully in group situations and activities, and is not likely to engage in actions that would potentially:

(1) Prevent other students from receiving the benefit of the program;

(2) Be incompatible with the maintenance of sound discipline; or

(3) Impede satisfactory relationships between the center to which the student is assigned and surrounding local communities.

(c) The applicant is made aware of the center's rules, what the consequences are for failure to observe the rules, and agrees to comply with such rules, as described in procedures issued by the Secretary;

(d) The applicant has not been convicted of a felony consisting of murder, child abuse, or a crime involving rape or sexual assault. Other than these felony convictions, no one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system. All applicants must submit to a background check conducted according to procedures established by the Secretary and in accordance with applicable State and local laws. If the background check finds that the applicant is on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, the court or appropriate supervising agency may certify in writing that it will approve of the applicant's participation in Job Corps, and provide full release from its supervision, and that the applicant's participation and release does not violate applicable laws and regulations; and

(e) Suitable arrangements are made for the care of any dependent children for the proposed period of enrollment.

§ 686.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

(a) Yes, each male applicant 18 years of age or older must present evidence that he has complied with sec. 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) if required; and

(b) When a male student turns 18 years of age, he must submit evidence to the center that he has complied with the requirements of the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

§ 686.430 What entities conduct outreach and admissions activities for the Job Corps program?

The Secretary makes arrangements with outreach and admissions providers to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. Entities eligible to receive funds to provide outreach and admissions services are identified in § 686.300.

§ 686.440 What are the responsibilities of outreach and admissions providers?

(a) Outreach and admissions agencies are responsible for:

(1) Developing outreach and referral sources;

(2) Actively seeking out potential applicants;

(3) Conducting personal interviews with all applicants to identify their needs and eligibility status; and

(4) Identifying youth who are interested and likely Job Corps participants.

(b) Outreach and admissions providers are responsible for completing all Job Corps application forms and determining whether applicants meet the eligibility and selection criteria for participation in Job Corps as provided in §§ 686.400 and 686.410.

(c) The Secretary may decide that determinations with regard to one or more of the eligibility criteria will be made by the National Director or his or her designee.

§ 686.450 How are applicants who meet eligibility and selection criteria assigned to centers?

(a) Each applicant who meets the application and selection requirements of §§ 686.400 and 686.410 is assigned to a center based on an assignment plan developed by the Secretary in consultation with the operators of Job Corps centers. The assignment plan identifies a target for the maximum percentage of students at each center who come from the State or region nearest the center, and the regions surrounding the center. The assignment plan is based on an analysis of the following non-exclusive list of factors that will be analyzed in consultation with center operators:

(1) The number of eligible individuals in the State and region where the center is located and the regions surrounding where the center is located;

(2) The demand for enrollment in Job Corps in the State and region where the center is located and in surrounding regions;

(3) The size and enrollment level of the center, including the education, training, and supportive services provided through the center; and

(4) The performance of the Job Corps center relating to the expected levels of performance for indicators described in WIOA sec. 159(c)(1), and whether any actions have been taken with respect to the center under secs. 159(f)(2) and 159(f)(3) of WIOA.

(b) Eligible applicants are assigned to the center that offers the type of career technical training selected by the individual, and among the centers that offer such career technical training, is closest to the home of the individual. The Secretary may waive this requirement if:

(1) The enrollee would be unduly delayed in participating in the Job Corps program because the closest center is operating at full capacity; or

(2) The parent or guardian of the enrollee requests assignment of the enrollee to another Job Corps center due to circumstances in the community that would impair prospects for successful completion by the enrollee.

(c) If a parent or guardian objects to the assignment of a student under the age of 18 to a center other than the center closest to home that offers the desired career technical training, the Secretary must not make such an assignment.

§ 686.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

No more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

§ 686.470 May an individual who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

(a) A person who is determined to be ineligible to participate in Job Corps under § 686.400 or a person who is not selected for enrollment under § 686.410 may appeal the determination to the outreach and admissions agency within 60 days of the determination. The appeal will be resolved according to the procedures in §§ 686.960 and 686.965. If the appeal is denied by the outreach/admissions contractor or the center, the person may appeal the decision in writing to the Regional Director within 60 days of the date of the denial. The Regional Director

will decide within 60 days whether to reverse or approve the appealed decision. The decision by the Regional Director is the Department's final decision.

(b) If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by sec. 188 of WIOA, the individual may proceed under the applicable Department nondiscrimination regulations implementing WIOA sec. 188 at 29 CFR part 38.

(c) An applicant who is determined to be ineligible or a person who is denied enrollment must be referred to the appropriate one-stop center or other local service provider.

§ 686.480 At what point is an applicant considered to be enrolled in Job Corps?

(a) To be considered enrolled as a Job Corps student, an applicant selected for enrollment must physically arrive at the assigned Job Corps center on the appointed date. However, applicants selected for enrollment who arrive at their assigned centers by government furnished transportation are considered to be enrolled on their dates of departure by such transportation.

(b) Center operators must document the enrollment of new students according to procedures issued by the Secretary.

§ 686.490 How long may a student be enrolled in Job Corps?

(a) Except as provided in paragraph (b) of this section, a student may remain enrolled in Job Corps for no more than 2 years.

(b)(1) An extension of a student's enrollment may be authorized in special cases according to procedures issued by the Secretary;

(2) A student's enrollment in an advanced career training program may be extended in order to complete the program for a period not to exceed 1 year;

(3) An extension of a student's enrollment may be authorized in the case of a student with a disability who would reasonably be expected to meet the standards for a Job Corps graduate if allowed to participate in the Job Corps for not more than 1 additional year; and

(4) An enrollment extension may be granted to a student who participates in national service, as authorized by a Civilian Conservation Center, for the amount of time equal to the period of national service.

Subpart E—Program Activities and Center Operations

§ 686.500 What services must Job Corps centers provide?

(a) Job Corps centers must provide an intensive, well-organized, and fully supervised program including:

(1) Educational activities, including:

(i) Career technical training;

(ii) Academic instruction;

(iii) Employability and skills training; and

(iv) Independent learning and living skills development.

(2) Work-based learning and experience;

(3) Residential support services; and

(4) Other services as required by the Secretary.

(b) In addition, centers must provide students with access to the career services described in secs. 134(c)(2)(A)(i)-(xi) of WIOA.

§ 686.505 What types of training must Job Corps centers provide?

(a) Job Corps centers must provide students with a career technical training program that is:

(1) Aligned with industry-recognized standards and credentials and with program guidance; and

(2) Linked to employment opportunities in in-demand industry sectors and occupations both in the area in which the center is located and, if practicable, in the area the student plans to reside after graduation.

(b) Each center must provide education programs, including: an English language acquisition program, high school diploma or high school equivalency certification program, and academic skills training necessary for students to master skills in their chosen career technical training programs.

(c) Each center must provide programs for students to learn and practice employability and independent learning and living skills including: job search and career development, interpersonal relations, driver's education, study and critical thinking skills, financial literacy and other skills specified in program guidance.

(d) All Job Corps training programs must be based on industry and academic skills standards leading to recognized industry and academic credentials, applying evidence-based instructional approaches, and resulting in:

(1) Students' employment in unsubsidized, in-demand jobs with the potential for advancement opportunities;

(2) Enrollment in advanced education and training programs or apprenticeships, including registered apprenticeship; or

(3) Enlistment in the Armed Services.

(e) Specific career technical training programs offered by individual centers must be approved by the Regional Director according to policies issued by the Secretary.

(f) Center workforce councils described in § 686.810 must review appropriate labor market information, identify in-demand industry sectors and employment opportunities in local areas where students will look for employment, determine the skills and education necessary for those jobs, and as appropriate, recommend changes in the center's career technical training program to the Secretary.

(g) Each center must implement a system to evaluate and track the progress and achievements of each student at regular intervals.

(h) Each center must develop a training plan that must be available for review and approval by the appropriate Regional Director.

§ 686.510 Are entities other than Job Corps center operators permitted to provide academic and career technical training?

(a) The Secretary may arrange for the career technical and academic education of Job Corps students through local public or private educational agencies, career and technical educational institutions or technical institutes, or other providers such as business, union or union-affiliated organizations with demonstrated effectiveness, as long as the entity can provide education and training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

(b) Entities providing these services will be selected in accordance with the requirements of § 686.310.

§ 686.515 What are advanced career training programs?

(a) The Secretary may arrange for programs of advanced career training (ACT) for selected students, which may be provided through the eligible training providers identified in WIOA sec. 122 in which the students continue to participate in the Job Corps program for a period not to exceed 1 year in addition to the period of participation to which these students would otherwise be limited.

(b) Students participating in an ACT program are eligible to receive:

(1) All of the benefits provided to a residential Job corps student; or

(2) A monthly stipend equal to the average value of the benefits described in paragraph (b)(1) of this section.

(c) Any operator may enroll more students than otherwise authorized by the Secretary in an ACT program if, in accordance with standards developed by the Secretary, the operator demonstrates:

(1) Participants in such a program have achieved a satisfactory rate of completion and placement in training-related jobs; and

(2) For the most recently preceding 2 program years, the operator has, on average, met or exceeded the expected levels of performance under WIOA sec. 159(c)(1) for each of the primary indicators described in WIOA sec. 116(b)(2)(A)(ii), listed in § 686.1010.

§ 686.520 What responsibilities do the center operators have in managing work-based learning?

(a) The center operator must emphasize and implement work-based learning programs for students through center program activities, including career and technical skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of

the students. Work-based learning usually occurs in tandem with students' career technical training.

(b) The center operator must ensure that students are assigned only to workplaces that meet the safety standards described in § 686.920.

§ 686.525 Are students permitted to hold jobs other than work-based learning opportunities?

Yes, a center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled activities.

§ 686.530 What residential support services must Job Corps center operators provide?

Job Corps center operators must provide the following services according to procedures issued by the Secretary:

(a) A center-wide quality living and learning environment that supports the overall training program and includes a safe, secure, clean and attractive physical and social environment, 7 days a week, 24 hours a day;

(b) An ongoing, structured personal counseling program for students provided by qualified staff;

(c) A quality, safe and clean food service, to provide nutritious meals for students;

(d) Medical services, through provision or coordination of a wellness program which includes access to basic medical, dental and mental health services, as described in the Policy and Requirements Handbook, for all students from the date of enrollment until separation from the Job Corps program;

(e) A recreation/avocational program that meets the needs of all students;

(f) A student leadership program and an elected student government; and

(g) A student welfare association for the benefit of all students that is funded by non-appropriated funds that come from sources such as snack bars, vending machines, disciplinary fines, donations, and other fundraising activities, and is run by an elected student government, with the help of a staff advisor.

§ 686.535 Are Job Corps centers required to maintain a student accountability system?

Yes, each Job Corps center must establish and implement an effective system to account for and document the daily whereabouts, participation, and status of students during their Job Corps enrollment. The system must enable center staff to detect and respond to instances of unauthorized or unexplained student absence. Each center must operate its student accountability system according to requirements and procedures issued by the Secretary.

§ 686.540 Are Job Corps centers required to establish behavior management systems?

(a) Yes, each Job Corps center must establish and maintain its own student incentives system to encourage and reward students' accomplishments.

(b) The Job Corps center must establish and maintain a behavior management system, based on a behavior management plan, according to standards of conduct and procedures established by the Secretary. The behavior management plan must be approved by the Job Corps regional office and reviewed annually. The behavior management system must include a zero tolerance policy for violence and drugs as described in § 686.545. All criminal incidents will be promptly reported to local law enforcement.

§ 686.545 What is Job Corps' zero tolerance policy?

(a) All center operators must comply with Job Corps' zero tolerance policy as established by the Secretary. Job Corps has a zero tolerance policy for infractions including but not limited to:

(1) Acts of violence, as defined by the Secretary;

(2) Use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802;

(3) Abuse of alcohol;

(4) Possession of unauthorized goods; or

(5) Other illegal or disruptive activity.

(b) As part of this policy, all students must be tested for drugs as a condition of participation.

(c) The zero tolerance policy specifies the offenses that result in the separation of students from the Job Corps. The center director is expressly responsible for determining when there is a violation of this policy.

§ 686.550 How does Job Corps ensure that students receive due process in disciplinary actions?

The center operator must ensure that all students receive due process in disciplinary proceedings according to procedures developed by the Secretary. These procedures must include center fact-finding and behavior review boards, a code of sanctions under which the penalty of separation from Job Corps might be imposed, and procedures for students to submit an appeal to a Job Corps regional appeal board following a center's decision to discharge involuntarily the student from Job Corps.

§ 686.555 What responsibilities do Job Corps centers have in assisting students with child care needs?

(a) Job Corps centers are responsible for coordinating with outreach and admissions agencies to assist applicants, whenever feasible, with making arrangements for child care. Prior to enrollment, a program applicant with dependent children who provides primary or custodial

care must certify that suitable arrangements for child care have been established for the proposed period of enrollment.

(b) Child development programs may be located at Job Corps centers with the approval of the Secretary.

§ 686.560 What are the center's responsibilities in ensuring that students' religious rights are respected?

(a) Centers must ensure that a student has the right to worship or not worship as he or she chooses.

(b) Students who believe their religious rights have been violated may file complaints under the procedures set forth in 29 CFR part 38.

(c) Requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries, are found at subpart D of 29 CFR part 2. See also §§ 683.255 and 683.285 of this chapter; 29 CFR part 38.

§ 686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Yes, the Secretary may undertake experimental, research and demonstration projects related to the Job Corps program according to WIOA sec. 156(a), provided that such projects are developed, approved, and conducted in accordance with policies and procedures developed by the Secretary.

Subpart F—Student Support

§ 686.600 Are students provided with government-paid transportation to and from Job Corps centers?

Yes, Job Corps provides for the transportation of students between their homes and centers as described in policies and procedures issued by the Secretary.

§ 686.610 When are students authorized to take leaves of absence from their Job Corps centers?

(a) Job Corps students are eligible for annual leaves, emergency leaves and other types of leaves of absence from their assigned centers according to criteria and requirements issued by the Secretary. Additionally, enrollees in Civilian Conservation Centers may take leave to provide assistance in addressing national, State, and local disasters, consistent with current laws and regulations, including child labor laws and regulations.

(b) Center operators and other service providers must account for student leave according to procedures issued by the Secretary.

§ 686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

(a) Yes, according to criteria and rates established by the Secretary, Job Corps students receive cash living allowances, performance bonuses, and allotments for care of dependents. Graduates receive post-separation transition allowances according to § 686.750.

(b) In the event of a student's death, any amount due under this section is paid according to the provisions of 5 U.S.C. 5582 governing issues such as designation of beneficiary, order of precedence, and related matters.

§ 686.630 Are student allowances subject to Federal payroll taxes?

Yes, Job Corps student allowances are subject to Federal payroll tax withholding and social security taxes. Job Corps students are considered to be Federal employees for purposes of

Federal payroll taxes.

§ 686.640 Are students provided with clothing?

Yes, Job Corps students are provided cash clothing allowances and/or articles of clothing, including safety clothing, when needed for their participation in Job Corps and their successful entry into the work force. Center operators and other service providers must issue clothing and clothing assistance to students according to rates, criteria, and procedures issued by the Secretary.

Subpart G—Career Transition and Graduate Services

§ 686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?

Job Corps centers must assess and counsel students to determine their competencies, capabilities, and readiness for career transition services.

§ 686.710 What career transition services are provided for Job Corps enrollees?

Job Corps career transition services focus on placing program graduates in:

(a) Full-time jobs that are related to their career technical training and career pathway that lead to economic self-sufficiency;

(b) Postsecondary education;

(c) Advanced training programs, including registered apprenticeship programs; or

(d) The Armed Forces.

§ 686.720 Who provides career transition services?

The one-stop delivery system must be used to the maximum extent practicable in placing graduates and former enrollees in jobs. Multiple other resources also may provide post-program

services, including but not limited to Job Corps career transition service providers under a contract or other agreement with the Department of Labor, and State vocational rehabilitation agencies for individuals with disabilities.

§ 686.730 What are the responsibilities of career transition service providers?

(a) Career transition service providers are responsible for:

(1) Contacting graduates;

(2) Assisting them in improving skills in resume preparation, interviewing techniques and job search strategies;

(3) Identifying job leads or educational and training opportunities through coordination with Local WDBs, one-stop operators and partners, employers, unions and industry organizations;

(4) Placing graduates in jobs, registered apprenticeship, the Armed Forces, or postsecondary education or training, or referring former students for additional services in their local communities as appropriate; and

(5) Providing placement services for former enrollees according to procedures issued by the Secretary.

(b) Career transition service providers must record and submit all Job Corps placement information according to procedures established by the Secretary.

§ 686.740 What services are provided for program graduates?

According to procedures issued by the Secretary, career transition and support services must be provided to program graduates for up to 12 months after graduation.

§ 686.750 Are graduates provided with transition allowances?

Yes, graduates receive post-separation transition allowances according to policies and procedures established by the Secretary. Transition allowances are incentive-based to reflect a graduate's attainment of academic credentials and those associated with career technical training such as industry-recognized credentials.

§ 686.760 What services are provided to former enrollees?

(a) Up to 3 months of employment services, including career services offered through a one-stop center, may be provided to former enrollees.

(b) According to procedures issued by the Secretary, other career transition services as determined appropriate may be provided to former enrollees.

Subpart H—Community Connections

§ 686.800 How do Job Corps centers and service providers become involved in their local communities?

(a) The director of each Job Corps center must ensure the establishment and development of mutually beneficial business and community relationships and networks. Establishing and developing networks includes relationships with:

(1) Local and distant employers;

(2) Applicable one-stop centers and Local WDBs:

(3) Entities offering apprenticeship opportunities, including registered apprenticeships, and youth programs;

(4) Labor-management organizations and local labor organizations;

(5) Employers and contractors that support national training programs and initiatives; and

(6) Community-based organizations, non-profit organizations, and intermediaries providing workforce development-related services.

(b) Each Job Corps center also must establish and develop relationships with members of the community in which it is located. Members of the community must be informed of the projects of the Job Corps center and changes in the rules, procedures, or activities of the center that may affect the community. Events of mutual interest to the community and the Job Corps center must be planned to create and maintain community relations and community support.

§ 686.810 What is the makeup of a workforce council and what are its responsibilities?

(a) Each Job Corps center must establish a workforce council, according to procedures established by the Secretary. The workforce council must include:

(1) Non-governmental and private sector employers;

(2) Representatives of labor organizations (where present) and of employees;

(3) Job Corps enrollees and graduates; and

(4) In the case of a single-State local area, the workforce council must include a representative of the State WDB constituted under § 679.110 of this chapter.

(b) A majority of the council members must be business owners, chief executives or chief operating officers of nongovernmental employers or other private sector employers, or their designees, who have substantial management, hiring or policy responsibility and who represent businesses with employment opportunities in the local area and the areas in which students will seek employment.

(c) The workforce council may include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

(d) The workforce council must:

(1) Work with all applicable Local WDBs and review labor market information to determine and provide recommendations to the Secretary regarding the center's career technical training offerings, including identification of emerging occupations suitable for training;

(2) Review all relevant labor market information, including related information in the State Plan or the local plan, to:

(i) Recommend in-demand industry sectors or occupations in the area in which the center operates;

(ii) Determine employment opportunities in the areas in which enrollees intend to seek employment;

(iii) Determine the skills and education necessary to obtain the identified employment; and

(iv) Recommend to the Secretary the type of career technical training that must be implemented at the center to enable enrollees to obtain the employment opportunities identified.

(3) Meet at least once every 6 months to reevaluate the labor market information, and other relevant information, to determine and recommend to the Secretary any necessary changes in the career technical training provided at the center.

§ 686.820 How will Job Corps coordinate with other agencies?

(a) The Secretary issues guidelines for the national office, regional offices, Job Corps centers and operational support providers to use in developing and maintaining cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training programs and agencies.

(b) The Secretary develops polices and requirements to ensure linkages with the one-stop delivery system to the greatest extent practicable, as well as with other Federal, State, and local programs, and youth programs funded under title I of WIOA. These linkages enhance services to youth who face multiple barriers to employment and must include, where appropriate:

(1) Referrals of applicants and students;

(2) Participant assessment;

(3) Pre-employment and work maturity skills training;

(4) Work-based learning;

(5) Job search, occupational, and basic skills training; and

(6) Provision of continued services for graduates.

(c) Job Corps is identified as a required one-stop partner. Wherever practicable, Job Corps centers and operational support contractors must establish cooperative relationships and partnerships with one-stop centers and other one-stop partners, Local WDBs, and other programs for youth.

Subpart I—Administrative and Management Provisions

§ 686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

Yes, students are considered Federal employees for purposes of the FTCA. (28 U.S.C. 2671 et seq.) Claims for such damage must be filed pursuant to the procedures found in 29 CFR part 15, subpart D.

§ 686.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?

Yes, the Job Corps may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D.

§ 686.910 If a student is injured in the performance of duty as a Job Corps student, what benefits may the student receive?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees' Compensation Act (FECA) as specified in sec. 157(a)(3) of WIOA. (29 U.S.C. 2897(a)(3))

(b) Job Corps students may be entitled to benefits under FECA as provided by 5 U.S.C. 8143 for injuries occurring in the performance of duty.

(c) Job Corps students must meet the same eligibility tests for FECA benefits that apply to all other Federal employees. The requirements for FECA benefits may be found at 5 U.S.C. 8101, et seq. and part 10 of this title. The Department of Labor's Office of Workers' Compensation Programs (OWCP) administers the FECA program; all FECA determinations are within the exclusive authority of the OWCP, subject to appeal to the Employees' Compensation Appeals Board.

(d) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures of the OWCP, at part 10 of this title, must be followed. To assist OWCP in determining FECA eligibility, a thorough investigation of the circumstances and a medical evaluation must be completed and required forms must be timely filed by the center operator with the Department's OWCP. Additional information regarding Job Corps FECA claims may be found in OWCP's regulations and procedures available on the Department's Web site located at https://www.dol.gov/.

§ 686.915 When is a Job Corps student considered to be in the performance of duty?

(a) Performance of duty is a determination that must be made by the OWCP under FECA, and is based on the individual circumstances in each claim.

(b) In general, residential students may be considered to be in the "performance of duty" when:

(1) They are on center under the supervision and control of Job Corps officials;

(2) They are engaged in any authorized Job Corps activity;

(3) They are in authorized travel status; or

(4) They are engaged in any authorized offsite activity.

(c) Non-resident students are generally considered to be "in performance of duty" as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

(d) Students are generally considered to be not in the performance of duty when:

(1) They are Absent Without Leave (AWOL);

(2) They are at home, whether on pass or on leave;

(3) They are engaged in an unauthorized offsite activity; or

(4) They are injured or ill due to their own willful misconduct, intent to cause injury or death to oneself or another, or through intoxication or illegal use of drugs.

§ 686.920 How are students protected from unsafe or unhealthy situations?

(a) The Secretary establishes procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. Whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State and local health and safety standards.

(b) The Secretary develops procedures to ensure compliance with applicable Department of Labor Occupational Safety and Health Administration regulations and Wage and Hour Division regulations.

§ 686.925 What are the requirements for criminal law enforcement jurisdiction on center property?

(a) All Job Corps property which would otherwise be under exclusive Federal legislative jurisdiction is considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement. Concurrent jurisdiction extends to all portions of the property, including housing and recreational facilities, in addition to the portions of the property used for education and training activities.

(b) Centers located on property under concurrent Federal-State jurisdiction must establish agreements with Federal, State and local law enforcement agencies to enforce criminal laws.

(c) The Secretary develops procedures to ensure that any searches of a student's person, personal area, or belongings for unauthorized goods follow applicable right-to-privacy laws.

§ 686.930 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

(a) A private for-profit or a non-profit Job Corps service provider is not liable, directly or indirectly, to any State or subdivision for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes in connection with any payments made to or by such service provider for operating a center or other Job Corps program or activity. The service provider is not liable to any State or subdivision to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity.

(b) If a State or local authority compels a center operator or other service provider to pay such taxes, the center operator or service provider may pay the taxes with Federal funds, but must document and report the State or local requirement according to procedures issued by the Secretary.

§ 686.935 What are the financial management responsibilities of Job Corps center operators and other service providers?

(a) Center operators and other service providers must manage Job Corps funds using financial management information systems that meet the specifications and requirements of the Secretary.

(b) These financial management systems must:

(1) Provide accurate, complete, and current disclosures of the costs of their Job Corps activities;

(2) Ensure that expenditures of funds are necessary, reasonable, allocable, and allowable in accordance with applicable cost principles;

(3) Use account structures specified by the Secretary;

(4) Ensure the ability to comply with cost reporting requirements and procedures issued by the Secretary; and

(5) Maintain sufficient cost data for effective planning, monitoring, and evaluation of program activities and for determining the allowability of reported costs.

§ 686.940 Are center operators and service providers subject to Federal audits?

(a) Yes, Center operators and service providers are subject to Federal audits.

(b) The Secretary arranges for the survey, audit, or evaluation of each Job Corps center and service provider at least once every 3 years, by Federal auditors or independent public accountants. The Secretary may arrange for more frequent audits.

(c) Center operators and other service providers are responsible for giving full cooperation and access to books, documents, papers and records to duly appointed Federal auditors and evaluators.

§ 686.945 What are the procedures for management of student records?

The Secretary issues guidelines for a system for maintaining records for each student during enrollment and for disposition of such records after separation.

§ 686.950 What procedures apply to disclosure of information about Job Corps students and program activities?

(a) The Secretary develops procedures to respond to requests for information or records or other necessary disclosures pertaining to students.

(b) Department disclosure of Job Corps information must be handled according to the Freedom of Information Act and according to Department regulations at 29 CFR part 70.

(c) Job Corps contractors are not "agencies" for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(d) The regulations at 29 CFR part 71 apply to a system of records covered by the Privacy Act of 1974 maintained by the Department or to a similar system maintained by a contractor, such as a screening agency, contract center operator, or career transition service provider on behalf of the Job Corps.

§ 686.955 What are the reporting requirements for center operators and operational support service providers?

The Secretary establishes procedures to ensure the timely and complete reporting of necessary financial and program information to maintain accountability. Center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide.

§ 686.960 What procedures are available to resolve complaints and disputes?

(a) Each Job Corps center operator and service provider must establish and maintain a grievance procedure for filing complaints and resolving disputes from applicants, students and/or other interested parties about its programs and activities. A hearing on each complaint or dispute must be conducted within 30 days of the filing of the complaint or dispute. A decision on the complaint must be made by the center operator or service provider, as appropriate, within 60 days after the filing of the complaint, and a copy of the decision must be immediately served, by first-class mail, on the complainant and any other party to the complaint. Except for complaints

under § 686.470 or complaints alleging fraud or other criminal activity, complaints may be filed within 1 year of the occurrence that led to the complaint.

(b) The procedure established under paragraph (a) of this section must include procedures to process complaints alleging violations of sec. 188 of WIOA, consistent with Department nondiscrimination regulations implementing sec. 188 of WIOA at 29 CFR part 38 and § 686.985.

§ 686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

(a) If a complaint is not resolved by the center operator or service provider in the time frames described in § 686.960, the person making the complaint may request that the Regional Director determine whether reasonable cause exists to believe that WIOA or regulations for this part of WIOA have been violated. The request must be filed with the Regional Director within 60 days from the date that the center operator or service provider should have issued the decision.

(b) Following the receipt of a request for review under paragraph (a) of this section, the Regional Director must determine within 60 days whether there has been a violation of WIOA or the WIOA regulations. If the Regional Director determines that there has been a violation of WIOA or WIOA regulations, (s)he may direct the operator or service provider to remedy the violation or direct the service provider to issue a decision to resolve the dispute according to the service provider's grievance procedures. If the service provider does not comply with the Regional Director's decision within 30 days, the Regional Director may impose a sanction on the center operator or service provider for violating WIOA or WIOA regulations, and/or for failing to issue a decision. Decisions imposing sanctions upon a center operator or service provider may

be appealed to the Department of Labor Office of Administrative Law Judges under § 683.800 or § 683.840 of this chapter.

§ 686.970 How does Job Corps ensure that centers or other service providers comply with the Workforce Innovation and Opportunity Act and the WIOA regulations?

(a) If the Department receives a complaint or has reason to believe that a center or other service provider is failing to comply with the requirements of WIOA or WIOA regulations, the Regional Director must investigate the allegation and determine within 90 days after receiving the complaint or otherwise learning of the alleged violation, whether such allegation or complaint is true.

(b) As a result of such a determination, the Regional Director may:

(1) Direct the center operator or service provider to handle a complaint through the grievance procedures established under § 686.960; or

(2) Investigate and determine whether the center operator or service provider is in compliance with WIOA and WIOA regulations. If the Regional Director determines that the center or service provider is not in compliance with WIOA or WIOA regulations, the Regional Director may take action to resolve the complaint under § 686.965(b), or will report the incident to the Department of Labor Office of the Inspector General, as described in § 683.620 of this chapter.

§ 686.975 How does Job Corps ensure that contract disputes will be resolved?

A dispute between the Department and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations.

§ 686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding the operation of Job Corps centers?

Disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding operating a center will be handled according to the interagency agreement between the two agencies.

§ 686.985 What Department of Labor equal opportunity and nondiscrimination regulations apply to Job Corps?

Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(a) Regulations implementing sec. 188 of WIOA for programs receiving Federal financial assistance under WIOA found at 29 CFR part 38;

(b) 29 CFR part 33 for programs conducted by the Department of Labor; and

(c) 41 CFR chapter 60 for entities that have a Federal government contract.

Subpart J—Performance

§ 686.1000 How is the performance of the Job Corps program assessed?

(a) The performance of the Job Corps program as a whole, and the performance of individual centers, outreach and admissions providers, and career transition service providers, is assessed in accordance with the regulations in this part and procedures and standards issued by the Secretary, through a national performance management system, including the Outcome Measurement System (OMS).

(b) The national performance management system will include measures that reflect the primary indicators of performance described in § 686.1010, the information needed to complete the Annual Report described in § 686.1040, and any other information the Secretary determines

is necessary to manage and evaluate the effectiveness of the Job Corps program. The Secretary will issue annual guidance describing the performance management system and outcome measurement system.

(c) Annual performance assessments based on the measures described in paragraph (b) of this section are done for each center operator and other service providers, including outreach and admissions providers and career transition providers.

§ 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

The primary indicators of performance for eligible youth are described in sec. 116(b)(2)(A)(ii) of WIOA. They are:

(a) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(b) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(c) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(d) The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program. Program participants who obtain a secondary school diploma or its recognized equivalent will be included in the percentage only if they also have obtained or retained employment, or are in an education or training program leading to a recognized postsecondary credential, within 1 year after exit from the program;

(e) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(f) The indicators of effectiveness in serving employers established by the Secretaries of Education and Labor, pursuant to sec. 116(b)(2)(A)(iv) of WIOA.

§ 686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?

The Secretary establishes performance indicators for outreach and admission service providers serving the Job Corps program. They include, but are not limited to:

(a) The number of enrollees recruited, compared to the established goals for such recruitment, and the number of enrollees who remain committed to the program for 90 days after enrollment;

(b) The percentage and number of former enrollees, including the number dismissed under the zero tolerance policy described in sec. 152(b) of WIOA and § 686.545;

(c) The maximum attainable percent of enrollees at the Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at the Job Corps center that reside in the State in which the center is located and in surrounding regions, as compared to the percentage targets established by the Secretary for the center for each of those measures;

(d) The cost per enrollee, calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year; and

(e) Additional indicators of performance, as necessary.

§ 686.1030 What are the indicators of performance for Job Corps career transition service providers?

The Secretary establishes performance indicators for career transition service providers serving the Job Corps program. These include, but are not limited to, the following:

(a) The primary indicators of performance for eligible youth in WIOA sec. 116(b)(2)(A)(ii), as listed in § 686.1010;

(b) The number of graduates who entered the Armed Forces;

(c) The number of graduates who entered registered apprenticeship programs;

(d) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program;

(e) The number of graduates who entered unsubsidized employment not related to the education and training received through the Job Corps program;

(f) The percentage and number of graduates who enter postsecondary education;

(g) The average wage of graduates who entered unsubsidized employment:

(1) On the first day of such employment, and

(2) On the day that is 6 months after such first day.

(h) Additional indicators of performance, as necessary.

§ 686.1040 What information will be collected for use in the Annual Report?

The Secretary will collect and submit in the Annual Report described in sec. 159(c)(4) of WIOA, which will include the following information on each Job Corps center, and the Job Corps program as a whole:

(a) Information on the performance, based on the performance indicators described § 686.1010, as compared to the expected level of performance established under § 686.1050 for each performance indicator;

(b) Information on the performance of outreach service providers and career transition service providers on the performance indicators established under §§ 686.1020 and 686.1030, as compared to the expected levels of performance established under § 686.1050 for each of those indicators;

(c) The number of enrollees served;

(d) Demographic information on the enrollees served, including age, race, gender, and education and income level;

(e) The number of graduates of a Job Corps center;

(f) The number of graduates who entered the Armed Forces;

(g) The number of graduates who entered registered apprenticeship programs;

(h) The number of graduates who received a regular secondary school diploma;

(i) The number of graduates who received a State recognized equivalent of a secondary school diploma;

(j) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program and the number who entered unsubsidized employment not related to the education and training received;

(k) The percentage and number of former enrollees, including the number dismissed under the zero tolerance policy described in § 686.545;

(l) The percentage and number of graduates who enter postsecondary education;

(m) The average wage of graduates who enter unsubsidized employment:

(1) On the first day of such employment; and

(2) On the day that is 6 months after such first day;

(n) The maximum attainable percent of enrollees at a Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at a Job Corps center that reside in the State in which the center is located and in surrounding regions, as compared to the percentage targets established by the Secretary for the center for each of those measures;

(o) The cost per enrollee, which is calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year;

(p) The cost per graduate, which is calculated by comparing the number of graduates of the center in a program year compared to the total budget for such center in the same program year;

(q) Information regarding the state of Job Corps buildings and facilities, including a review of requested construction, rehabilitation, and acquisition projects, by each Job Corps center, and a review of new facilities under construction;

(r) Available information regarding the national and community service activities of enrollees, particularly those enrollees at Civilian Conservation Centers; and

(s) Any additional information required by the Secretary.

§ 686.1050 How are the expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers established?

(a) The Secretary establishes expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers and the Job Corps

program relating to each of the primary indicators of performance described in §§ 686.1010, 686.1020, and 686.1030.

(b) As described in § 686.1000, the Secretary will issue annual guidance describing the national performance management system and outcomes measurement system, which will communicate the expected levels of performance for each primary indicator of performance for each center, and each indicator of performance for each outreach and admission provider, and for each career transition service provider. Such guidance also will describe how the expected levels of performance were calculated.

§ 686.1060 How are center rankings established?

(a) The Secretary calculates annual rankings of center performance based on the performance management system described in § 686.1000 as part of the annual performance assessment described in § 686.1000(c).

(b) The Secretary will issue annual guidance that communicates the methodology for calculating the performance rankings for the year.

§ 686.1070 How and when will the Secretary use Performance Improvement Plans?

(a) The Secretary establishes standards and procedures for developing and implementing performance improvement plans.

(1) The Secretary will develop and implement a performance improvement plan for a center when that center fails to meet the expected levels of performance described in § 686.1050,

(i) The Secretary will consider a center to have failed to meet the expected level of performance if the center:

(A) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(B) The center fails to achieve an average of 90 percent of the expected level of performance for all of the primary indicators.

(ii) For any program year that precedes the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers identified in § 686.1010, the Secretary will consider a center to have failed to meet the expected levels of performance if the center:

(A) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(B) The center's composite OMS score for the program year is 88 percent or less of the year's OMS national average.

(2) The Secretary also may develop and implement additional performance improvement plans, which will require improvements for a Job Corps center that fails to meet criteria established by the Secretary other than the expected levels of performance.

(b) A performance improvement plan will require action be taken to correct identified performance issues within 1 year of the implementation of the plan, and it will identify criteria that must be met for the center to complete the performance improvement plan.

(1) The center operator must implement the actions outlined in the performance improvement plan.

(2) If the center fails to take the steps outlined in the performance improvement plan or fails to meet the criteria established to complete the performance improvement plan after 1 year, the center will be considered to have failed to improve performance under a performance improvement plan detailed in paragraph (a) of this section.

(i) Such a center will remain on a performance improvement plan and the Secretary will take action as described in paragraph (c) of this section.

(ii) If a Civilian Conservation Center fails to meet expected levels of performance relating to the primary indicators of performance specified in § 686.1010, or fails to improve performance under a performance improvement plan detailed in paragraph (a) of this section after 3 program years, the Secretary, in consultation with the Secretary of Agriculture, must select an entity to operate the Civilian Conservation Center on a competitive basis, in accordance with the requirements of § 686.310.

(c) Under a performance improvement plan, the Secretary may take the following actions, as necessary:

(1) Providing technical assistance to the center;

(2) Changing the management staff of a center;

(3) Changing the career technical training offered at the center;

(4) Replacing the operator of the center;

(5) Reducing the capacity of the center;

(6) Relocating the center; or

(7) Closing the center in accordance with the criteria established under § 686.200(b).

14. Add part 687 to read as follows:

PART 687 – NATIONAL DISLOCATED WORKER GRANTS

Sec.
687.100 What are the types and purposes of National Dislocated Worker Grants under the Workforce Innovation and Opportunity Act?
687.110 What are major economic dislocations or other events which may qualify for a National Dislocated Worker Grant?
687.120 Who is eligible to apply for National Dislocated Worker Grants?

687.130 When must applications for National Dislocated Worker Grants be submitted to the Department?
687.140 What activities are applicants expected to conduct before a National Dislocated Worker Grant application is submitted?
687.150 What are the requirements for submitting applications for National Dislocated Worker Grants?
687.160 What is the timeframe for the Department to issue decisions on National Dislocated Worker Grant applications?
687.170 Who is eligible to be served under National Dislocated Worker Grants?
687.180 What are the allowable activities under National Dislocated Worker Grants?
687.190 How do statutory and regulatory waivers apply to National Dislocated Worker Grants?
687.200 What are the program and administrative requirements that apply to National Dislocated Worker Grants?

Authority: Secs. 170, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

§ 687.100 What are the types and purposes of National Dislocated Worker Grants under the Workforce Innovation and Opportunity Act?

There are two types and purposes of National Dislocated Worker Grants (DWGs) under sec. 170 of WIOA: Employment Recovery DWGs and Disaster Recovery DWGs.

(a) Employment Recovery DWGs provide employment and training activities for dislocated workers and other eligible populations. They are intended to expand service capacity temporarily at the State and local levels, by providing time-limited funding assistance in response to major economic dislocations or other events that affect the U.S. workforce that cannot be accommodated with WIOA formula funds or other relevant existing resources.

(b) Disaster Recovery DWGs allow for the creation of disaster relief employment to assist with clean-up and recovery efforts from emergencies or major disasters and the provision of employment and training activities, in accordance with § 687.180(b).

§ 687.110 What are major economic dislocations or other events which may qualify for a National Dislocated Worker Grant?

(a) Qualifying events for Employment Recovery DWGs include:

(1) Plant closures or mass layoffs affecting 50 or more workers from one employer in the same area;

(2) Closures and realignments of military installations;

(3) Plant closures or layoffs that have significantly increased the total number of unemployed individuals in a community;

(4) Situations where higher-than-average demand for employment and training activities for dislocated members of the Armed Forces, dislocated spouses of members of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)), or members of the Armed Forces described in § 687.170(a)(1)(iii), exceeds State and local resources for providing such activities; and

(5) Other events, as determined by the Secretary.

(b) Qualifying events for Disaster Recovery DWGs include:

(1) Emergencies or major disasters, as defined in paragraphs (1) and (2), respectively, of sec. 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) which have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA);

(2) An emergency or disaster situation of national significance, natural or man-made, that could result in a potentially large loss of employment, as declared or otherwise recognized and issued in writing by the chief official of a Federal Agency with jurisdiction over the Federal response to the emergency or disaster situation; and

(3) Situations where a substantial number of workers from a State, tribal area, or outlying area in which an emergency or disaster has occurred relocate to another State, tribal area, or outlying area.

§ 687.120 Who is eligible to apply for National Dislocated Worker Grants?

(a) For Employment Recovery DWGs, the following entities are eligible to apply:

(1) States or outlying areas, or a consortium of States;

(2) Local Workforce Development Boards (WDBs), or a consortium of WDBs;

(3) An entity described in sec. 166(c) of WIOA (relating to Indian and Native American programs);

(4) Other entities determined to be appropriate by the Governor of the State or outlying area involved; and

(5) Other entities that demonstrate to the Secretary the capability to respond effectively to circumstances relating to particular dislocations.

(b) For Disaster Recovery DWGs, the following entities are eligible to apply:

(1) States;

(2) Outlying areas; and

(3) Indian tribal governments as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(6)).

§ 687.130 When must applications for National Dislocated Worker Grants be submitted to the Department?

(a) Applications for Employment Recovery DWGs may be submitted at any time during the year and must be submitted to respond to eligible events as soon as possible when:

(1) The applicant receives a notification of a mass layoff or a closure as a result of a Worker Adjustment and Retraining Notification (WARN) Act notice, a general announcement, or some other means, or in the case of applications to address situations described in § 687.110(a)(4), when higher-than-average demand for employment and training activities for those members of the Armed Forces and military spouses exceeds State and local resources for providing such activities;

(2) Worker need and interest in services has been determined through Rapid Response, or other means, and is sufficient to justify the need for a DWG; and

(3) A determination has been made, in collaboration with the applicable local area, that State and local formula funds are inadequate to provide the level of services needed by the affected workers.

(b) Applications for Disaster Recovery DWGs to respond to an emergency or major disaster must be submitted as soon as possible when:

(1) As described in § 687.110(b)(1), FEMA has declared that the affected area is eligible for public assistance;

(2) A situation as described in § 687.110(b)(2) occurs. The applications must indicate the applicable Federal agency declaration, describe the impact on the local and/or State economy, and describe the proposed activities; or

(3) A situation as described in § 687.110(b)(3) occurs, and interest in services has been determined and is sufficient to justify the need for a DWG.

§ 687.140 What activities are applicants expected to conduct before a National Dislocated Worker Grant Application is submitted?

Prior to submitting an application for DWG funds, applicants must:

(a) For Employment Recovery DWGs:

(1) Collect information to identify the needs and interests of the affected workers through rapid response activities (described in § 682.330 of this chapter), or other means;

(2) Provide appropriate services to eligible workers including other rapid response activities, based on information gathered as described in paragraph (a)(1) of this section; and

(3) Coordinate with the Local WDB and chief elected official(s) of the local area(s) in which the proposed DWG project is to operate.

(b) For Disaster DWGs:

(1) Conduct a preliminary assessment of the clean-up and humanitarian needs of the affected areas;

(2) Reasonably ascertain that there is a sufficient population of eligible individuals to conduct the planned work; and

(3) Coordinate with the Local WDB and chief elected official(s) of the local area(s) in which the proposed project is to operate.

§ 687.150 What are the requirements for submitting applications for National Dislocated Worker Grants?

The Department will publish guidance on the requirements for submitting applications for DWGs. Requirements may vary depending on the DWG. A project implementation plan must be submitted after receiving the DWG award, unless otherwise specified.

§ 687.160 What is the timeframe for the Department to issue decisions on National Dislocated Worker Grant applications?

The Department will issue a final decision on a DWG application within 45 calendar days of receipt of an application that meets the requirements of this part. Applicants are encouraged

to review their DWG application submissions carefully and consult with the appropriate Employment and Training Administration Regional Office to ensure their applications meet the requirements established in this part and those that may be set forth in guidance.

§ 687.170 Who is eligible to be served under National Dislocated Worker Grants?

(a) For Employment Recovery DWGs:

(1) In order to receive employment and training activities, an individual must be:

(i) A dislocated worker within the meaning of sec. 3(15) of WIOA;

(ii) A person who is either:

(A) A civilian employee of the Department of Defense or the Department of Energy employed at a military installation that is being closed or will undergo realignment within 24 months after the date of determination of eligibility; or

(B) An individual employed in a non-managerial position with a Department of Defense contractor determined by the Secretary of Defense to be at risk of termination from employment as a result of reductions in defense expenditures and whose employer is converting from defense to non-defense applications in order to prevent worker layoffs; or

(iii) A member of the Armed Forces who:

(A) Was on active duty or full-time National Guard duty;

(B) Is involuntarily separated from active duty or full-time National Guard duty (as defined in 10 U.S.C. 1141), or is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under 10 U.S.C. 1174a, or the voluntary separation incentive program under 10 U.S.C. 1175;

(C) Is not entitled to retired or retained pay incident to the separation described in paragraph (a)(1)(iii)(B) of this section; and

(D) Applies for employment and training assistance under this part before the end of the 180-day period beginning on the date of the separation described in paragraph (a)(1)(iii)(B) of this section.

(iv) For Employment Recovery DWGs awarded for situations described in § 687.110(a)(4), a person who is:

(A) A dislocated member of the Armed Forces or member of the Armed Forces described in paragraph (a)(1)(iii) of this section; or

(B) The dislocated spouse of a member of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)).

(b) For Disaster Recovery DWGs:

(1) In order to be eligible to receive disaster relief employment under sec. 170(b)(1)(B)(i) of WIOA, an individual must be:

(i) A dislocated worker;

(ii) A long-term unemployed individual;

(iii) An individual who is temporarily or permanently laid off as a consequence of the emergency or disaster; or

(iv) An individual who is self-employed and becomes unemployed or significantly underemployed as a result of the emergency or disaster.

(2) In order to be eligible to receive employment and training activities and in rare instances, disaster relief employment under sec. 170(b)(1)(B)(ii) of WIOA, an individual must have relocated or evacuated from an area as a result of a disaster that has been declared or otherwise recognized, and be:

(i) A dislocated worker;

(ii) A long-term unemployed individual;

(iii) An individual who is temporarily or permanently laid off as a consequence of the emergency or disaster; or

(iv) An individual who is self-employed and becomes unemployed or significantly underemployed as a result of the emergency or disaster.

(c) For Disaster Recovery DWG funds, individuals described in paragraph (b)(2) of this section are eligible to receive services provided with DWG funds in the State, tribal area, or outlying area in which the disaster occurred or the State, tribal area, or outlying area to which they have relocated. In certain cases determined by the Secretary, individuals described in paragraph (b)(2) of this section are eligible to receive services in both the State, tribal area, or outlying area in which the disaster occurred and the State, tribal area, or outlying area to which they have relocated.

§ 687.180 What are the allowable activities under National Dislocated Worker Grants?

(a) For Employment Recovery DWGs:

(1) Employment and training assistance, including those activities authorized at secs. 134(c) through (d) and 170(b)(1) of WIOA. The services to be provided in a particular project are negotiated between the Department and the grantee, taking into account the needs of the target population covered by the grant, and may be changed through grant modifications, if necessary.

(2) DWGs may provide for supportive services, including needs-related payments (subject to the restrictions in sec. 134(d)(3) of WIOA, where applicable, and the terms and conditions of the grant) to help workers who require such assistance to participate in the activities provided for in the grant. Generally, the terms of a grant must be consistent with local

policies governing such financial assistance under its formula funds (including the payment levels and duration of payments). The terms of the grant agreement may diverge from established local policies, in the following instances:

(i) If unemployed dislocated workers served by the project are not able to meet the 13 or 8 weeks enrollment in training requirement established by sec. 134(d)(3)(B) of WIOA because of the lack of formula or DWG funds in the State or local area at the time of the dislocation, such individuals may be eligible for needs-related payments if they are enrolled in training by the end of the 6th week following the date of the DWG award; or

(ii) Under other circumstances as specified in guidance governing DWG application requirements.

(b) For Disaster DWGs: Funds provided under sec. 170(b)(1)(B) of WIOA can support a different array of activities, depending on the circumstances surrounding the situation for which the grant was awarded:

(1) For DWGs serving individuals in an emergency or disaster area declared eligible for public assistance by FEMA, disaster relief employment is authorized to support projects that provide food, clothing, shelter, and other humanitarian assistance for emergency and disaster victims, and projects regarding demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area and in offshore areas related to the emergency or disaster in coordination with the Administrator of FEMA. Employment and training activities also may be provided, as appropriate. An individual's disaster relief employment is limited to 12 months or less for work related to recovery from a single emergency or disaster. The Secretary may extend an individual's disaster

relief employment for up to an additional 12 months, if it is requested and sufficiently justified by an entity described in § 687.120(b).

(2) For DWGs serving individuals who have relocated from an emergency or disaster area, only employment and training activities will be authorized, except where disaster relief employment is appropriate.

(3) For DWGs awarded to States for events that have designations from Federal agencies (other than FEMA) that recognize an emergency or disaster situation as one of national significance that could result in a potentially large loss of employment, disaster relief employment and/or employment and training activities may be authorized, depending on the circumstances associated with the specific event.

(c) Disaster Recovery DWG funds may be expended through public and private agencies and organizations engaged in the activities described in this paragraph (b) of this section.

§ 687.190 How do statutory and regulatory waivers apply to National Dislocated Worker Grants?

(a) For DWGs, utilization of statutory or regulatory waivers is limited to waivers already approved by the Department under sec. 189(i) of WIOA, separate from the DWG process. WIOA sec. 189(i) gives the Department the authority to waive provisions under subtitles A, B, and/or E of WIOA; requirements of DWGs in WIOA subtitle D cannot and will not be waived.

(b) A grant application must include a description of the approved waiver and request that the waiver be applied to the DWG. The Department will consider such requests as part of the overall DWG application review and decision process; however, applicants may not use this process to request new waivers.

(c) If during the operation of a DWG, the grantee wishes to utilize a statutory or regulatory waiver that the Department has already approved under sec. 189(i), but it was not included in the grantee's original DWG application, the grantee must submit a grant modification that describes the waiver and requests application of the waiver to the DWG. Grantees may not use this process to request new waivers.

§ 687.200 What are the program and administrative requirements that apply to National Dislocated Worker Grants?

(a) Unless otherwise authorized in a DWG agreement, the financial and administrative rules contained in part 683 of this chapter apply to awards under this part.

(b) Exceptions include:

(1) Funds provided in response to a disaster may be used for temporary job creation in areas declared eligible for public assistance by FEMA, and, in some instances, areas impacted by an emergency or disaster situation of national significance, as provided in § 687.110(b)(2), and subject to the limitations of sec. 170(d) of WIOA, this part, and any guidance issued by the Department;

(2) Per sec. 170(d)(4) of WIOA, in extremely limited instances, as determined by the Secretary or the Secretary's designee, any Disaster Recovery DWG funds that are available for expenditure under any grant awarded under this part may be used for additional disasters or situations of national significance experienced by an entity described in § 687.120(b) in the same program year the funds were awarded;

(3) DWG funds may be used to pay an appropriate level of administrative costs based on the design and complexity of the project. The Department will negotiate administrative costs

with the applicant as part of the application review and grant award and modification processes. Administrative cost limits will be calculated against the amount of the grant awarded.

(4) The period of availability for expenditure of funds under a DWG is specified in the grant agreement;

(5) The Department may establish supplemental reporting, monitoring, and oversight requirements for DWGs. The requirements will be identified in the grant application instructions or the grant document; and

(6) The Department may negotiate and fund projects under terms other than those specified in this part where it can be clearly demonstrated that such adjustments will achieve a greater positive benefit for the workers and/or communities being assisted.

15. Add part 688 to read as follows:

PART 688 – PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

Subpart A—Purpose and Definitions

Sec.
688.100 What is YouthBuild?
688.110 What are the purposes of the YouthBuild program?
688.120 What definitions apply to this part?

Subpart B—Funding and Grant Applications

Sec.
688.200 How are YouthBuild grants funded and administered?
688.210 How does an eligible entity apply for grant funds to operate a YouthBuild program?
688.220 How are eligible entities selected to receive grant funds?
688.230 What are the minimum requirements to apply for YouthBuild funds?
688.240 How are eligible entities notified of approval for grant funds?

Subpart C—Program Requirements

Sec.

688.300 Who is an eligible participant?
688.310 Are there special rules that apply to veterans?
688.320 What eligible activities may be funded under the YouthBuild program?
688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?
688.340 What timeframes apply to participation?
688.350 What timeframes must be devoted to education and workforce investment or other activities?
688.360 What timeframes apply to follow-up services?
688.370 What are the requirements for exit from the YouthBuild program?
688.380 What is the role of the YouthBuild grantee in the one-stop delivery system?

Subpart D—Performance Indicators

Sec.
688.400 What are the performance indicators for YouthBuild grants?
688.410 What are the required levels of performance for the performance indicators?
688.420 What are the reporting requirements for YouthBuild grantees?
688.430 What are the due dates for quarterly reporting?

Subpart E—Administrative Rules, Costs, and Limitations

Sec.
688.500 What administrative regulations apply to the YouthBuild program?
688.510 How may grantees provide services under the YouthBuild program?
688.520 What cost limits apply to the use of YouthBuild program funds?
688.530 What are the cost-sharing or matching requirements of the YouthBuild program?
688.540 What are considered to be leveraged funds?
688.550 How are the costs associated with real property treated in the YouthBuild program?
688.560 What participant costs are allowable under the YouthBuild program?
688.570 Does the Department allow incentive payments in the YouthBuild program?
688.580 What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits?
688.590 What program income requirements apply under the YouthBuild program?
688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?
688.610 What are the recordkeeping requirements for YouthBuild programs?

Subpart F—Additional Requirements

Sec.
688.700 What are the safety requirements for the YouthBuild program?
688.710 What are the reporting requirements for youth safety?
688.720 What environmental protection laws apply to the YouthBuild program?
688.730 What requirements apply to YouthBuild housing?

Authority: Secs. 171, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purpose and Definitions

§ 688.100 What is YouthBuild?

(a) YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged and low-income youth between the ages of 16 and 24, most of whom are secondary school drop outs and are either a member of a low-income family, a foster care youth, a youth who is homeless, an offender, a youth with a disability, a child of an incarcerated parent, or a migrant youth.

(b) Program participants receive education services that may lead to either a high school diploma or its State-recognized equivalent. Further, they receive occupational skills training and are encouraged to pursue postsecondary education or additional training, including registered apprenticeship and pre-apprenticeship programs. The program is designed to create a skilled workforce either in the construction industry, through the rehabilitation and construction of housing for homeless and low-income individuals and families, as well as public facilities, or in other in-demand industries or occupations. The program also benefits the larger community because it provides increased access to affordable housing.

§ 688.110 What are the purposes of the YouthBuild program?

The overarching goal of the YouthBuild program is to provide disadvantaged and low-income youth the opportunity to obtain education and employment skills in local in-demand jobs to achieve economic self-sufficiency. Additionally, the YouthBuild program has as goals to:

(a) Enable disadvantaged youth to obtain the education and employment skills necessary to achieve economic self-sufficiency through employment in in-demand occupations and pursuit of postsecondary education and training opportunities;

(b) Provide disadvantaged youth with opportunities for meaningful work and service to their communities;

(c) Foster the development of employment and leadership skills and commitment to community development among youth in low-income communities;

(d) Expand the supply of permanent affordable housing for homeless individuals and families, homeless youth, and low-income families by utilizing the talents of disadvantaged youth. The program seeks to increase the number of affordable and transitional housing units available to decrease the rate of homelessness in communities with YouthBuild programs.

(e) Improve the quality and energy efficiency of community and other non-profit and public facilities, including those that are used to serve homeless and low-income families.

§ 688.120 What definitions apply to this part?

In addition to the definitions at sec. 3 of the Workforce Innovation and Opportunity Act (WIOA) and § 675.300 of this chapter, the following definitions apply:

Adjusted income means, with respect to a family, the amount (as determined by the Housing Development Agency) of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any income exclusions as follows:

(1) Mandatory exclusions. In determining adjusted income, a Housing Development Agency must exclude from the annual income of a family the following amounts:

(i) Elderly and disabled families. $400 for any elderly or disabled family.

(ii) Medical expenses. The amount by which three percent of the annual family income is exceeded by the sum of:

(A) Unreimbursed medical expenses of any elderly family or disabled family;

(B) Unreimbursed medical expenses of any family that is not covered under paragraph (1)(ii)(A) of this definition, except that this paragraph only applies to the extent approved in appropriation Acts; and

(C) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each handicapped member of the family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

(iii) Child care expenses. Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(iv) Minors, students, and persons with disabilities. $480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.

(v) Child support payments. Any payment made by a member of the family for the support and maintenance of any child who does not reside in the household, except that the amount excluded under this clause may not exceed $480 for each child for whom such payment is made; except that this clause only applies to the extent approved in appropriations Acts.

(vi) Spousal support expenses. Any payment made by a member of the family for the support and maintenance of any spouse or former spouse who does not reside in the household, except that the amount excluded under this clause must not exceed the lesser of the amount that such family member has a legal obligation to pay, or $550 for each individual for whom such payment is made; except that this clause only applies to the extent approved in appropriations Acts.

(vii) Earned income of minors. The amount of any earned income of a member of the family who is not:

(A) 18 years of age or older; and

(B) The head of the household (or the spouse of the head of the household).

(2) Permissive exclusions for public housing. In determining adjusted income, a Housing Development Agency may, at the discretion of the agency, establish exclusions from the annual income of a family residing in a public housing dwelling unit. Such exclusions may include the following amounts:

(i) Excessive travel expenses. Excessive travel expenses in an amount not to exceed $25 per family per week, for employment or education-related travel.

(ii) Earned income. An amount of any earned income of the family, established at the discretion of the Housing Development Agency, which may be based on:

(A) All earned income of the family,

(B) The amount earned by particular members of the family;

(C) The amount earned by families having certain characteristics; or

(D) The amount earned by families or members during certain periods or from certain sources.

(iii) Others. Such other amounts for other purposes, as the Housing Development Agency may establish.

Applicant means an eligible entity that has submitted an application under § 688.210.

Basic Skills Deficient means an individual:

(1) Who is a youth, and who has English reading, writing, or computing skills at or below the eighth grade level on a generally accepted standardized test; or

(2) Who is a youth or adult, and who is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.

Community or other public facility means those facilities which are either privately owned by non-profit organizations, including faith-based and community-based organizations, and publicly used for the benefit of the community, or publicly owned and publicly used for the benefit of the community.

Construction Plus means the inclusion of occupational skills training for YouthBuild participants in in-demand occupations other than construction.

Eligible entity means a public or private non-profit agency or organization (including a consortium of such agencies or organizations), including:

(1) A community-based organization;

(2) A faith-based organization;

(3) An entity carrying out activities under this title, such as a Local Workforce Development Board (WDB);

(4) A community action agency;

(5) A State or local Housing Development Agency;

(6) An Indian tribe or other agency primarily serving Indians;

(7) A community development corporation;

(8) A State or local youth service or conservation corps; and

(9) Any other entity eligible to provide education or employment training under a Federal program (other than the program carried out under this section).

English language learner, when used with respect to a participant, means an eligible individual who has limited ability in reading, writing, speaking, or comprehending the English language, and:

(1) Whose native language is a language other than English; or

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

Exit, as used in § 688.400, has the same meaning as in § 677.150(c) of this chapter.

Follow-up services include:

(1) The leadership development and supportive service activities listed in §§ 681.520 and 681.570 of this chapter;

(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career development, and further education;

(4) Work-related peer support groups;

(5) Adult mentoring; and

(6) Services necessary to ensure the success of youth participants in employment and/or postsecondary education.

Homeless individual means an individual who lacks a fixed, regular, and adequate nighttime residence and includes an individual who:

(1) Is sharing the housing of other persons due to loss of housing, economic hardship, or similar reason;

(2) Is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

(3) Is living in an emergency or transitional shelter;

(4) Is abandoned in a hospital, or is awaiting foster care placement;

(5) Has a primary nighttime residence that is a public or private place not designed for or ordinarily used as regular sleeping accommodation for human beings; or

(6) Is a migratory child living in circumstances described in this definition.

Homeless child or youth means an individual who lacks a fixed, regular, and adequate nighttime residence and includes a child or youth who:

(1) Is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(2) Is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

(3) Is living in an emergency or transitional shelter, is abandoned in a hospital, or is awaiting foster care placement;

(4) Has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(5) Is living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

(6) Is a migratory child living in circumstances described in this definition.

Housing Development Agency means any agency of a Federal, State or local government, or any private non-profit organization, that is engaged in providing housing for homeless individuals or low-income families.

Income, as defined in the United States Housing Act of 1937 (42 U.S.C. 1437 a(b)(2)), means income is from all sources of each member of the household, as determined in accordance

with the criteria prescribed by the Secretary of Labor, in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family and any amounts which would be eligible for exclusion under sec. 1382b(a)(7) of the United States Housing Act of 1937, may not be considered as income under this definition.

In-Demand Industry Sector or Occupation means:

(1) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting business, or the growth of other industry sectors; or

(2) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

Indian, as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), means a person who is a member of an Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Individual with a disability means an individual with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C .12102).

Low-income family means a family whose income does not exceed 80 percent of the median income for the area unless the Secretary determines that a higher or lower ceiling is warranted. This definition includes families consisting of one person as defined by 42 U.S.C. 1437a(b)(3).

Migrant youth means a youth, or a youth who is the dependent of someone who, during the previous 12 months, has:

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

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

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

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

Needs-based payments means additional payments beyond regular stipends for program participation that are based on defined needs that enable a youth to participate in the program.

Occupational skills training means an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Occupational skills training includes training programs that lead to recognized postsecondary credentials that align with in-demand industry sectors or occupations in the local area. Such training must:

(1) Be outcome-oriented and focused on an occupational goal specified in the individual service strategy;

(2) Be of sufficient duration to impart the skills needed to meet the occupational goal; and

(3) Result in attainment of a recognized postsecondary credential.

Offender means an adult or juvenile who:

(1) Is or has been subject to any stage of the criminal justice process, and who may benefit from WIOA services; or

(2) Requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

Participant means an individual who has been determined eligible to participate in the YouthBuild program, and who enrolls in the program and receives services or training described in § 688.320.

Pre-apprenticeship, as defined in § 681.480 of this chapter, means a program designed to prepare individuals to enter and succeed in an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat.664, chapter 663; 29 U.S.C. 50 et seq.) (referred to in this part as a "registered apprenticeship" or "registered apprenticeship program") and includes the following elements:

(1) Training and curriculum that aligns with the skill needs of employers in the economy of the State or region involved;

(2) Access to educational and career counseling and other supportive services, directly or indirectly;

(3) Hands-on, meaningful learning activities that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career;

(4) Opportunities to attain at least one industry-recognized credential; and

(5) A partnership with one or more registered apprenticeship programs that assists in placing individuals who complete the pre-apprenticeship program in a registered apprenticeship program.

YouthBuild programs that receive funding under this part are considered pre-apprenticeship programs under this definition.

Recognized postsecondary credential means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of a registered apprenticeship, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree.

Registered apprenticeship program means an apprenticeship program that:

(1) Is registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act" (50 Stat. 664; 20 U.S.C. 50 et seq.)); and

(2) Meets such other criteria as the Secretary may establish.

School dropout means an individual who no longer attends any school and who has not received a secondary school diploma or its State-recognized equivalent.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Section 3 means a program described in sec. 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992.

Supportive services for youth, as defined in § 681.570 of this chapter, are services that enable an individual to participate in WIOA activities. These services include, but are not limited to, the following:

(1) Linkages to community services;

(2) Assistance with transportation;

(3) Assistance with child care and dependent care;

(4) Referrals to child support;

(5) Assistance with housing;

(6) Needs-related payments;

(7) Assistance with educational testing;

(8) Reasonable accommodations for youth with disabilities;

(9) Referrals to health care;

(10) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(11) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(12) Payments and fees for employment and training-related applications, tests, and certifications.

Transitional housing means housing provided to ease the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period.

YouthBuild program means any program that receives assistance under this section and provides disadvantaged youth with opportunities for employment, education, leadership development, service to the community, and training through the rehabilitation (which, for purposes of this section, includes energy efficiency enhancements) or construction of housing for homeless individuals and low-income families, and public facilities.

Youth in foster care, as defined in § 681.210 of this chapter, means an individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship, guardianship, or adoption; or a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement.

Subpart B—Funding and Grant Applications

§ 688.200 How are YouthBuild grants funded and administered?

The Secretary uses funds authorized for appropriation under WIOA sec. 171(i) to administer YouthBuild as a national program under title I, subtitle D of WIOA. YouthBuild grants are awarded to eligible entities, as defined in § 688.120, through the competitive selection process described in § 688.210.

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

The Secretary announces the availability of grant funds through a Funding Opportunity Announcement (FOA). The FOA contains instructions for what the Department requires in the grant application, describes eligibility requirements, the rating criteria that the Department will use in reviewing grant applications, and special reporting requirements to operate a YouthBuild

project. The FOA, along with the requisite forms needed to apply for grant funds, can be found at http://www.doleta.gov/grants/find_grants.cfm.

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

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

(a) The qualifications or potential capabilities of an applicant;

(b) An applicant's potential to develop a successful YouthBuild program;

(c) The need for an applicant's proposed program, as determined by the degree of economic distress of the community from which participants would be recruited (measured by indicators such as poverty, youth unemployment, and the number of individuals who have dropped out of secondary school) and of the community in which the housing and community and public facilities proposed to be rehabilitated or constructed are located (measured by indicators such as incidence of homelessness, shortage of affordable housing, and poverty);

(d) The commitment of an applicant to provide skills training, leadership development, counseling and case management, and education to participants;

(e) The focus of a proposed program on preparing youth for local in-demand sectors or occupations, or postsecondary education and training opportunities;

(f) The extent of an applicant's coordination of activities to be carried out through the proposed program with:

(1) Local WDBs, one-stop center operators, and one-stop partners participating in the operation of the one-stop delivery system involved, or the extent of the applicant's good faith efforts, as determined by the Secretary, in achieving such coordination;

(2) Public education, criminal justice, housing and community development, national service, or postsecondary education or other systems that relate to the goals of the proposed program; and

(3) Employers in the local area;

(g) The extent to which a proposed program provides for inclusion of tenants who were previously homeless individuals or families in the rental of housing provided through the program;

(h) The commitment of additional resources to the proposed program (in addition to the funds made available through the grant) by:

(1) An applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance who will sponsor any part of the rehabilitation, construction, operation and maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State, or local activities or activities conducted by Indian tribes, including vocational education programs, adult and language instruction educational programs, and job training using funds provided under WIOA~~;~~

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

(1) Education and training providers including:

(i) The kindergarten through twelfth grade educational system;

(ii) Adult education programs;

(iii) Community and technical colleges;

(iv) Four-year colleges and universities;

(v) Registered apprenticeship programs; and

(vi) Other training entities;

(2) Employers, including professional organizations and associations. An applicant will be evaluated on the extent to which employers participate in:

(i) Defining the program strategy and goals;

(ii) Identifying needed skills and competencies;

(iii) Designing training approaches and curricula;

(iv) Contributing financial support; and

(v) Hiring qualified YouthBuild graduates;

(3) The workforce development system which may include:

(i) State and Local WDBs;

(ii) State workforce agencies; and

(iii) One-stop centers and their partner programs;

(4) The juvenile and adult justice systems, and the extent to which they provide:

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

(ii) Assistance in the reporting of recidivism rates among YouthBuild participants; and

(iii) Referrals of eligible participants through diversion or reentry from incarceration;

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

(i) Case management;

(ii) Mentoring;

(iii) English as a Second Language courses; and

(iv) Other comprehensive supportive services, when appropriate;

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

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

(l) The weight to be given to these factors will be described in a FOA issued under § 688.210.

§ 688.230 What are the minimum requirements to apply for YouthBuild funds?

At minimum, applications for YouthBuild funds must include the following elements:

(a) Labor market information for the relevant labor market area, including both current data (as of the date of submission of the application) and projections on career opportunities in construction and in-demand industry sectors or occupations;

(b) A request for the grant, specifying the amount of the grant requested and its proposed uses;

(c) A description of the applicant and a statement of its qualifications, including a description of the applicant's relationship with Local WDBs, one-stop operators, employers, local unions, entities carrying out registered apprenticeship programs, other community groups, and the applicant's past experience with rehabilitation or construction of housing or public facilities (including experience with programs through the U.S. Department of Housing and Urban Development (HUD) under sec. 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)), and with youth education and employment training programs);

(d) A description of the proposed site for the proposed program;

(e) A description of the educational and job training activities, work opportunities, postsecondary education and training opportunities, and other services that will be provided to participants, and how those activities, opportunities, and services will prepare youth for employment in in-demand industry sectors or occupations in the labor market area described in paragraph (a) of this section;

(1) A description of the proposed activities to be undertaken under the grant related to rehabilitation or construction, and, in the case of an applicant requesting approval from the Secretary to carry out additional activities related to in-demand industry sectors or occupations, a description of such additional activities.

(2) The anticipated schedule for carrying out all activities proposed under paragraph (f) of this section;

(f) A description of the manner in which eligible youth will be recruited and selected as participants, including a description of arrangements that will be made with Local WDBs, one-stop operators, faith and community-based organizations, State education agencies or local education agencies (including agencies of Indian tribes), public assistance agencies, the courts of jurisdictions, agencies that serve youth who are homeless individuals (including those that operate shelters), foster care agencies, and other appropriate public and private agencies;

(g) A description of the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children) as participants;

(h) A description of the specific role of employers in the proposed program, such as their role in developing the proposed program and assisting in service provision and placement activities;

(i) A description of how the proposed program will be coordinated with other Federal, State, and local activities conducted by Indian tribes, such as workforce investment activities, career and technical education and training programs, adult and language instruction educational programs, activities conducted by public schools, activities conducted by community colleges, national service programs, and other job training provided with funds available under WIOA, in particular how programs will coordinate with local Workforce Development funds outlined in WIOA sec. 129(c)(2);

(j) Assurances that there will be a sufficient number of adequately trained supervisory personnel in the proposed program;

(k) A description of the level of performance to be achieved with respect to primary indicators of performance for eligible youth as described in § 688.410;

(l) The organization's past performance under a grant issued by the Secretary to operate a YouthBuild program;

(m) A description of the applicant's relationship with local building trade unions regarding their involvement in training to be provided through the proposed program, the relationship of the proposed program to established registered apprenticeship programs and employers, the ability of the applicant to grant an industry-recognized certificate or certification through the program, and the quality of the program leading to the certificate or certification;

(n) A description of activities that will be undertaken to develop leadership skills of participants;

(o) A detailed budget and description of the system of fiscal controls, and auditing and accounting procedures, that will be used to ensure fiscal soundness for the proposed program;

(p) A description of the commitments for any additional resources (in addition to funds made available through the grant) to be made available to the proposed program from:

(1) The applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance that will sponsor any part of the rehabilitation or construction, operation or maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State or local activities conducted by Indian tribes, including career and technical education and training programs, and job training provided with funds under WIOA;

(q) Information identifying and describing of, the financing proposed for any:

(1) Rehabilitation of the property involved;

(2) Acquisition of the property; or

(3) Construction of the property;

(r) Information identifying and describing of, the entity that will manage and operate the property;

(s) Information identifying and describing of, the data collection systems to be used;

(t) A certification, by a public official responsible for the housing strategy for the State or unit of general local government within which the proposed program is located, that the proposed program is consistent with the housing strategy;

(u) A certification that the applicant will comply with requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and will affirmatively further fair housing; and

(v) Any additional requirements that the Secretary determines are appropriate.

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

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

Subpart C—Program Requirements

§ 688.300 Who is an eligible participant?

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

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

(2) A school dropout or an individual who has dropped out of school and has subsequently reenrolled; and

(3) Is one or more of the following:

(i) A member of a low-income family;

(ii) A youth in foster care;

(iii) An offender;

(iv) A youth who is an individual with a disability;

(v) The child of a current or formerly incarcerated parent; or

(vi) A migrant youth.

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

(1) Are basic skills deficient, as defined in § 688.120, despite attainment of a secondary school diploma or its recognized State equivalent (including recognized certificates of attendance or similar documents for individuals with disabilities); or

(2) Have been referred by a local secondary school for participation in a YouthBuild program leading to the attainment of a secondary school diploma if such referral is to a YouthBuild program offering a secondary school diploma.

§ 688.310 Are there special rules that apply to veterans?

Special rules for determining income for veterans are found in § 683.230 of this chapter and for the priority of service provisions for qualified persons are found in 20 CFR part 1010. Those special rules apply to covered persons who are eligible to participate in the YouthBuild program.

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

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

(a) Eligible education and workforce activities including:

(1) Work experience and skills training (coordinated, to the maximum extent feasible, with registered apprenticeship programs), including:

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

transitional housing for homeless individuals and in additional in-demand industry sectors or occupations in the region in which the program operates (as approved by the Secretary);

(ii) Supervision and training for participants in the rehabilitation or construction of community and other public facilities, except that not more than 15 percent of grant funds appropriated to carry out this section may be used for this activity; and

(iii) Supervision and training for participants in in-demand industry sectors or occupations in the region in which the program operates, if such activity is approved by the Secretary.

(2) Occupational skills training;

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

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

(i) Basic skills instruction and remedial education;

(ii) Language instruction educational programs for participants who are English language learners;

(iii) Secondary education services and activities, including tutoring, study skills training, and school dropout prevention and recovery activities, designed to lead to the attainment of a secondary school diploma or its recognized equivalent (including recognized certificates of attendance or similar documents for individuals with disabilities);

(iv) Counseling and assistance in obtaining postsecondary education and required financial aid; and

(v) Alternative secondary school services.

(5) Counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse, referrals to mental health services, and referrals to victim services;

(6) Activities designed to develop employment and leadership skills, which may include community service and peer-centered activities encouraging responsibility, interpersonal skills, and other positive social behaviors, and activities related to youth policy committees that participate in decision-making related to the program;

(7)(i) Supportive services and needs-based payments necessary to enable individuals to participate in the program and to assist individuals, for a period of time not to exceed 12 months after the completion of training, in obtaining or retaining employment or applying for and transitioning to postsecondary education or training.

(ii) To provide needs-based payments, a grantee must have a written policy which:

(A) Establishes participant eligibility for such payments;

(B) Establishes the amounts to be provided;

(C) Describes the required documentation and criteria for payments; and

(D) Applies consistently to all program participants;

(8) Job search and assistance.

(b) Payment of the administrative costs of the applicant, including recruitment and selection of participants, except that not more than 10 percent of the amount awarded under § 688.210 may be used for such costs;

(c) Adult mentoring;

(d) Provision of wages, stipends, or benefits to participants in the program;

(e) Ongoing training and technical assistance that is related to developing and carrying out the program, and;

(f) Follow-up services.

§ 688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?

At a minimum, in order to qualify as a work site for the purposes of the YouthBuild program, a work site must:

(a) Provide participants with the opportunity to have hands-on training and experience in two or more modules, each within a different skill area, in a construction skills training program that offers an industry-recognized credential;

(b) Be built or renovated for low-income individuals or families;

(c) Have a restrictive covenant in place that only allows for rental or resale to low-income participants as required by § 688.730; and

(d) Adhere to the allowable construction and other capital asset costs applicable to the YouthBuild program.

§ 688.340 What timeframes apply to participation?

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

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

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

(a) Education and related services and activities designed to meet educational needs, such as those specified in § 688.320(a)(4) through (7), during at least 50 percent of the time during which they participate in the program; and

(b) Workforce and skills development activities, such as those specified in § 688.320(a)(1) through (3), during at least 40 percent of the time during which they participate in the program.

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

§ 688.360 What timeframes apply to follow-up services?

Grantees must provide follow-up services to all YouthBuild participants for a period of 12 months after a participant successfully exits a YouthBuild program.

§ 688.370 What are the requirements for exit from the YouthBuild program?

At a minimum, to be a successful exit, the Department of Labor requires that:

(a) Participants receive hands-on construction training or hands-on training in another industry or occupation, in the case of Construction Plus grantees; and

(b) Participants meet the exit policies established by the grantee.

(1) Such policies must describe the program outcomes and/or individual goals that must be met by each participant in order to successfully complete the program; and

(2) Grantees must apply the policies consistently to determine when a successful exit has occurred.

§ 688.380 What is the role of the YouthBuild grantee in the one-stop delivery system?

In those local areas where the grantee operates its YouthBuild program, the grantee is a required partner of the local one-stop delivery system and is subject to the provisions relating to such partners described in part 678 of this chapter.

Subpart D—Performance Indicators

§ 688.400 What are the performance indicators for YouthBuild grants?

The performance indicators for YouthBuild grants include:

(a) The percentage of program participants who are in education and training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(b) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(c) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(d) The percentage of program participants who obtain a recognized postsecondary credential or secondary school diploma or its recognized equivalent (and for those achieving the secondary diploma or its recognized equivalent, such participants also have obtained or retained employment or are in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program);

(e) The percentage of program participants who, during a program year, are in an education and training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment;

(f) The indicator of effectiveness in serving employers described at § 677.155(c)(6) of this chapter; and

(g) Other indicators of performance as may be required by the Secretary.

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

(a) The Secretary must annually establish expected levels of performance for YouthBuild programs relating to each of the primary indicators of performance. The expected levels of performance for each of the performance indicators are national standards that are provided in separately issued guidance. Short-term or other performance indicators will be provided in separately issued guidance or as part of the FOA or grant agreement. Performance level expectations will be based on available YouthBuild data and data from similar WIOA youth programs and may change from one grant competition to another. The expected national levels of performance will take into account the extent to which the levels promote continuous improvement in performance.

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

(1) Be expressed in an objective, quantifiable, and measurable form; and

(2) Indicate continuous improvement in performance.

§ 688.420 What are the reporting requirements for YouthBuild grantees?

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

(a) The quarterly performance report;

(b) The quarterly narrative progress report;

(c) The financial report; and

(d) Such other reports as may be required by the grant agreement.

§ 688.430 What are the due dates for quarterly reporting?

(a) Quarterly reports are due no later than 45 days after the end of the reporting quarter, unless otherwise specified in the reporting guidance issued under § 688.420; and

(b) A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

Subpart E—Administrative Rules, Costs, and Limitations

§ 688.500 What administrative regulations apply to the YouthBuild program?

Each YouthBuild grantee must comply with the following:

(a) The regulations found in this part;

(b) The general administrative requirements found in part 683 of this chapter, except those that apply only to the WIOA title I, subtitle B program and those that have been modified by this section;

(c) The Department's regulations on government-wide requirements, which include:

(1) The regulations codifying the Office of Management and Budget's (OMB) government-wide grants requirements at 2 CFR parts 200 and 2900, as applicable;

(2) The Department's regulations at 29 CFR part 38, which implement the nondiscrimination provisions of WIOA sec. 188;

(3) The Department's regulations at 29 CFR parts 93, 94, and 98 relating to restrictions on lobbying, drug free workplace, and debarment and suspension; and

(4) The audit requirements of the Office of Management and Budget at 2 CFR part 200 and 2900, as applicable; and

(d) Relevant State and local educational standards.

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

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

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

(a) Administrative costs for programs operated under YouthBuild are limited to 10 percent of the grant award. The definition of administrative costs can be found in § 683.215 of this chapter.

(b) The cost of supervision and training for participants involved in the rehabilitation or construction of community and other public facilities is limited to no more than 15 percent of the grant award.

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

(a) In addition to the rules described in paragraphs (b) through (f) of this section, the cost-sharing or matching requirements applicable to a YouthBuild grant will be addressed in the grant agreement.

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

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

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

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

(1) The purchase cost of buildings used solely for training purposes is allowable; and

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

(f) Grantees must follow the requirements of Uniform Guidance at 2 CFR parts 200 and 2900 in the accounting, valuation, and reporting of the required non-Federal share.

§ 688.540 What are considered to be leveraged funds?

(a) Leveraged funds may be used to support allowable YouthBuild program activities and consist of payments made for allowable costs funded by both non-YouthBuild Federal, and non-Federal, resources which include:

(1) Costs which meet the criteria for cost-sharing or match in § 688.530 and are in excess of the amount of cost-sharing or match resources required;

(2) Costs which would meet the criteria in § 688.530 except that they are paid for with other Federal resources; and

(3) Costs which benefit the grant program and are otherwise allowable under the cost principles but are not allowable under the grant because of some statutory, regulatory, or grant provision, whether paid for with Federal or non-Federal resources.

(b) The use of leveraged funds must be reported in accordance with Departmental instructions.

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

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

(1) Rehabilitation of existing structures for use by homeless individuals and families or low-income families or for use as transitional housing;

(2) Construction of buildings for use by homeless individuals and families or low-income families or for use as transitional housing; and

(3) Construction or rehabilitation of community or other public facilities, except, as provided in § 688.520(b), only 15 percent of the grant award is allowable for such construction and rehabilitation.

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

(1) The purchase cost of buildings used solely for training purposes is allowable; and

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

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

(1) Trainees' tools and clothing including personal protective equipment (PPE);

(2) On-site trainee supervisors;

(3) Construction management;

(4) Relocation of buildings; and

(5) Clearance and demolition.

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

(e) The following costs are unallowable:

(1) The costs of acquisition of land; and

(2) Brokerage fees.

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

Allowable participant costs include:

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

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

(c) The costs of needs-based payments;

(d) The costs of supportive services; and

(e) The costs of providing additional benefits to participants or individuals who have exited the program and are receiving follow-up services, which may include:

(1) Tuition assistance for obtaining college education credits;

(2) Scholarships to a registered apprenticeship or technical education program; and

(3) Employer- or Government-sponsored health programs.

§ 688.570 Does the Department allow incentive payments in the YouthBuild program?

(a) Grantees are permitted to provide incentive payments to youth participants for recognition and achievement directly tied to training activities and work experiences. Grantees must tie the incentive payments to the goals of the specific grant program and outline such goals in writing prior to starting the program that makes incentive payments.

(b) Prior to providing incentive payments, the organization must have written policies and procedures in place governing the awarding of incentives, and the incentives provided under the grant must align with these organizational policies.

(c) All incentive payments must comply with the requirements in Uniform Guidance at 2 CFR part 200.

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

Under § 683.275(d) of this chapter, the Department does not consider allowances, earnings, and payments to individuals participating in programs under title I of WIOA as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301).

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

(a) Except as provided in paragraph (b) of this section, program income requirements, as specified in the applicable Uniform Administrative Requirements at 2 CFR parts 200 and 2900, apply to YouthBuild grants.

(b) Revenue from the sale of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families and low-income families is not considered

program income. Grantees are encouraged to use that revenue for the long-term sustainability of the YouthBuild program.

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

(a) YouthBuild programs and grantees are subject to Davis-Bacon labor standards requirements under the circumstances set forth in paragraph (b) of this section. In those instances where a grantee is subject to Davis-Bacon requirements, the grantee must follow applicable requirements in the Department's regulations at 29 CFR parts 1, 3, and 5, including the requirements contained in the Davis-Bacon contract provisions set forth in 29 CFR 5.5.

(b) YouthBuild participants are subject to Davis-Bacon Act labor standards when they perform Davis-Bacon-covered laborer or mechanic work, defined at 29 CFR 5.2(m), on Federal or Federally-assisted projects that are subject to the Davis-Bacon Act labor standards. The Davis-Bacon prevailing wage requirements apply to hours worked on the site of the work.

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

§ 688.610 What are the recordkeeping requirements for YouthBuild programs?

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

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

Subpart F—Additional Requirements

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

(a) YouthBuild Grantees must comply with § 683.280 of this chapter, which applies Federal and State health and safety standards to the working conditions under WIOA-funded projects and programs. These health and safety standards include "hazardous orders" governing child labor at 29 CFR part 570.

(b) YouthBuild grantees are required to:

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

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

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

(4) Submit required injury incident reports.

§ 688.710 What are the reporting requirements for youth safety?

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

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

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

§ 688.730 What requirements apply to YouthBuild housing?

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

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

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

(3) Use as transitional or permanent housing for the purpose of assisting in the movement of homeless individuals and families to independent living. In the case of transitional housing, the unit(s) must be occupied no more than 24 months by the same individual(s); or

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

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

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

(2) The property owner must not terminate the tenancy or refuse to renew the lease of a tenant occupying a residential rental housing unit constructed or rehabilitated using YouthBuild

funds except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State, or local laws, or for good cause. Any termination or refusal to renew the lease must be preceded by not less than a 30-day written notice to the tenant specifying the grounds for the action. The property owner may waive the written notice requirement for termination in dangerous or egregious situations involving the tenant.

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

(d) For sales or rentals of residential housing units constructed or rehabilitated using YouthBuild funds, YouthBuild grantees must ensure that owners of the property record a restrictive covenant at the time that an occupancy permit is issued against such property which includes the use restrictions set forth in paragraphs (a), (b), and (c) of this section and incorporates the following definitions at § 688.120: Homeless individual, Low-income family, and Transitional housing. The term of the restrictive covenant must be at least 5 years from the time of the issuance of the occupancy permit, unless a time period of more than 5 years has been established by the grantee. The Department advises that any additional stipulations imposed by a grantee or property owner be clearly stated in the covenant.

(e) Any conveyance document prepared in the 5-year period of the restrictive covenant must inform the buyer of the property that all residential housing units constructed or rehabilitated using YouthBuild funds are subject to the restrictions set forth in paragraphs (a) through (d) of this section.

16. Revise part 651 to read as follows:

PART 651 – GENERAL PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

Authority: Wagner-Peyser Act sec. 49a, as amended by Pub. L. 113-128 sec. 302; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

§ 651.10 Definitions of terms used in parts 651, 652, 653, 654, and 658.

In addition to the definitions set forth in sec. 3 of WIOA, the following definitions apply to the regulations in parts 652, 653, 654, and 658 of this chapter:

Act means the Wagner-Peyser Act (codified at 29 U.S.C. 49 et seq.).

Administrator, Office of Workforce Investment (OWI Administrator) means the chief official of the Office of Workforce Investment (OWI) or the Administrator's designee.

Affirmative action means positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the affirmative action guidelines of the Equal Employment Opportunity Commission (see 29 CFR part 1608) to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other non-occupationally valid purposes has been discouraged from entering certain occupational fields.

Agricultural employer means any employer as defined in this part who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer as described in 29 U.S.C. 1802(2).

Agricultural worker see Farmworker.

Applicant Holding Office means a Wagner-Peyser Act Employment Service (ES) office that is in receipt of a clearance order and has access to U.S. workers who may be willing and available to perform farmwork on a less than year-round basis.

Applicant Holding State means a State Workforce Agency that is in receipt of a clearance order from another State and potentially has U.S. workers who may be willing and available to perform farmwork on a less than year-round basis.

Bona Fide Occupational Qualification (BFOQ) means that an employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin, or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605, and 1627.

Career Services means the services described in sec. 134(c)(2) of the Workforce Innovation and Opportunity Act (WIOA) and § 678.430 of this chapter.

Clearance Order means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS).

Clearance System means the orderly movement of U.S. job seekers as they are referred through the employment placement process by an ES office. This includes joint action of local ES offices in different labor market areas and/or States.

Complainant means the individual, employer, organization, association, or other entity filing a complaint.

Complaint means a representation made or referred to a State or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department’s Wage

and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law.

Decertification means the rescission by the Secretary of the year-end certification made under sec. 7 of the Wagner-Peyser Act to the Secretary of the Treasury that the State agency may receive funds authorized by the Wagner-Peyser Act.

Department means the United States Department of Labor, including its agencies and organizational units.

Employer means a person, firm, corporation, or other association or organization which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises, and otherwise controls the work of such employees. An association of employers is considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, is considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia.

Employment and Training Administration (ETA) means the component of the Department of Labor that administers Federal government job training and worker dislocation programs, Federal grants to States for public ES programs, and unemployment insurance benefits. These services are provided primarily through State and local workforce development systems.

Employment-related laws means those laws that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies.

Employment Service (ES) office means a site in a local WDB where staff of the State Workforce Agency, consistent with the requirements of § 652.215 of this chapter, provide Wagner-Peyser Act services as a one-stop partner program. A site must be colocated with a one-stop center consistent with the requirements of §§ 678.305 through 678.315 of this chapter.

Employment Service (ES) regulations means the Federal regulations at parts 651, 652, 653, 654, 658 of this chapter, and 29 CFR part 75.

Establishment means a public or private economic employing unit generally at a single physical location which produces and/or sells goods or services, for example, a mine, factory, store, farm, orchard or ranch. It is usually engaged in one, or predominantly one, type of commercial or governmental activity. Each branch or subsidiary unit of a large employer in a geographical area or community must be considered an individual establishment, except that all such units in the same physical location is considered a single establishment. A component of an establishment which may not be located in the same physical structure (such as the warehouse of a department store) also must be considered as part of the parent establishment. For the purpose of the "seasonal farmworker" definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

Farmwork means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also

includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities means all commodities produced on a farm including crude gum (oleoresin) from a living tree products processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. Farmwork also means any service or activity covered under § 655.103(c) of this chapter and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.

Farmworker means an individual employed in farmwork, as defined in this section.

Field Checks means random, unannounced appearances by State Workforce Agency personnel at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.

Field Visits means appearances by Monitor Advocates or State Workforce Agency outreach personnel to the working and living areas of migrant and seasonal farmworkers (MSFWs), to discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers. Monitor Advocates or outreach personnel must keep records of each such visit.

Governor means the chief executive of a State or an outlying area.

Hearing Officer means a Department of Labor Administrative Law Judge, designated to preside at Department administrative hearings.

Individual with a Disability means an individual with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Interstate clearance order means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices in a different State.

Intrastate clearance order means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices within the State.

Job development means the process of securing a job interview with a public or private employer for a specific participant for whom the ES office has no suitable opening on file.

Job information means information derived from data compiled in the normal course of ES activities from reports, job orders, applications, and the like.

Job opening means a single job opportunity for which the ES office has on file a request to select and refer participants.

Job order means the document containing the material terms and conditions of employment relating to wages, hours, working conditions, worksite and other benefits, submitted by an employer.

Job referral means:

(1) The act of bringing to the attention of an employer a participant or group of participants who are available for specific job openings or for a potential job; and

(2) The record of such referral. "Job referral" means the same as "referral to a job."

Labor market area means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area must be identified in

accordance with criteria used by the Department's Bureau of Labor Statistics in defining such areas or similar criteria established by a Governor.

Local Office Manager means the official in charge of all ES activities in a one-stop center.

Local Workforce Development Board or Local WDB means a Local Workforce Development Board established under sec. 107 of WIOA.

Migrant farmworker means a seasonal farmworker (as defined in this section) who travels to the job site so that the farmworker is not reasonably able to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

Migrant food processing worker see Migrant Farmworker.

MSFW means a migrant farmworker or a seasonal farmworker.

Occupational Information Network (O*NET) system means the online reference database which contains detailed descriptions of U.S. occupations, distinguishing characteristics, classification codes, and information on tasks, knowledge, skills, abilities, and work activities as well as information on interests, work styles, and work values.

One-stop center means a physical center within the one-stop delivery system, as described in sec. 121(e)(2)(A) of WIOA.

One-stop delivery system means a one-stop delivery system described in sec. 121(e) of WIOA.

One-stop partner means an entity described in sec. 121(b) of WIOA and § 678.400 of this chapter that is participating in the operation of a one-stop delivery system.

O*NET-SOC means the occupational codes and titles used in the O*NET system, based on and grounded in the Standard Occupational Classification (SOC), which are the titles and codes utilized by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, and disseminating data. The SOC system is issued by the Office of Management and Budget and the Department of Labor is authorized to develop additional detailed O*NET occupations within existing SOC categories. The Department uses O*NET-SOC titles and codes for the purposes of collecting descriptive occupational information and for State reporting of data on training, credential attainment, and placement in employment by occupation.

Onsite Review means an appearance by the State Monitor Advocate and/or Federal staff at an ES office to monitor the delivery of services and protections afforded by ES regulations to MSFWs by the State Workforce Agency and local ES offices.

Order Holding Office means an ES office that has accepted a clearance order from an employer seeking U.S. workers to perform farmwork on a less than year-round basis through the Agricultural Recruitment System.

Outreach Contact means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from an outreach worker.

Participant means a reportable individual who has received services other than the services described in § 677.150(a)(3) of this chapter, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination. (See § 677.150(a) of this chapter.)

(1) The following individuals are not Participants, subject to § 677.150(a)(3)(ii) and(iii) of this chapter:

(i) Individuals who only use the self-service system; and

(ii) Individuals who receive information-only services or activities.

(2) Wagner-Peyser Act participants must be included in the program's performance calculations

Placement means the hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the employment office completed all of the following steps:

(1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific participant;

(2) Made prior arrangements with the employer for the referral of an individual or individuals;

(3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;

(4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(5) Appropriately recorded the placement.

Public housing means housing operated by or on behalf of any public agency.

Regional Administrator (RA) means the chief Department of Labor Employment and Training Administration (ETA) official in each Department regional office.

Reportable individual means an individual who has taken action that demonstrates an intent to use Wagner-Peyser Act services and who meets specific reporting criteria of the Wagner-Peyser Act (see § 677.150(b) of this chapter), including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

Respondent means the employer, individual, or State agency (including a State agency official) who is alleged to have committed the violation described in a complaint.

Seasonal farmworker means an individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in farmwork, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

Secretary means the Secretary of the U.S. Department of Labor or the Secretary's designee.

Significant MSFW one-stop centers are those designated annually by the Department and include those ES offices where MSFWs account for 10 percent or more of annual participants in employment services and those local ES offices which the administrator determines must be included due to special circumstances such as an estimated large number of MSFWs in the

service area. In no event may the number of significant MSFW one-stop centers be less than 100 centers on a nationwide basis.

Significant MSFW States are those States designated annually by the Department and must include the 20 States with the highest number of MSFW participants.

Significant multilingual MSFW one-stop centers are those designated annually by the Department and include those significant MSFW ES offices where 10 percent or more of MSFW participants are estimated to require service provisions in a language(s) other than English unless the administrator determines other one-stop centers also must be included due to special circumstances.

Solicitor means the chief legal officer of the U.S. Department of Labor or the Solicitor's designee.

Standard Metropolitan Statistical Area (SMSA) means a metropolitan area designated by the Bureau of Census which contains:

(1) At least 1city of 50,000 inhabitants or more; or

(2) Twin cities with a combined population of at least 50,000.

State means any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

State Administrator means the chief official of the SWA.

State agency or State Workforce Agency (SWA) means the State ES agency designated under sec. 4 of the Wagner-Peyser Act.

State hearing official means a State official designated to preside at State administrative hearings convened to resolve complaints involving ES regulations pursuant to subpart E of part 658 of this chapter.

State Workforce Development Board or State WDB means the entity within a State appointed by the Governor under sec. 101 of WIOA.

Supply State(s) means a State that potentially has U.S. workers who may be recruited for referral through the Agricultural Recruitment System to the area of intended employment in a different State.

Supportive services means services that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner-Peyser Act. These services may include, but are not limited to, the following:

(1) Linkages to community services;

(2) Assistance with transportation;

(3) Assistance with child care and dependent care;

(4) Assistance with housing;

(5) Needs-related payments;

(6) Assistance with educational testing;

(7) Reasonable accommodations for individuals with disabilities;

(8) Referrals to health care;

(9) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(10) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(11) Payments and fees for employment and training-related applications, tests, and certifications.

Tests means a standardized method of measuring an individual's possession of, interest in, or ability to acquire, job skills and knowledge. Use of tests by one-stop staff must be in

accordance with the provisions of: (1) 41 CFR part 60–3, Uniform Guidelines on Employee Selection Procedures; (2) 29 CFR part 1627, Records To Be Made or Kept Relating to Age; Notices To Be Posted; Administrative Exemptions; and (3) The Department of Labor's regulations on Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, which have been published as 29 CFR part 32 at 45 FR 66706 (Oct. 7, 1980).

Training Services means services described in sec. 134(c)(3) of WIOA.

Unemployment Insurance claimant means a person who files a claim for benefits under any State or Federal unemployment compensation law.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as defined under 38 U.S.C. 101 and sec. 3(63)(A) of WIOA.

Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES) means the national system of public ES offices described under the Wagner-Peyser Act. Employment services are delivered through a nationwide system of one-stop centers, and are managed by State Workforce Agencies and the various local offices of the State Workforce Agencies, and funded by the United States Department of Labor.

WIOA means the Workforce Innovation and Opportunity Act (codified at 29 U.S.C. 3101 et seq.).

Workforce and Labor Market Information (WLMI) means the body of knowledge that describes the relationship between labor demand and supply. This includes identification and analysis of the socio-economic factors that influence employment, training, and business decisions, such as worker preparation, educational program offerings and related policy

decisions within national, State, Substate, and local labor market areas. WLMI includes, but is not limited to:

(1) Employment numbers by occupation and industry;

(2) Unemployment numbers and rates;

(3) Short- and long-term industry and occupational employment projections;

(4) Information on business employment dynamics, including the number and nature of business establishments, and share and location of industrial production;

(5) Local employment dynamics, including business turnover rates; new hires, job separations, net job losses;

(6) Job vacancy counts;

(7) Job seeker and job posting data from the public labor exchange system;

(8) Identification of high growth and high demand industries, occupations, and jobs;

(9) Information on employment and earnings for wage and salary workers and for the self-employed,

(10) Information on work hours, benefits, unionization, trade disputes, conditions of employment, and retirement;

(11) Information on occupation-specific requirements regarding education, training, skills, knowledge, and experience;

WLMI also may include, as either source data or as outputs of analysis of source data:

(12) Population and workforce growth and decline, classified by age, sex, race, and other demographic characteristics;

(13) Identification of emerging occupations and evolving skill demands;

(14) Business skill and hiring requirements;

(15) Workforce characteristics, which may include skills, experience, education, credential attainment, competencies, etc.;

(16) Workforce available in geographic areas;

(17) Information on regional and local economic development activity, including job creation through business start-ups and expansions;

(18) Enrollments in and completers from educational programs, training and registered apprenticeship;

(19) Trends in industrial and occupational restructuring;

(20) Shifts in consumer demands;

(21) Data contained in governmental or administrative reporting including wage records as identified in § 652.301 of this chapter;

(22) Labor market intelligence gained from interaction with businesses, industry or trade associations, education agencies, government entities, and the public; and

(23) Other economic factors.

Workforce and Labor Market Information System (WLMIS) means the system that collects, analyzes, interprets, and disseminates workforce characteristics and employment-related data, statistics, and information at national, State, and local labor market areas and makes that information available to the public, workforce development system, one-stop partner programs, and the education and economic development communities.

Workforce Development Activity means an activity carried out through a workforce development program as defined in sec. 3 of WIOA.

Working days or business days means those days that the order-holding ES office is open for public business, for purposes of the Agricultural Recruitment System.

Work test means activities designed to ensure that an individual whom a State determines to be eligible for unemployment insurance benefits is able to work, available for work, and actively seeking work in accordance with the State's unemployment compensation law.

17. Revise part 652 to read as follows:

PART 652 – ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICE

Subpart A—Employment Service Operations

Sec.
652.1 Introduction.
652.2 Scope and purpose of the Wagner-Peyser Act Employment Service.
652.3 Public labor exchange services system.
652.4 Allotment of funds and grant agreement.
652.5 Services authorized.
652.6 [Reserved].
652.7 [Reserved].
652.8 Administrative provisions.
652.9 Labor disputes.

Subpart B—Services for Veterans

Sec.
652.100 Services for veterans.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Sec.
652.200 What is the purpose of this subpart?
652.201 What is the role of the State Workforce Agency in the one-stop delivery system?
652.202 May local Employment Service offices exist outside of the one-stop delivery system?
652.203 Who is responsible for funds authorized under the Wagner-Peyser Act in the workforce development system?
652.204 Must funds authorized under section 7(b) of the Wagner-Peyser Act (the Governor's Reserve) flow through the one-stop delivery system?
652.205 May funds authorized under the Wagner-Peyser Act be used to supplement funding for labor exchange programs authorized under separate legislation?

652.206 May a State use funds authorized under the Wagner-Peyser Act to provide applicable "career services," as defined in the Workforce Innovation and Opportunity Act?
652.207 How does a State meet the requirement for universal access to services provided under the Wagner-Peyser Act?
652.208 How are applicable career services related to the methods of service delivery described in this part?
652.209 What are the requirements under the Wagner-Peyser Act for providing reemployment services and other activities to referred unemployment insurance claimants?
652.210 What are the Wagner-Peyser Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?
652.211 What are State planning requirements under the Wagner-Peyser Act?
652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Wagner-Peyser Act?
652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Wagner-Peyser Act?

Subpart D—Workforce and Labor Market Information

Sec.
652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?
652.301 What are wage records for purposes of the Wagner-Peyser Act?
652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?
652.303 How do the requirements of part 603 of this chapter apply to wage records?

Authority: Wagner-Peyser Act sec. 15 as amended by Pub. L. 113-128 sec. 308, 29 U.S.C. 49l-2; Pub. L. 113-128 secs. 189, 503.

Subpart A—Employment Service Operations

§ 652.1 Introduction.

These regulations implement the provisions of the Wagner-Peyser Act, known hereafter as the Wagner-Peyser Act, as amended by title III of the Workforce Innovation and Opportunity Act (WIOA), Pub. L. 113-128. The Wagner-Peyser Act Employment Service (ES) is a core program under the WIOA, and an integral component of the one-stop delivery system. Congress

intended that the States exercise broad authority in implementing provisions of the Wagner-Peyser Act.

§ 652.2 Scope and purpose of the Wagner-Peyser Act Employment Service.

The basic purpose of the ES is to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers.

§ 652.3 Public labor exchange services system.

At a minimum, each State must administer a labor exchange system which has the capacity, to:

(a) Assist job seekers in finding employment, including promoting their familiarity with the Department's electronic tools;

(b) Assist employers in filling jobs;

(c) Facilitate the match between job seekers and employers;

(d) Participate in a system for clearing labor among the States, including the use of standardized classification systems issued by the Secretary, under sec. 15 of the Wagner-Peyser Act;

(e) Meet the work test requirements of the State unemployment compensation system; and

(f) Provide labor exchange services as identified in § 678.430(a) of this chapter, sec. 7(a) of the Wagner-Peyser Act, and sec. 134(c)(2)(A)(iv) of WIOA.

§ 652.4 Allotment of funds and grant agreement.

(a) Allotments. The Secretary must provide planning estimates in accordance with sec. 6(b)(5) of the Wagner-Peyser Act. Within 30 days of receipt of planning estimates from the

Secretary, the State must make public the sub-State resource distributions, and describe the process and schedule under which these resources will be issued, planned, and committed. This notification must include a description of the procedures by which the public may review and comment on the sub-State distributions, including a process by which the State will resolve any complaints.

(b) Grant agreement. To establish a continuing relationship under the Wagner-Peyser Act, the Governor and the Secretary must sign a grant agreement, including a statement assuring that the State must comply with the Wagner-Peyser Act and all applicable rules and regulations. Consistent with this agreement and sec. 6 of the Wagner-Peyser Act, State allotments will be obligated through a notification of obligation.

§ 652.5 Services authorized.

The funds allotted to each State under sec. 6 of the Wagner-Peyser Act must be expended consistent with an approved plan under §§ 676.100 through 676.145 of this chapter and § 652.211. At a minimum, each State must provide the minimum labor exchange elements listed at § 652.3.

§ 652.6 [Reserved].

§ 652.7 [Reserved].

§ 652.8 Administrative provisions.

(a) Administrative requirements. The Employment Security Manual is not applicable to funds appropriated under the Wagner-Peyser Act. Except as provided for in paragraph (f) of this section, administrative requirements and cost principles applicable to grants under this part 652 are as specified in 2 CFR parts 200 and 2900 which govern the Uniform Guidelines, cost principles, and audit requirements for Federal awards.

(b) Management systems, reporting, and recordkeeping. (1) The State must ensure that a financial system provides fiscal control and accounting procedures sufficient to permit preparation of required reports, and the tracing of funds to a level of expenditure adequate to establish that funds have not been expended in violation of the restrictions on the use of such funds. (sec. 10(a))

(2) The financial management system and the program information system must provide Federally-required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit and evaluation purposes. (sec. 10(c))

(c) Reports required. (1) Each State must make reports pursuant to instructions issued by the Secretary and in such format as the Secretary prescribes.

(2) The Secretary is authorized to monitor and investigate pursuant to sec. 10 of the Wagner-Peyser Act.

(d) Special administrative and cost provisions. (1) Neither the Department nor the State is a guarantor of the accuracy or truthfulness of information obtained from employers or applicants in the process of operating a labor exchange activity.

(2) Prior approval authority—as described in various sections of 29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Office of Management and Budget Circular A-87 (Revised)—is delegated to the State except that the Secretary reserves the right to require transfer of title on nonexpendable Automated Data Processing Equipment (ADPE), in accordance with provisions contained in 2 CFR parts 200 and 2900. The Secretary reserves the right to exercise prior approval authority in other areas, after providing advance notice to the State.

(3) Application for financial assistance and modification requirements must be as specified under this part.

(4) Cost of promotional and informational activities consistent with the provisions of the Wagner-Peyser Act, describing services offered by employment security agencies, job openings, labor market information, and similar items are allowable.

(5) Each State must retain basic documents for the minimum period specified below, consistent with 2 CFR parts 200 and 2900:

(i) Work application: 3 years.

(ii) Job order: 3 years.

(6) Payments from the State's Wagner-Peyser Act allotment made into a State's account in the Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (sec. 903(c) of the Social Security Act, as amended (42 U.S.C. 1103(c)) are allowable costs, provided that:

(i) The charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations or for the acquisition or major renovation of State-owned office building; and

(ii) With respect to each acquisition of improvement of property pursuant to paragraph (d)(6)(i) of this section, the payments are accounted for in the State's records as credits against equivalent amounts of Reed Act funds used for administrative expenditures.

(e) Disclosure of information. (1) The State must assure the proper disclosure of information pursuant to sec. 3(b) of the Wagner-Peyser Act.

(2) The information specified in sec. 3(b) and other sections of the Wagner-Peyser Act, also must be provided to officers or any employee of the Federal government or of a State

government lawfully charged with administration of unemployment compensation laws, ES activities under the Wagner-Peyser Act or other related legislation, but only for purposes reasonably necessary for the proper administration of such laws.

(f) Audits. (1) The State must follow the audit requirements found at § 683.210 of this chapter, except that funds expended pursuant to sec. 7(b) of the Wagner-Peyser Act must be audited annually.

(2) The Comptroller General and the Inspector General of the Department have the authority to conduct audits, evaluations or investigations necessary to meet their responsibilities under sec. 9(b)(1) and 9(b)(2), respectively, of the Wagner-Peyser Act.

(3) The audit, conducted pursuant to paragraph (f)(1) or (2) of this section, must be submitted to the Secretary who will follow the resolution process specified in §§ 683.420 through 683.440 of this chapter.

(g) Sanctions for violation of the Wagner-Peyser Act. (1) The Secretary may impose appropriate sanctions and corrective actions for violation of the Wagner-Peyser Act, regulations, or State Plan, including the following:

(i) Requiring repayment, for debts owed the government under the grant, from non-Federal funds;

(ii) Offsetting debts arising from the misexpenditure of grant funds, against amounts to which the State is or may be entitled under the Wagner-Peyser Act, provided that debts arising from gross negligence or willful misuse of funds may not be offset against future grants. When the Secretary reduces amounts allotted to the State by the amount of the misexpenditure, the debt must be fully satisfied;

(iii) Determining the amount of Federal cash maintained by the State or a subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt;

(iv) Imposing other appropriate sanctions or corrective actions, except where specifically prohibited by the Wagner-Peyser Act or regulations.

(2) To impose a sanction or corrective action, the Secretary must utilize the initial and final determination procedures outlined in paragraph (f)(3) of this section and specified in the administrative provisions at §§ 683.420 through 683.440 of this chapter.

(h) Other violations. Violations or alleged violations of the Wagner-Peyser Act, regulations, or grant terms and conditions except those pertaining to audits or discrimination must be determined and handled in accordance with part 658, subpart H of this chapter.

(i) Fraud and abuse. Any persons having knowledge of fraud, criminal activity or other abuse must report such information directly and immediately to the Secretary, including all complaints involving such matters.

(j) Nondiscrimination and affirmative action requirements. States must:

(1) Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the Wagner-Peyser Act in violation of any applicable nondiscrimination law. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable Department of Labor nondiscrimination regulations.

(2) Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)-2(e), 29 CFR parts 1604, 1606, 1625.

(3) Assure that employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations.

(4) Assure that employment testing programs will comply with 41 CFR part 60-3 and 29 CFR part 32 and 29 CFR 1627.3(b)(1)(iv).

(5) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the applicable Department of Labor nondiscrimination regulations.

§ 652.9 Labor disputes.

(a) State agencies may not make a job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification must be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to which the applicant is being referred is not at issue in the dispute.

(c) When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, State agencies must:

(1) Verify the existence of the labor dispute and determine its significance with respect to each vacancy involved in the job order; and

(2) Notify all potentially affected staff concerning the labor dispute.

(d) State agencies must resume full referral services when they have been notified of, and verified with the employer and workers' representative(s), that the labor dispute has been terminated.

(e) State agencies must notify the regional office in writing of the existence of labor disputes which:

(1) Result in a work stoppage at an establishment involving a significant number of workers; or

(2) Involve multi-establishment employers with other establishments outside the reporting State.

Subpart B—Services for Veterans

§ 652.100 Services for veterans.

Veterans receive priority of service for all Department-funded employment and training programs as described in 20 CFR part 1010. The Department's Veterans' Employment and Training Service (VETS) administers the Jobs for Veterans State Grants (JVSG) program under chapter 41 of title 38 of the U.S. Code and other activities and training programs which provide services to specific populations of eligible veterans. VETS' general regulations are located in parts 1001, 1002, and 1010 of this title.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

§ 652.200 What is the purpose of this subpart?

(a) This subpart provides guidance to States to implement the services provided under the Wagner-Peyser Act, as amended by WIOA, in a one-stop delivery system environment.

(b) Except as otherwise provided, the definitions contained in part 651 of this chapter and sec. 2 of the Wagner-Peyser Act apply to this subpart.

§ 652.201 What is the role of the State Workforce Agency in the one-stop delivery system?

(a) The role of the State Workforce Agency (SWA) in the one-stop delivery system is to ensure the delivery of services authorized under sec. 7(a) of the Wagner-Peyser Act. The SWA is a required one-stop partner in each local one-stop delivery system and is subject to the provisions relating to such partners that are described at part 678 of this chapter.

(b) Consistent with those provisions, the State agency must:

(1) Participate in the one-stop delivery system in accordance with sec. 7(e) of the Wagner-Peyser Act;

(2) Be represented on the Workforce Development Boards (WDBs) that oversee the local and State one-stop delivery system and be a party to the Memorandum of Understanding, described at § 678.500 of this chapter, addressing the operation of the one-stop delivery system; and

(3) Provide these services as part of the one-stop delivery system.

§ 652.202 May local Employment Service offices exist outside of the one-stop delivery system?

No. Local ES offices may not exist outside of the one-stop service delivery system. A State must colocate ES, as provided in §§ 678.310 through 678.315 of this chapter.

§ 652.203 Who is responsible for funds authorized under the Wagner-Peyser Act in the workforce development system?

The SWA retains responsibility for all funds authorized under the Wagner-Peyser Act, including those funds authorized under sec. 7(a) required for providing the services and activities delivered as part of the one-stop delivery system.

§ 652.204 Must funds authorized under section 7(b) of the Wagner-Peyser Act (the Governor's Reserve) flow through the one-stop delivery system?

No, sec. 7(b) of the Wagner-Peyser Act provides that 10 percent of the State's allotment under the Wagner-Peyser Act is reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, professional development and career advancement of SWA staff, and services for groups with special needs. However, these funds may flow through the one-stop delivery system.

§ 652.205 May funds authorized under the Wagner-Peyser Act be used to supplement funding for labor exchange programs authorized under separate legislation?

(a) Section 7(c) of the Wagner-Peyser Act enables States to use funds authorized under sec. 7(a) or 7(b) of the Wagner-Peyser Act to supplement funding of any workforce activity carried out under WIOA.

(b) Funds authorized under the Wagner-Peyser Act may be used under sec. 7(c) to provide additional funding to other activities authorized under WIOA if:

(1) The activity meets the requirements of the Wagner-Peyser Act, and its own requirements;

(2) The activity serves the same individuals as are served under the Wagner-Peyser Act;

(3) The activity provides services that are coordinated with services under the Wagner-Peyser Act; and

(4) The funds supplement, rather than supplant, funds provided from non-Federal sources.

§ 652.206 May a State use funds authorized under the Wagner-Peyser Act to provide applicable "career services," as defined in the Workforce Innovation and Opportunity Act?

Yes, funds authorized under sec. 7(a) of the Wagner-Peyser Act must be used to provide basic career services as identified in § 678.430(a) of this chapter and secs. 134(c)(2)(A)(i)-(xi) of WIOA, and may be used to provide individualized career services as identified in § 678.430(b) of this chapter and sec. 134(c)(2)(A)(xii) of WIOA. Funds authorized under sec. 7(b) of the Wagner-Peyser Act may be used to provide career services. Career services must be provided consistent with the requirements of the Wagner-Peyser Act.

§ 652.207 How does a State meet the requirement for universal access to services provided under the Wagner-Peyser Act?

(a) A State has discretion in how it meets the requirement for universal access to services provided under the Wagner-Peyser Act. In exercising this discretion, a State must meet the Wagner-Peyser Act's requirements.

(b) These requirements are:

(1) Labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and individuals with disabilities;

(2) The State must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Wagner-Peyser Act, on a statewide basis through:

(i) Self-service, including virtual services;

(ii) Facilitated self-help service; and

(iii) Staff-assisted service;

(3) In each local area, in at least one comprehensive physical center, staff funded under the Wagner-Peyser Act must provide labor exchange services (including staff-assisted labor exchange services) and career services as described in § 652.206; and

(4) Those labor exchange services provided under the Wagner-Peyser Act in a local area must be described in the Memorandum of Understanding (MOU) described in § 678.500 of this chapter.

§ 652.208 How are applicable career services related to the methods of service delivery described in in this part?

Career services may be delivered through any of the applicable three methods of service delivery described in § 652.207(b)(2). These methods are:

(a) Self-service, including virtual services;

(b) Facilitated self-help service; and

(c) Staff-assisted service.

§ 652.209 What are the requirements under the Wagner-Peyser Act for providing reemployment services and other activities to referred unemployment insurance claimants?

(a) In accordance with sec. 3(c)(3) of the Wagner-Peyser Act, the SWA, as part of the one-stop delivery system, must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. Services must be appropriate to the needs of UI claimants who are referred to reemployment services under any Federal or State UI law.

(b) The SWA also must provide other activities, including:

(1) Coordination of labor exchange services with the provision of UI eligibility services as required by sec. 5(b)(2) of the Wagner-Peyser Act;

(2) Administration of the work test, conducting eligibility assessments, and registering UI claimants for employment services in accordance with a State's unemployment compensation law, and provision of job finding and placement services as required by sec. 3(c)(3) and described in sec. 7(a)(3)(F) of the Wagner-Peyser Act;

(3) Referring UI claimants to, and providing application assistance for, training and education resources and programs, including Federal Pell grants and other student assistance under title IV of the Higher Education Act, the Montgomery GI Bill, Post-9/11 GI Bill, and other Veterans Educational Assistance, training provided for youth, and adult and dislocated workers, as well as other employment training programs under WIOA, and for Vocational Rehabilitation Services under title I of the Rehabilitation Act of 1973.

§ 652.210 What are the Wagner-Peyser Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?

(a) State UI law or rules establish the requirements under which UI claimants must register and search for work in order to fulfill the UI work test requirements.

(b) Staff funded under the Wagner-Peyser Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Wagner-Peyser Act that are necessary and appropriate to facilitate their earliest return to work, including career services specified in § 652.206 and listed in sec. 134(c)(2)A) of WIOA;

(2) UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search; and

(3) ES staff will provide UI program staff with information about UI claimants' ability or availability for work, or the suitability of work offered to them.

§ 652.211 What are State planning requirements under the Wagner-Peyser Act?

The ES is a core program identified in WIOA and must be included as part of each State's Unified or Combined State Plans. See §§ 676.105 through 676.125 of this chapter for planning requirements for the core programs.

§ 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Wagner-Peyser Act?

No, the Secretary requires that labor exchange services provided under the authority of the Wagner-Peyser Act, including services to veterans, be provided by State merit-staff employees. This interpretation is authorized by and consistent with the provisions in secs. 3(a) and 5(b) of the Wagner-Peyser Act and the Intergovernmental Personnel Act (42 U.S.C 4701 et seq.). The Secretary has and has exercised the legal authority under sec. 3(a) of the Wagner-Peyser Act to set additional staffing standards and requirements and to conduct demonstrations to ensure the effective delivery of services provided under the Wagner-Peyser Act. No additional exemptions, other than the ones previously authorized under the Wagner-Peyser Act as amended by WIA, will be authorized.

§ 652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Wagner-Peyser Act?

Yes, the one-stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a one-stop setting. As part of the local Memorandum of Understanding described in § 678.500 of this

chapter, the SWA, as a one-stop partner, may agree to have staff receive guidance from the one-stop operator regarding the provision of labor exchange services. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of State merit staff employees funded under the Wagner-Peyser Act, remain under the authority of the SWA. The guidance given to employees must be consistent with the provisions of the Wagner-Peyser Act, the local Memorandum of Understanding, and applicable collective bargaining agreements.

Subpart D—Workforce and Labor Market Information

§ 652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?

(a) The Secretary of Labor must oversee the development, maintenance, and continuous improvement of the workforce and labor market information system defined in Wagner-Peyser Act sec. 15 and § 651.10 of this chapter. The Department also will identify parameters of continuous improvement. The Secretary will consult with the Workforce Information Advisory Council on these matters and consider the council's recommendations.

(b) With respect to data collection, analysis, and dissemination of workforce and labor market information as defined in Wagner-Peyser Act sec. 15 and § 651.10 of this chapter, the Secretary must:

(1) Assign responsibilities within the Department of Labor for elements of the workforce and labor market information system described in sec. 15(a) of the Wagner-Peyser Act to ensure that the statistical and administrative data collected are consistent with appropriate Bureau of

Labor Statistics standards and definitions, and that the information is accessible and understandable to users of such data;

(2) Actively seek the cooperation of heads of other Federal agencies to establish and maintain mechanisms for ensuring complementarity and non-duplication in the development and operation of statistical and administrative data collection activities;

(3) Solicit, receive, and evaluate the recommendations of the Workforce Information Advisory Council established by Wagner-Peyser Act sec. 15(d);

(4) Eliminate gaps and duplication in statistical undertakings;

(5) Through the Bureau of Labor Statistics and the Employment and Training Administration, and in collaboration with States, develop and maintain the elements of the workforce and labor market information system, including the development of consistent procedures and definitions for use by States in collecting and reporting the workforce and labor market information data described in Wagner-Peyser Act sec. 15 and defined in § 651.10 of this chapter;

(6) Establish procedures for the system to ensure that the data and information are timely, and paperwork and reporting for the system are reduced to a minimum; and

(7) Prepare a 2-year plan for the workforce and labor market information system, as described in the Wagner-Peyser Act sec. 15(c), as amended by WIOA sec. 308(d).

§ 652.301 What are wage records for purposes of the Wagner-Peyser Act?

Wage records, for purposes of the Wagner-Peyser Act, are records that contain "wage information" as defined in § 603.2(k) of this chapter. In this part, "State wage records" refers to wage records produced or maintained by a State.

§ 652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?

(a) A significant portion of the workforce and labor market information—defined in § 651.10 of this chapter—are developed using State wage records.

(b) Based on the Secretary of Labor's responsibilities described in Wagner-Peyser Act sec. 15 and § 652.300, the Secretary of Labor will, in consultation with Federal agencies, and States, and considering recommendations from the Workforce Information Advisory Council described in Wagner-Peyser Act sec. 15(d), develop:

(1) Standardized definitions for the data elements comprising "wage records" as defined in § 652.301; and

(2) Improved processes and systems for the collection and reporting of wage records.

(c) In carrying out these activities, the Secretary also may consult with other stakeholders, such as employers.

§ 652.303 How do the requirements of part 603 of this chapter apply to wage records?

All information collected by the State in wage records referred to in § 652.302 is subject to the confidentiality regulations at part 603 of this chapter.

18. Revise part 653 to read as follows:

PART 653 – SERVICES OF THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE SYSTEM

Subpart A—[Reserved].

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

Sec.
653.100 Purpose and scope of subpart.
653.101 Provision of services to migrant and seasonal farmworkers.

653.102 Job information.
653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.
653.104 [Reserved].
653.105 [Reserved].
653.106 [Reserved].
653.107 Outreach and Agricultural Outreach Plan.
653.108 State Workforce Agency and State Monitor Advocate responsibilities.
653.109 Data collection and performance accountability measures.
653.110 Disclosure of data.
653.111 State Workforce Agency staffing requirements.

Subparts C – E [Reserved].

Subpart F—Agricultural Recruitment System for U.S. Workers (ARS)

Sec.
653.500 Purpose and scope of subpart.
653.501 Requirements for processing clearance orders.
653.502 Conditional access to the Agricultural Recruitment System.
653.503 Field checks.

Authority: Pub. L. 113-128 secs. 167, 189, 503; Wagner-Peyser Act, as amended by Pub. L. 113-128 secs. 302 – 308, 29 U.S.C. 49 et seq.; 38 U.S.C. part III, chapters 41 and 42.

Subpart A—[Reserved].

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

§ 653.100 Purpose and scope of subpart.

(a) This subpart sets forth the principal regulations of the Wagner-Peyser Act Employment Service (ES) concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion. This includes ensuring MSFWs have access to these services in a way that meets their unique needs. MSFWs must receive services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

(b) This subpart contains requirements that State Workforce Agencies (SWAs) establish a system to monitor their own compliance with ES regulations governing services to MSFWs.

(c) Established under this subpart are special services to ensure MSFWs receive the full range of career services as defined in WIOA sec. 134(c)(2).

§ 653.101 Provision of services to migrant and seasonal farmworkers.

Each one-stop center must offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. In providing such services, the one-stop centers must consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

§ 653.102 Job information.

All SWAs must make job order information conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through internet labor exchange systems and through the one-stop centers. One-stop centers must provide adequate staff assistance to MSFWs to access job order information easily and efficiently. In designated significant MSFW multilingual offices, such assistance must be provided to MSFWs in their native language, whenever requested or necessary.

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

(a) Each one-stop center must determine whether participants are MSFWs as defined at § 651.10 of this chapter.

(b) All SWAs will ensure that MSFWs who are English Language Learners (ELLs) receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by the one-stop centers.

(c) One-stop center staff must provide MSFWs a list of available career and supportive services in their native language.

(d) One-stop center staff must refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

§ 653.107 Outreach and Agricultural Outreach Plan.

(a) State Workforce Agency (SWA) outreach responsibilities. (1) Each SWA must employ an adequate number of outreach workers to conduct MSFW outreach in their service areas. SWA Administrators must ensure State Monitor Advocates and outreach workers coordinate their outreach efforts with WIOA title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups.

(2) As part of their outreach, SWAs must:

(i) Communicate the full range of workforce development services to MSFWs.

(ii) Conduct thorough outreach efforts with extensive follow-up activities in supply States.

(3) For purposes of hiring and assigning staff to conduct outreach duties, and to maintain compliance with SWAs' Affirmative Action programs, SWAs must seek, through merit system procedures, qualified candidates who:

(i) Are from MSFW backgrounds;

(ii) Speak a language common among MSFWs in the State; or

(iii) Are racially or ethnically representative of the MSFWs in the service area.

(4) The 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, must assign, in accordance with State merit staff requirements, full-time, year-round staff to conduct outreach duties. The remainder of the States must hire year-round part-time outreach staff and, during periods of the highest MSFW activity must hire full-time outreach staff. All outreach staff must be multilingual if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

(5) The SWA must publicize the availability of employment services through such means as newspaper and electronic media publicity. Contacts with public and private community agencies, employers and/or employer organizations, and MSFW groups also must be utilized to facilitate the widest possible distribution of information concerning employment services.

(b) Outreach worker's responsibilities. Outreach workers must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Outreach workers' responsibilities include:

(1) Explaining to MSFWs at their working, living, or gathering areas (including day-haul sites), by means of written and oral presentations either spontaneous or recorded, in a language readily understood by them, the following:

(i) The services available at the local one-stop center (which includes the availability of referrals to training, supportive services, and career services, as well as specific employment opportunities), and other related services;

(ii) Information on the Employment Service and Employment-related Law Complaint System;

(iii) Information on the other organizations serving MSFWs in the area; and

(iv) A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment;

(2) Outreach workers must not enter work areas to perform outreach duties described in this section on an employer's property without permission of the employer unless otherwise authorized to enter by law; must not enter workers' living areas without the permission of the workers; and must comply with appropriate State laws regarding access.

(3) After making the presentation, outreach workers must urge the MSFWs to go to the local one-stop center to obtain the full range of employment and training services.

(4) If an MSFW cannot or does not wish to visit the local one-stop center, the outreach worker must offer to provide on-site the following:

(i) Assistance in the preparation of applications for employment services;

(ii) Assistance in obtaining referral(s) to current and future employment opportunities;

(iii) Assistance in the preparation of either ES or employment-related law complaints;

(iv) Referral of complaints to the ES office Complaint Specialist or ES office manager;

(v) Referral to supportive services and/or career services in which the individual or a family member may be interested; and

(vi) As needed, assistance in making appointments and arranging transportation for individual MSFW(s) or members of his/her family to and from local one-stop centers or other appropriate agencies.

(5) Outreach workers must make follow-up contacts as necessary and appropriate to provide the assistance specified in paragraphs (b)(1) through (b)(4) of this section.

(6) Outreach workers must be alert to observe the working and living conditions of MSFWs and, upon observation or upon receipt of information regarding a suspected violation of Federal or State employment-related law, document and refer information to the ES office manager for processing in accordance with § 658.411 of this chapter. Additionally, if an outreach worker observes or receives information about apparent violations (as described in § 658.419 of this chapter), the outreach worker must document and refer the information to the appropriate ES office manager.

(7) Outreach workers must be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual harassment. While sexual harassment is the primary requirement, training also may include similar issues such as sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach workers identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies. They also must be trained in the procedure for informal resolution of complaints. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by the Employment and Training Administration (ETA). The SMA must be given an opportunity to review and comment on the State's program.

(8) Outreach workers must maintain complete records of their contacts with MSFWs and the services they perform. These records must include a daily log, a copy of which must be sent monthly to the ES office manager and maintained on file for at least 2 years. These records must include the number of contacts, the names of contacts (if available), and the services provided (e.g., whether a complaint was received, whether a request for career services was received, and whether a referral was made). Outreach workers also must maintain records of each possible

violation or complaint of which they have knowledge, and their actions in ascertaining the facts and referring the matters as provided herein. These records must include a description of the circumstances and names of any employers who have refused outreach workers access to MSFWs pursuant to paragraph (b)(2) of this section.

(9) Outreach workers must not engage in political, unionization, or anti-unionization activities during the performance of their duties.

(10) Outreach workers must be provided with, carry and display, upon request, identification cards or other material identifying them as employees of the SWA.

(11) Outreach workers in significant MSFW local offices must conduct especially vigorous outreach in their service areas.

(c) ES office outreach responsibilities. Each ES office manager must file with the SMA a monthly summary report of outreach efforts. These reports must summarize information collected, pursuant to paragraph (b)(8) of this section. The ES office manager and/or other appropriate State office staff must assess the performance of outreach workers by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance must not be judged solely by the number of contacts made by the outreach worker. The monthly reports and daily outreach logs must be made available to the SMA and Federal on-site review teams.

(d) State Agricultural Outreach Plan (AOP).

(1) Each SWA must develop an AOP every 4 years as part of the Unified or Combined State Plans required under sec. 102 or 103 of WIOA.

(2) The AOP must:

(i) Provide an assessment of the unique needs of MSFWs in the area based on past and projected agricultural and MSFW activity in the State;

(ii) Provide an assessment of available resources for outreach;

(iii) Describe the SWA's proposed outreach activities including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted by the one-stop center;

(iv) Describe the activities planned for providing the full range of employment and training services to the agricultural community, including both MSFWs and agricultural employers, through the one-stop centers;

(v) Provide an assurance that the SWA is complying with the requirements under § 653.111 if the State has significant MSFW one-stop centers.

(3) In developing the AOP, the SWA must solicit information and suggestions from WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 calendar days before submitting its final AOP to the Department, the SWA must provide the proposed AOP to NFJP grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 calendar days for review and comment. The SWA must:

(i) Consider any comments received in formulating its final proposed AOP.

(ii) Inform all commenting parties in writing whether their comments have been incorporated and, if not, the reasons therefore.

(iii) Transmit the comments and recommendations received and its responses to the Department with the submission of the AOP. (If the comments are received after the submission of the AOP, they may be sent separately to the Department.)

(4) The AOP must be submitted in accordance with paragraph (d) of this section and planning guidance issued by the Department.

(5) The Annual Summaries required at § 653.108(s) must update the Department on the SWA's progress toward meetings its goals set forth in the AOP.

§ 653.108 State Workforce Agency and State Monitor Advocate responsibilities.

(a) State Administrators must ensure their SWAs monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis. The State Administrator has overall responsibility for SWA self-monitoring.

(b) The State Administrator must appoint a State Monitor Advocate. The State Administrator must inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply through the State merit system prior to appointing a State Monitor Advocate. Among qualified candidates determined through State merit system procedures, the SWAs must seek persons:

(1) Who are from MSFW backgrounds; or

(2) Who speak Spanish or other languages of a significant proportion of the State MSFW population; or

(3) Who have substantial work experience in farmworker activities.

(c) The SMA must have direct, personal access, when necessary, to the State Administrator. The SMA must have status and compensation as approved by the civil service

classification system and be comparable to other State positions assigned similar levels of tasks, complexity, and responsibility.

(d) The SMA must be assigned staff necessary to fulfill effectively all of the duties set forth in this subpart. The number of staff positions must be determined by reference to the number of MSFWs in the State, as measured at the time of the peak MSFW population, and the need for monitoring activity in the State. The SMA must devote full-time to Monitor Advocate functions. Any State that proposes less than full-time dedication must demonstrate to its Regional Administrator that the SMA function can be effectively performed with part-time staffing.

(e) All SMAs and their staff must attend, within the first 3 months of their tenure, a training session conducted by the Regional Monitor Advocate. They also must attend whatever additional training sessions are required by the Regional or National Monitor Advocate.

(f) The SMA must provide any relevant documentation requested from the SWA by the Regional Monitor Advocate or the National Monitor Advocate.

(g) The SMA must:

(1) Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices (including progress made in achieving affirmative action staffing goals). The SMA, without delay, must advise the SWA and local offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations and may request a corrective action plan to address these deficiencies. The SMA must advise the SWA on means to improve the delivery of services.

(2) Participate in on-site reviews on a regular basis, using the following procedures:

(i) Before beginning an onsite review, the SMA or review staff must study:

(A) Program performance data;

(B) Reports of previous reviews;

(C) Corrective action plans developed as a result of previous reviews;

(D) Complaint logs; and

(E) Complaints elevated from the office or concerning the office.

(ii) Ensure that the onsite review format, developed by ETA, is used as a guideline for onsite reviews.

(iii) Upon completion of an onsite monitoring review, the SMA must hold one or more wrap-up sessions with the ES office manager and staff to discuss any findings and offer initial recommendations and appropriate technical assistance.

(iv) After each review the SMA must conduct an in-depth analysis of the review data. The conclusions and recommendations of the SMA must be put in writing and must be sent to the State Administrator, to the official of the SWA with authority over the ES office, and other appropriate SWA officials.

(v) If the review results in any findings of noncompliance with the regulations under this chapter, the ES office manager must develop and propose a written corrective action plan. The plan must be approved or revised by appropriate superior officials and the SMA. The plan must include actions required to correct or to take major steps to correct any compliance issues within 30 business days, and if the plan allows for more than 30 business days for full compliance, the length of, and the reasons for, the extended period must be specifically stated. SWAs are responsible for assuring and documenting that the ES office is in compliance within the time period designated in the plan.

(vi) SWAs must submit to the appropriate ETA regional office copies of the onsite review reports and corrective action plans for ES offices.

(vii) The SMA may recommend that the review described in paragraph (g)(2) of this section be delegated to a responsible, professional member of the administrative staff of the SWA, if and when the State Administrator finds such delegation necessary. In such event, the SMA is responsible for and must approve the written report of the review.

(3) Ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff, are reviewed at least once per year by State staff, and that, if necessary, those ES offices in which significant problems are revealed by required reports, management information, the Complaint System, or other means are reviewed as soon as possible.

(4) Review and approve the SWA's Agricultural Outreach Plan (AOP).

(5) On a random basis, review outreach workers' daily logs and other reports including those showing or reflecting the workers' activities.

(6) Write and submit annual summaries to the State Administrator with a copy to the Regional Administrator as described in paragraph (s) of this section.

(h) The SMA must participate in Federal reviews conducted pursuant to part 658, subpart G of this chapter.

(i) At the discretion of the State Administrator, the SMA may be assigned the responsibility as the Complaint Specialist. The SMA must participate in and monitor the performance of the Complaint System, as set forth at §§ 658.400 et seq. of this chapter. The SMA must review the ES office's informal resolution of complaints relating to MSFWs and must ensure that the ES office manager transmits copies of the Complaint System logs pursuant to part 658, subpart E of this chapter to the SWA.

(j) The SMA must serve as an advocate to improve services for MSFWs.

(k) The SMA must establish an ongoing liaison with WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State.

(l) The SMA must meet (either in person or by alternative means), at minimum, quarterly, with representatives of the organizations pursuant to paragraph (k) of this section, to receive complaints, assist in referrals of alleged violations to enforcement agencies, receive input on improving coordination with ES offices or improving the coordination of services to MSFWs. To foster such collaboration, the SMAs must establish Memorandums of Understanding (MOUs) with the NFJP grantees and may establish MOUs with other organizations serving farm workers as appropriate.

(m) The SMA must conduct frequent field visits to the working, living, and gathering areas of MSFWs, and must discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers. Records must be kept of each such field visit.

(n) The SMA must participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee, other Occupational Safety and Health Administration and Wage and Hour Division task forces, and other committees as appropriate.

(o) The SMA must ensure that outreach efforts in all significant MSFW ES offices are reviewed at least yearly. This review will include accompanying at least one outreach worker from each significant MSFW ES office on field visits to MSFWs' working, living, and/or

gathering areas. The SMA must review findings from these reviews with the ES office managers.

(p) The SMA must review on at least a quarterly basis all statistical and other MSFW-related data reported by ES offices in order:

(1) To determine the extent to which the SWA has complied with the ES regulations*;* and

(2) To identify the areas of non-compliance.

(q) The SMA must have full access to all statistical and other MSFW-related information gathered by SWAs and ES offices, and may interview SWA and ES office staff with respect to reporting methods. Subsequent to each review, the SMA must consult, as necessary, with the SWA and ES offices and provide technical assistance to ensure accurate reporting.

(r) The SMA must review and comment on proposed State ES directives, manuals, and operating instructions relating to MSFWs and must ensure:

(1) That they accurately reflect the requirements of the regulations; and

(2) That they are clear and workable. The SMA also must explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations, and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved.

(s) Annual Summary. The SMA must prepare for the State Administrator, the Regional Monitor Advocate, and the National Monitor Advocate an Annual Summary describing how the State provided employment services to MSFWs within the State based on statistical data, reviews, and other activities as required in this chapter. The summary must include:

(1) A description of the activities undertaken during the program year by the SMA pertaining to his/her responsibilities set forth in this section and other applicable regulations in this chapter.

(2) An assurance that the SMA has direct, personal access, whenever he/she finds it necessary, to the State Administrator and that the SMA has status and compensation approved by the civil service classification system, and is comparable to other State positions assigned similar levels of tasks, complexity, and responsibility.

(3) An assurance the SMA devotes all of his/her time to monitor advocate functions. Or, if the SWA proposed the SMA conducts his/her functions on a part-time basis, an explanation of how the SMA functions are effectively performed with part-time staffing.

(4) A summary of the monitoring reviews conducted by the SMA, including:

(i) A description of any problems, deficiencies, or improper practices the SMA identified in the delivery of services;

(ii) A summary of the actions taken by the SWA to resolve the problems, deficiencies, or improper practices described in its service delivery; and

(iii) A summary of any technical assistance the SMA provided for the SWA and the ES offices.

(5) A summary of the outreach efforts undertaken by all significant and non-significant MSFW ES offices.

(6) A summary of the State's actions taken under the Complaint System described in part 658, subpart E of this chapter, identifying any challenges, complaint trends, findings from reviews of the Complaint System, trainings offered throughout the year, and steps taken to inform MSFWs and employers, and farmworker advocacy groups about the Complaint System.

(7) A summary of how the SMA is working with WIOA sec. 167 NFJP grantees and other organizations serving farmworkers, employers and employer organizations, in the State, and an assurance that the SMA is meeting at least quarterly with representatives of these organizations.

(8) A summary of the statistical and other MSFW-related data and reports gathered by SWAs and ES offices for the year, including an overview of the SMA's involvement in the SWA's reporting systems.

(9) A summary of the training conducted for SWA personnel, including ES office personnel, on techniques for accurately reporting data.

(10) A summary of activities related to the AOP and an explanation of how those activities helped the State reach the goals and objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of the SWA's achievements over the previous 4 years to accomplish the goals set forth in the AOP, and a description of the goals which were not achieved and the steps the SWA will take to address those deficiencies.

(11) For significant MSFW ES offices, a summary of the functioning of the State's affirmative action staffing program under § 653.111.

§ 653.109 Data collection and performance accountability measures.

SWAs must:

(a) Collect career service indicator data for the performance indicators specified in WIOA sec. 116(b)(2)(A)(i).

(b) Collect data, in accordance with applicable ETA Reports and Guidance, on:

(1) The number of MSFWs contacted through outreach activities;

(2) The number of MSFWs and non-MSFWs registered for career services;

(3) The number of MSFWs referred to and placed in agricultural jobs;

(4) The number of MSFWs referred to and placed in non-agricultural jobs;

(5) The percentage of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;

(6) The median earnings of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;

(7) The percentage of MSFW program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(8) The number of MSFWs served who identified themselves as male, female, Hispanic or Latino, Black or African-American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, or White;

(9) Agricultural clearance orders (including field checks), MSFW complaints and apparent violations, and monitoring activities; and

(10) Any other data required by the Department.

(c) Provide necessary training to SWA personnel, including ES office personnel, on techniques for accurately reporting data.

(d) Collect and submit data on MSFWs required by the Unified or Combined State Plan, as directed by the Department.

(e) Periodically verify data required to be collected under this section, take necessary steps to ensure its validity, and submit the data for verification to the Department, as directed by the Department.

(f) Submit additional reports to the Department as directed.

(g) Meet equity indicators that address ES controllable services and include, at a minimum, individuals referred to a job, receiving job development, and referred to supportive or career services.

(h) Meet minimum levels of service in significant MSFW States. That is, only significant MSFW SWAs will be required to meet minimum levels of service to MSFWs. Minimum level of service indicators must include, at a minimum, individuals placed in a job, individuals placed long-term (150 days or more) in a non-agricultural job, a review of significant MSFW ES offices, field checks conducted, outreach contacts per week, and processing of complaints. The determination of the minimum service levels required of significant MSFW States for each year must be based on the following:

(1) Past SWA performance in serving MSFWs, as reflected in on-site reviews and data collected under paragraph (b) of this section.

(2) The need for services to MSFWs in the upcoming year, comparing prior and projected levels of MSFW activity.

§ 653.110 Disclosure of data.

(a) SWAs must disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by SWAs and ES offices pursuant to § 653.109, if possible within 10 business days after receipt of the request.

(b) If a request for data held by a SWA is made to the ETA national or regional office, the ETA must forward the request to the SWA for response.

(c) If the SWA cannot supply the requested data within 10 business days after receipt of the request, the SWA must respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) SWA intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the SWA and the ETA, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided the reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, also may be withheld provided the reason is given to the requestor in writing.

§ 653.111 State Workforce Agency staffing requirements.

(a) The SWA must implement and maintain an affirmative action program for staffing in significant MSFW one-stop centers, and must employ ES staff in a manner facilitating the delivery of employment services tailored to the special needs of MSFWs, including:

(1) The positioning of multilingual staff in offices serving a significant number of Spanish-speaking or ELL participants; and

(2) The hiring of staff members from the MSFW community or members of community-based migrant programs.

(b) The SWA must hire sufficient numbers of qualified, permanent minority staff in significant MSFW ES offices. SWAs will determine whether a "sufficient number" of staff have been hired by conducting a comparison between the characteristics of the staff and the workforce and determining if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the workforce in the ES office service area(s). SWAs with significant MSFW ES offices, must undertake special efforts to recruit MSFWs and persons from MSFW backgrounds for its staff.

(1) Where qualified minority applicants are not available to be hired as permanent staff, qualified minority part-time, provisional, or temporary staff must be hired in accordance with State merit system procedures, where applicable.

(2) If an ES office does not have a sufficient number of qualified minority staff, the SWA must establish a goal to achieve sufficient staffing at the ES office. The SWA also must establish a reasonable timetable for achieving the staffing goal by hiring or promoting available, qualified staff in the under-represented categories. In establishing timetables, the SWA must consider the vacancies anticipated through expansion, contraction, and turnover in the office(s) and available funds. All affirmative action programs must establish timetables that are designed to achieve the staffing goal no later than 1year after the submission of the Unified or Combined State Plan or Annual Summary, whichever is sooner. Once such goals have been achieved, the SWA must submit a State Plan modification request to the Department with the assurance that the requirements of paragraph (b) of this section have been achieved.

(3) The SMA, Regional Monitor Advocate, or the National Monitor Advocate, as part of his/her regular reviews of SWA compliance with these regulations, must monitor the extent to which the SWA has complied with its affirmative action program.

Subparts C - E—[Reserved].

Subpart F—Agricultural Recruitment System for U.S. Workers (ARS)

§ 653.500 Purpose and scope of subpart.

This subpart includes the requirements for the acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-

round basis. Orders seeking workers to perform farmwork on a year-round basis are not subject to the requirements of this subpart. This subpart affects all job orders for workers who are recruited through the ES intrastate and interstate clearance systems for less than year-round farmwork, including both MSFWs and non-MSFW job seekers.

§ 653.501 Requirements for processing clearance orders.

(a) No ES office or SWA may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless:

(1) The ES office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area, or;

(2) The ES office anticipates a shortage of local workers.

(b) ES office responsibilities. (1) Each ES office must ensure the agricultural clearance form prescribed by the Department (ETA Form 790 or its subsequently issued form), and its attachments are complete when placing intrastate or interstate clearance orders seeking workers.

(2) All clearance orders must be posted in accordance with applicable ETA guidance. If the job order for the ES office incorporates offices beyond the local office commuting area, the ES office must suppress the employer information in order to facilitate the orderly movement of workers within the ES.

(3) ES staff must determine, through a preoccupancy housing inspection performed by ES staff or an appropriate public agency, that the housing assured by the employer is either available and meets the applicable housing standards or has been approved for conditional access to the clearance system as set forth in § 653.502; except that mobile range housing for sheepherders and goatherders must meet existing Departmental guidelines and/or applicable regulations.

(c) SWA responsibilities. (1) SWAs must ensure intrastate and interstate clearance orders:

(i) Include the following language: "In view of the statutorily established basic function of the ES as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the SWAs are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the ES constitute a contractual job offer to which the ETA or a SWA is in any way a party;"

(ii) Do not contain an unlawful discriminatory specification including, for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status;

(iii) Are signed by the employer; and

(iv) State all the material terms and conditions of the employment, including:

(A) The crop;

(B) The nature of the work;

(C) The anticipated period and hours of employment;

(D) The anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available;

(E) The hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size;

(F) Any deductions to be made from wages;

(G) A specification of any non-monetary benefits to be provided by the employer;

(H) Any hours, days, or weeks for which work is guaranteed, and, for each guaranteed week of work except as provided in paragraph (c)(3)(i) of this section, the exclusive manner in

which the guarantee may be abated due to weather conditions or other acts of God beyond the employer's control; and

(I) Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate, including the anticipated time period(s) within which such payments will be made.

(2) SWAs must ensure:

(i) The wages and working conditions offered are not less than the prevailing wages and working conditions among similarly employed farmworkers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher. If the wages offered are expressed as piece rates or as base rates and bonuses, the employer must make the method of calculating the wage and supporting materials available to ES staff who must check if the employer's calculation of the estimated hourly wage rate is reasonably accurate and is not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher; and

(ii) The employer has agreed to provide or pay for the transportation of the workers and their families at or before the end of the period of employment specified in the job order on at least the same terms as transportation is commonly provided by employers in the area of intended employment to farmworkers and their families recruited from the same area of supply. Under no circumstances may the payment or provision of transportation occur later than the departure time needed to return home to begin the school year, in the case of any worker with children 18 years old or younger, or be conditioned on the farmworker performing work after the period of employment specified in the job order.

(3) SWAs must ensure the clearance order includes the following assurances:

(i) The employer will provide to workers referred through the clearance system the number of hours of work cited in paragraph (c)(1)(iv)(D) of this section for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 business days prior to the original date of need (pursuant to paragraph (c)(3)(iv) of this section) by so notifying the order-holding office in writing (email notification may be acceptable). The SWA must make a record of this notification and must attempt to inform referred workers of the change expeditiously.

(ii) No extension of employment beyond the period of employment specified in the clearance order may relieve the employer from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

(iii) The working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

(iv) The employer will expeditiously notify the order-holding office or SWA by e-mailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment or other factors have changed the terms and conditions of employment.

(v) The employer, if acting as a farm labor contractor ("FLC") or farm labor contractor employee ("FLCE") on the order, has a valid Federal FLC certificate or Federal FLCE identification card and when appropriate, any required State farm labor contractor certificate.

(vi) The availability of no cost or public housing which meets the Federal standards and which is sufficient to house the specified number of workers requested through the clearance

system. This assurance must cover the availability of housing for only those workers, and when applicable, family members who are not reasonably able to return to their residence in the same day.

(vii) Outreach workers must have reasonable access to the workers in the conduct of outreach activities pursuant to § 653.107.

(viii) The job order contains all the material terms and conditions of the job. The employer must assure this by signing the following statement in the clearance order: "This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job."

(4) If a SWA discovers that an employer's clearance order contains a material misrepresentation, the SWA may initiate the Discontinuation of Services as set forth in part 658, subpart F of this chapter.

(5) If there is a change to the anticipated date of need and the employer fails to notify the order-holding office at least 10 business days prior to the original date of need the employer must pay eligible (pursuant to paragraph (d)(4) of this section) workers referred through the clearance system the specified hourly rate of pay, or if the pay is piece-rate, the higher of the Federal or State minimum wage for the first week starting with the originally anticipated date of need or provide alternative work if such alternative work is stated on the clearance order. If an employer fails to comply under this section the order holding office may notify the Department's Wage and Hour Division for possible enforcement.

(d) Processing clearance orders. (1) The order-holding office must transmit an electronic copy of the approved clearance order to its SWA. The SWA must distribute additional

electronic copies of the form with all attachments (except that the SWA may, at its discretion, delegate this distribution to the local office) as follows:

(i) At least one copy of the clearance order must be sent to each of the SWAs selected for recruitment (areas of supply);

(ii) At least one copy of the clearance order must be sent to each applicant-holding ETA regional office;

(iii) At least one copy of the clearance order must be sent to the order-holding ETA regional office; and

(iv) At least one copy of the clearance order must be sent to the Regional Farm Labor Coordinated Enforcement Committee and/or other Occupational Safety and Health Administration and Wage and Hour Division regional agricultural coordinators, and/or other committees as appropriate in the area of employment.

(2) The ES office may place an intrastate or interstate order seeking workers to perform farmwork for a specific farm labor contractor or for a worker preferred by an employer provided the order meets ES nondiscrimination criteria. The order would not meet such criteria, for example, if it requested a “white male crew leader” or “any white male crew leader.”

(3) The approval process described in paragraph (d)(3) of this section does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to part 655, subpart B of this chapter; such clearance orders must be sent to the processing center as directed by ETA in guidance. For non-criteria clearance orders (orders that are not attached to applications under part 655, subpart B of this chapter), the ETA regional office must review and approve the order within 10 business days of its receipt of the order, and the Regional Administrator or his/her designee must approve the areas of supply to which the

order will be extended. Any denial by the Regional Administrator or his/her designee must be in writing and state the reasons for the denial.

(4) The applicant holding office must notify all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members, to contact an ES office, preferably the order-holding office, to verify the date of need cited in the clearance order between 9 and 5 business days prior to the original date of need cited in the clearance order; and that failure to do so will disqualify the referred farmworker from the first weeks' pay as described in paragraph (c)(3)(i) of this section. The SWA must make a record of this notification.

(5) If the worker referred through the clearance system contacts an ES office (in any State) other than the order holding office, that ES office must assist the referred worker in contacting the order holding office on a timely basis. Such assistance must include, if necessary, contacting the order holding office by telephone or other timely means on behalf of the worker referred through the clearance system.

(6) ES office staff must assist all farmworkers, upon request in their native language, to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists in their native language showing wage payment schedules, working conditions, and other material specifications of the clearance order.

(7) If an order holding office learns that a crop is maturing earlier than expected or that other material factors, including weather conditions and recruitment levels have changed since the date the clearance order was accepted, the SWA must contact immediately the applicant holding office which must inform immediately crews and families scheduled to report to the job

site of the changed circumstances and must adjust arrangements on behalf of such crews and families.

(8) When there is a delay in the date of need, SWAs must document notifications by employers and contacts by individual farmworkers or crew leaders on behalf of farmworkers or family heads on behalf of farmworker family members to verify the date of need.

(9) If weather conditions, over-recruitment, or other conditions have eliminated the scheduled job opportunities, the SWAs involved must make every effort to place the workers in alternate job opportunities as soon as possible, especially if the worker(s) is/(are) already en-route or at the job site. ES office staff must keep records of actions under this section.

(10) Applicant-holding offices must provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. Such checklists, where necessary, must be in the workers' native language. The checklist must include language notifying the worker that a copy of the original clearance order is available upon request. SWAs must use a standard checklist format provided by the Department (such as in Form WH516 or a successor form).

(11) The applicant-holding office must give each referred worker a copy of the list of worker's rights described in the Department's ARS Handbook.

(12) If the labor supply SWA accepts a clearance order, the SWA must actively recruit workers for referral. In the event a potential labor supply SWA rejects a clearance order, the reasons for rejection must be documented and submitted to the Regional Administrator having jurisdiction over the SWA. The Regional Administrator will examine the reasons for rejection, and, if the Regional Administrator agrees, will inform the Regional Administrator with jurisdiction over the order-holding SWA of the rejection and the reasons. If the Regional

Administrator who receives the notification of rejection does not concur with the reasons for rejection, that Regional Administrator will inform the National Monitor Advocate, who, in consultation with the appropriate ETA higher authority, will make a final determination on the acceptance or rejection of the order.

§ 653.502 Conditional access to the Agricultural Recruitment System.

(a) Filing requests for conditional access—(1) "Noncriteria" employers. Except as provided in paragraph (a)(2) of this section, an employer whose housing does not meet applicable standards may file with the ES office serving the area in which its housing is located, a written request for its clearance orders to be conditionally allowed into the intrastate or interstate clearance system, provided that the employer's request assures its housing will be in full compliance with the requirements of the applicable housing standards at least 20 calendar days (giving the specific date) before the housing is to be occupied.

(2) "Criteria" employers. If the request for conditional access described in paragraph (a)(1) of this section is from an employer filing a clearance order pursuant to an application for temporary alien agricultural labor certification for H-2A workers under subpart B of part 655 of this chapter, the request must be filed with the Certifying Officer (CO) at the processing center designated by ETA in guidance to make determinations on applications for temporary employment certification under the H-2A program.

(3) Assurance. The employer's request pursuant to paragraphs (a)(1) or (2) of this section must contain an assurance that the housing will be in full compliance with the applicable housing standards at least 20 calendar days (stating the specific date) before the housing is to be occupied.

(b) Processing requests—(1) SWA processing. Upon receipt of a written request for conditional access to the intrastate or interstate clearance system under paragraph (a)(1) of this section, the ES office must send the request to the SWA, which, in turn, must forward it to the Regional Administrator.

(2) Regional office processing and determination. Upon receipt of a request for conditional access pursuant to paragraph (b)(1) of this section, the Regional Administrator must review the matter and, as appropriate, must either grant or deny the request.

(c) Authorization. The authorization for conditional access to the intrastate or interstate clearance system must be in writing, and must state that although the housing does not comply with the applicable standards, the employer's job order may be placed into intrastate or interstate clearance until a specified date. The Regional Administrator must send the authorization to the employer and must send copies (hard copy or electronic) to the appropriate SWA and ES office. The employer must submit and the ES office must attach copies of the authorization to each of the employer's clearance orders which is placed into intrastate or interstate clearance.

(d) Notice of denial. If the Regional Administrator denies the request for conditional access to the intrastate or interstate clearance system he/she must provide written notice to the employer, the appropriate SWA, and the ES office, stating the reasons for the denial.

(e) Inspection. The ES office serving the area containing the housing of any employer granted conditional access to the intrastate or interstate clearance system must assure that the housing is inspected no later than the date by which the employer has promised to have its housing in compliance with the applicable housing standards. An employer however, may request an earlier preliminary inspection. If, on the date set forth in the authorization, the housing is not in full compliance with the applicable housing standards as assured in the request

for conditional access, the ES office must afford the employer 5 calendar days to bring the housing into full compliance. After the 5-calendar-day period, if the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the ES office must immediately:

(1) Notify the RA or the NPC designated by the Regional Administrator;

(2) Remove the employer's clearance orders from intrastate and interstate clearance; and

(3) If workers have been recruited against these orders, in cooperation with the ES agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.

§ 653.503 Field checks.

(a) If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(b) Where the SWA has made placements on 10 or more agricultural clearance orders (pursuant to part 653, subpart F) during the quarter, the SWA must conduct field checks on at least 25 percent of the total of such orders. Where the SWA has made placements on nine or fewer job orders during the quarter (but at least one job order), the SWA must conduct field checks on 100 percent of all such orders. This requirement must be met on a quarterly basis.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

(d) If SWA or Federal personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the SWA must document the finding and attempt informal resolution where appropriate (for example, informal resolution must not be attempted in certain cases, such as EO related issues and others identified by the Department through guidance.) If the matter has not been resolved within 5 business days, the SWA must initiate the Discontinuation of Services as set forth at part 658, subpart F of this chapter and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.

(e) SWAs may enter into formal or informal arrangements with appropriate State and Federal enforcement agencies where the enforcement agency staff may conduct field checks instead of and on behalf of SWA personnel. The agreement may include the sharing of information and any actions taken regarding violations of the terms and conditions of the employment as stated in the clearance order and any other violations of employment-related laws. An enforcement agency field check must satisfy the requirement for SWA field checks where all aspects of wages, hours, working and housing conditions have been reviewed by the enforcement agency. The SWA must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies.

(f) ES staff must keep records of all field checks.

19. Revise the authority citation for part 654 to read as follows:

Authority: 29 U.S.C. 49k; 8 U.S.C. 1188(c)(4); 41 Op.A.G. 406 (1959).

20. Revise subpart E of part 654 to read as follows:

Subpart E—Housing for Farmworkers

Purpose and Applicability

Sec.
654.400 Scope and purpose.
654.401 Applicability.
654.402 Variances.
654.403 [Reserved].

Housing Standards

Sec.
654.404 Housing site.
654.405 Water supply.
654.406 Excreta and liquid waste disposal.
654.407 Housing.
654.408 Screening.
654.409 Heating.
654.410 Electricity and lighting.
654.411 Toilets.
654.412 Bathing, laundry, and hand washing.
654.413 Cooking and eating facilities.
654.414 Garbage and other refuse.
654.415 Insect and rodent control.
654.416 Sleeping facilities.
654.417 Fire, safety, and first aid.

Subpart E—Housing for Farmworkers

Purpose and Applicability

§ 654.400 Scope and purpose.

(a) This subpart sets forth the Department's Employment and Training Administration (ETA) standards for agricultural housing and variances. Local Wagner-Peyser Act Employment Service (ES) offices, as part of the State ES agencies and in cooperation with the ES program, assist employers in recruiting farmworkers from places outside the area of intended employment. The experiences of the ES agencies indicate that employees so referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this

practice, it is the policy of the Federal-State ES system to deny its intrastate and interstate recruitment services to employers until the State ES agency has ascertained that the employer's housing meets certain standards.

(b) To implement this policy, § 653.501 of this chapter provides that recruitment services must be denied unless the employer has signed an assurance that if the workers are to be housed, a preoccupancy inspection has been conducted, and the ES staff has ascertained that, with respect to intrastate or interstate clearance orders, the employer's housing meets the full set of standards set forth at 29 CFR 1910.142 or part 654, subpart E, except that mobile range housing for sheepherders or goatherders must meet existing Departmental guidelines and/or applicable regulations.

§ 654.401 Applicability.

(a) Employers whose housing was completed or under construction prior to April 3, 1980, or was under a signed contract for construction prior to March 4, 1980, may continue to follow the full set of the Department's ETA standards set forth in this subpart.

(b) The Department will consider agricultural housing which complies with ETA transitional standards set forth in this subpart also to comply with the Occupational Safety and Health Administration (OSHA) temporary labor camp standards at 29 CFR 1910.142.

§ 654.402 Variances.

(a) An employer may apply for a structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local ES office serving the area in which the housing is located. This application must:

(1) Clearly specify the standard(s) from which the variance is desired;

(2) Adequately justify that the variance is necessary to obtain a beneficial use of an

existing facility, and to prevent a practical difficulty or unnecessary hardship; and

(3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local ES office must send the request to the State office which, in turn, must forward it to the ETA Regional Administrator (RA). The RA must review the matter and, after consultation with OSHA, must either grant or deny the request for a variance.

(c) The variance granted by the RA must be in writing, must state the particular standard(s) involved, and must state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA must send the approved variance to the employer and must send copies to OSHA's Regional Administrator, the Regional Administrator of the Wage and Hour Division (WHD), and the appropriate State Workforce Agency (SWA) and the local ES office. The employer must submit and the local ES office must attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA must provide written notice stating the reasons for the denial to the employer, the appropriate SWA, and the local ES office. The notice also must offer the employer an opportunity to request a hearing before a Department of Labor Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing must be handled in accordance with the complaint procedures set forth at §§ 658.424 and 658.425 of this chapter.

(e) The procedures of paragraphs (a) through (d) of this section only apply to an

employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404 through 654.417.

§ 654.403 [Reserved].

Housing Standards

§ 654.404 Housing site.

(a) Housing sites must be well drained and free from depressions in which water may stagnate. They must be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing must not be subject to, or in proximity to, conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.

(c) Grounds within the housing site must be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site must provide a space for recreation reasonably related to the size of the facility and the type of occupancy.

§ 654.405 Water supply.

(a) An adequate and convenient supply of water that meets the standards of the State health authority must be provided.

(b) A cold water tap must be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities must be provided for overflow and spillage.

(c) Common drinking cups are not permitted.

§ 654.406 Excreta and liquid waste disposal.

(a) Facilities must be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste may not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes must be connected thereto.

(c) Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets must be provided. Any requirements of the State health authority must be complied with.

§ 654.407 Housing.

(a) Housing must be structurally sound, in good repair, in a sanitary condition and must provide protection to the occupants against the elements.

(b) Housing must have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements must be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant;

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant;

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of age must have a room or partitioned sleeping area for the husband and wife. The partition must be of rigid materials and installed so as to provide reasonable privacy.

(e) Separate sleeping accommodations must be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family must be provided.

(g) At least one-half of the floor area in each living unit must have a minimum ceiling height of 7 feet. No floor space may be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) must have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, must equal at least 10 percent of the usable floor area. The total openable area must equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

§ 654.408 Screening.

(a) All outside openings must be protected with screening of not less than 16 mesh.

(b) All screen doors must be tight fitting, in good repair, and equipped with self-closing devices.

§ 654.409 Heating.

(a) All living quarters and service rooms must be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68 degrees Fahrenheit (°F) if during the period of normal occupancy the temperature in such quarters falls below 68 °F.

(b) Any stoves or other sources of heat utilizing combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated by electricity may be provided. If a solid or liquid fuel

stove is used in a room with wooden or other combustible flooring, there must be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

(c) Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stovepipe must be of fireproof material. A vented metal collar must be installed around a stovepipe, or vent passing through a wall, ceiling, floor, or roof.

(d) When a heating system has automatic controls, the controls must be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 654.410 Electricity and lighting.

(a) All housing sites must be provided with electric service.

(b) Each habitable room and all common use rooms, and areas such as: laundry rooms, toilets, privies, hallways, stairways, etc., must contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet must be provided in each individual living room.

(c) Adequate lighting must be provided for the yard area, and pathways to common use facilities.

(d) All wiring and lighting fixtures must be installed and maintained in a safe condition.

§ 654.411 Toilets.

(a) Toilets must be constructed, located, and maintained so as to prevent any nuisance or public health hazard.

(b) Water closets or privy seats for each sex must be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.

(c) Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

(d) Except in individual family units, separate toilet accommodations for men and women must be provided. If toilet facilities for men and women are in the same building, they must be separated by a solid wall from floor to roof or ceiling. Toilets must be distinctly marked "men" and "women" in English and in the native language of the persons expected to occupy the housing.

(e) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, must be furnished.

(f) Common use toilets and privies must be well lighted and ventilated and must be clean and sanitary.

(g) Toilet facilities must be located within 200 feet of each living unit.

(h) Privies may not be located closer than 50 feet from any living unit or any facility where food is prepared or served.

(i) Privy structures and pits must be fly–tight. Privy pits must have adequate capacity for the required seats.

§ 654.412 Bathing, laundry, and hand washing.

(a) Bathing and hand washing facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. These facilities must be clean and sanitary and located within 200 feet of each living unit.

(b) There must be a minimum of 1 showerhead per 15 persons. Showerheads must be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate,

dry dressing space must be provided in common use facilities. Shower floors must be constructed of nonabsorbent nonskid materials and sloped to properly constructed floor drains. Except in individual family units, separate shower facilities must be provided each sex. When common use shower facilities for both sexes are in the same building they must be separated by a solid nonabsorbent wall extending from the floor to ceiling, or roof, and must be plainly designated "men" or "women" in English and in the native language of the persons expected to occupy the housing.

(c) Lavatories or equivalent units must be provided in a ratio of 1 per 15 persons.

(d) Laundry facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. Laundry trays or tubs must be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons must be provided in addition to the mechanical washers.

§ 654.413 Cooking and eating facilities.

(a) When workers or their families are permitted or required to cook in their individual unit, a space must be provided and equipped for cooking and eating. Such space must be provided with:

(1) A cookstove or hot plate with a minimum of two burners;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Provisions for mechanical refrigeration of food at a temperature of not more than 45 °F;

(4) A table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and

(5) Adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities must be provided for cooking and eating. Such room or building must be provided with:

(1) Stoves or hot plates, with a minimum equivalent of 2 burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Mechanical refrigeration for food at a temperature of not more than 45 °F.;

(4) Tables and chairs or equivalent seating adequate for the intended use of the facility;

(5) Adequate sinks with hot and cold water under pressure;

(6) Adequate lighting and ventilation; and

(7) Floors must be of nonabsorbent, easily cleaned materials.

(c) When central mess facilities are provided, the kitchen and mess hall must be in proper proportion to the capacity of the housing and must be separate from the sleeping quarters. The physical facilities, equipment, and operation must be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas must be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas must be of fire-resistant material.

§ 654.414 Garbage and other refuse.

(a) Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, must be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers must be provided in a minimum ratio of 1 per 15 persons.

(b) Provisions must be made for collection of refuse at least twice a week, or more often if necessary. The disposal of refuse, which includes garbage, must be in accordance with State and local law.

§ 654.415 Insect and rodent control.

Housing and facilities must be free of insects, rodents, and other vermin.

§ 654.416 Sleeping facilities.

(a) Sleeping facilities must be provided for each person. Such facilities must consist of comfortable beds, cots, or bunks, provided with clean mattresses.

(b) Any bedding provided by the housing operator must be clean and sanitary.

(c) Triple deck bunks may not be provided.

(d) The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk must be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling must be a minimum of 36 inches.

(e) Beds used for double occupancy may be provided only in family accommodations.

§ 654.417 Fire, safety, and first aid.

(a) All buildings in which people sleep or eat must be constructed and maintained in accordance with applicable State or local fire and safety laws.

(b) In family housing and housing units for less than 10 persons, of one story construction, two means of escape must be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24×24 inches.

(c) All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms must have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(d) Sleeping quarters and common assembly rooms on the second story must have a stairway, and a permanent, affixed exterior ladder or a second stairway.

(e) Sleeping and common assembly rooms located above the second story must comply with the State and local fire and building codes relative to multiple story dwellings.

(f) Fire extinguishing equipment must be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment must provide protection equal to a $2^1/_2$ gallon stored pressure or 5-gallon pump-type water extinguisher.

(g) First aid facilities must be provided and readily accessible for use at all time. Such facilities must be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials must be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals may not be stored in the housing area.

21. Revise part 658 to read as follows:

PART 658 – ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

Subpart A-D [Reserved].

Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

Sec.
658.400 Purpose and scope of subpart.

Complaints Filed at the Local and State Level

Sec.
658.410 Establishment of local and State complaint systems.
658.411 Action on complaints.

658.417 State hearings.
658.418 Decision of the State hearing official.
658.419 Apparent violations.

When a Complaint Rises to the Federal Level

Sec.
658.420 Responsibilities of the Employment and Training Administration regional office.
658.421 Handling of Wagner-Peyser Act Employment Service regulation-related complaints.
658.422 Handling of employment-related law complaints by the Regional Administrator.
658.424 Proceedings before the Office of Administrative Law Judges.
658.425 Decision of Department of Labor Administrative Law Judge.
658.426 Complaints against the United States Employment Service.

Subpart F—Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

Sec.
658.500 Scope and purpose of subpart.
658.501 Basis for discontinuation of services.
658.502 Notification to employers.
658.503 Discontinuation of services.
658.504 Reinstatement of services.

Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

Sec.
658.600 Scope and purpose of subpart.
658.601 State Workforce Agency responsibility.
658.602 Employment and Training Administration National Office responsibility.
658.603 Employment and Training Administration Regional Office responsibility.
658.604 Assessment and evaluation of program performance data.
658.605 Communication of findings to State agencies.

Subpart H—Federal Application of Remedial Action to State Workforce Agencies

Sec.
658.700 Scope and purpose of subpart.
658.701 Statements of policy.
658.702 Initial action by the Regional Administrator.
658.703 Emergency corrective action.
658.704 Remedial actions.
658.705 Decision to decertify.
658.706 Notice of decertification.

658.707 Requests for hearings.
658.708 Hearings.
658.709 Conduct of hearings.
658.710 Decision of the Administrative Law Judge.
658.711 Decision of the Administrative Review Board.

Authority: Pub. L. 113-128 secs. 189, 503; Wagner-Peyser Act, as amended by Pub. L. 113-128 secs. 302 – 308, 29 U.S.C. 49 et seq.

Subpart A - D [Reserved].

Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

§ 658.400 Purpose and scope of subpart.

(a) This subpart sets forth the regulations governing the Complaint System for the Wagner-Peyser Act Employment Service (ES) at the State and Federal levels. Specifically, the Complaint System handles complaints against an employer about the specific job to which the applicant was referred through the ES and complaints involving the failure to comply with the ES regulations under parts 651, 652, 653, 654, and this part. As noted below, this subpart only covers ES-related complaints made within 2 years of the alleged violation.

(b) Any complaints alleging violations under the Unemployment Insurance program, under Workforce Innovation and Opportunity Act (WIOA) title I programs, or complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 4212 are not covered by this subpart and must be referred to the appropriate administering agency which would follow the procedures set forth in the respective regulations.

(c) The Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws as defined in § 651.10 of this chapter.

(d) A complainant may designate an individual to act as his/her representative.

Complaints Filed at the Local and State Level

§ 658.410 Establishment of local and State complaint systems.

(a) Each State Workforce Agency (SWA) must establish and maintain a Complaint System pursuant to this subpart.

(b) The State Administrator must have overall responsibility for the operation of the Complaint System. At the ES office level the manager must be responsible for the operation of the Complaint System.

(c) SWAs must ensure centralized control procedures are established for the processing of complaints. The manager of the ES office and the SWA Administrator must ensure a central complaint log is maintained, listing all complaints taken by the ES office or the SWA, and specifying for each complaint:

(1) The name of the complainant;

(2) The name of the respondent (employer or State agency);

(3) The date the complaint is filed;

(4) Whether the complaint is by or on behalf of a migrant and seasonal farmworker (MSFW);

(5) Whether the complaint concerns an employment-related law or the ES regulations; and

(6) The action taken and whether the complaint has been resolved.

(d) State agencies must ensure information pertaining to the use of the Complaint System is publicized, which must include, but is not limited to, the prominent display of an Employment and Training Administration (ETA)-approved Complaint System poster in each one-stop center.

(e) Each one-stop center must ensure there is appropriate staff available during regular office hours to take complaints.

(f) Complaints may be accepted in any one-stop center, or by a State Workforce Agency, or elsewhere by an outreach worker.

(g) All complaints filed through the local ES office must be handled by a trained Complaint System representative.

(h) All complaints received by a SWA must be assigned to a State agency official designated by the State Administrator, provided that the State agency official designated to handle MSFW complaints must be the State Monitor Advocate (SMA).

(i) State agencies must ensure any action taken by the Complaint System representative, including referral on a complaint from an MSFW is fully documented containing all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any ES-related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls and all correspondence relating thereto.

(j) Within 1 month after the end of the calendar quarter, the ES office manager must transmit an electronic copy of the quarterly Complaint System log described in paragraph (c) of this section to the SMA. These logs must be made available to the Department upon request.

(k) The appropriate SWA or ES office representative handling a complaint must offer to assist the complainant through the provision of appropriate services.

(l) The State Administrator must establish a referral system for cases where a complaint is filed alleging a violation that occurred in the same State but through a different ES office.

(m) Follow-up on unresolved complaints. When a complaint is submitted or referred to a SWA, the Complaint System representative (where the complainant is an MSFW, the Complaint System representative will be the SMA), must follow-up monthly regarding MSFW

complaints, and must inform the complainant of the status of the complaint. No follow-up with the complainant is required for non-MSFW complaints.

(n) When a complainant is an English Language Learner (ELL), all written correspondence with the complainant under part 658, subpart E must include a translation into the complainant's native language.

(o) A complainant may designate an individual to act as his/her representative throughout the filing and processing of a complaint.

§ 658.411 Action on complaints.

(a) Filing complaints. (1) Whenever an individual indicates an interest in filing a complaint under this subpart with an ES office or SWA representative, or an outreach worker, the individual receiving the complaint must offer to explain the operation of the Complaint System and must offer to take the complaint in writing.

(2) During the initial discussion with the complainant, the staff taking the complaint must:

(i) Make every effort to obtain all the information he/she perceives to be necessary to investigate the complaint;

(ii) Request that the complainant indicate all of the physical addresses, email, and telephone numbers through which he/she might be contacted during the investigation of the complaint;

(iii) Request that the complainant contact the Complaint System representative before leaving the area if possible, and explain the need to maintain contact during the investigation.

(3) The staff must ensure the complainant (or his/her representative) submits the complaint on the Complaint/Referral Form or another complaint form prescribed or approved by

the Department or submits complaint information which satisfies paragraph (a)(4) of this section. The Complaint/Referral Form must be used for all complaints, including complaints about unlawful discrimination, except as provided in paragraph (a)(4) of this section. The staff must offer to assist the complainant in filling out the form and submitting all necessary information, and must do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants must be named. The complainant, or his/her representative, must sign the completed form in writing or electronically. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed complaint submission must be given to the complainant(s), and the complaint form must be given to the appropriate Complaint System representative described in § 658.410(g).

(4) Any complaint in a reasonable form (letter or email) which is signed by the complainant, or his/her representative, and includes sufficient information to initiate an investigation must be treated as if it were a properly completed Complaint/Referral Form filed in person. A letter (via hard copy or email) confirming the complaint was received must be sent to the complainant and the document must be sent to the appropriate Complaint System representative. The Complaint System representative must request additional information from the complainant if the complainant has not provided sufficient information to investigate the matter expeditiously.

(b) Complaints regarding an employment-related law. (1) When a complaint is filed regarding an employment-related law with a ES office or a SWA the office must determine if the complainant is an MSFW.

(i) If the complainant is a non-MSFW, the office must immediately refer the complainant to the appropriate enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as appropriate, for assistance. Upon completing the referral the local or State representative is not required to follow-up with the complainant.

(ii) If the complainant is a MSFW, the ES office or SWA Complaint System representative must:

(A) Take from the MSFW or his/her representative, in writing (hard copy or electronic), the complaint(s) describing the alleged violation(s) of the employment-related law(s);

(B) Attempt to resolve the issue informally at the local level, except in cases where the complaint was submitted to the SWA and the SMA determines that he/she must take immediate action and except in cases where informal resolution at the local level would be detrimental to the complainant(s). In cases where informal resolution at the local level would be detrimental to the complainant(s), the Complaint System Representative or SMA (depending on where the complaint was filed) must immediately refer the complaint to the appropriate enforcement agency. Concurrently, the Complaint System representative must offer to refer the MSFW to other employment services should the MSFW be interested.

(C) If the issue is not resolved within 5 business days, the Complaint System representative must refer the complaint to the appropriate enforcement agency (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate) for further assistance.

(D) If the ES office or SWA Complaint System representative determines that the complaint must be referred to a State or Federal agency, he/she must refer the complaint to the

SMA who must immediately refer the complaint to the appropriate enforcement agency for prompt action.

(E) If the complaint was referred to the SMA under paragraph (b)(1)(ii)(D) of this section, the representative must provide the SMA's contact information to the complainant. The SMA must notify the complainant of the enforcement agency to which the complaint was referred.

(2) If an enforcement agency makes a final determination that the employer violated an employment-related law and the complaint is connected to a job order, the SWA must initiate procedures for discontinuation of services immediately in accordance with subpart F of this part. If this occurs, the SWA must notify the complainant and the employer of this action.

(c) Complaints alleging a violation of rights under the Equal Employment Opportunity Commission (EEOC) Regulations or enforced by the Department of Labor's Civil Rights Center (CRC). (1) All complaints received by a ES office or a SWA alleging unlawful discrimination, as well as reprisal for protected activity, in violation of EEOC regulations, must be logged and immediately referred to either a local Equal Opportunity (EO) representative, the State EO representative, or the EEOC. The Complaint System representative must notify the complainant of the referral in writing.

(2) Any complaints received either at the local and State level or at the ETA regional office, that allege violations of civil rights laws and regulations such as those under title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal for protected activity, must immediately be logged and directed or forwarded to the recipient's Equal Opportunity Officer or the CRC.

(d) Complaints regarding the ES regulations (ES Complaints). (1) When an ES complaint is filed with a ES office or a SWA the following procedures apply:

(i) When an ES complaint is filed against an employer, the proper office to handle the complaint is the ES office serving the area in which the employer is located.

(ii) When a complaint is against an employer in another State or against another SWA:

(A) The ES office or SWA receiving the complaint must send, after ensuring that the Complaint/Referral Form is adequately completed, a copy of the Complaint/Referral Form and copies of any relevant documents to the SWA in the other State. Copies of the referral letter must be sent to the complainant, and copies of the complaint and referral letter must be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies. All such copies must be sent via hard copy or electronic mail.

(B) The SWA receiving the complaint must handle the complaint as if it had been initially filed with that SWA.

(C) The ETA regional office with jurisdiction over the receiving SWA must follow-up with it to ensure the complaint is handled in accordance with these regulations.

(D) If the complaint is against more than one SWA, the complaint must so clearly state. Additionally, the complaints must be processed as separate complaints and must be handled according to procedures in this § 658.411(d).

(iii) When an ES complaint is filed against a ES office, the proper office to handle the complaint is the ES office serving the area in which the alleged violation occurred.

(iv) When an ES complaint is filed against more than one ES offices and is in regard to an alleged agency-wide violation the SWA representative or his/her designee must process the complaint.

(v) When a complaint is filed alleging a violation that occurred in the same State but through a different ES office, the ES office where the complaint is filed must ensure that the Complaint/Referral Form is adequately completed and send the form to the appropriate local ES office for tracking, further referral if necessary, and follow-up. A copy of the referral letter must be sent to the complainant via hard copy or electronic mail.

(2)(i) If a complaint regarding an alleged violation of the ES regulations is filed in a ES office by either a non-MSFW or MSFW, or their representative(s) (or if all necessary information has been submitted to the office pursuant to paragraph (a)(4) of this section), the appropriate ES office Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution has not been achieved to the satisfaction of the complainant within 15 working days after receipt of the complaint, or 5 working days with respect to complaints filed by or on behalf of MSFWs, (or after all necessary information has been submitted to the ES office pursuant to paragraph (a)(4) of this section), the Complaint System representative must send the complaint to the SWA for resolution or further action,.

(iii) The ES office must notify the complainant and the respondent, in writing (via hard copy or electronic mail), of the determination (pursuant to paragraph (d)(5) of this section) of its investigation under paragraph (d)(2)(i) of this section, or of the referral to the SWA (if referred).

(3) When a non-MSFW or his/her representative files a complaint regarding the ES regulations with a SWA, or when a non-MSFW complaint is referred from a ES office the following procedures apply:

(i) If the complaint is not transferred to an enforcement agency under paragraph (b)(1)(i) of this section the Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution at the SWA level has not been accomplished within 30 working days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), whether the complaint was received directly or from a ES office pursuant to paragraph (d)(2)(ii) of this section, the SWA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(4)(i) When a MSFW or his/her representative files a complaint regarding the ES regulations directly with a SWA, or when a MSFW complaint is referred from a ES office, the SMA must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.

(ii) If resolution at the SWA level has not been accomplished within 20 business days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), the SMA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(5) Written Determinations.

(i) All written determinations by ES or SWA officials on complaints under the ES regulations must be sent by certified mail (or another legally viable method) and a copy of the

determination may be sent via electronic mail. The determination must include all of the following:

(A) The results of any SWA investigation;

(B) The conclusions reached on the allegations of the complaint;

(C) If a resolution was not reached, an explanation of why the complaint was not resolved;

(D) If the complaint is against the SWA, an offer to the complainant of the opportunity to request, in writing, a hearing within 20 business days after the certified date of receipt of the notification.

(ii) If the SWA determines that the employer has not violated the ES regulations, the SWA must offer to the complainant the opportunity to request a hearing within 20 working days after the certified date of receipt of the notification.

(iii) If the SWA, within 20 business days from the certified date of receipt of the notification provided for in paragraph (d)(5) of this section, receives a written request (via hard copy or electronic mail) for a hearing, the SWA must refer the complaint to a State hearing official for hearing. The SWA must, in writing (via hard copy or electronic mail), notify the respective parties to whom the determination was sent that:

(A) The parties will be notified of the date, time, and place of the hearing;

(B) The parties may be represented at the hearing by an attorney or other representative;

(C) The parties may bring witnesses and/or documentary evidence to the hearing;

(D) The parties may cross-examine opposing witnesses at the hearing;

(E) The decision on the complaint will be based on the evidence presented at the hearing;

(F) The State hearing official may reschedule the hearing at the request of a party or its representative; and

(G) With the consent of the SWA's representative and of the State hearing official, the party who requested the hearing may withdraw the request for hearing in writing before the hearing.

(iv) If the State agency makes a final determination that the employer who has or is currently using the ES has violated the ES regulations, the determination, pursuant to paragraph (d)(5) of this section, must state that the State will initiate procedures for discontinuation of services to the employer in accordance with subpart F of this part.

(6) A complaint regarding the ES regulations must be handled to resolution by these regulations only if it is made within 2 years of the alleged occurrence.

(e) Resolution of complaints. A complaint is considered resolved when:

(1) The complainant indicates satisfaction with the outcome via written correspondence;

(2) The complainant chooses not to elevate the complaint to the next level of review;

(3) The complainant or the complainant's authorized representative fails to respond to a request for information under paragraph (a)(4) of this section within 20 working days or, in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate ES office or State agency;

(4) The complainant exhausts all available options for review; or

(5) A final determination has been made by the enforcement agency to which the complaint was referred.

(f) Reopening of case after resolution. If the complainant or the complainant’s authorized representative fails to respond pursuant to paragraph (e)(3) of this section, the

complainant or the complainant's authorized representative may reopen the case within 1 year after the SWA has closed the case.

§ 658.417 State hearings.

(a) The hearing described in § 658.411(d)(5) must be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law. Examples of hearing officials are referees in State unemployment compensation hearings and officials of the State agency authorized to preside at State administrative hearings.

(b) The State hearing official may decide to conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously if conducted together.

(c) The State hearing official, upon the referral of a case for a hearing, must:

(1) Notify all involved parties of the date, time, and place of the hearing; and

(2) Reschedule the hearing, as appropriate.

(d) In conducting a hearing, the State hearing official must:

(1) Regulate the course of the hearing;

(2) Issue subpoenas if necessary, provided the official has the authority to do so under State law;

(3) Ensure that all relevant issues are considered;

(4) Rule on the introduction of evidence and testimony; and

(5) Take all actions necessary to ensure an orderly proceeding.

(e) All testimony at the hearing must be recorded and may be transcribed when appropriate.

(f) The parties must be afforded the opportunity to present, examine, and cross-examine witnesses.

(g) The State hearing official may elicit testimony from witnesses, but may not act as advocate for any party.

(h) The State hearing official must receive and include in the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof must be made available by the party submitting the document to other parties to the hearing upon request.

(i) Federal and State rules of evidence do not apply to hearings conducted pursuant to this section; however rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied where reasonably necessary by the State hearing official. The State hearing official may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(k) The State hearing official must, if feasible, resolve the dispute at any time prior to the conclusion of the hearing.

(l) At the State hearing official's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as amicus curiae (friends of the court) with respect to any legal or factual issues relevant to the complaint. Any documents submitted by the amicus curiae must be included in the record.

(m) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the State hearing official, the hearing official must:

(1) Whenever possible, hold a single hearing at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the State hearing official under paragraph (m)(1) of this section, the State hearing official may conduct, with the consent of the parties, the hearing by a telephone conference call from a State agency office. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the State agency is not able, for any reason, to conduct a telephonic hearing under paragraph (m)(2) of this section, the State agencies in the States where the parties are located must take evidence and hold the hearing in the same manner as used for appealed interstate unemployment claims in those States, to the extent that such procedures are consistent with this section.

§ 658.418 Decision of the State hearing official.

(a) The State hearing official may:

(1) Rule that it lacks jurisdiction over the case;

(2) Rule that the complaint has been withdrawn properly in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned;

(4) Render such other rulings as are appropriate to resolve the issues in question. However, the State hearing official does not have authority or jurisdiction to consider the validity

or constitutionality of the ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including the investigations and determinations of the ES offices and State agencies and any evidence provided at the hearing, the State hearing official must prepare a written decision. The State hearing official must send a copy of the decision stating the findings of fact and conclusions of law, and the reasons therefor to the complainant, the respondent, entities serving as amicus capacity (if any), the State agency, the Regional Administrator, and the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Department of Labor, room N2101, 200 Constitution Avenue, NW., Washington, DC, 20210. The notification to the complainant and respondent must be sent by certified mail or by other legally viable means.

(c) All decisions of a State hearing official must be accompanied by a written notice informing the parties (not including the Regional Administrator, the Solicitor of Labor, or entities serving in an amicus capacity) that they may appeal the judge's decision within 20 working days of the certified date of receipt of the decision, and they may file an appeal in writing with the Regional Administrator. The notice must give the address of the Regional Administrator.

§ 658.419 Apparent violations.

(a) If a SWA, ES office employee, or outreach worker, observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, except as provided at § 653.503 of this chapter (field checks) or § 658.411 (complaints), the employee must document the suspected violation and refer this information to the ES office manager.

(b) If the employer has filed a job order with the ES office within the past 12 months, the ES office must attempt informal resolution provided at § 658.411.

(c) If the employer has not filed a job order with the ES office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

When a Complaint Rises to the Federal Level

§ 658.420 Responsibilities of the Employment and Training Administration regional office.

(a) Each Regional Administrator must establish and maintain a Complaint System within each ETA regional office.

(b) The Regional Administrator must designate Department of Labor officials to handle ES regulation-related complaints as follows:

(1) Any complaints received either at the local and State level or at the ETA regional office, that allege violations of civil rights laws and regulations such as those under Title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal for protected activity, must immediately be logged and directed or forwarded to the recipient's Equal Opportunity Officer or the CRC.

(2) All complaints alleging discrimination on the basis of genetic information must be assigned to a Regional Director for Equal Opportunity and Special Review and, where appropriate, handled in accordance with procedures Coordinated Enforcement at 29 CFR part 31.

(3) All complaints other than those described in paragraphs (b)(1) and (2) of this section, must be assigned to a regional office official designated by the Regional Administrator, provided

that the regional office official designated to handle MSFW complaints must be the Regional Monitor Advocate (RMA).

(c) Except for those complaints under paragraphs (b)(1) and (2) of this section, the Regional Administrator must designate Department of Labor officials to handle employment-related law complaints in accordance with § 658.411, provided that the regional official designated to handle MSFW employment-related law complaints must be the RMA. The RMA must follow up monthly on all complaints filed by MSFWs including complaints under paragraphs (b)(1) and (2) of this section.

(d) The Regional Administrator must ensure that all complaints and all related documents and correspondence are logged with a notation of the nature of each item.

§ 658.421 Handling of Wagner-Peyser Act Employment Service regulation-related complaints.

(a)(1) Except as provided below in paragraph (a)(2) of this section, no complaint alleging a violation of the ES regulations may be handled at the ETA regional office level until the complainant has exhausted the SWA administrative remedies set forth at §§ 658.411 through 658.418. If the Regional Administrator determines that a complaint has been prematurely filed with an ETA regional office, the Regional Administrator must inform the complainant within 10 working days in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter and a copy of the complaint also must be sent to the State Administrator.

(2) If a complaint is submitted directly to the Regional Administrator and if he/she determines that the nature and scope of a complaint described in paragraph (a) of this section is such that the time required to exhaust the administrative procedures at the SWA level would

adversely affect a significant number of individuals, the RA must accept the complaint and take the following action:

(i) If the complaint is filed against an employer, the regional office must handle the complaint in a manner consistent with the requirements imposed upon State agencies by §§ 658.411 and 658.418. A hearing must be offered to the parties once the Regional Administrator makes a determination on the complaint.

(ii) If the complaint is filed against a SWA, the regional office must follow procedures established at § 658.411(d).

(b) The ETA regional office is responsible for handling appeals of determinations made on complaints at the SWA level. An appeal includes any letter or other writing which the Regional Administrator reasonably understands to be requesting review if it is received by the regional office and signed by a party to the complaint.

(c)(1) Once the Regional Administrator receives a timely appeal, he/she must request the complete SWA file, including the original Complaint/Referral Form from the appropriate SWA.

(2) The Regional Administrator must review the file in the case and must determine within 10 business days whether any further investigation or action is appropriate; however if the Regional Administrator determines that he/she needs to request legal advice from the Office of the Solicitor at the U.S. Department of Labor then the Regional Administrator is allowed 20 business days to make this determination.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator will send his/her determination in writing to the appellant within 5 days of the determination, with a notification that the appellant may request a hearing before a

Department of Labor Administrative Law Judge (ALJ) by filing a hearing request in writing with the Regional Administrator within 20 working days of the appellant's receipt of the notification.

(e) If the Regional Administrator determines that further investigation or other action is warranted, the Regional Administrator must undertake such an investigation or other action necessary to resolve the complaint.

(f) After taking the actions described in paragraph (e) of this section, the Regional Administrator must either affirm, reverse, or modify the decision of the State hearing official, and must notify each party to the State hearing official's hearing or to whom the State office determination was sent, notice of the determination and notify the parties that they may appeal the determination to the Department of Labor's Office of Administrative Law Judges within 20 business days of the party's receipt of the notice.

(g) If the Regional Administrator finds reason to believe that a SWA or one of its ES offices has violated ES regulations, the Regional Administrator must follow the procedures set forth at subpart H of this part.

§ 658.422 Handling of employment-related law complaints by the Regional Administrator.

(a) Scope of section. This section applies to all complaints submitted directly to the Regional Administrator or his/her representative.

(b) Each complaint filed by an MSFW alleging violation(s) of employment-related laws must be taken in writing, logged, and referred to the appropriate enforcement agency for prompt action.

(c) Each complaint submitted by a non-MSFW alleging violation(s) of employment-related laws must be logged and referred to the appropriate enforcement agency for prompt action.

(d) Upon referring the complaint in accordance with paragraphs (b) and (c) of this section, the regional official must inform the complainant of the enforcement agency (and individual, if known) to which the complaint was referred.

§ 658.424 Proceedings before the Office of Administrative Law Judges.

(a) If a party requests a hearing pursuant to § 658.421 or § 658.707, the Regional Administrator must:

(1) Send the party requesting the hearing, and all other parties to the prior State level hearing, a written notice (hard copy or electronic) that the matter will be referred to the Office of Administrative Law Judges for a hearing;

(2) Compile four hearing files (hard copy or electronic) containing copies of all documents relevant to the case, indexed and compiled chronologically; and

(3) Send simultaneously one hearing file to the Department of Labor Chief Administrative Law Judge, 800 K Street NW, suite 400N, Washington, DC 20001-8002, one hearing file to the OWI Administrator, and one hearing file to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, and retain one hearing file.

(b) Proceedings under this section are governed by the rules of practice and procedure at subpart A of 29 CFR part 18, Rule of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, except where otherwise specified in this section or at § 658.425.

(c) Upon receipt of a hearing file, the ALJ designated to the case must notify the party requesting the hearing, all parties to the prior State hearing official hearing (if any), the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor of Labor of the

receipt of the case. After conferring all the parties, the ALJ may decide to make a determination on the record in lieu of scheduling a hearing.

(d) The ALJ may decide to consolidate cases and conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously.

(e) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the ALJ, the ALJ must:

(1) Whenever possible, hold a single hearing, at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the ALJ at a location pursuant to paragraph (e)(1) of this section, the ALJ may conduct, with the consent of the parties, the hearing by a telephone conference call. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the ALJ is unable, for any reason, to conduct a telephonic hearing under paragraph (e)(2) of this section, the ALJ must confer with the parties on how to proceed.

(f) Upon deciding to hold a hearing, the ALJ must notify all involved parties of the date, time, and place of the hearing.

(g) The parties to the hearing must be afforded the opportunity to present, examine, and cross-examine witnesses. The ALJ may elicit testimony from witnesses, but may not act as advocate for any party. The ALJ has the authority to issue subpoenas.

(h) The ALJ must receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing, provided that copies of such evidence is provided to the other parties to the proceeding prior to the hearing at the time required by the ALJ.

(i) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination must be applied where reasonably necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party to the hearing at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual concerned.

(k) The ALJ must, if feasible, encourage resolution of the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.425 Decision of Department of Labor Administrative Law Judge.

(a) The ALJ may:

(1) Rule that he/she lacks jurisdiction over the case;

(2) Rule that the appeal has been withdrawn, with the written consent of all parties;

(3) Rule that reasonable cause exists to believe that the appeal has been abandoned; or

(4) Render such other rulings as are appropriate to the issues in question. However, the ALJ does not have jurisdiction to consider the validity or constitutionality of the ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including any legal briefs, the record before the State agency, the investigation (if any) and determination of the Regional Administrator, and evidence provided at the hearing, the ALJ must prepare a written decision. The ALJ must send a copy of the decision stating the findings of fact and conclusions of law to the parties to the hearing, including the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor, and to entities filing amicus briefs (if any).

(c) The decision of the ALJ serves as the final decision of the Secretary.

§ 658.426 Complaints regarding the Wagner-Peyser Act Employment Service at the Regional or National Level.

(a) Complaints alleging that an ETA regional office or the National Office has violated ES regulations must be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, DC 20210. Such complaints must include:

(1) A specific allegation of the violation;

(2) The date of the incident;

(3) Location of the incident;

(4) The individual alleged to have committed the violation; and

(5) Any other relevant information available to the complainant.

(b) The Assistant Secretary or the Regional Administrator as designated must make a determination and respond to the complainant after investigation of the complaint.

Subpart F—Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services provided pursuant part 653 of this chapter to employers by the ETA, including SWAs.

§ 658.501 Basis for discontinuation of services.

(a) The SWA must initiate procedures for discontinuation of services to employers who:

(1) Submit and refuse to alter or withdraw job orders containing specifications which are contrary to employment-related laws;

(2) Submit job orders and refuse to provide assurances, in accordance with the Agricultural Recruitment System for U.S. Workers at part 653, subpart F of this chapter, that the jobs offered are in compliance with employment-related laws, or to withdraw such job orders;

(3) Are found through field checks or otherwise to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders;

(4) Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to the Department or the SWA by that enforcement agency;

(5) Are found to have violated ES regulations pursuant to § 658.411;

(6) Refuse to accept qualified workers referred through the clearance system;

(7) Refuse to cooperate in the conduct of field checks conducted pursuant to § 653.503 of this chapter; or

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (7) of this section.

(b) The SWA may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart in paragraphs

(a)(1) through (7) of this section would cause substantial harm to a significant number of workers. In such instances, procedures at §§ 658.503 et seq. must be followed.

(c) If it comes to the attention of a ES office or SWA that an employer participating in the ES may not have complied with the terms of its temporary labor certification, under, for example the H-2A and H-2B visa programs, State agencies must engage in the procedures for discontinuation of services to employers pursuant to paragraphs (a)(1) through (a)(8) of this section and simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility pursuant to § 655.184 or § 655.73 of this chapter respectively for subsequent temporary labor certification.

§ 658.502 Notification to employers.

(a) The SWA must notify the employer in writing that it intends to discontinue the provision of employment services pursuant to parts 652, 653, 654, and 658 of this chapter, and the reason therefore.

(1) Where the decision is based on submittal and refusal to alter or to withdraw job orders containing specifications contrary to employment-related laws, the SWA must specify the date the order was submitted, the job order involved, the specifications contrary to employment-related laws and the laws involved. The SWA must notify the employer in writing that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the specifications are not contrary to employment-related laws, or

(ii) Withdraws the specifications and resubmits the job order in compliance with all employment-related laws, or

(iii) If the job is no longer available, makes assurances that all future job orders submitted will be in compliance with all employment-related laws, or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(2) Where the decision is based on the employer's submittal of an order and refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the SWA must specify the date the order was submitted, the job order involved, and the assurances involved. The employer must be notified that all employment services will be terminated within 20 working days unless the employer within that time:

(i) Resubmits the order with the appropriate assurances; or

(ii) If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment-related laws; or

(iii) Requests a hearing from the SWA pursuant to § 658.417.

(3) Where the decision is based on a finding that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the SWA must specify the basis for that determination. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that terms and conditions of employment were not misrepresented; or

(ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders; or

(iii) Provides resolution of a complaint which is satisfactory to a complainant referred by the ES; and

(iv) Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(4) Where the decision is based on a final determination by an enforcement agency, the SWA must specify the enforcement agency's findings of facts and conclusions of law. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws; or

(ii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on a finding of a violation of ES regulations under § 658.411, the SWA must specify the finding. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the employer did not violate ES regulations; or

(ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(6) Where the decision is based on an employer's failure to accept qualified workers referred through the clearance system, the SWA must specify the workers referred and not accepted. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the workers were accepted; or

(ii) Provides adequate evidence that the workers were not available to accept the job; or

(iii) Provides adequate evidence that the workers were not qualified; and

(iv) Provides adequate assurances that qualified workers referred in the future will be accepted; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the SWA must specify the lack of cooperation. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that he/she did cooperate; or

(ii) Cooperates immediately in the conduct of field checks; and

(iii) Provides assurances that he/she will cooperate in future field checks in further activity; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(b) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that the SWA does not accept the documentary evidence or assurances as adequate.

(c) Where the decision is based on repeated initiation of procedures for discontinuation of services, the employer must be notified that services have been terminated.

(d) If the employer makes a timely request for a hearing, in accordance with this section, the SWA must follow procedures set forth at § 658.411 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to § 658.411.

§ 658.503 Discontinuation of services.

(a) If the employer does not provide a satisfactory response in accordance with § 658.502, within 20 working days, or has not requested a hearing, the SWA must immediately terminate services to the employer.

(b) If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, the SWA must notify the ETA regional office immediately.

§ 658.504 Reinstatement of services.

(a) Services may be reinstated to an employer after discontinuation under § 658.503(a) and (b), if:

(1) The State is ordered to do so by a Federal ALJ Judge or Regional Administrator, or

(2)(i) The employer provides adequate evidence that any policies, procedures or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future, and

(ii) The employer provides adequate evidence that he/she has responded adequately to any findings of an enforcement agency, SWA, or ETA, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

(b) The SWA must notify the employer requesting reinstatement within 20 working days whether his/her request has been granted. If the State denies the request for reinstatement, the basis for the denial must be specified and the employer must be notified that he/she may request a hearing within 20 working days.

(c) If the employer makes a timely request for a hearing, the SWA must follow the procedures set forth at § 658.417.

(d) The SWA must reinstate services to an employer if ordered to do so by a State hearing official, Regional Administrator, or Federal ALJ as a result of a hearing offered pursuant to paragraph (c) of this section.

Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

§ 658.600 Scope and purpose of subpart.

This subpart sets forth the regulations governing review and assessment of State Workforce Agency (SWA) compliance with the ES regulations at parts 651, 652, 653, 654, and 658 of this chapter. All recordkeeping and reporting requirements contained in parts 653 and 658 of this chapter have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980.

§ 658.601 State Workforce Agency responsibility.

(a) Each SWA must establish and maintain a self-appraisal system for ES operations to determine success in reaching goals and to correct deficiencies in performance. The self-appraisal system must include numerical (quantitative) appraisal and non-numerical (qualitative) appraisal.

(1) Numerical appraisal at the ES office level must be conducted as follows:

(i) Performance must be measured on a quarterly-basis against planned service levels as stated in the Unified or Combined State Plan ("State Plan"). The State Plan must be consistent with numerical goals contained in ES office plans.

(ii) To appraise numerical activities/indicators, actual results as shown on the Department's ETA 9002A report, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) When the numerical appraisal of required activities/indicators identifies significant differences from planned levels, additional analysis must be conducted to isolate possible contributing factors. This data analysis must include, as appropriate, comparisons to past performance, attainment of State Plan goals and consideration of pertinent non-numerical factors.

(iv) Results of ES office numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(6) of this section must be developed to address these deficiencies.

(v) The result of ES office appraisal, including corrective action plans, must be communicated in writing to the next higher level of authority for review. This review must cover adequacy of analysis, appropriateness of corrective actions, and need for higher level

involvement. When this review is conducted at an area or district office, a report describing ES office performance within the area or district jurisdiction must be communicated to the SWA on a quarterly basis.

(2) Numerical appraisal at the SWA level must be conducted as follows:

(i) Performance must be measured on a quarterly basis against planned service levels as stated in the State Plan. The State Plan must be consistent with numerical goals contained in ES office plans.

(ii) To appraise these key numerical activities/indicators, actual results as shown on the ETA 9002A report, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) The SWA must review statewide data and performance against planned service levels as stated in the State Plan on at least a quarterly basis to identify significant statewide deficiencies and to determine the need for additional analysis, including identification of trends, comparisons to past performance, and attainment of State Plan goals.

(iv) Results of numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(5) of this section must be developed to address these deficiencies. These plans must be submitted to the ETA Regional Office as part of the periodic performance process described at § 658.603(d)(2).

(3) Non-numerical (qualitative) appraisal of ES office activities must be conducted at least annually as follows:

(i) Each ES office must assess the quality of its services to applicants, employers, and the community and its compliance with Federal regulations.

(ii) At a minimum, non-numerical review must include an assessment of the following factors:

(A) Appropriateness of services provided to participants and employers;

(B) Timely delivery of services to participants and employers;

(C) Staff responsiveness to individual participants and employer needs;

(D) Thoroughness and accuracy of documents prepared in the course of service delivery; and

(E) Effectiveness of ES interface with external organizations, such as other ETA-funded programs, community groups, etc.

(iii) Non-numerical review methods must include:

(A) Observation of processes;

(B) Review of documents used in service provisions; and

(C) Solicitation of input from applicants, employers, and the community.

(iv) The result of non-numerical reviews must be documented and deficiencies identified. A corrective action plan addressing these deficiencies as described in paragraph (a)(6) of this section must be developed.

(v) The result of ES office non-numerical appraisal, including corrective actions, must be communicated in writing to the next higher level of authority for review. This review must cover thoroughness and adequacy of ES office appraisal, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district level, a report summarizing local ES office performance within that jurisdiction must be communicated to the SWA on an annual basis.

(4) As part of its oversight responsibilities, the SWA must conduct onsite reviews in those ES offices which show continuing internal problems or deficiencies in performance as indicated by such sources as data analysis, non-numerical appraisal, or other sources of information.

(5) Non-numerical (qualitative) review of SWA ES activities must be conducted as follows:

(i) SWA operations must be assessed annually to determine compliance with Federal regulations.

(ii) Results of non-numerical reviews must be documented and deficiencies identified. A corrective action plan addressing these deficiencies must be developed.

(6) Corrective action plans developed to address deficiencies uncovered at any administrative level within the State as a result of the self-appraisal process must include:

(i) Specific descriptions of the type of action to be taken, the time frame involved, and the assignment of responsibility.

(ii) Provision for the delivery of technical assistance as needed.

(iii) A plan to conduct follow-up on a timely basis to determine if action taken to correct the deficiencies has been effective.

(7)(i) The provisions of the ES regulations which require numerical and non-numerical assessment of service to special applicant groups (e.g., services to veterans at 20 CFR part 1001—Services for Veterans and services to MSFWs at parts 653 and 658 of this chapter), are supplementary to the provisions of this section.

(ii) Each State Administrator and ES office manager must ensure their staff know and carry out ES regulations, including regulations on performance standards and program emphases, and any corrective action plans imposed by the SWA or by the Department.

(iii) Each State Administrator must ensure the SWA complies with its approved State Plan.

(iv) Each State Administrator must ensure to the maximum extent feasible the accuracy of data entered by the SWA into Department-required management information systems. Each SWA must establish and maintain a data validation system pursuant to Department instructions. The system must review every local ES office at least once every 4 years. The system must include the validation of time distribution reports and the review of data gathering procedures.

§ 658.602 Employment and Training Administration National Office responsibility.

The ETA National Office must:

(a) Monitor ETA Regional Offices' operations under ES regulations;

(b) From time to time, conduct such special reviews and audits as necessary to monitor ETA regional office and SWA compliance with ES regulations;

(c) Offer technical assistance to the ETA regional offices and SWAs in carrying out ES regulations and programs;

(d) Have report validation surveys conducted in support of resource allocations;

(e) Develop tools and techniques for reviewing and assessing SWA performance and compliance with ES regulations.

(f) ETA must appoint a National Monitor Advocate (NMA), who must devote full time to the duties set forth in this subpart. The NMA must:

(1) Review the effective functioning of the Regional Monitor Advocates (RMAs) and SMAs;

(2) Review the performance of SWAs in providing the full range of employment services to MSFWs;

(3) Take steps to resolve or refer ES-related problems of MSFWs which come to his/her attention;

(4) Take steps to refer non ES-related problems of MSFWs which come to his/her attention;

(5) Recommend to the Administrator changes in policy toward MSFWs; and

(6) Serve as an advocate to improve services for MSFWs within the ES system. The NMA must be a member of the National Farm Labor Coordinated Enforcement Staff Level Working Committee and other Occupational Safety and Health Administration (OSHA) and Wage and Hour Division (WHD) task forces, and other committees as appropriate.

(g) The NMA must be appointed by the Office of Workforce Investment Administrator (Administrator) after informing farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. Among qualified candidates, determined through merit systems procedures, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in SWA self-monitoring requirements at § 653.108(b) of this chapter.

(h) The NMA must be assigned staff necessary to fulfill effectively all the responsibilities set forth in this subpart.

(i) The NMA must submit the Annual Report to the OWI Administrator, the ETA Assistant Secretary, and the National Farm Labor Coordinated Enforcement Committee covering the matters set forth in this subpart.

(j) The NMA must monitor and assess SWA compliance with ES regulations affecting MSFWs on a continuing basis. His/her assessment must consider:

(1) Information from RMAs and SMAs;

(2) Program performance data, including the service indicators;

(3) Periodic reports from regional offices;

(4) All Federal on-site reviews;

(5) Selected State on-site reviews;

(6) Other relevant reports prepared by the ES;

(7) Information received from farmworker organizations and employers; and

(8) His/her personal observations from visits to SWAs, ES offices, agricultural work sites, and migrant camps. In the Annual Report, the NMA must include both a quantitative and qualitative analysis of his/her findings and the implementation of his/her recommendations by State and Federal officials, and must address the information obtained from all of the foregoing sources.

(k) The NMA must review the activities of the State/Federal monitoring system as it applies to services to MSFWs and the Complaint System including the effectiveness of the regional monitoring function in each region and must recommend any appropriate changes in the operation of the system. The NMA's findings and recommendations must be fully set forth in the Annual Report.

(l) If the NMA finds the effectiveness of any RMA has been substantially impeded by the Regional Administrator or other regional office official, he/she must, if unable to resolve such problems informally, report and recommend appropriate actions directly to the OWI Administrator. If the NMA receives information that the effectiveness of any SMA has been substantially impeded by the State Administrator or other State or Federal ES official, he/she must, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the OWI Administrator.

(m) The NMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. The NMA must advise the Administrator concerning all such proposed changes which may adversely affect MSFWs. The NMA must propose directly to the OWI Administrator changes in ES policy and administration which may substantially improve the delivery of services to MSFWs. He/she also must recommend changes in the funding of SWAs and/or adjustment or reallocation of the discretionary portions of funding formulae.

(n) The NMA must participate in the review and assessment activities required in this section and §§ 658.700 et seq. As part of such participation, the NMA, or if he/she is unable to participate, a RMA must accompany the National Office review team on National Office on-site reviews. The NMA must engage in the following activities in the course of each State on-site review:

(1) He/she must accompany selected outreach workers on their field visits.

(2) He/she must participate in a random field check(s) of migrant camps or work site(s) where MSFWs have been placed on inter or intrastate clearance orders.

(3) He/she must contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and, discuss with representatives of these organizations current trends and any other pertinent information concerning MSFWs.

(4) He/she must meet with the SMA and discuss the full range of the employment services to MSFWs, including monitoring and the Complaint System.

(o) In addition to the duties specified in paragraph (f)(8) of this section, the NMA each year during the harvest season must visit the four States with the highest level of MSFW activity during the prior fiscal year, if they are not scheduled for a National Office on-site review during the current fiscal year, and must:

(1) Meet with the SMA and other SWA staff to discuss MSFW service delivery, and

(2) Contact representatives of MSFW organizations and interested employer organizations to obtain information concerning ES delivery and coordination with other agencies.

(p) The NMA must perform duties specified in §§ 658.700 et seq. As part of this function, he/she must monitor the performance of regional offices in imposing corrective action. The NMA must report any deficiencies in performance to the Administrator.

(q) The NMA must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations. He/she must attend conferences or meetings of these groups wherever possible and must report to the Administrator and the National Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. The NMA must include in the Annual Report recommendations about how the Department might better

coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services as they pertain to MSFWs.

(r) In the event that any SMA or RMA, enforcement agency, or MSFW group refers a matter to the NMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(s) Through all the mechanisms provided in this subpart, the NMA must aggressively seek to ascertain and remedy, if possible, systemic deficiencies in the provisions of employment services and protections afforded by these regulations to MSFWs. The NMA must:

(1) Use the regular reports on complaints submitted by SWAs and ETA regional offices to assess the adequacy of these systems and to determine the existence of systemic deficiencies.

(2) Provide technical assistance to ETA regional office and State Workforce Agency staff for administering the Complaint System, and any other employment services as appropriate.

(3) Recommend to the Regional Administrator specific instructions for action by regional office staff to correct any ES-related systemic deficiencies. Prior to any ETA review of regional office operations concerning employment services to MSFWs, the NMA must provide to the Regional Administrator a brief summary of ES-related services to MSFWs in that region and his/her recommendations for incorporation in the regional review materials as the Regional Administrator and ETA reviewing organization deem appropriate.

(4) Recommend to the National Farm Labor Coordinated Enforcement Committee specific instructions for action by WHD and OSHA regional office staff to correct any non-ES-related systemic deficiencies of which he/she is aware.

§ 658.603 Employment and Training Administration regional office responsibility.

(a) The Regional Administrator must have responsibility for the regular review and assessment of SWA performance and compliance with ES regulations.

(b) The Regional Administrator must participate with the National Office staff in reviewing and approving the State Plan for the SWAs within the region. In reviewing the State Plans the Regional Administrator and appropriate National Office staff must consider relevant factors including the following:

(1) State Workforce Agency compliance with ES regulations;

(2) State Workforce Agency performance against the goals and objectives established in the previous State Plan;

(3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on the SWA's performance;

(4) SWA adherence to national program emphasis; and

(5) The adequacy and appropriateness of the State Plan for carrying out ES programs.

(c) The Regional Administrator must assess the overall performance of SWAs on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

(d) As appropriate, Regional Administrators must conduct or have conducted:

(1) Comprehensive on-site reviews of SWAs and their offices to review SWA organization, management, and program operations;

(2) Periodic performance reviews of SWA operation of ES programs to measure actual performance against the State Plan, past performance, the performance of other SWAs, etc.;

(3) Audits of SWA programs to review their program activity and to assess whether the expenditure of grant funds has been in accordance with the approved budget. Regional Administrators also may conduct audits through other agencies or organizations or may require the SWA to have audits conducted;

(4) Validations of data entered into management information systems to assess:

(i) The accuracy of data entered by the SWAs into the management information system;

(ii) Whether the SWAs' data validating and reviewing procedures conform to Department instructions; and

(iii) Whether SWAs have implemented any corrective action plans required by the Department to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist SWAs in carrying out ES regulations and programs;

(6) Reviews to assess whether the SWA has complied with corrective action plans imposed by the Department or by the SWA itself; and

(7) Random, unannounced field checks of a sample of agricultural work sites to which ES placements have been made through the clearance system to determine and document whether wages, hours, working and housing conditions are as specified on the job order. If regional office staff find reason to believe that conditions vary from job order specifications, findings must be documented on the Complaint/Apparent Violation Referral Form and provided to the State Workforce Agency to be handled as an apparent violation under § 658.419.

(e) The Regional Administrator must provide technical assistance to SWAs to assist them in carrying out ES regulations and programs.

(f) The Regional Administrator must appoint a RMA who must devote full time to the duties set forth in this subpart. The RMA must:

(1) Review the effective functioning of the SMAs in his/her region;

(2) Review the performance of SWAs in providing the full range of employment services to MSFWs;

(3) Take steps to resolve ES-related problems of MSFWs which come to his/her attention;

(4) Recommend to the Regional Administrator changes in policy towards MSFWs;

(5) Review the operation of the Complaint System; and

(6) Serve as an advocate to improve service for MSFWs within the ES. The RMA must be a member of the Regional Farm Labor Coordinated Enforcement Committee.

(g) The RMA must be appointed by the Regional Administrator after informing farmworker organizations and other organizations in the region with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. The RMA must have direct personal access to the Regional Administrator wherever he/she finds it necessary. Among qualified candidates, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in § 653.108(b) of this chapter.

(h) The Regional Administrator must ensure that staff necessary to fulfill effectively all the regional office responsibilities set forth in this section are assigned. The RMA must notify the Regional Administrator of any staffing deficiencies and the Regional Administrator must take appropriate action.

(i) The RMA within the first 3 months of his/her tenure must participate in a training session(s) approved by the National Office.

(j) At the regional level, the RMA must have primary responsibility for:

(1) Monitoring the effectiveness of the Complaint System set forth at subpart E of this part;

(2) Apprising appropriate State and ETA officials of deficiencies in the Complaint System; and

(3) Providing technical assistance to SMAs in the region.

(k) At the ETA regional level, the RMA must have primary responsibility for ensuring SWA compliance with ES regulations as it pertains to services to MSFWs is monitored by the regional office. He/she must independently assess on a continuing basis the provision of employment services to MSFWs, seeking out and using:

(1) Information from SMAs, including all reports and other documents;

(2) Program performance data;

(3) The periodic and other required reports from SWAs;

(4) Federal on-site reviews;

(5) Other reports prepared by the National Office;

(6) Information received from farmworker organizations and employers; and

(7) Any other pertinent information which comes to his/her attention from any possible source.

(8) In addition, the RMA must consider his/her personal observations from visits to ES offices, agricultural work sites, and migrant camps.

(l) The RMA must assist the Regional Administrator and other line officials in applying appropriate corrective and remedial actions to State agencies.

(m) The Regional Administrator's quarterly report to the National Office must include the RMA's summary of his/her independent assessment as required in paragraph (f)(5) of this section. The fourth quarter summary must include an annual summary from the region. The summary also must include both a quantitative and a qualitative analysis of his/her reviews and must address all the matters with respect to which he/she has responsibilities under these regulations.

(n) The RMA must review the activities and performance of the SMAs and the State monitoring system in the region, and must recommend any appropriate changes in the operation of the system to the Regional Administrator. The RMA's review must include a determination whether the SMA:

(1) Does not have adequate access to information;

(2) Is being impeded in fulfilling his/her duties; or

(3) Is making recommendations which are being consistently ignored by SWA officials.

If the RMA believes that the effectiveness of any SMA has been substantially impeded by the State Administrator, other State agency officials, or any Federal officials, he/she must report and recommend appropriate actions to the Regional Administrator. Copies of the recommendations must be provided to the NMA electronically or in hard copy.

(o) The RMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. He/she must advise the Regional Administrator on all such proposed changes which, in his/her opinion, may adversely affect MSFWs or which may substantially improve the delivery of services to MSFWs. The RMA also may recommend changes in ES policy or regulations, as well as changes in the

funding of State Workforce Agencies and/or adjustments of reallocation of the discretionary portions of funding formulae as they pertain to MSFWs.

(p) The RMA must participate in the review and assessment activities required in this section and §§ 658.700 et seq. He/she, an assistant, or another RMA, must participate in National Office and regional office on-site statewide reviews of employment services to MSFWs in States in the region. The RMA must engage in the following activities in the course of participating in an on-site SWA review:

(1) Accompany selected outreach workers on their field visits;

(2) Participate in a random field check of migrant camps or work sites where MSFWs have been placed on intrastate or interstate clearance orders;

(3) Contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and must discuss with representatives of these organizations perceived trends, and/or other relevant information concerning MSFWs in the area; and

(4) Meet with the SMA and discuss the full range of the employment services to MSFWs, including monitoring and the Complaint System.

(q) During the calendar quarter preceding the time of peak MSFW activity in each State, the RMA must meet with the SMA and must review in detail the State Workforce Agency's capability for providing the full range of services to MSFWs as required by ES regulations, during the upcoming harvest season. The RMA must offer technical assistance and recommend to the SWA and/or the Regional Administrator any changes in State policy or practice that he/she finds necessary.

(r) The RMA each year during the peak harvest season must visit each State in the region not scheduled for an on-site review during that fiscal year and must:

(1) Meet with the SMA and other SWA staff to discuss MSFW service delivery; and

(2) Contact representatives of MSFW organizations to obtain information concerning ES delivery and coordination with other agencies and interested employer organizations.

(s) The RMA must initiate and maintain regular and personal contacts, including informal contacts in addition to those specifically required by these regulations, with SMAs in the region. In addition, the RMA must have personal and regular contact with the NMA. The RMA also must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations in his/her region. He/she must attend conferences or meetings of these groups wherever possible and must report to the Regional Administrator and the Regional Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. He/she also must make recommendations as to how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services to MSFWs.

(t) The RMA must attend MSFW-related public meeting(s) conducted in the region. Following such meetings or hearings, the RMA must take such steps or make such recommendations to the Regional Administrator, as he/she deems necessary to remedy problem(s) or condition(s) identified or described therein.

(u) The RMA must attempt to achieve regional solutions to any problems, deficiencies, or improper practices concerning services to MSFWs which are regional in scope. Further, he/she must recommend policies, offer technical assistance, or take any other necessary steps as he/she deems desirable or appropriate on a regional, rather than State-by-State basis, to promote

region-wide improvement in the delivery of employment services to MSFWs. He/she must facilitate region-wide coordination and communication regarding provision of employment services to MSFWs among SMAs, State Administrators, and Federal ETA officials to the greatest extent possible. In the event that any SWA or other RMA, enforcement agency, or MSFW group refers a matter to the RMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(v) The RMA must initiate and maintain such contacts as he/she deems necessary with RMAs in other regions to seek to resolve problems concerning MSFWs who work, live, or travel through the region. He/she must recommend to the Regional Administrator and/or the National Office inter-regional cooperation on any particular matter, problem, or policy with respect to which inter-regional action is desirable.

(w) The RMA must establish regular contacts with the regional agricultural coordinators from WHD and OSHA and any other regional staff from other Federal enforcement agencies and must establish contacts with the staff of other Department agencies represented on the Regional Farm Labor Coordinated Enforcement Committee and to the extent necessary, on other pertinent task forces or committees.

(x) The RMA must participate in the regional reviews of the State Plans, and must comment to the Regional Administrator as to the SWA compliance with the ES regulations as they pertain to services to MSFWs, including the staffing of ES offices.

§ 658.604 Assessment and evaluation of program performance data.

(a) State Workforce Agencies must compile program performance data required by the Department, including statistical information on program operations.

(b) The Department must use the program performance data in assessing and evaluating whether each SWA has complied with ES regulations and its State Plan.

(c) In assessing and evaluating program performance data, the Department must act in accordance with the following general principles:

(1) The fact that the program performance data from a SWA, whether overall or relative to a particular program activity, indicate poor program performance does not by itself constitute a violation of ES regulations or of the State Workforce Agency's responsibilities under its State Plan;

(2) Program performance data, however, may so strongly indicate that a SWA's performance is so poor that the data may raise a presumption (prima facie case) that a SWA is violating ES regulations or the State Plan. A SWA's failure to meet the operational objectives set forth in the State Plan raises a presumption that the agency is violating ES regulations and/or obligations under its State Plan. In such cases, the Department must afford the SWA an opportunity to rebut the presumption of a violation pursuant to the procedures at subpart H of this part.

(3) The Department must take into account that certain program performance data may measure items over which SWAs have direct or substantial control while other data may measure items over which the SWA has indirect or minimal control.

(i) Generally, for example, a SWA has direct and substantial control over the delivery of employment services such as referrals to jobs, job development contacts, counseling, referrals to career and supportive services, and the conduct of field checks.

(ii) State Workforce Agencies, however, have only indirect control over the outcome of services. For example, SWAs cannot guarantee that an employer will hire a referred applicant,

nor can they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, such as a sudden heavy increase in unemployment rates, a strike by SWA employees, or a severe drought or flood, may skew the results measured by program performance data.

(4) The Department must consider a SWA's failure to keep accurate and complete program performance data required by ES regulations as a violation of the ES regulations.

§ 658.605 Communication of findings to State agencies.

(a) The Regional Administrator must inform SWAs in writing of the results of review and assessment activities and, as appropriate, must discuss with the State Administrator the impact or action required by the Department as a result of review and assessment activities.

(b) The ETA National Office must transmit the results of any review and assessment activities it conducted to the Regional Administrator who must send the information to the SWA.

(c) Whenever the review and assessment indicates a SWA violation of ES regulations or its State Plan, the Regional Administrator must follow the procedures set forth at subpart H of this part.

(d) Regional Administrators must follow-up any corrective action plan imposed on a SWA under subpart H of this part by further review and assessment of the State Workforce Agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Workforce Agencies

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which the Department must follow upon either discovering independently or receiving from other(s) information indicating that SWAs may not be adhering to ES regulations.

§ 658.701 Statements of policy.

(a) It is the policy of the Department to take all necessary action, including the imposition of the full range of sanctions set forth in this subpart, to ensure State Workforce Agencies comply with all requirements established by ES regulations.

(b) It is the policy of the Department to initiate decertification procedures against SWAs in instances of serious or continual violations of ES regulations if less stringent remedial actions taken in accordance with this subpart fail to resolve noncompliance.

(c) It is the policy of the Department to act on information concerning alleged violations by SWAs of the ES regulations received from any person or organization.

§ 658.702 Initial action by the Regional Administrator.

(a) The ETA Regional Administrator is responsible for ensuring that all SWAs in his/her region are in compliance with ES regulations.

(b) Wherever a Regional Administrator discovers or is apprised of possible SWA violations of ES regulations by the review and assessment activities under subpart G of this part, or through required reports or written complaints from individuals, organizations, or employers which are elevated to the Department after the exhaustion of SWA administrative remedies, the Regional Administrator must conduct an investigation. Within 10 business days after receipt of the report or other information, the Regional Administrator must make a determination whether there is probable cause to believe that a SWA has violated ES regulations.

(c) The Regional Administrator must accept complaints regarding possible SWA violations of ES regulations from employee organizations, employers or other groups, without exhaustion of the complaint process described at subpart E, if the Regional Administrator determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants. In such cases, the Regional Administrator must investigate the matter within 10 business days, may provide the SWA 10 business days for comment, and must make a determination within an additional 10 business days whether there is probable cause to believe that the SWA has violated ES regulations.

(d) If the Regional Administrator determines that there is no probable cause to believe that a SWA has violated ES regulations, he/she must retain all reports and supporting information in Department files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination, he/she must so notify the Administrator in writing and the time for the investigation must be extended 20 additional business days.

(e) If the Regional Administrator determines there is probable cause to believe a SWA has violated ES regulations, he/she must issue a Notice of Initial Findings of Non-compliance by registered mail (or other legally viable means) to the offending SWA. The notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the Complaint System, a copy of said notice must be sent to the NMA.

(f)(1) The SWA may have 20 business days to comment on the findings, or up to 20 additional days, if the Regional Administrator determines a longer period is appropriate. The

SWA's comments must include agreement or disagreement with the findings and suggested corrective actions, where appropriate.

(2) After the period elapses, the Regional Administrator must prepare within 20 business days, written final findings which specify whether the SWA has violated ES regulations. If in the final findings the Regional Administrator determines the SWA has not violated ES regulations, the Regional Administrator must notify the State Administrator of this finding and retain supporting documents in his/her files. If the final finding involves services to MSFWs or the Complaint System, the Regional Administrator also must notify the NMA. If the Regional Administrator determines a SWA has violated ES regulations, the Regional Administrator must prepare a Final Notice of Noncompliance which must specify the violation(s) and cite the regulations involved. The Final Notice of Noncompliance must be sent to the SWA by registered mail or other legally viable means. If the noncompliance involves services to MSFWs or the Complaint System, a copy of the Final Notice must be sent to the NMA.

(g) If the violation involves the misspending of grant funds, the Regional Administrator may order in the Final Notice of Noncompliance a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the Regional Administrator disallows costs, the Regional Administrator must give the reasons for the disallowance, inform the SWA that the disallowance is effective immediately and that no more funds may be spent in the disallowed manner, and offer the SWA the opportunity to request a hearing pursuant to § 658.707. The offer, or the acceptance of an offer of a hearing, however, does not stay the effectiveness of the disallowance. The Regional Administrator must keep complete records of the disallowance.

(h) If the violation does not involve misspending of grant funds or the Regional Administrator determines that the circumstances warrant other action:

(1) The Final Notice of Noncompliance must direct the SWA to implement a specific corrective action plan to correct all violations. If the SWA's comment demonstrates with supporting evidence (except where inappropriate) that all violations have already been corrected, the Regional Administrator need not impose a corrective action plan and instead may cite the violation(s) and accept the SWA's resolution, subject to follow-up review, if necessary. If the Regional Administrator determines that the violation(s) cited had been found previously and that the corrective action(s) taken had not corrected the violation(s) contrary to the findings of previous follow-up reviews, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(2) The Final Notice of Noncompliance must specify the time by which each corrective action must be taken. This period may not exceed 40 business days unless the Regional Administrator determines that exceptional circumstances necessitate corrective actions requiring a longer time period. In such cases, and if the violations involve services to MSFWs or the Complaint System, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate more time, and must specify the additional time period. The specified time must commence with the date of signature on the registered mail receipt.

(3) When the time provided for in paragraph (h)(2) of this section elapses, Department staff must review the SWA's efforts as documented by the SWA to determine if the corrective action(s) has been taken and if the SWA has achieved compliance with ES regulations. If necessary, Department staff must conduct a follow-up visit as part of this review.

(4) If, as a result of this review, the Regional Administrator determines the SWA has corrected the violation(s), the Regional Administrator must record the basis for this determination, notify the SWA, send a copy to the Administrator, and retain a copy in Department files.

(5) If, as a result of this review, the Regional Administrator determines the SWA has taken corrective action but is unable to determine if the violation has been corrected due to seasonality or other factors, the Regional Administrator must notify in writing the SWA and the Administrator of his/her findings. The Regional Administrator must conduct further follow-up at an appropriate time to make a final determination if the violation has been corrected. If the Regional Administrator's follow-up reveals that violations have not been corrected, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(6) If, as a result of the review the Regional Administrator determines the SWA has not corrected the violations and has not made good faith efforts and adequate progress toward the correction of the violations, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(7) If, as a result of the review, the Regional Administrator determines the SWA has made good faith efforts and adequate progress toward the correction of the violation and it appears the violation will be fully corrected within a reasonable amount of time, the SWA must be advised by registered mail or other legally viable means (with a copy sent to the Administrator) of this conclusion, of remaining differences, of further needed corrective action, and that all deficiencies must be corrected within a specified time period. This period may not exceed 40 business days unless the Regional Administrator determines exceptional circumstances necessitate corrective action requiring more time . In such cases, the Regional

Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate more time, and must specify that time period. The specified time commences with the date of signature on the registered mail receipt.

(8)(i) If the SWA has been given additional time pursuant to paragraph (h)(7) of this section, Department staff must review the SWA's efforts as documented by the SWA at the end of the time period. If necessary, the Department must conduct a follow-up visit as part of this review.

(ii) If the SWA has corrected the violation(s), the Regional Administrator must document that finding, notify in writing the SWA and the Administrator, and retain supporting documents in Department files. If the SWA has not corrected the violation(s), the Regional Administrator must apply remedial actions pursuant to § 658.704.

§ 658.703 Emergency corrective action.

In critical situations as determined by the Regional Administrator, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program, the Regional Administrator may impose immediate corrective action. Where immediate corrective action is imposed, the Regional Administrator must notify the SWA of the reason for imposing the emergency corrective action prior to providing the SWA an opportunity to comment.

§ 658.704 Remedial actions.

(a) If a SWA fails to correct violations as determined pursuant to § 658.702, the Regional Administrator must apply one or more of the following remedial actions to the SWA:

(1) Imposition of special reporting requirements for a specified time;

(2) Restrictions of obligational authority within one or more expense classifications;

(3) Implementation of specific operating systems or procedures for a specified time;

(4) Requirement of special training for SWA personnel;

(5) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the elevation of specific decision-making functions from the State Administrator to the Regional Administrator;

(6) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the imposition of Federal staff in key SWA positions;

(7) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, funding of the SWA on a short-term basis or partial withholding of funds for a specific function or for a specific geographical area;

(8) Holding of public hearings in the State on the SWA's deficiencies;

(9) Disallowance of funds pursuant to § 658.702(g); or

(10) If the matter involves a serious or continual violation, the initiation of decertification procedures against the State Workforce Agency, as set forth in paragraph (e) of this section.

(b) The Regional Administrator must send, by registered mail, a Notice of Remedial Action to the SWA. The Notice of Remedial Action must set forth the reasons for the remedial action. When such a notice is the result of violations of regulations governing services to MSFWs (§§ 653.100 et seq. of this chapter) or the Complaint System (§§ 658.400 et seq.), a copy of said notice must be sent to the Administrator, who must publish the notice promptly in the Federal Register.

(c) If the remedial action is other than decertification, the notice must state the remedial action must take effect immediately. The notice also must state the SWA may request a hearing pursuant to § 658.707 by filing a request in writing with the Regional Administrator pursuant to § 658.707 within 20 business days of the SWA's receipt of the notice. The offer of hearing, or the acceptance thereof, however, does not stay or otherwise delay the implementation of remedial action.

(d) Within 60 business days after the initial application of remedial action, the Regional Administrator must conduct a review of the SWA's compliance with ES regulations unless the Regional Administrator determines more time is necessary. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate more time, and specify that time period. If necessary, Department staff must conduct a follow-up visit as part of this review. If the SWA is in compliance with the ES regulations, the Regional Administrator must fully document these facts and must terminate the remedial actions. The Regional Administrator must notify the SWA of his/her findings. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy of said notice must be sent to the Administrator, who must promptly publish the notice in the Federal Register. The Regional Administrator must conduct, within a reasonable time after terminating the remedial actions, a review of the SWA's compliance to determine whether any remedial actions must be reapplied.

(e) If, upon conducting the on-site review referred to in paragraph (c) of this section, the Regional Administrator finds the SWA remains in noncompliance, the Regional Administrator must continue the remedial action and/or impose different additional remedial actions. The Regional Administrator must fully document all such decisions and, when the case involves

violations of regulations governing services to MSFWs or the Complaint System, must send copies to the Administrator, who must promptly publish the notice in the Federal Register.

(f)(1) If the SWA has not brought itself into compliance with ES regulations within 120 business days of the initial application of remedial action, the Regional Administrator must initiate decertification unless the Regional Administrator determines the circumstances necessitate continuing remedial action for more time. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate the extended time, and specify the time period.

(2) The Regional Administrator must notify the SWA by registered mail or by other legally viable means of the decertification proceedings, and must state the reasons therefor. Whenever such a notice is sent to a SWA, the Regional Administrator must prepare five copies (hard copies or electronic copies) containing, in chronological order, all the documents pertinent to the case along with a request for decertification stating the grounds therefor. One copy must be retained. Two must be sent to the ETA National Office, one must be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and, if the case involves violations of regulations governing services to MSFWs or the Complaint System, one copy must be sent to the NMA. All copies also must be sent electronically to each respective party. The notice sent by the Regional Administrator must be published promptly in the Federal Register.

§ 658.705 Decision to decertify.

(a) Within 30 business days of receiving a request for decertification, the ETA Assistant Secretary must review the case and must decide whether to proceed with decertification.

(b) The Assistant Secretary must grant the request for decertification unless he/she makes a finding that:

(1) The violations of ES regulations are neither serious nor continual;

(2) The SWA is in compliance; or

(3) The Assistant Secretary has reason to believe the SWA will achieve compliance within 80 business days unless exceptional circumstances necessitate more time, pursuant to the remedial action already applied or to be applied. (In the event the Assistant Secretary does not have sufficient information to act upon the request, he/she may postpone the determination for up to an additional 20 business days in order to obtain any available additional information.) In making a determination of whether violations are "serious" or "continual," as required by paragraph (b)(1) of this section, the Assistant Secretary must consider:

(i) Statewide or multiple deficiencies as shown by performance data and/or on-site reviews;

(ii) Recurrent violations, even if they do not persist over consecutive reporting periods, and

(iii) The good faith efforts of the State to achieve full compliance with ES regulations as shown by the record.

(c) If the Assistant Secretary denies a request for decertification, he/she must write a complete report documenting his/her findings and, if appropriate, instructing an alternate remedial action or actions be applied. Electronic copies of the report must be sent to the Regional Administrator. Notice of the Assistant Secretary's decision must be published promptly in the Federal Register and the report of the Assistant Secretary must be made available for public inspection and copying.

(d) If the Assistant Secretary decides decertification is appropriate, he/she must submit the case to the Secretary providing written explanation for his/her recommendation of decertification.

(e) Within 30 business days after receiving the Assistant Secretary's report, the Secretary must determine whether to decertify the SWA. The Secretary must grant the request for decertification unless he/she makes one of the three findings set forth in paragraph (b) of this section. If the Secretary decides not to decertify, he/she must then instruct that remedial action be continued or that alternate actions be applied. The Secretary must write a report explaining his/her reasons for not decertifying the SWA and copies (hard copy and electronic) will be sent to the SWA. Notice of the Secretary's decision must be published promptly in the Federal Register, and the report of the Secretary must be made available for public inspection and copy.

(f) Where either the Assistant Secretary or the Secretary denies a request for decertification and orders further remedial action, the Regional Administrator must continue to monitor the SWA's compliance. If the SWA achieves compliance within the time established pursuant to paragraph (b) of this section, the Regional Administrator must terminate the remedial actions. If the SWA fails to achieve full compliance within that time period after the Secretary's decision not to decertify, the Regional Administrator must submit a report of his/her findings to the Assistant Secretary who must reconsider the request for decertification pursuant to the requirements of paragraph (b) of this section.

§ 658.706 Notice of decertification.

If the Secretary decides to decertify a SWA, he/she must send a Notice of Decertification to the SWA stating the reasons for this action and providing a 10 business day period during

which the SWA may request an administrative hearing in writing to the Secretary. The notice must be published promptly in the Federal Register.

§ 658.707 Requests for hearings.

(a) Any SWA which received a Notice of Decertification under § 658.706 or a notice of disallowance under § 658.702(g) may request a hearing on the issue by filing a written request for hearing with the Secretary within 10 business days of receipt of the notice. This request must state the reasons the SWA believes the basis of the decision to be wrong, and it must be signed by the State Administrator (electronic signatures may be accepted).

(b) When the Secretary receives a request for a hearing from a SWA, he/she must send copies of a file containing all materials and correspondence relevant to the case to the Assistant Secretary, the Regional Administrator, the Solicitor of Labor, and the Department of Labor Chief Administrative Law Judge. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy must be sent to the NMA.

(c) The Secretary must publish notice of hearing in the Federal Register. This notice must invite all interested parties to attend and to present evidence at the hearing. All interested parties who make written request to participate must thereafter receive copies (hard copy and/or electronic) of all documents filed in said proceedings.

§ 658.708 Hearings.

(a) Upon receipt of a hearing file by the Chief Administrative Law Judge, the case must be docketed and notice sent by electronic mail, other means of electronic service, or registered mail, return receipt requested, to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, the Administrator, the Regional Administrator and the State

Administrator. The notice must set a time, place, and date for a hearing on the matter and must advise the parties that:

(1) They may be represented at the hearing;

(2) They may present oral and documentary evidence at the hearing;

(3) They may cross-examine opposing witnesses at the hearing; and

(4) They may request rescheduling of the hearing if the time, place, or date set are inconvenient.

(b) The Solicitor of Labor or the Solicitor's designee will represent the Department at the hearing.

§ 658.709 Conduct of hearings.

(a) Proceedings under this section are governed by secs. 5 through 8 of the Administrative Procedure Act, 5 U.S.C. 553 et seq. and the rules of practice and procedure at subpart A of 29 CFR part 18, except as otherwise specified in this section.

(b) Technical rules of evidence do not apply, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied if necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record must be open to examination by the parties. Opportunity must be given to refute facts and arguments advanced on either side of the issue. A transcript must be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) Discovery may be conducted as provided in the rules of practice and procedure at 29 CFR 18.50 through 18.65.

(d) When a public officer is a respondent in a hearing in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties must be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order may not affect the substitution.

§ 658.710 Decision of the Administrative Law Judge.

(a) The ALJ has jurisdiction to decide all issues of fact and related issues of law and to grant or deny appropriate motions, but does not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(b) The decision of the ALJ must be based on the hearing record, must be in writing, and must state the factual and legal basis of the decision. The ALJ's decision must be available for public inspection and copying.

(c) Except when the case involves the decertification of a SWA, the decision of the ALJ will be considered the final decision of the Secretary.

(d) If the case involves the decertification of an appeal to the SWA, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the SWA or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending a written appeal to the Administrative Review Board.

§ 658.711 Decision of the Administrative Review Board.

(a) Upon the receipt of an appeal to the Administrative Review Board, United States Department of Labor, the ALJ must certify the record in the case to the Administrative Review Board, which must make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Administrative Review Board is the final decision of the Secretary on decertification appeals. It must be in writing, and must set forth the factual and legal basis for the decision. Notice of the Administrative Review Board's decision must be published in the Federal Register, and copies must be made available for public inspection and copying.

Signed at Washington, D.C., this ___ day of June, 2016.

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Thomas E. Perez

Secretary of Labor

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