eligible and they and their programs included on the State and local lists.

Section 663.595—Requirements for Providers of OJT and Customized Training—One commenter recommended that the Governor solicit comments from business and labor organizations on the development of performance information for OJT and customized training while another commenter suggested that it was inadvisable to disseminate information on the performance of employers, since many employers would be unwilling to participate if their identity was to be made known to the general public.

Response: There is nothing to preclude Governors from soliciting comments from business and labor in developing these performance requirements and learning if disseminating performance information would be a deterrent to other employers and it would be consistent with both the process for developing provider and program eligibility procedures and the general intent of WIA to promote openness and consultation to do so. Governors need to consider the impact of requiring performance information in terms of employer participation, particularly since employer-provided training has, in the past, been an effective method for providing training. However, if the Governor determines that performance information must be collected and the criteria to be met, One-Stop operators must collect such information, determine if performance criteria are met, and disseminate information on employers that meet the criteria. We note that information does not have to be disseminated on employers that do *not* meet Governor's criteria under the current regulation. No change has been made to the Final rule.

One commenter noted that the Preamble to the Interim Final rule, page 18673, column three, lines 8–11, should have said that the Governor has the option to require performance information of providers of OJT and customized training.

Response: We agree that the Preamble was in error. It should have said that Governors *may* require performance information.

Subpart F—Priority and Special Populations

1. Priority Under Limited Adult Funding: This subpart contains requirements related to the statutorily-required priority for the use of adult funds, authorized under WIA section 133(b)(2)(A) or (3), when funds are limited. WIA section 134(d)(4)(E) states that in the event that funds allocated to a local area for adult employment and training activities are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate Local Board and the Governor must direct the One-Stop operators in the local area with regard to making determinations related to such priority. We assume that adult funding is generally limited because there are not enough adult funds available to provide services to all of the adults who could benefit from such services. However, we also recognize that conditions are different from one area to another and funds might not be limited in all areas. Because of this, the regulation requires that all Local Boards must consider the availability of funds in their area. In making this determination, the availability of other Federal funding, such as TANF and Welfare-to-Work funds, should be taken into consideration. Unless the Local Board determines that funds are not limited in the local area, the priority requirement will be in effect. States and Local Boards must work together to establish the criteria that must be used in making this determination. States and Local Boards also may administer their priority for adult recipients of public assistance and other low income adults so as not to preclude providing intensive and training services to other individuals.

We received a substantial number of comments on the priority issue. Many commenters voiced their support for interpretation that adult funds will generally be limited and for clarifying the State's and local areas' role in prioritizing the use of these funds for TANF recipients and other low-income individuals. Many other commenters believed that we should not write any regulations at all on this section of the statute.

Response: We believe that the interpretation of this requirement is of such importance that there must be regulations. Section 663.600 interprets the statutory language that provides States and Local Boards with the authority to determine the criteria to be applied when making the determination that there are sufficient funds available so that the priority is not in effect. No change has been made to the Final rule.

Some commenters requested further guidance and technical assistance regarding the process described at § 663.600(b), (c), and (d) that permits the priority for services to the recipients of public assistance and low income individuals to be exercised while still serving other eligible individuals. A number of these commenters supported the ''cone of service'' concept that provides universal service to the largest number of individuals and, through a process of determining individuals' employment service needs and their eligibility, leads to reduce numbers of individuals receiving services as the services become more staff intensive, longer in duration, and more costly. They asked that priority guidance be based on this concept.

Response: In general, § 663.600(d) clarifies that the process for determining whether to apply the priority established under paragraph (b) does not necessarily mean that only recipients on public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor are specifically authorized to establish a process that gives priority for services to recipients on public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.

We used the ''cone of service'' concept to illustrate an estimated distribution of service needs by One-Stop customers. It was not intended to convey a scheme of priority of service. The distribution of service needs in a local area may vary from the pure ''cone'' in areas with a number of job seekers with extensive barriers to employment or in areas of highly educated, self-directed job seekers. The ''cone'' illustration is not intended to be applied as strict percentages of service provision to the pool of eligibles candidates for services. Rather each local area must assess the needs of its workforce and determine the most appropriate distribution of services against projected levels of service needs. However, recognizing the important role that the adult and dislocated worker funds play in the One-Stop system, § 662. 250(a) requires these programs to provide all of the required core services in each of the comprehensive One-Stop centers. The fact that WIA adult funds may be used to provide core services on a universal basis is one of the key reform elements of the legislation, and augments the investment traditionally provided by the Wagner-Peyser Act. No change has been made to the Final Rule.

Commenters expressed concern that the priority requirement would be implemented by establishing an arbitrary minimum standard, such as establishing a percentage of participants or funds that must be targeted to TANF and other low-income job seekers, which could become a ''check off'' rather than a thoughtful balancing of needs. Commenters also were concerned

that an arbitrary percentage not be used to satisfy the priority requirement.

Response: While the regulation requires that States and local areas consider whether funds are limited, it gives them flexibility to determine the criteria on which to base the determination, because local areas vary widely in the characteristics of their work force. We discourage States and local areas from setting an arbitrary percentage of TANF and low-income job seekers to be served could result in sufficiently skewing the distribution of services relative to the workforce's needs that differences in the severity of service needs would not necessarily be reflected in the process. We believe that the present language in the regulations permits the maximum flexibility in the design of the priority process and provides a sufficient framework to implement priority of service for public assistance recipients and low income individuals consistent with the Act. We expect that States and local areas will take seriously the responsibility to develop effective priority criteria, and believe that the public input generated through the local planning process will result in criteria that effectively serve the needs of the local area. No change has been made to the Final rule.

Other commenters requested assurance in the regulations that if local entities determine that there is not limited funding, that we would not reevaluate their determination at a later date and find the local area out of compliance.

Response: The regulations, at § 661.350(a)(11), require that the local workforce investment plan include a description of the criteria to be used by the Governor and the Local Board, under § 663.600, to determine whether funds allocated to a local area for adult employment and training activities under WIA §§ 133(b)(2)(A) or (3) are limited, and the process by which any priority will be applied by the One-Stop operator(s). The local plan is subject to public comment as well as review and approval by the Governor. Upon approval by the Governor and local implementation of its priority determination, it is expected that the local workforce staff will continue to monitor workforce employment and training population needs and conditions to ensure that the priority determination continues to be appropriate. Later modifications to the plan would require public comment. No change has been made to the Final rule. We recognize that this will be an area of interest to the Department and national policymakers and as such, State and local areas can expect that it will be evaluated during the implementation studies.

Commenters suggested that we add language to the regulations that would require the mix of individuals served by the local One-Stop system to reflect the demographic characteristics of the eligible population in the community and that the local plan provide an interpretation of the priority as applied to the demographics of the area.

Response: The Department has an obligation, as part of its oversight responsibilities, to determine whether a particular function, e.g., service delivery, is consistent with the intent of the Act and regulations. Non-discrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are administered and enforced by our Civil Rights Center. Regulations implementing the requirements of WIA section 188 are published at 29 CFR part 37. It should be noted that except where service to specific populations is authorized by statute (such as in WIA section 166), it is unlawful under WIA section 188(a)(2) and 29 CFR 37.6(b)(1)–(6) for One-Stop systems to use demographic characteristics to determine which individuals will receive services. However, under 29 CFR 37.42, One-Stop systems must do outreach to various populations, to ensure that members of those populations are aware of the programs and services provided by the systems. No change has been made to the Final Rule.

We received a number of comments about the definition of ''public assistance'' as it relates to individuals served under the priority provision. Commenters stated the belief that while application of the priority could result in improved access to persons with disabilities, the potential for this increased access is dependent, to some degree, on the application of a broad definition of public assistance. WIA section 101(37), defines public assistance to mean ''Federal, State or local government cash payments for which eligibility is determined by a needs or income test.'' The commenters requested a definition that specifically recognizes other forms of assistance such as Medicaid, Medicare, Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) as well as ''other funding used heavily by persons with disabilities.''

Response: A definition of the term ''public assistance'' developed by States and local areas that includes the availability of other Federal, State or local government cash payments to an individual based on a needs or income test would be consistent with WIA requirements. The statutory definition of ''public assistance'' at WIA sec. 101(37) contains a two-part test. The program must provide ''cash payments'' and eligibility for the program must be determined by a ''needs or income test.'' Under this definition, cash payments, such as SSI, state payments to individuals with a disability, and local general relief payments to homeless individuals would meet both parts of the statutory definition of public assistance.

On the other hand, the statute would not permit a state or local definition that included programs providing benefits that are not cash payments, or programs that are not needs or income-based. For example, SSDI payments are not income tested, and, therefore, cannot be considered public assistance under WIA. However, as a practical matter, SSDI beneficiaries may still qualify for priority under WIA. For example, SSDI beneficiaries might be determined to be eligible under the priority for WIA services as ''other low income individuals'' based on their income, under 20 CFR 663.640, which provides for the individual with a disability to be considered a low income individual even if the family income does not meet the income eligibility criteria when the individual's own income meets the income criteria. Similarly, Medicaid and Medicare benefits are not considered public assistance as defined under WIA. Medicare is a medical insurance for which individuals are eligible based their having attained the age of 65 and contributed to the fund during their employment. There is no needs or income test to determine an individual's receipt of Medicare benefits. Furthermore, while Medicaid eligibility is dependent upon an income test, it fails to meet the second part of the WIA definition. Under Medicaid, there is no cash payment provided to the individual, rather payments representing reimbursements of medical expenses are paid directly to the medical services provider. However, individuals receiving Medicaid or Medicare payments may still be determined appropriate for the WIA service priority as ''other low income individuals'' based on their income. No change has been made to the Final rule.

2. Welfare-to-Work and Temporary Assistance to Needy Families as Part of One-Stop: At § 663.620, the regulation discusses the relationship of the Welfare-to-Work program and the Temporary Assistance to Needy Families (TANF) program to the One-Stop delivery system. Welfare-to-Work is a required partner to which the One-

Stop partner regulations apply. The TANF agency is specifically suggested as an additional partner. Both programs can benefit from close cooperation with the One-Stop delivery system because their respective participants will have access to a much broader range of services to promote employment retention and self-sufficiency.

A commenter suggested that § 663.620(a), which provides that Welfare-to-Work participants may be referred to receive WIA training, should include a statement that such funding assistance is not available under Welfare-to-Work or should clarify that § 663.620 is an exception to § 663.310(d), if that is the intent.

Response: Section 663.310(d) provides that training services are available to adults who ''are unable to obtain grant assistance from other sources to pay the costs of such training'' and notes as an example of other grant assistance, Federal Pell Grants. It is not intended that this section limit ''other grant assistance'' to only Federal Pell Grants, rather it is expected that access to other grant funds that will maximize the availability of WIA funds so that the broadest number of individuals may be served. ''Other grant assistance'' funds would be considered as additional training resources for individuals requiring training. Such funds could include not only Federal Pell Grants, but also Welfare-to-Work grant funds (which, under recent amendments may be used to provide limited occupational training), State education grants and dislocated worker funds where such an application is appropriate. The language in § 663.310(d) has been changed to provide Welfare-to-Work and other examples in addition to the Pell Grant reference as appropriate to the eligibility of the individual involved for other training fund assistance.

Subpart G—On-the-Job Training and Customized Training

Sections 663.700 through 663.720 are the regulatory provisions for conducting on-the-job (OJT) and customized training activities. They include specific information regarding general, contract, and employer payment requirements. Unlike JTPA, WIA does not limit OJT to six months. However, as specified in WIA § 101(31)(C), it is limited in duration as appropriate for the occupation being trained for. Section 663.705 establishes requirements that permit OJT contracts for employed workers.

One commenter supported the brevity of the regulations related to OJT. A second commenter apparently construed the language in § 663.700(a) that states that, ''A contract may be developed * * *'' to mean that the use of contracts for the development and delivery of OJT is optional.

Response: The language in § 663.700(a) has been changed to clarify that OJT must be provided through a contractual arrangement as an exception to the ITA requirement under WIA section 134(d)(4)(G)(ii)(I). We believe that written agreements are necessary to ensure that the requirements of OJT are met. The regulations, in § 663.700 (b) and (c), establish minimal requirements for OJT contracts. OJT contracts must ensure that participants are provided a structured training opportunity in which to gain the knowledge and competencies necessary to be successful in the occupation in which they receive training.

That same commenter also suggested that the regulations be amended to require that the OJT contract contain detailed information on the skills and competencies to be acquired, the time frame for acquiring them, and sufficient documentation to demonstrate that workers received bonafide training and acquired the competencies.

Response: Generally, we believe that States and local areas should have the flexibility to determine the information needed for inclusion in the required OJT contracts. Therefore, we have not mandated that the contracts contain documentation that the competencies are acquired. However, in order to ensure that workers and employers have a common understanding of the goals and purpose of the OJT assignment, we believe that certain general terms should be reduced to writing. Accordingly, we have amended § 663.700(c) to require that the OJT contract identify the occupation, the skills and competencies to be learned and the length of time the training will be provided.

We received comments which recommended that the regulations require local programs, in entering into OJT contracts or undertaking customized training, give priority to employers who: offer wages and benefits that lead to family self sufficiency; ensure long term self sufficiency for their employees; exhibit a strong pattern of union management cooperation; and after upgrading existing employees through OJT, backfill vacancies with public assistance recipients and other low income persons.

Response: We have chosen not to limit local options by specifically identifying priorities for the selection of such employers. However, Local Boards may consider these and other factors in selecting employers to provide training opportunities that will assist in their efforts to provide services that meet or exceed the performance objectives regarding employment leading to self sufficiency and job retention. No change has been made to the Final rule.

Commenters recommended that the regulations be revised to eliminate from consideration for an OJT contract or for customized training any employer which has violated: anti-discrimination statutes; labor and employment laws; environmental laws; or health and safety laws.

Response: We concur that Federal grant funds should not be used to engage employers that have violated Federal law. Such information should be available under information requirements at 29 CFR 37.38(b). We encourage States and Local Boards to require a written assurance by a potential employer, that no such violations have occurred within some reasonable period of time. It would also be appropriate to obtain written assurance from the employer that the training to be provided will be in accordance with WIA § 181(a)(1)(A) and § 667.272 for wage and labor standards, and WIA § 181(a)(2) and § 667.274(a) for health and safety standards.

29 CFR 37.20(a)(1) contains an assurance regarding nondiscrimination and equal opportunity. Under 29 CFR 37.20(a)(2), this assurance is considered incorporated by operation of law, and may be incorporated by reference, in documents that make WIA Title I financial assistance available, such as OJT contracts.

A commenter recommended that we add a requirement that employers be required to retain, or transition to new upgraded jobs with wages and benefits commensurate with their new skills, those workers who receive customized retraining.

Response: WIA § 181(b)(2) and 20 CFR 667.270 establish safeguards for workers to ensure that participants in WIA employment and training activities do not displace other employees. These protections may affect immediate opportunities for workers receiving customized training to ''transition to new upgraded jobs.'' However, Local Boards may establish policies concerning the selection and non-selection of employers for the OJT and customized training programs. We encourage the development of policies that maximize the opportunities presented by funding upgrade skill training on-site, which, upon completion of the training, will result not only in a more highly skilled workforce, but also in new entry level jobs for additional program participants.

We have made no change to the regulations.

A commenter requested that the regulations require that a system be in place to assure that customized training funds are used to supplement rather than supplant an employer's own training.

Response: We do not believe it is necessary to require such a system. With the limited funding available for training, issues of maintenance of effort or substitution of public funds for training previously funded by the employer will most likely be considered an important factor in a local or state policy for the selection of employers for customized training. We have made no change to the regulations.

A commenter suggested that the performance outcomes of employers who have OJT contracts should be considered public documents and made available for review and comment. At the same time, the commenter cautioned that the confidentiality of participant records must be preserved.

Response: Performance information on providers of OJT and customized training is collected and disseminated under the eligible provider requirements of § 663.595.

A commenter recommended that we modify the regulations to require that local programs conduct retention services with individuals placed in OJT to determine whether the OJT requirements and nondiscrimination and other employment rights are satisfied.

Response: As discussed above, all OJT contracts are subject to the worker protection requirements set forth in WIA sections 181(a)(1) (A) and (B), (b)(2), (3), (4) and (5), and 188. In addition, we believe that monitoring of OJT contractors must include review of selection patterns and other areas of potential concern regarding trainees' civil and other employment rights (consistent with the requirements of 29 CFR 37.54(d)(2)(ii)) to ensure the quality of the One-Stop operator's selection of training opportunities. No change has been made to the regulations.

A commenter suggested that to assure compliance with WIA section 181(b)(7), OJT and customized training contracts be required to include a provision guarantees that customized training funds or subsidies will not be used directly or indirectly to assist, promote or deter union organizing.

Response: We don't believe it is appropriate to mandate the inclusion of a particular provision in these contracts. However, we have specifically identified this prohibition in new § 663.730 to ensure that this information is readily available to practitioners.

Several commenters urged that we drop the requirements in §§ 663.705 and 663.720, that in order for employed workers to be determined eligible for OJT and for customized training they must not be earning a self-sufficient wage as determined by the Local Board. The commenters observed that there is no specific wage criterion on OJT and customized training eligibility in WIA, and that it would limit customized training available for skill upgrading for new technology and new job skills noted in § 663.720(c). The commenters believed that such a limitation on customized training could also affect the linkages with employers and economic development efforts.

Response: The Act, in sections 134 (d)(3)(A)(ii) and (d)(4)(A)(i), provides that one of the eligibility criteria for intensive and training services for employed individuals is that they need such services in order to obtain or retain employment that allows for self-sufficiency. These criteria enable employed adults in entry level jobs to receive those services to initiate the steps toward a career or to obtain those skills necessary to improve their earning capacity in another job to assist them in attaining self-sufficiency. Therefore, no change has been made to the Final rule. However, this eligibility requirement does not apply to training provided as part of the Statewide workforce investment activities under 20 CFR 665.210(d), which provides for establishing and implementing innovative incumbent workers training programs.

We received a comment requesting that we add language to the regulations to assure that labor organizations who operate training programs be considered eligible to operate customized training programs.

Response: The definition of customized training, at § 663.715, does not limit providers of customized training to employers, but provides that it be ''conducted with a commitment by the employer to employ an individual on successful completion of the training, and * * * for which the employer pays for not less than 50 percent of the training.'' Neither the Act nor regulations preclude any specific organization which meets the criteria established by local areas from being a provider of a customized training program. Because a wide range of programs and providers are available, we have decided not to identify any specific type of program or provider in the regulations.

Subpart H—Supportive Services

1. Flexibility in the Provision of Supportive Services: The regulations in subpart H define the scope and purpose of supportive services and needs related payments and the requirements governing their disbursement. Supportive services include transportation, child care, dependent care, housing and needs-related payments that are necessary to enable an individual to participate in activities authorized under WIA title I. We also strongly encourage Local Boards to establish linkages with programs such as child support, EITC, Food Stamps, Medicaid, and the Children's Health Insurance Program, which also serve as key supports for customers making the transition to self-sufficiency. A fundamental principle of WIA is to provide local areas with the authority to make policy and administrative decisions as well as the flexibility to tailor the workforce investment system to meet the needs of the local community. To ensure this flexibility, the regulations afford local areas the discretion to provide supportive services as they deem appropriate with limitations only in the areas defined in the Act. Local Boards are required to develop policies and procedures addressing coordination with other entities to ensure non-duplication of resources and services, as well as any limits on the amount and duration of such services. Attention should be given to developing policies and procedures that ensure that the supportive services provided are not available through other agencies and that they are necessary for the individual to participate in title I activities.

We received a comment suggesting that States must be encouraged to provide incentive and performance rewards to those local areas which provide substantial supportive services.

Response: States certainly may choose to spend Statewide reserve funds on this type of incentive award. However, we believe that amending the regulations to encourage States to provide incentive and performance rewards to local areas for supportive services is not consistent with the principle of granting discretion to Local Boards to determine the appropriate mix of services, including provision of supportive services, for their area based on their assessment of local needs and resources. No change has been made to the regulations.

A comment asked that the local supportive services policy be required to address service delivery and procedures for referrals.

Response: Although Local Boards are required to adopt policies that ensure coordination of any supportive services provided, we have not mandated that the policy specifically address the delivery of such services. The inclusion of such a mandate, or the substitution of ''must'' for ''should'' with respect to referral procedures in the context of this regulation would be inconsistent with the principle of granting local discretion in the provision of supportive services. No change has been made to the Final rule.

2. Needs-Related Payments: Sections 663.815 through 663.840 address requirements relating to needs-related payments. Section 663.825, in particular, deals with needs-related payments to dislocated workers. Studies show that early entry into training for dislocated workers who require it is a key factor in reducing the period of unemployment during the adjustment process. Early intervention strategies and policies are best implemented through quality rapid response assistance which includes comprehensive core services, and the provision of other reemployment assistance, including intensive and training services, as soon as the need can be identified, preferably before layoff. The statute authorizes all levels of assistance under title I of WIA to many workers six months (180 days) before layoff, or at least as soon as a layoff notice is received. Providing these workers with access to quality information regarding all adjustment assistance available in the community, including any deadlines that must be met, is critical for workers to make intelligent reemployment choices. Thus, any concerns that the enrolled in training requirement may limit the number of dislocated workers who are eligible for needs-related payments can be resolved through the use of early intervention strategies.

A commenter asked that the regulations be changed to require that Local Boards must fund supportive services, and, particularly, needs-related payments, when other resources are not available.

Response: WIA, at Section 134(e) (2) and (3) lists supportive services and needs-related payments as permissible employment and training activities. Although we agree that supportive services and needs-related payments should be provided with WIA funds when other funds are not available, we also recognize that WIA recognizes that Local Boards or One-Stop operators may have to make hard decisions about the use of limited WIA resources. To enable them to make these hard decisions, WIA makes the provision of supportive services a discretionary decision. It would be inconsistent with the Act and with our principle of maximizing flexibility to create the requirement the commenter requests. No change has been made to the regulations. However, as a matter of policy, we will follow State and local policy with respect to provision of needs-related payments to dislocated worker program participants under national emergency grants operating in a local area.

A commenter noted the different time requirements for training enrollments for TAA and NAFTA–TAA, as compared to WIA, and asked that the requirements be aligned to permit more complete assistance to dislocated workers eligible for TAA and NAFTA–TAA.

Response: The eligibility requirements for TAA benefits and needs-related payments are established by different authorizing statutes, and may not be changed by these regulations. As also noted above, early entry into training for dislocated workers needing it is a key determinant in reducing an individual's period of unemployment.

We received two other comments about the eligibility requirements for dislocated workers to receive needs-related payments found in § 663.825. One comment indicated that references to TAA seemed to be intended for TRA. A second comment noted a missing reference to training as an eligibility requirement for needs-related payments by those dislocated workers who are unemployed and who did not qualify for unemployment compensation or trade readjustment allowances.

Response: Section 663.825 has been revised to change the incorrect reference to ''trade readjustment assistance'' to ''trade readjustment allowances.'' However, difference in eligibility criteria for individuals who did not qualify for unemployment insurance or trade readjustment allowances is required by WIA section 134(e)(3).

One comment was received in regard to § 663.840 asking that all needs-related payments and support services ''packages'' be required to be comparable to the applicable weekly level of the unemployment compensation benefit.

Response: WIA sets a maximum level for needs-related payments, but does not specify a minimum level. As noted previously, we do not think it is appropriate to limit the flexibility granted to States and local areas by statute.

Part 664—Youth Activities Under Title I

Introduction

The regulations for youth activities reflect the intent of the legislation by moving away from one-time, short-term interventions and toward a systematic approach that offers youth a broad range of coordinated services. This includes opportunities for assistance in academic and occupational learning; development of leadership skills; and preparation for further education, additional training, and eventual employment. Rather than supporting separate, categorical programs, the regulations for youth activities are written to facilitate the provision of a menu of varied services that may be provided in combination or alone at different times during a youth's development.

The youth council, (the local entity responsible for recommending and coordinating youth policies and programs), a new entity created in WIA, serves as a catalyst for this broad change. The regulations support that legislative intent.

Flexibility for local program operators to conduct youth programs is key to WIA and these regulations. We encourage local decision-making in developing policy, youth program design within the statutory framework, and determining appropriate program offerings for each individual youth. We expect that these programs and activities will provide needed guidance for youth that is balanced with appropriate consideration of each youth's involvement in his or her training and educational plan. Further, the regulations support strong connections between youth program activities and the One-Stop service delivery system, so that youth learn early in their development how to access the services of the One-Stop system and continue to use those services throughout their working lives.

Subpart A—Youth Councils

Subpart A explains the purpose of youth councils which are created at section 117(h) of the Act and discussed in 20 CFR 661.335 and 661.340 of the local governance regulations in part 661. The youth council is a new feature of the workforce investment system that helps develop youth employment and training policy, brings a youth development perspective to the establishment of that policy, establishes linkages with other local youth services organizations, and takes into account a range of issues that can have an impact on the success of youth in the labor market.

There were several comments about the youth councils. One commenter suggested requiring that the youth council include representatives from organized labor, particularly from recognized apprenticeship programs and teachers' unions.

Response: As stated in WIA section 117(h)(1), members of the youth council are appointed by the Local Board in cooperation with the chief elected officials(s) (CEO) in the local area. Among other categories of youth council representatives, paragraph (2) of WIA section 117(h) states that the youth council must include Local Board members described in paragraph (A) or (B) of section 117(b)(2) with special interest or expertise in youth policy. Therefore, union members (including those who may be from recognized apprenticeship programs or teachers' unions) who are members of the Local Board and have an interest or expertise in youth issues may be appointed to the youth council under this provision. Additionally, clause (B) of WIA section 117(h)(2) provides that the chairperson of the Local Board, in cooperation with the CEO's, may appoint other ''appropriate'' individuals to the youth council. In short, the Act already provides avenues through which representatives of organized labor may be appointed to the youth council. Because we believe that local areas should have as much discretion as possible in selecting members of the youth council to best serve their communities, we do not feel it is appropriate to prescribe requirements in addition to those in the Act. No change has been made to the regulation.

Other commenters asked that we require that youth be included as full members of these councils at all levels. A number of other commenters encouraged us to require that youth with disabilities are members of the youth councils

Response: While there is no specific requirement for the appointment of youth, including youth with disabilities, to the youth council, there is also no prohibition to naming them to the youth council. In fact, 20 CFR 661.335(a) requires representation by individuals with experience relating to youth activities and 20 CFR 661.335(c) authorizes the Local Board Chair and CEO to appoint such other individuals as they determine appropriate. Either of these provisions could support the appointment of youth, including participants and youth with disabilities, to the youth council. Furthermore, WIA section 129(c)(3)(C) and § 664.400(f) provide that Local Boards must ensure that youth participants are among the individuals who are involved in both the design and the implementation of its youth program. Youth with disabilities may, of course, be included among the youth participants who are designated to be involved in this process. We agree with the commenters that Local Boards should seek to involve a diverse cross-section of its youth population in the planning and design of activities, however, we feel that adding additional youth council requirements beyond those already in the Act and the regulations, is neither necessary nor appropriate. As discussed above, we believe that local areas should have as much discretion as possible, in selecting members of the youth council to best serve their communities. The issue of youth council membership is also discussed in 20 CFR 661.335, as well as the preamble discussion of that section. No change has been made to the regulations.

Section 664.110 discusses oversight responsibilities for youth programs and activities. Working with the youth council, the Local Board has responsibility for oversight of youth programs. As required by WIA section 117(d)(4), § 664.110(b) requires local program oversight to be conducted in consultation with the CEO. In order to make § 664.110(c) consistent with § 664.110(b), a commenter recommended revising § 664.110(c) to add that the Local Board should consult with the CEO about delegating its responsibility for oversight of youth programs to the youth council.

Response: We agree that it may be advantageous for Local Boards, in consultation with local area CEO, to delegate the responsibility for oversight of youth programs to youth councils which have expertise in youth issues, as is permitted by § 664.110. Section 664.110(c) has been revised to reflect this comment.

A commenter requested that we provide guidance to youth councils on identifying and certifying eligible non-traditional training providers to ensure that youth are able to pursue non-traditional employment. The commenter feels that more information is needed on non-traditional training, specifically guidance on non-traditional employment for women.

Response: We support the idea that local youth programs can benefit by making non-traditional training opportunities available to participants, and encourage States to consider non-traditional service providers among the lists of service providers designated in local areas. In addition, should the need arise, we will consider addressing the issue of non-traditional training providers and eligible providers list through subsequent guidance and technical assistance. At this time, however, we do not see a need for additional guidance.

Subpart B—Eligibility for Youth Services

Subpart B provides regulations under which youth are determined eligible for WIA youth services. A commenter requested that we amend the criteria in § 664.200 so that a low-income youth, regardless of any other barriers may participate in the youth employment programs funded through WIA. The commenter feels that youth served by their agency do not meet the barrier to employment eligibility criteria to allow them to participate in WIA youth activities.

Response: We cannot accommodate the commenter's concerns. The Act specifically requires that, to be determined eligible, a low income youth must have at least one of the barriers listed in section 101(13)(C) of the Act and § 664.200(c) of the regulations.

We received a comment suggesting that we make the definition of basic literacy skills at § 664.205 consistent with the definition of basic skills deficient in section 101(4) the Act, in order to eliminate confusion.

Response: Section 664.205 is revised to better align the definition of these two terms by using the same grade level criterion for both terms. While we made changes to better align the definitions, the two terms are not identical. Section 101(4) of the Act refers to a definition of basic skills deficient for use as one of the categories of youth not meeting the income eligibility test who may be served with up to 5% of youth funds, as well as one of the standards for determining ''out-of-school-youth.'' Section 664.205 addresses the criterion for documenting general eligibility when determining whether youth are deficient in basic literacy skills. The regulatory definition of ''deficient in basic literacy skills'' is based on the statutory definition of the term ''literacy'' found in WIA section 203 and cross-referenced in WIA section 101(19). Therefore, the terms and their definitions are not identical. However, § 664.205(a) provides authority for States and local areas to define the term ''deficient in basic literacy skills,'' so long as certain minimum criteria are met. The flexibility provided at § 664.205(a) as revised, would allow States and/or local areas which choose to do so to define the term in a way in which an individual who is determined to be ''deficient in basic literacy skills'' on the basis of the grade level criteria,

will also be considered to be ''basic skills deficient'' for purposes of determining whether the out-of-school youth or 5% youth standards are met.

Under section 101(13)(C)(vi) of the Act, a low income youth is eligible for services if he or she requires additional assistance to complete an educational program, or to secure and hold employment. We envision that Local Boards will define this term, however, under § 664.210, if the State sets policy regarding this provision, the policy must be described in the State Plan.

Section 664.215 requires that all youth participants be registered by collecting information for supporting eligibility determinations, as well as Equal Opportunity (EO) data. We received a number of comments asking that we make the policy that all youth must be registered to participate in youth programs consistent with the adult policy, allowing the same exceptions to the registration requirement.

Response: While these commenters feel that the registration policy for youth and adults should be the same, we believe that the policy for youth should not be changed because the basic approach for serving youth differs from adults. The difference in the registration criteria for youth and adults arises from the way in which an applicant enters each program. WIA section 129(c)(1) makes it clear that each youth participant is to have an assessment and a service strategy, activities which would also require registration under the Adult program. An adult may enter the One-Stop and receive only informational or self-help services, for which registration is not required. The more individually-focused youth program does not envision these kinds of activities as part of entry. (Of course, a youth may avail him/herself of informational or self-help services through the One-Stop.) Therefore, no change has been made to this section of the regulations.

EO data must be collected for every individual who is interested in being considered for WIA 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 by the recipient. See 29 CFR 37.4 (definition of ''applicant'') and 29 CFR 37.37. This includes all youth participants. We will issue further guidance regarding this data collection requirement.

Section 129(c)(5) of the Act provides that up to five percent of youth participants served in a local area may be individuals who do not meet the income criterion for eligible youth, if they meet one or more of the criteria specified in section 129(c)(5)(A) through (H) of the Act, restated in the regulations at § 664.220. Local Boards may define the term ''serious barriers to employment'' and describe it in the Local Plan. One commenter also supported WIA's requirements that allow individuals with one or more disabilities, including learning disabilities, to be eligible under the exception to permit five percent of youth participants to be individuals who do not meet the income criteria.

Section 664.240 explains that eligibility for free school lunches is not a substitute for income eligibility under the Act. When drafting the Interim Final Regulations, we received suggestions that program operators be allowed to use eligibility for free lunch as a substitute for determining eligibility under the Act, and encouraging us to seek a technical amendment to include such a provision in the legislation. Several commenters again made requests that we pursue a technical amendment on the free lunch and reduced lunch eligibility issue and suggested that eligibility for these programs be used to determine eligibility for WIA youth services.

Response: We recognize the importance of this issue, yet lack statutory authority to change the Act's income eligibility requirements. Should such a change be made to the statute, § 664.240 would be revised. We support a technical amendment in this area, and have discussed the issue with Congressional staff.

Section 664.250 provides that a youth with a disability whose family income exceeds maximum income levels under the Act may qualify for services if the individual's own income meets the income criteria established in WIA section 101(25)(F), or the eligibility criteria for cash payments under any Federal, State or Local public assistance program. (WIA section 101(25)(B).) One commenter strongly supported WIA's recognition, in the Act and the regulations, of the need for youth with disabilities to receive youth services.

Subpart C—Out of School Youth

Sections 664.300, 664.310, and 664.320 address issues related to out-of-school youth. Section 101(33) of the Act defines ''out-of-school youth'' as: eligible youth who are school dropouts or who have received a secondary school diploma or its equivalent, but are basic skills deficient, unemployed, or underemployed. ''School dropout'' is defined in WIA section 101(39) and § 664.310. Youth enrolled in alternative schools are not school dropouts.

We received a number of comments requesting that we seek a technical amendment to WIA that would allow youth attending alternative schools to be included in the definition of ''school dropout.'' The commenters felt that this would permit Local Boards to provide services to more youth in alternative educational environments and to design programs that take advantage of local resources and best meet the needs of local youth.

Response: While we recognize the importance of local flexibility and of serving youth in alternative school settings, we lack statutory authority to change definitions established under the Act. However, we have revised § 664.310 to clarify that a youth's dropout status is determined at the time of registration. Therefore, an individual who is out-of-school at the time of registration and subsequently placed in an alternative school, may be considered an out-of-school youth for the purposes of the 30 percent expenditure requirement for out-of-school youth.

We also received comments suggesting that § 664.310 should make it clear that, for the purposes of determining whether a youth in an alternative school can be considered out-of-school, their dropout status should be determined at the point of intake.

Response: We agree. Section 664.310 is revised to clarify that dropout status is determined at the time of registration.

At least thirty percent of the total youth allocation (except for local area expenditures for administrative purposes) must be spent on services for out-of-school youth. This 30 percent, like the remaining 70 percent, need not be spent proportionally between summer and year-round activities. The Local Board, in consultation with the chief elected official, determines the distribution of funds. There is no separate summer program under WIA. Therefore, there is no exemption from the 30 percent requirement for funds spent on summer employment opportunities. A single allocation of youth funds, at least 30 percent of which must be spent on out-of-school youth, is available to local areas for year-round and summer employment opportunities.

Subpart D—Youth Program Design, Elements, and Parameters

The features of the youth program design are outlined in section 129(c) of the Act. While the Act specifies three program design categories and ten

program elements, it permits individual program design flexibility in determining the definition, scope, and characteristics of the elements.

A commenter suggested that, to avoid confusion, we should clarify the number of youth elements that are required and the entity responsible for providing the ten elements. The commenter also suggested replacing the term ''local program'' in § 664.410 with either ''local workforce investment board'' or ''local workforce investment area'' to identify the entity responsible for making the ten elements available.

Response: WIA requires that Local Boards must ensure that all ten elements are available for youth in their local area. To provide further guidance to assist Local Boards, we added a new § 664.400 to define the composition of a local youth program and to address the difference between local programs and local program operators. This definition clarifies that a local youth program must include all the youth activities in a local area, irrespective of the number of operators or alternative services. In addition, we redesignated § 664.400 of the Interim Final Rule as § 664.405 and have added a provision which we discuss below.

Redesignated § 664.405 discusses the three categories required under WIA section 129(c)(1) which provide the framework for youth program design. They are: (1) An objective assessment of each participant; (2) individual service strategies; and (3) services that prepare youth for postsecondary educational opportunities, link academic and occupational learning, prepare youth for employment, and provide connections to intermediary organizations linked to the job market and employers.

A commenter asked us to clarify that the requirement, in WIA section 123, that eligible providers of only the ten required program elements be identified by awarding grants or contracts on a competitive basis, does not apply to the design framework component of the program.

Response: Eligible providers of the ten program elements must be identified as required by WIA section 123; however, we have added a new paragraph (a)(4) to the redesignated § 664.405 to clarify that this requirement does not apply to the design framework of local youth programs when the grant recipient/fiscal agent is the provider of the design framework activity. A similar exception in § 664.610 also applies to the grant recipient/fiscal agent's provision of summer employment activities.

A commenter requested that we clarify that developing a career goal for each youth could be part of the individual's service strategy rather than an immediate requirement to identify a career goal because many young people 14 years and above do not know what they want to do.

Response: We agree that developing a career goal may be part of an individual service strategy rather than an immediate requirement for younger youth. However, setting goals for younger youth may reflect a career interest. Goals may change as a youth ages and interests broaden as a result of participation in workforce development activities. Therefore, we believe local program operators should encourage younger youth to identify career interests which may serve as a career goal. We have added the phrase ''age-appropriate'' to redesignated § 664.405(a)(2) to clarify that the career goals selected should appropriate for the age of the youth participant.

Redesignated § 664.405(c) requires Local Boards to establish linkages to entities that will foster the participation of eligible youth. We received several comments stating that youth programs should be designed to address the needs of teen parents (such as child care, flexibility in schedule), to combat the occupational segregation which contributes to low wages of women and that training should be evaluated for access to non-traditional jobs and career paths for women and girls. The commenters also suggested that we add language to this section to provide for linking youth programs with educational institutions, child care facilities, and other entities to meet women-specific needs.

Response: The final regulations, in redesignated § 664.405(a)(3), provide for linking youth programs with other entities to assist youth. Examples of linkages are listed in § 644.405(c), but the list is not exhaustive. Local Boards must ensure that there are appropriate links to entities that will foster the participation of eligible local area youth. Program operators may link their programs to entities such as local high schools, alternative schools, childcare agencies, vocational programs, and two- and four-year postsecondary institutions that provide services to address the specific needs of the targeted population, including teen parents, for eligible youth services. We agree with the commenters about the importance of these linkages in fostering the participation of eligible youth, however, we do not want to be overly prescriptive, decreasing the discretion of local areas in making such decisions. No change has been made in the final regulations.

Section 129(c)(3) of the Act requires that Local Boards ensure that eligible youth receive information and referrals, including information on the full array of appropriate services available to them and referrals to appropriate training and educational programs. Youth program providers must ensure that eligible applicants who do not meet the enrollment requirements of their program or who cannot be served by their program are referred for additional assessment and program placement. This language is included in redesignated § 664.405(d) to emphasize the importance of referrals as a part of overall youth program design. To further promote the concept of seamless One-Stop service delivery, One-Stop operators are encouraged to send those youth assessments that are completed at the One-Stop center to other training and educational programs to which the youth is referred.

Section 129(c)(2) of the Act lists 10 program elements that must be generally available to youth through local programs. A commenter asked for clarification on the number of youth elements required and whether these elements must be provided to every youth participant.

Response: Section 664.410(a) makes it clear that the Local Board must ensure that all ten elements are available for youth in their local area. However, § 664.410(b) provides that a local program is not required to provide all ten program elements to every participant. Local program operators must determine what program elements will be provided to each youth participant based on the participant's objective assessment and service strategy. We envision that each youth will participate in more than one of the ten program elements required as part of any local youth program and all youth must receive follow-up services. For example, even if it is determined appropriate that a youth participate in only summer employment activities, he or she would still receive at least 12 months of followup services. Followup service requirements are fully described in § 664.450. Since the regulations address this issue, no change is necessary.

Sections 664.420 through 664.470 further define and discuss five program elements: leadership development, positive social behaviors, supportive services, followup services, and work experiences.

Under WIA section 129(c)(2)(F) and § 664.410, youth programs must make leadership development opportunities available. The Act gives the following examples of leadership activities:

community service and peer-centered activities encouraging responsibility and other positive social behaviors during non-school hours. Some additional examples of leadership development activities are listed in § 664.420 which elaborates on the definition of leadership development opportunities. The development of leadership abilities might address team work, decision making, personal responsibility, and citizenship training, as well as positive social behavior training in areas such as positive attitudinal development, self-esteem building, cultural diversity training, and other skills and attributes that would help youth to lead effectively, responsibly, and by example.

One commenter suggested that the examples of leadership development opportunities should include actual opportunities for youth to assume leadership roles, such as: involving participants in program governance and decision making, entrepreneurship training and peer leadership opportunities.

Response: The examples of leadership development and positive social behaviors in § 664.420 are not intended to be all inclusive, they are merely examples. Other kinds of leadership development opportunities may be provided at the discretion of the Local Board. The commenter provides good examples of the types of leadership development opportunities Local Boards may want to consider when designing their local youth programs. No change has been made in the final regulations.

A commenter suggested that the rules define ''positive social behaviors'' and make it clear that positive social behaviors are outcomes of leadership opportunities. The commenter recommended a new definition of positive social behavior which includes some of the following activities: maintaining healthy lifestyles, including being drug and alcohol free; maintaining positive relationships with responsible adults and peers; contributing to the well-being of one's community; voting; being committed to learning and academic success; remaining non-delinquent; and postponed and responsible parenting.

Response: We have added these suggestions to the list of positive social behaviors in § 664.430 because we think that the original list of examples was too narrow to reflect the full range of positive social behaviors. As a technical correction, we have removed the phrase ''but not limited to'' from this section. This does not change the meaning of this provision. Here, as throughout the regulations, the term ''include'' is used to indicate an illustrative, but not exhaustive list of examples.

Another of the ten required program elements is supportive services. Section 101(46) of the Act defines supportive services to include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to participate in activities authorized under title I of the Act. Section 664.440 elaborates on the definition of supportive services as it applies to youth. Such services may include: linkages to community services; referrals to medical services; and assistance with work attire and work-related tool costs, including such items as eye glasses and protective eye gear. Child support, EITC, Food Stamps, Medicaid, and the Children's Health Insurance Program are among the programs with which Local Boards are encouraged to coordinate. We have made a slight modification to this section which previously referred to assistance with transportation, dependent care and housing ''costs''. We have removed the reference to ''costs'' for the services since WIA title I funds may be used to provide services such as on-site child care as well as to directly provide or reimburse the costs of these services.

Section 664.450 requires that followup services be provided to all youth participants for not less than 12 months after the completion of participation, as appropriate. The appropriate scope of followup services must be based on the needs of the individual participant. Followup services have proved to be effective. Evaluation studies such as Abt Associates' Final Report on the National JTPA Study, have shown disappointing results for short-term job training programs for youth. In contrast, programs such as STRIVE and the Children's Village have shown much success with longer-term followup strategies. A 1993 study by MDRC showed that the programs of the Center for Employment Training, which feature close ties to the private sector and a strong job placement component with followup with employers, increased the earnings of enrollees by $3,000 a year over a control group during the last two years of a four-year evaluation.

Section 664.450(a)(1) provides that followup may include leadership development or supportive service activities, as well as other allowable activities, and provides additional examples of permissible followup services. The list is intended to present examples of followup services; other types of followup services may be determined at the local level.

Section 664.450(b) clarifies that all youth participants must receive some form of followup services. Such services must be for a minimum of 12 months. Followup services for youth who participate in only summer employment activities may, however, be less intensive than for those youth who participate in other types of activities. Program operators are encouraged to consider the intensity of the services provided and the needs of the individual youth in determining the appropriate level of followup services.

A commenter suggested revising the sentence referring to less intensive followup services for youth who have only participated in summer employment opportunities, to say that the scope and intensity of these followup services should be consistent with each participant's individual service strategy.

Response: Section 664.450(b) already states that the types of services provided and the duration of services must be determined based on the needs of the individual. Therefore, we do not feel that further clarification is required. Local programs will make the determination on the intensity of followup services. However, we will provide additional guidance on other aspects of this subject through our regular system of communication to States and local areas for States that may need technical assistance.

Sections 664.460 and 664.470 address work experiences for youth. Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. The regulations do not specify a particular time limit for work experiences. A commenter requested that we place a maximum time limit on work experiences (no more than 30 days), and require that all work experiences be paid, with priority given to employers who have evidenced a commitment to training for their own workers and union management approaches to training.

Response: We agree that Local Boards should make a point of establishing work experiences opportunities for youth with employers who have demonstrated quality approaches to training and labor management, but do not think it is necessary to mandate this approach. We believe, however, that establishing a regulatory time limit, requiring that all work experiences be paid and giving priority to select employers is inconsistent with principle of local flexibility in designing

programs. No change has been made in the final regulations.

As provided in Section 129(c)(2)(D) of the Act, work experiences may be paid or unpaid, as appropriate. A commenter suggested that we clarify that work experiences are appropriate and desirable activities for many youth throughout the year.

Response: We agree and have added the suggested language to § 664.460(c).

Section 664.460 provides that work experiences may be in the private for-profit sector, the nonprofit sector, or the public sector, and gives examples of the types of activities that work experiences may include, such as internships and job shadowing. A few commenters recommended adding other examples to § 664.600 to expand the types of acceptable work experiences. They suggested that the definition of work experiences should make it clear that paid or unpaid community service programs, such as youth services or conservation corps, are valid examples of work experiences, and suggested that language be added to encourage Local Boards to maximize the use of paid work experiences in summer conservation corps programs managed by qualified State, local, non-profit or Federal agencies, as key element or strategy. In addition, a commenter proposed that the regulations encourage Local Boards to maximize collaboration with federal agencies that operate summer youth conservation corps program.

Response: We agree that paid and unpaid community service programs may be appropriate types of work experiences for youth, and have amended the list of examples in § 664.460(c) to include them. However, while we agree that youth conservation corps may be one of the programs in which WIA youth participants gain work experiences, we have refrained from identifying particular types of program providers throughout the regulations. Therefore, consistent with the principle of maximizing State and local discretion, we have not specified this program in the regulations.

A few commenters also endorsed the principle that decisions regarding OJT for youth participants should be left to Local Boards.

Response: We agree that the decision about when to provide OJT to youth under age 18 should remain a decision left to Local Boards. While OJT is not an appropriate activity for most youth under age 18, local programs may choose to use this service strategy for such youth based on the needs identified in an individual youth's objective assessment. Since § 664.460(d) provides for local discretion in deciding when to use OJT, based on a youth's service strategy, no change is made to the regulations.

Section 664.470 provides that youth funds may be used to pay the wages of youth in work experiences, including in the private, for-profit sector, under conditions designed to protect youth and incumbent workers when the purpose of the work experiences is to provide youth with opportunities for career exploration and skill development and not to benefit the employer. If an unpaid work experience creates an employer/employee relationship, federal wage standards may apply. This relationship is determined under the Fair Labor Standards Act.

One commenter asked that we clarify the statement that the purpose of work experiences is not to benefit the employer although the employers may, in fact, benefit from activities performed by the youth, stating that § 664.460 (c) is ambiguous.

Response: The intent of work experiences is to provide youth with opportunities for career exploration and skill development and to enhance their work readiness skills in preparation for employment. While this is the primary objective of work experiences, we recognize that the employer may also receive some benefit in the form of work being done or of recruiting a potential new employee. We believe that the regulations adequately explain this; therefore, no change has been made to the regulations.

Subpart E—Concurrent Enrollment

Under the criteria of section 101(13) of the Act, an eligible youth is an individual 14 through 21 years of age. Adults are defined in section 101(1) of the Act as individuals age 18 and older. Section 664.500(b) clarifies that eligible youth who are 18 through 21 years old may participate in youth and adult programs concurrently, as appropriate for the individual. Such individuals must meet the eligibility requirements under the applicable youth or adult criteria for the services received. Local program operators must identify and track the funding streams for services provided to individuals who participate in youth and adult programs concurrently, ensuring non-duplication of services.

A commenter asked that we make it clear that out-of-school youth may enroll in adult programs under Titles I and Title II of the Act.

Response: We have revised paragraph (b) of § 664.500 to clarify that concurrent enrollment is allowable for youth served in the adult program, dislocated worker program, adult education programs under title II of WIA, and other programs, in order to broaden options for serving youth.

A commenter suggested that youth co-enrolled in both youth and adult programs should also be offered the complete services available to youth.

Response: We think the regulations already cover this suggestion since youth enrolled in youth programs must receive an individual assessment and service strategy based on their need, regardless of whether they are co-enrolled in an adult program. The service strategy should consider all the service options available under both the youth and adult programs.

Section 664.510 provides that ITA's are not an authorized use of youth funds. One commenter stated that WIA is silent on the use of ITA's for youth and this should be a State or local decision. This commenter felt that since it is allowable to enroll 18 year old youth in both youth and adult programs, the use of ITA's should be allowed as an activity for 18–21 year old youth enrolled only in youth funded activities. Another commenter asked that we reverse the rule disallowing ITA's for youth participants not eligible for training services under the adult and dislocated worker programs.

Response: The ITA is the currency of a market-based system that enables adults and dislocated workers to select the service providers most suited to their needs based on information about the past performance of such providers. While the Act does not mention ITA's in its youth provisions, it does require that providers of the ten required youth program elements be competitively selected. The competitive selection requirement effectively precludes the use of ITA's since providers are selected by the Local Board, rather than by the participant. Thus, because the supply of providers may be limited, we interpret the Act to preclude ITA's for youth below age 18. Youth aged 18 through 21 can access ITA's under the adult or dislocated worker program, if appropriate. Accordingly, we have not changed this section.

Subpart F—Summer Employment Opportunities

Subpart F provides clarification about summer employment opportunities for youth. Commenters expressed concern that WIA does not have a separate funding authorization for summer youth employment and training programs. A commenter also felt that without a separate authorization, the summer youth employment program could find

itself in some peril in the future and suggested that regulatory language be added to preclude any diminution in this highly important activity.

Response: The commenters are correct that the summer youth employment and training program is no longer a separately funded activity. Rather, summer employment opportunities are intended to be part of a comprehensive array of services available to youth in a local area. Although all Local Boards must offer summer employment opportunities for eligible youth as one of the ten required program elements listed in WIA section 129(c)(2) and § 664.420, the proportion of youth funds used for summer employment is determined by the Local Board in consultation with the chief elected official. Section 664.600 elaborates on the activities that must be included in all summer employment opportunities, including direct linkages to academic and occupational learning, as well as followup services for at least 12 months. Accordingly, we believe it would be contrary to the intent of the Act and inconsistent with local flexibility to regulate the level of activity required for any of the ten program elements, including the summer youth employment opportunities. We will, however, work with States and local areas to assist them with making the transition to providing summer employment activities as part of a comprehensive system of youth services. For example, we issued Training and Employment Guidance Letter (TEGL) 3–99 in January 2000, to provide guidance to States and local areas on implementing comprehensive youth services under title I of WIA during the summer of 2000. This guidance is available on the Internet at *www.usworkforce.org.* Therefore, a change in the regulations is not necessary.

A commenter also asked that a new paragraph (e) be added to § 664.600 to require each local area to report yearly on the number of youth participants who are provided summer employment opportunities.

Response: Section 183 of the Act authorizes the Secretary to monitor all recipients of financial assistance, which would include grant recipients that operate summer employment activities. We are in the process of developing a reporting system to collect information on WIA participants, youth participants will be included in the reporting system. This reporting system will include information on how many youth participants participated in summer employment opportunities, as well as the characteristics of those participants. Since this issue is being addressed in the reporting arena, no change is made to these regulations. In addition, Training and Employment Guidance Letter (TEGL) 14–99, transmitting instructions for the WIA Transition Summer Report addresses these issues. The TEGL was issued on June 12, 2000 and can be found on the Internet at www.usworkforce.org.

We received numerous inquiries about whether the Act would allow cities and counties to continue to operate their summer employment opportunity activities.

Response: Section 664.610 provides that this practice is still allowed when the local chief elected official is the grant recipient/fiscal agent. It clarifies that if summer employment opportunities are provided by entities other than the grant recipient/fiscal agent, then, under WIA section 123, the providers must be selected by awarding a grant or contract on a competitive basis, based on recommendations of the youth council and on criteria contained in the State Plan. Thus, a city or county may continue to operate the summer employment opportunities component of the youth program, and is not required to engage in a competitive selection process for that component, if it acts as the grant recipient/fiscal agent for the Local Area. However, under WIA section 123, providers must be selected on a competitive basis if providers other than the grant recipient/fiscal agent provide the summer employment opportunities component of the local youth program.

A commenter also suggested that we clarify that local government units operating summer youth employment opportunities as a consortium may provide summer youth opportunities without competitive bidding.

Response: We agree and have revised § 664.610 to specifically recognize consortia of local governments.

One commenter requested that we allow the selection of private sector unsubsidized employment opportunities to be excluded from the competitive process.

Response: We agree and § 664.610 has been revised accordingly.

Some commenters suggested that the description of summer youth employment should make it clear that youth service and conservation corps constitute valid summer employment opportunities. They also recommended that we encourage Local Boards to maximize collaboration with Federal agencies that operate summer youth conservation corps programs.

Response: In our discussion of § 664.460, we have identified youth conservation corps and youth service corps as available work experiences opportunities for youth. As such, placement with these programs as part of summer employment opportunities may also be appropriate. However, we do not believe it is necessary to specifically identify these programs in the regulations.

The core indicators specified in section 136 of the Act apply to the youth program as a whole, including all youth program activities. This is consistent with the intent of the Act to move from a focus on separate, categorical programs to a more systematic approach to workforce investment and serving the needs of youth. Summer employment opportunities, then, are to be viewed as one element among many available to youth as a part of a menu of activities offered by the Local Board. Section 664.620 indicates that participants in summer activities, as part of the overall youth program, are required to be included in the same core indicators of performance as the other youth activities.

A commenter thought that performance measures in Title I and Title II should be the same for youth because youth can be simultaneously enrolled in both programs.

Response: We agree that performance measures for federal education and training programs should be coordinated to the extent possible. We have held discussions with the Department of Education to identify similar performance measures which would apply to both Title I and Title II programs and will continue our joint efforts to harmonize performance measures across programs.

Subpart G—One-Stop Services to Youth

Subpart G explains that the chief elected official (as the local grant recipient for the youth program), is a required One-Stop partner, is subject to the One-Stop provisions related to required partners, described in 20 CFR part 662, and is responsible for connecting the youth program and its activities to the One-Stop system. In addition to the provisions of 20 CFR part 662, links between the youth program and the One-Stop system may include those that facilitate:

- The coordination of youth activities;
- Connections to the job market and employers;
- Access for eligible youth to information and services; and
- Other activities designed to achieve the purposes of the youth program.

Under section 134(d)(2) of the Act, adults have access to core services in One-Stop centers without regard to eligibility. Adults are defined under the Act as persons aged 18 and above. Section 664.710 of the regulations clarifies that local area youth, including youth under age 18 who are not eligible under the title I youth program, may receive services through the One-Stop centers; however, services for such youth must be funded from sources that do not restrict eligibility for services, such as the Wagner-Peyser Act. We believe that WIA's intent is to introduce youth, particularly out-of-school youth, to the services of the One-Stop system early in their development and to encourage the use of the One-Stop system as an entry point to obtaining education, training, and job search services.

Commenters suggested that One-Stop Centers should make significant efforts to make their programs and services accessible to youth and work with local school systems to reach eligible youth. One of the commenters also suggested amending § 664.700(b)(2) to add the local school systems to the linkage requirement, and to require One-Stops to provide materials at low literacy and developmentally diverse levels. To better serve participants of all ages, staff should be trained on the developmental stages of youth and adulthood. A commenter also stated that it is important that, in all cases, written material and/or electronically accessed information available at one-stop centers and throughout the system be written at no more than a fifth grade reading level and, where appropriate, also available in languages other than English spoken by a majority of potential customers.

Response: While neither WIA nor its implementing regulations require any sort of reading level analysis for EO purposes, local areas may consider providing written materials at low literacy and developmentally diverse levels. The WIA nondiscrimination regulations, at 29 CFR 37.35, set forth the specific obligations to provide services and information in languages other than English. The level that triggers the obligation to prepare non-English materials and services in advance is ''a significant number or proportion of the population eligible to be served or likely affected.'' Since One-Stop centers must adhere to the 29 CFR part 37 Civil Rights regulations when adopting such policies, no changes to § 664.700 are necessary.

Subpart I —Youth Opportunity Grant Programs

This subpart explains that competitive procedures for awarding Youth Opportunity Grants will be established by the Secretary. It also restates statutory language about the eligibility of Local Boards and other entities in high poverty areas to apply for Youth Opportunity Grants. Provisions of the Act regarding eligibility for services under Youth Opportunity Grants and the process for establishing performance measures are clarified in §§ 664.800 to 664.830. We view these grants as a distinct opportunity to provide a variety of needed services to youth in high poverty areas, building on the current successful activities and innovations already at work in many communities.

Part 665—Statewide Activities Under Title I of the Workforce Investment Act

Introduction

This part addresses the funds reserved at the State level for statewide workforce investment activities under WIA sections 128(a) and 133(a)(2).

Subpart A—General Description

Subpart A provides a general description of Statewide activities conducted with the up to 15 percent of the funds which the Governor may reserve from the youth, adult and dislocated worker funding streams (''15 percent funds''), and the up to an additional 25 percent of dislocated worker funds which the Governor may reserve for Statewide activities.

Section 665.110(b) explains that the 15 percent reserved funds may be pooled and expended on workforce investment 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. We believe that the use of these funds can provide critical leadership in the development and continuous improvement of a comprehensive workforce investment system for each State and, as a result, create a national system to which job seekers and workers can look to for expert assistance, and employers can look to for a qualified workforce. This issue is also addressed in 20 CFR 667.130(b).

We did not receive any comments on this subpart and no changes have been made in the final regulations.

Subpart B—Required and Allowable Statewide Workforce Investment Activities

Subpart B discusses required and optional activities conducted with funds reserved from the three title I funding streams (youth, adults, and dislocated workers).

1. Required Activities: Section 665.200 identifies the eight activities each State is required to carry out with its reserved funds from the three funding streams. The Governor must reserve funding for these activities, but has discretion to determine the amount reserved, up to the maximum 15 percent of each funding stream. One authorized use of these funds is administration, subject to the five percent administrative cost limitation at 20 CFR 667.210(a)(1). This paragraph clarifies that while there is no specific amount that must be spent for each of the seven activities that are required to be carried out with the 15 percent funds, it is expected that the State will expend a sufficient amount to ensure effective implementation of those activities.

States are also required to provide additional assistance to local areas that have high concentrations of eligible youth. This activity is one way States can help local areas maximize the number of youth served under title I of WIA. Another required activity, rapid response, is discussed in subpart C of part 665.

Section 665.200(b) discusses the States' responsibility for disseminating information about eligible providers of training services for adults, dislocated workers and youth, including the statewide list of eligible providers and information on performance and program cost. One commenter stated that, when discussing statewide dissemination strategies, the regulation should encourage States to disseminate information in different languages, for different reading levels, and to use radio and television public service announcements to reach as wide and diverse an audience as possible.

Response: We agree with the commenter and encourage States to develop dissemination strategies using multiple means, including those suggested by the commenter, to provide information in such a way as to reach the widest population. The Interim Final Regulation implementing WIA's section 188 nondiscrimination provisions contains requirements for the effective communication of information to individuals with disabilities, including dissemination of information in different languages and to various population groups. 29 CFR 37.9; 37.35;

37.42, (published at 64 FR 61692) (Nov. 12, 1999)). We will work with the Department of Labor's Civil Rights Center to issue guidance on compliance with 29 CFR 37.35 to assist providers in meeting their obligations to provide materials and services in languages other than English. To permit maximum State and local flexibility, we have chosen not to specify particular methods by which information on eligible providers must be disseminated. However, we have added a new paragraph (5) to § 665.200(b) which requires that States assure that the information listed in paragraphs (1) through (4) is widely available.

Section 665.200(c) discusses conducting evaluations (WIA section 136(e)) of workforce investment activities for adults, dislocated workers and youth as one of the eight required Statewide activities. One commenter suggested that ''high wages'' be specified as part of ''high-level outcomes'' which result from the improvements identified in the evaluations.

Response: Section 665.200(c) discusses broad Statewide program goals leading to high-level performance and outcomes and is not intended to require specific measures to be used in achieving them, nor to address individual participant outcomes. We believe that high wages may be better addressed by the core performance indicators required by WIA section 136 and discussed in 20 CFR 666.100, especially by the 6-month post employment earnings measure, which, by definition, addresses wages. Also, it is expected that the Governors will use additional indicators of performance on a Statewide and local basis that may more fully address the commenter's concern (see 20 CFR 666.110 and 666.300(b)). Finally, ''high wages'' is a relative term and, as such, is difficult to define in a useful way, except on an individual basis because it is a function of a particular occupation, local labor market conditions, an individual worker's skills, experience, education level, and other factors. What are high wages for one person may be low wages for another. For these reasons, the final regulation is unchanged.

Another commenter expressed concern that, under a universal access system and uniform performance standards, special populations with significant barriers to employment will experience difficulties in learning about, accessing and receiving appropriate services. The commenter suggested that the final regulations encourage evaluations of the delivery of workforce investment activities to economically disadvantaged and other special populations.

Response: While we agree that the evaluation of activities, including outreach, for these populations is important and should be encouraged, we do not wish to limit the Governors' flexibility in allocating and administering the funds reserved for these required activities. 29 CFR 37.42, in the regulations implementing the WIA nondiscrimination and equal opportunity provisions, contains further obligations regarding outreach and universal access. Under WIA, the Governors have been given the discretion to determine funding levels for outreach and evaluation activities and whether the activities will be targeted to specific organizations, populations or programs. However, WIA section 136(e)(2) and § 665.200(c) require Governors to design the evaluations in conjunction with the State and Local Workforce Investment Boards and to coordinate with Local Boards in conducting the evaluation studies. Community-based organizations, advocacy groups, and other stakeholders have a variety of opportunities for participation in the workforce investment system decision-making process. They are among the groups represented on State and Local Boards. They may attend Local Board meetings, provide comments on workforce investment plans, become eligible training providers, and demonstrate effectiveness in the delivery of training programs. We believe that the commenter's concerns should be, and will be, addressed through this broad consultation process. However, § 665.200(c) of the final regulations is revised to include a reference to the requirements of WIA section 136(e)(2), which was not included in the Interim Final Rule.

Other commenters suggested that, for the purposes of awarding incentive grants, the final regulations should define the term ''exemplary performance,'' used at § 665.200(d)(3), in a way that will reward local areas that assist a significant percentage of individuals to meet their self-sufficiency standard (i.e., to earn wages needed to cover costs for various family sizes and types, without governmental assistance).

Response: We agree that consideration of the extent to which programs lead to self-sufficiency is an important factor in measuring program effectiveness and encourage States to look at this factor in determining incentive grants. Under WIA, however, the Governor has the discretion to develop additional indicators of performance by further defining exemplary performance beyond the core performance measures specified in the Act and regulations. As stated in 20 CFR 666.300, WIA section 136(c)(1) authorizes the Governor, and not the Department, to apply additional indicators of performance, such as self-sufficiency, to local areas and to use them along with the core performance measures as the basis for awarding Incentive Grants for exemplary performance. As stated in 20 CFR 666.400(b), WIA section 134(a)(2)(B)(iii) further provides that the authority to determine the criteria for exemplary local performance that qualifies for incentive grants, as well as the amount of funds used for these grants, lies with the Governor. To limit the Governors' discretion in this area by requiring additional indicators would not be in keeping with the letter and intent of WIA to provide increased State and local flexibility. Consequently, this provision remains unchanged in the final regulations and the States retain the authority to exercise discretion in these matters.

Section 665.200(e) provides for technical assistance to local areas that fail to meet local performance measures. A commenter indicated that such technical assistance must include capacity building for Local Board members to help improve services and performance.

Response: The State has the flexibility to develop technical assistance strategies and, therefore, a State may decide to include capacity building activities as part of its overall technical assistance strategy. WIA section 134(a)(3)(A)(ii) and § 665.210(b) list capacity building activities as an allowable statewide activity. Consistent with the WIA principle of maximizing State and local flexibility, we believe that it would not be appropriate to limit flexibility by specifying a particular type of technical assistance activity that must be provided. While we agree that capacity building for Board members is often a useful technical assistance strategy, we are not prepared to require it in all cases. This provision remains unchanged in the final regulation.

2. Optional Activities: Section 665.210 identifies activities which each State is allowed to carry out with the 15 percent funds. For the first time, States have the discretion to conduct research and demonstration projects, and incumbent worker projects, including the establishment and implementation of an employer loan program. We encourage States to establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker projects. We have added the phrase ''or groups of

workers'' to § 665.220 to clarify that groups of workers, in addition to individual workers, may be determined eligible for incumbent worker training, and that the eligibility determination for the ''group'' does not have to be done on an individual basis. Section 665.220 makes clear that incumbent workers served under projects funded with these reserve funds do not necessarily have to meet the requirement that training leads to a self-sufficient wage. However, because of different WIA requirements, employed adult or dislocated workers served with local formula funds must meet the self-sufficiency requirement.

Under their capacity-building function (one of the allowable Statewide workforce investment activities), states may also conduct activities and implement programs designed to promote access to and coordination among supportive services and work supports administered by other state agencies. Because supportive service and work support programs are vital for low-income families making the transition to self-sufficiency, efforts to integrate and coordinate such programs at the state level will greatly enhance the capacity of One-Stop providers to serve their participants successfully.

One commenter suggested that States consult and coordinate allowable Statewide workforce investment activities with State labor federations and appropriate labor organizations, especially in the case of incumbent worker training. The same commenter also suggested that States be required to provide assurances that capacity building and technical assistance funds are used to enhance participation of all stakeholders, including organized labor.

Response: We agree that State labor federations and other appropriate labor organizations at the State and local level should be involved in consulting and coordinating on allowable Statewide workforce investment activities, including capacity building (which is one of the allowable activities), and technical assistance (a required activity for local areas that fail to meet performance levels). Representatives of labor organizations have the opportunity for consultation and coordination through their membership on State and Local Boards, the opportunity for public comment during State and local planning processes, as well as other opportunities provided under the sunshine provisions of WIA (WIA sections 111(g) and 117(e), and 20 CFR 661.220(d) and 661.305(d)). We believe the commenter's concerns on consultation and coordination will be addressed by these broad consultation processes. This provision remains unchanged in the final regulations.

One commenter suggested that States must consult on policies governing incumbent worker training with organized labor representatives, especially those whose members have the skills in which training is proposed. In addition, the commenter suggested that written concurrence on the training programs must be provided by the unions whose members are being affected by these programs.

Response: We agree that written union concurrence is required, under WIA section 181(b)(2)(B) and 20 CFR 667.270(b), where a training program would impair or be inconsistent with an existing collective bargaining agreement. We believe that general consultation on incumbent worker training initiative policies will occur with organized labor representatives through the processes described above. We strongly encourage State and Local Boards to also consult with the specific organized labor organizations whose members have the skills in which incumbent worker training programs are being planned, as well as with organized labor organizations whose members are affected by such programs even where the is no question of impairment of collective bargaining agreements. No changes have been made to the final regulations.

Several commenters suggested that we add illustrative language to the list of optional Statewide activities specified in § 665.210 to identify and encourage the selection of particular programs or types of providers that may be funded with the State's 15 percent reserve funds.

Response: These suggestions are discussed in more detail below. As a matter of policy, we agree that the commenters' suggestions would be permissible uses of the 15 percent funds. However, we are not prepared to single out any particular type of program or provider, consistent with our overarching policy of providing State and local flexibility in program design and implementation.

One commenter asked that the following language be added to § 665.210(b)(1) regarding staff development and training: ''particularly for non-profit community-based organizations that serve disadvantaged populations to assist them in being certified as eligible providers and to comply with data collection requirements.'' The commenter also suggested that language in § 665.210(e) should specifically mention that the support provided to local areas for identifying eligible training providers should include outreach efforts to community-based organizations that serve disadvantaged (minority, immigrant, low-income, disabled) populations.

Response: While we are not prepared to limit State and local flexibility by imposing this requirement, we are committed to assisting disadvantaged populations, such as low-income individuals or individuals with disabilities, and agree that community-based organizations are an important part of the workforce investment system with their focus on serving these populations. Outreach to groups serving disadvantaged population groups is an important part of the Local Board's responsibility to provide universal access to WIA funded activities. See 29 CFR 37.42. Therefore, we encourage Local Boards to engage in outreach activities to community-based organizations. In addition, community-based organizations will be represented on Local Boards, will have the opportunity to attend Local Board meetings, and provide comments on the eligible provider process and to demonstrate effectiveness in the delivery of training programs. We expect States to provide training activities for all organizations that have traditionally been partners of the system. No change has been made in the regulations.

Another commenter suggested that § 665.210(b)(2) should specifically list programs provided by State and local youth service and conservation corps as examples of exemplary program activities.

Response: We believe that when a State is developing exemplary program activities, it should include programs, such as those suggested, that have proven successful in delivering employment and training activities for youth, adults and dislocated workers. However, we also recognize that the Governor has the authority to determine what allowable activities will be conducted and how the 15 percent funds will be used to conduct those activities. Since we do not believe it is appropriate to prescribe how the States should spend those funds, no change has been made in the final regulations.

A commenter noted that §§ 665.200(b)(1) and 665.210(f) provide for nontraditional training and employment in both required and allowable Statewide workforce investment activities. The commenter suggested that we should provide more specific guidance on how States should provide opportunities for training for non-traditional employment at the State and local levels.

Response: We agree that training for non-traditional employment is an important component of the workforce investment system. While the rule remains unchanged in the final regulations, we expect to issue guidance to States and local areas on the provision of training for non-traditional employment. In addition to implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employments, we also encourage states to implement programs to promote increase employment of low-income fathers so they can support their children more adequately.

One commenter indicated that § 665.210(f) should list entrepreneurship and asset-building initiatives as examples of innovative programs for displaced homemakers.

Response: We encourage States to develop innovative programs, which may include those specified by the commenter, when designing innovative programs for displaced homemakers. However, we believe that the States should have the flexibility to design programs which meet their specific needs. The rule, therefore, remains unchanged in the final regulations.

The same commenter suggested that § 665.210(f) should specify that when a State is implementing programs to increase the number of individuals trained for and placed in non-traditional employment, special attention should be given to low-income individuals and recipients of public assistance.

Response: Although we agree that States should take steps to assure that all training activities are available to low-income individuals and public assistance recipients, we believe that States must have the flexibility to design programs which increase the participation of all individuals. We do not think it is appropriate to narrowly limit this flexibility. Therefore, the regulation remains unchanged.

Another commenter suggested that the listing of required and allowable Statewide workforce investment activities should specify that the needs of older workers can be addressed with these resources.

Response: We agree that the Governor has the discretion to fund activities for older workers and other specific groups. However, as stated above, we believe the States should have the flexibility to design programs which meet their needs. Consequently, we have not specified this permissive use of funds in the final regulations.

One commenter suggested adding language to § 665.210(b)(2) that encourages States to continue exemplary programs funded through targeted JTPA funds as they transition to WIA so that individuals currently participating in such exemplary programs may continue to receive services and avoid abrupt termination.

Response: While one of the reforms contained in WIA was the elimination of the mandatory set-asides (such as the 5 percent set-aside for older worker programs) in order to increase State flexibility, we expect that programs under WIA will benefit from the experience and expertise gained under JTPA. Further, WIA policy guidance (in WIA Questions and Answers dated April 1999, Section I., Transition Issues, Number 1 at *www.usworkforce.org*) expresses our intent that individuals who are receiving JTPA services continue to receive services under WIA when a local area transitions to WIA so that they may complete their JTPA service strategy without interruption. These participant transition provisions have been added to subpart I of part 667 of these regulations.

One commenter suggests that § 665.210(d) either provide more information on the reference to Empowerment Zones and Enterprise Communities in relation to innovative incumbent worker initiatives, or delete the reference entirely, because this reference could not be located in the WIA legislation.

Response: WIA, at section 134(a)(3)(A)(iv)(II), specifically authorizes programs targeted to Empowerment Zones and Enterprise Communities. This is separate from the authority to operate innovative incumbent worker initiatives. The Empowerment Zone and Enterprise Community initiative is a joint effort of the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture. The initiative is designed to provide Federal tax incentives and flexible grant assistance to distressed urban and rural areas, and is framed around four key principles: economic opportunity; sustainable community development; community-based partnerships; and a strategic vision for change. Over 100 communities around the country have been named Empowerment Zones or Enterprise Communities. More information on this initiative can be found at *www.hud.gov.*

In order to clarify the statutory provisions in WIA section 134(a)(3)(A)(iv)(I) and (II), which separates the establishment and implementation of programs targeted to Empowerment Zones and Enterprise Communities from the implementation of innovative incumbent worker training programs, we are breaking paragraph (d) of § 665.210 into two paragraphs to clarify that these are two separate allowable activities.

One commenter suggested that § 665.210(g) should specify entrepreneurship and asset-building training as types of employment and training activities which the State can use its reserve funds to provide to adult and dislocated workers.

Response: WIA section 134(d)(4)(D) lists the types of training services that may be provided to adult and dislocated workers, including entrepreneurship training. (WIA section 134(d)(4)(D)(vi).) However, as 20 CFR 663.300 makes clear, the list is not all-inclusive and other training services may be provided. Therefore, the State, with local input, has the flexibility to determine what types of training programs will be made available to adult and dislocated workers. We encourage States to consider various types of training programs, including asset-building training, as long as it meets the training program requirements in § 663.508. We have structured § 665.210(g) broadly to provide States with maximum discretion about the kinds of training activities they will assist with Statewide activity funds. This provision remains unchanged in the final regulations.

Section 665.220 sets standards for determining the eligibility of incumbent workers served with Statewide funds. Commenters pointed out that § 665.220 contains no income requirements in the definition of incumbent worker for Statewide workforce activities, but imposes a ''self-sufficient'' wage level in customized training for an eligible employed individual at the local level under § 663.720. They suggested that the same requirements should hold at the State and local levels.

Response: Section 665.220 reflects Congress' intent that States may choose to treat incumbent workers served with Statewide reserve funds differently from employed workers served with formula funds at the local level, for whom specific eligibility requirements are imposed. While WIA section 134(a) sets no eligibility requirements on State-funded incumbent worker training, at the local level, WIA section 134(d)(3)(A)(ii) requires that employed workers be trained for jobs which will provide them self-sufficiency. Thus, since the statutory provisions are not the same, we have not made the regulatory provisions the same, although the State has the option to define the two terms in the same way. Consequently, this provision remains unchanged in the final regulations.

Subpart C—Rapid Response Activities

Subpart C addresses the use of funds that must be reserved (up to 25 percent of dislocated worker funds allotted to States under section 132(b)(2)(B) of WIA) to provide rapid response assistance.

Section 665.300 describes what rapid response activities are and who is responsible for providing them. Rapid response assistance begins at the dislocation site as soon as a State has received a WARN notice, a public announcement or other information that a mass dislocation or plant closure is scheduled to take place. We believe that this early intervention feature for dislocated workers, if provided in a comprehensive and systematic manner through collaboration between the State and Local Boards, One-Stop partners and other applicable entities, is critical to enabling workers to minimize the duration of unemployment following layoff. We strongly urge States and Local Boards to implement processes that allow for core services to be an integral part of rapid response assistance, preferably on-site, if the size of the dislocation or other factors warrant it. Further, WIA defines ''dislocated worker'' at section 101(9) in a way that permits funds to be used for intensive and training services for workers: (1) as soon as they have layoff notices; or (2) six months (180 days) before layoff if employed at a facility that has made a general announcement that it will close within 180 days.

We believe that this is a critical period for workers, States, Local Boards, One-Stop operators and partners to begin to make important decisions. One important decision is whether there are enough formula funds in the State (at the State or local levels) to adequately serve the workers being dislocated, or whether national emergency grant funds, authorized under WIA section 173 and discussed in 20 CFR part 671, must be requested in a timely manner so that all services are available to the workers when they need them.

Section 665.320 provides details on rapid response activities that may be provided in addition to the required activities described in § 665.310.

One commenter indicated that the current regulations do not include language about the for-profit business sector participation in planning and implementing Rapid Response activities. The commenter would like the regulations to emphasize that there is an important role for private for-profit businesses in this effort. A commenter thought the Job Service Employer Committee (JSEC) employers can provide assistance in designing rapid response services to help affected workers and employers. Another commenter suggested that the regulations specify a similar role for labor organizations. The commenter went on to state that we should consider providing a portion of our incentive grant funds for comprehensive rapid response services, including the participation of the State labor federation in Statewide rapid response.

Response: We agree that the Act provides many opportunities for stakeholders and we encourage States to be as inclusive as possible in planning and implementing their rapid response activities. Just as the Act recognizes the important role of business and labor in the makeup of State and Local Boards, the inclusion of both interests in the design and operation of rapid response activities is equally important. The State, however, is responsible, under WIA section 134(a)(2)(A)(i), for providing rapid response activities and it is up to the State to determine how it will plan for and implement those activities. Consistent with our principle of providing States with maximum discretion in the design of their programs, this provision remains unchanged in the Final Rule.

On the issue of using incentive grant funds to encourage States to include labor (or business) participation, we believe that the commenter's suggestion has merit. However, we have chosen not to define innovative programs in the regulations so that we can provide the States the opportunity to experiment with a wide variety of programs. We will develop guidelines (under 20 CFR 666.220) for incentive grants. We may decide to provide examples of innovative programs, such as the establishment of State labor liaisons with State rapid response activities, in the application guidelines. This provision remains unchanged in the final regulation.

Section 665.300(c) requires a State to establish a rapid response dislocated worker unit to carry out Statewide rapid response activities. One commenter suggested requiring the State to maintain an identifiable dislocated worker unit or a State entity that has the responsibility for carrying out rapid response activities and that such responsibilities should not be devolved to other entities.

Response: States are required to establish a dislocated worker unit and have ultimate responsibility for providing rapid response activities under § 665.300(b). However, WIA section 134(a)(2)(A)(i) authorizes States, working in conjunction with the Local Boards and the chief elected officials in the local areas, to designate an entity to provide rapid response activities. The provision remains unchanged in the final regulations.

A commenter wanted on-site contact, which is required by section 101(38)(A) of the Act and § 665.310(a), to require contact with the bargaining agent when an affected employer has a collective bargaining agreement and that such on-site contact must take place within 48 hours of the State receiving the notice/announcement of layoff. The commenter also asserted that the bargaining agent must be contacted at the outset and involved as a full partner in the development of programs and services that affect its members.

Response: Section 665.310(a) does require that on-site contact be made with the employer, representatives of the affected workers and representatives of the local community. When employees are represented by a labor organization, this provision requires contact with the bargaining agent. WIA section 101(38)(A) also requires that on-site contact be made with employers and employee representatives, and provides that the contact must be made immediately after the State is notified of a current or projected permanent closure or layoff, or in the case of a disaster, immediately after the State is made aware of mass job dislocation as a result of the disaster. We have added the phrase ''immediate and'' to paragraph (a) of § 665.310 to reiterate this requirement in WIA section 101(38)(A). In addition, we believe that the purpose of these requirements is to ensure the involvement of both the employer and the workers or their representatives in planning and implementing the entire range of services to the affected workers. We encourage the State to coordinate with all interested parties, including employee representatives, when developing programs and services for the affected workers.

This same commenter suggested that the dislocated worker unit be required to provide information to all workers and companies about the opportunities available under the Trade Adjustment Assistance (TAA) and the NAFTA-Transitional Adjustment Assistance (NAFTA–TAA) programs as part of rapid response (19 U.S.C. § 2271, *et seq.*).

Response: Section 665.310(b) requires that information and access to unemployment compensation benefits, comprehensive One-Stop system services, including information on TAA and NAFTA–TAA, be provided to affected workers. Therefore, because the

regulations already address the commenter's concerns, no change has been made.

A commenter noted that § 665.310(a)(5) provides that required rapid response activities include ''available resources to meet the short and long-term assistance needs of affected workers.'' The commenter asked whether this means that rapid response funds must be used to provide needs-related payments and, if so, asked that the regulations be revised to reflect this. Another commenter argued that States must not be allowed to use rapid response funds for core, intensive or training services, but should maximize the integration of these services with its rapid response activities at the local level.

Response: The requirement that § 665.310(a)(5) imposes on States is to assess available resources as part of the assessment of the other factors specified in § 665.310(a). This refers to the review of funds and services available in the area to help the affected workers. In addition, WIA sections 101(38) and 134(a)(2)(A)(i) describe the uses of the funds set aside for rapid response, which is amplified in § 665.320. Under WIA section 134(a)(2)(A)(ii), the State may use some of the rapid response funds to assist affected workers with direct services, which could include intensive services, training, or needs-related payments, if local resources cannot meet the needs of these workers. These funds can be provided as ''State'' funds or as additional local funding assistance beyond the initial formula allocation for the area. In order to clarify this distinction, a new section, § 665.340, has been added to the final regulations. The new § 665.340 discusses the use of reserve funds to provide additional assistance to local areas and makes it clear that a State must reserve enough funds from its 25 percent funds to adequately fund its rapid response unit.

A commenter indicated that the items listed in § 665.320 are positive and pro-active approaches to rapid response, however, the commenter would like us to add an additional provision to § 665.320 to require that labor organizations whose members are affected by a layoff be consulted in the development and design of all rapid response and dislocated worker programs.

Response: Section 665.320 provides a list of additional rapid response activities that a State or designated entity may provide in addition to the required rapid response activities in § 665.310. To the extent that a State or designated entity conducts any of the activities listed in paragraphs (a)(1) through (3) of § 665.320, those activities must be conducted in conjunction with the groups listed in paragraph (a) of § 665.320, which includes labor organizations. We encourage States to continue working in collaboration with all interested parties when providing all rapid response activities. This provision remains unchanged in the final regulations.

Section 665.330 addresses the linkage of rapid response assistance and WIA title I assistance to NAFTA–TAA. This linkage is a requirement under NAFTA–TAA and is an important feature of the One-Stop service delivery system. One commenter indicated that unions whose members have been affected by NAFTA must be consulted in the design and implementation of programs to assist their members and that this same provision must also apply to TAA participants as well.

Response: We believe that in providing rapid response, a State should coordinate such efforts with all interested parties including representatives of the affected workers. As discussed above, consistent with our principle of providing States with maximum discretion in the design of their programs, this provision remains unchanged in the final regulations.

Section 665.330 requires rapid response to be available when the Governor makes a preliminary finding that NAFTA–TAA certification criteria have been met. A commenter suggested that the final rule clearly state that the Secretary makes the final determination on NAFTA–TAA eligibility for a group of workers covered by a petition.

Response: We agree that the clarification is appropriate. In order to clarify the rule, we have revised this provision to indicate that the requirement that rapid response be made available occurs when the Governor makes a ''preliminary finding'' that the NAFTA–TAA certification criteria have been met. (More information on preliminary findings can be found at 19 U.S.C. § 2331(b).) It is important to restate our policy that rapid response should occur as soon as possible after information on an actual or probable layoff has been received. If a preliminary affirmative finding occurs after the rapid response, the State may wish to provide additional information and assistance to the workers. If rapid response has not occurred before a preliminary affirmative finding by the Governor, the Governor must ensure that rapid response is provided to the workers at that point.

Part 666—Performance Accountability Under Title I of the Workforce Investment Act

Introduction

This part presents the performance accountability requirements under title I of the Act. It largely summarizes the statutory language in the Act, and establishes the framework for definitions, guidelines and instructions that we will issue later to implement and carry out the requirements of the Act. WIA's purpose is to provide workforce investment activities that improve the quality of the workforce. We are strongly committed to a system-wide continuous improvement approach, grounded upon proven quality principles and practices.

The development and establishment of a performance accountability system that reflects this commitment requires collaboration with representatives of appropriate Federal agencies, and representatives of States and political subdivisions, business and industry, labor organizations, employees, eligible providers of employment and training activities, including those serving hard to serve and non-traditional participants, educators, and participants, with expertise regarding workforce investment policies and workforce investment activities. During the period since the passage of the Workforce Investment Act, we have published a series of consultation papers to engage the system in a dialogue and to seek input into the establishment of a performance accountability system. On March 24, 1999, two consultation papers, ''Performance Accountability Measurement for the Workforce Investment System'' and ''Reaching Agreement on State Adjusted Levels of Performance,'' were published in the **Federal Register** Volume 64, No. 56 on March 24, 1999. On April 24, 1999, a third consultation paper, ''Incentives and Sanctions Under WIA,'' was published in the **Federal Register**, Volume 64, No. 80. And, on August 5, 1999, the fourth and fifth consultation papers, ''Continuous Improvement Under Title I of the Workforce Investment Act of 1998'' and ''Customer Satisfaction Under Title I of the Workforce Investment Act of 1998,'' were published in the **Federal Register**, Volume 64, Number 150. In addition, we held Town Hall meetings in 11 cities across the country in August of 1999 to invite and listen to suggestions and concerns of the partners and stakeholders on a range of issues including performance accountability.

The comments received in response to the publication of the five consultation papers, plus the comments received in response to the publication of the Interim Final Rule and the input from the Town Hall meetings have been instrumental in the development and dissemination of guidance to the system on performance accountability. The substance of comments received in response to the publication of the Interim Final Regulations are discussed in this preamble, and reflected in the final regulations. We continue discussions with our other federal partner agencies to expand agreement on common definitions and measures, and further guidance will be made continually available, reflecting on-going consultation with our partners and stakeholders.

Subpart A—State Measures of Performance

1. Indicators: Section 666.100 identifies the core indicators of performance and the customer satisfaction indicators that States are required to address in title I State Plans. The core indicators represent four basic measures that will be applied to each of the three programs serving adults, dislocated workers and eligible youth age 19 through 21, and three measures specifically for younger youth (age 14 through 18). There is one customer satisfaction measure for participants and one for employers.

Several comments suggested changes to the core indicators of performance to include part time employment, or to focus on non-traditional employment. Other comments requested the addition of new measures, for example for placement in non-traditional jobs, provision of services to low income people, and the inclusion of part-time employment as a placement measure. There were comments about the addition of a youth measure relating to placement in employment that creates a career path leading to long term self-sufficiency.

Response: The interest in more measures, or in measures for specific target populations is anticipated in the Act and the regulations, and States may develop those measures, as provided for in the Act, at section 136((b)(2)(C), and in the regulations, at § 666.110, and as described in their State Plan. We believe that the Act commits the development of additional measures to the Governor's discretion and that we lack the authority to impose additional performance standards. Those interested in State adoption of additional performance standards have a variety of opportunities to have their views heard through opportunities to comment on the State Plan and through the Act's sunshine provisions. Therefore, no change to the regulations was needed.

Some comments requested greater specificity and clarity for the definitions of the measures.

Response: The language in § 666.100(a) reflects the language in section 136(b)(2) of the Act. In general, we feel that the statutory language provides the basis for on-going consultation with partners and stakeholders. Then, as appropriate, additional guidance can be provided, such as the recent guidance on the measures provided in Training and Employment Guidance Letters (TEGL), number 7–99 and 8–99.

However, in response to a specific comment that attainment of basic skills was too general and not necessarily related to program services, we clarified the measure for younger youth, at § 666.100(a)(3)(i), to reflect the basic program design for youth that establishes one or more goals for participants each year. Attainment of basic skills goals, and, as appropriate, work readiness or occupational skills goals, is, therefore, a more accurate way to describe the measure, but it is limited to no more than three goals per year. Use of the term ''goals'' in reference to these difference skills acknowledges that obtaining skills, especially for younger youth, is an incremental process. This concept is described in more detail in TEGL 7–99.

A number of comments noted that the core performance indicators are not all directly related to the Vocational Rehabilitation program of services under title IV of WIA, taking the position that Vocational Rehabilitation performance indicators must remain separate from title I WIA performance indicators.

Response: We feel that the language in § 666.100(a) is sufficiently clear that the core indicators of performance apply only to adult, dislocated worker and youth programs under WIA title I subtitle B. Nothing in this language suggests that these core measurements replace or supercede measurements required by other partner programs.

Three comments described the 15 core indicators of performance and 2 customer satisfaction indicators required in § 666.100 as excessive and too complex.

Response: The Act specifically identifies four core measures for employment and training activities, including activities for youth 19–21, with three additional measures for younger youth. It is clear that States will be accountable for measuring performance for the Adult, Youth and Dislocated Worker programs separately, just as there will be separate measures of performance for the other partner programs. Our intention in the regulations is to set out what the Act already requires, but to do so in a way that makes clear how the Act's performance indicators apply to the different population groups which WIA serves.

The decision to measure customer satisfaction for job seekers and workers separately from employers was made after considerable consultation with the system. The two customer satisfaction measures are intended to provide more meaningful feedback to the States and the workforce investment system as a whole by acknowledging the different expectations held by the two very different customer groups. We believe that this is a reasonable and practical interpretation of the statutory requirement to have customer satisfaction measures for employers and participants.

Thus, the regulations were drafted to track the provisions in the Act by applying the core measures to the different programs, and to clarify that the application of the core measures, along with satisfaction measures for each of the key customer groups, requires the separate measurements identified in § 666.100(a).

2. Additional indicators: Section 666.110 provides that Governors may develop additional performance indicators and that these additional indicators must be included in the State Plan.

One comment questioned whether the requirement that additional indicators ''must'' be included in the State Plan was consistent with the language in the Act, citing section 136(b)(2)(C) of WIA which provides that ''A state may identify in the state plan additional indicators for workforce investment activities authorized under this subtitle.''

Response: We interpret this provision of WIA to authorize States to establish additional indicators, without requiring that States do so. However, if optional measures are established, they must be identified in the State Plan. This is confirmed by the use of similar language in WIA section 112(b)(3). Therefore, if a State wishes to establish additional indicators, the State must identify them in the State Plan.

A number of comments suggested that there should be a performance indicator for the self-service and informational activities so important to the system and the customers.

Response: WIA section 136(b)(2)(A)(i) specifically excludes these activities from the core measures. States and Local areas, however, are dedicating considerable and growing resources to self-service and informational activities in the One-Stop centers, and more and more of the customers of the workforce investment system are taking advantage of the information they can access on their own. Many will be doing so by using the Internet from home or work or some other location, without ever entering the One-Stop office. Efforts to identify and track the users of these services, even at a modest cost per individual, can become significant when we consider the huge numbers of customers who access these services on their own. Further, the cost of information and self-service activities for the individual served is generally very low when compared to the cost of staff-assisted services. Thus, the cost of identifying and tracking these customers could easily exceed the actual cost of the service they received.

However, we realize that some assessment of the value of these services is important for determining what resources are devoted to these types of activities. We will convene a workgroup of Federal, State and local representatives to discuss the issue of self-service measures in the Fall of 2000. We anticipate that this workgroup will develop a menu of optional self-service measures that States and local areas can utilize.

3. Negotiations: Section 666.120(b) addresses the requirement that States must submit expected or proposed levels of performance for the core indicators and customer satisfaction indicators in their State Plans. We received comments requesting clarification of the process for negotiating levels of performance, especially with regard to the factors that may be considered during the negotiations. Further comments suggested the reestablishment of State baselines after one year of WIA activity.

Response: The negotiation of performance levels for programs under title I B will be part of the process of reviewing and approving State Plans. To help clarify and reflect the goal of the process, we have replaced the term ''adjusted level'' with the term ''negotiated level'' throughout the regulations to refer to the outcome of the process and the resulting numerical levels of performance for each indicator that will be used to determine whether sanctions will be applied or incentive grant funds will be awarded.

In consultation with the system, and using the experience of early implementing States, we developed a list of possible factors that may be considered when negotiating levels of performance. The list, which was published in TEGL 8–99, is not intended to be prescriptive or exhaustive, but to suggest the kinds of information that might be considered.

Thus, ''differences in economic conditions'' might include:

- the unemployment rate;
- the rate of job creation or loss; and/or
- the rate of new business start-ups.

The negotiations can take into account ''differences in participant characteristics,'' which might include:

- indicators of welfare dependency;
- indicators of educational level;
- indicators of poor work history;
- indicators of basic skills deficiency;
- indicators of disability;
- indicators of age; and/or
- creation of a ''hardest-to-serve'' index.

The kinds of factors related to ''proposed service mix and strategies'' might include:

- percentage of WIA Title I B funds to be used for core, intensive, and training services;
- extent of follow-up services planned;
- extent and type of experimental or pilot programs planned; and/or
- extent to which non-WIA Title I B funds are available for training or other services.

Other factors that might be considered when proposing and negotiating performance levels could include:

- community factors such as the availability of transportation and daycare;
- policy objectives such as application of Malcolm Baldrige criteria, pursuit of new or enhanced partnerships, or piloting of new programs or activities.

ETA Regional Offices will work with the individual States to identify baseline data, using experience under the Job Training Partnership Act. The establishment of baselines, and the process for proposing and negotiating levels of performance is addressed in Training and Employment Guidance Letter No. 8–99. Those negotiated levels of performance may be revised, as provided for in § 666.130.

Some commenters suggested that incremental increases in negotiated levels of performance not be the only way to consider and demonstrate continuous improvement. Other comments observed that the continuous improvement requirements were not well defined and did not encourage the State and local partners and stakeholders to take a larger role in defining system accountability.

Response: We agree that continuous improvement is desirable even in areas not directly measurable by performance measures, like increasing administrative efficiency. We have added language to § 666.120(g) to more clearly provide States with the opportunity to define areas targeted for continuous improvement that may be in addition to the indicators of performance required under § 666.100.

4. Participants Included in Measures: Section 666.140 explains that all individuals, except for those adults and dislocated workers who receive services that are self-service or informational, must be registered and included in the core indicators of performance. In addition, § 666.140(b) implements the requirement that a standardized record must be completed for registered participants.

A number of comments took exception to the provision that all youth must be registered and included in the measures of performance, but that adults and dislocated workers who participate exclusively in self-service or informational activities are excluded from registration and are, therefore, not included in the performance accountability system.

Response: While these commenters feel that the registration policy for youth and adults should be the same, we believe that the policy should not be changed because of basic approach for serving youth differs from adults. The difference in the registration criteria for the Youth program and the Adult and Dislocated Worker programs arises from the way in which an applicant enters each program. WIA section 129(c)(1) makes it clear that each youth participant is to have an assessment and a service strategy, activities which would also require registration under the Adult or Dislocated Worker programs. The Act specifically excludes individuals who receive only self-service and informational activities under the Adult and Dislocated Worker Programs under WIA section 134 from the core measures of performance, and, therefore, keeping records on the individuals taking advantage of the services is not an issue. The more individually-focused youth program does not envision these kinds of activities as part of the entry. (Of course, a youth may avail him/herself of informational or self-help services through the One-Stop.)

To help clarify the issue of registration, we have added a new paragraph (a)(2) to § 666.140 to explain that ''self-service and informational

activities'' are core services consisting of widely available information that does not require significant staff involvement with the individual in terms of resources or time. Many customers of the workforce investment system do not require staff assistance to access employment statistics or job listings, for example, that are increasingly available on the Internet or in handouts or brochures designed to be widely distributed to the general public. We are, however, aware of the commenters' concerns that the system's performance in serving these self-service customers also needs to be measured. As discussed above, we will work with our partners to develop optional self-service measures.

Other comments suggested a need to provide a system-wide measurement for participants who received services under programs operated by the partners, and a need to clarify when to measure performance that could be applied across the system by all States.

Response: The comments about when an individual's participation is considered to begin for purposes of the measurement of performance, including the measurement for individuals served by partner programs, were widely discussed during the consultations with partners and stakeholders. WIA promotes the partnership of programs and activities in local One-Stop systems, and the performance accountability system must be able to reflect that desire for partnership without interfering with it. The standardized record, referred to in § 666.140(b), can be used to document services and activities provided by any of the partners in the local One-Stop system. Performance will be measured by looking at outcomes and results achieved by each registered participant following receipt of services under Title I B and any other services provided by a partner in the local One-Stop system. This clarification has been included in a new paragraph (c) to § 666.140. The performance measurement system in these regulations, including the standardized record, has been developed in consultation with Federal partners so it can be used (or modified for use) by other system partners. Other partner programs, however, are not required to use or conform to this performance measurement system, and multiple reports may track and display the outcomes achieved by a single individual who receives services under separate programs.

We have provided additional guidance in the instructions for the standardized record, including guidance to clarify when to begin measuring results achieved for those performance indicators that are to be measured following the receipt of service in Training and Employment Guidance Letter No. 7–99. This guidance was repeated in a document published in the April 3, 2000, **Federal Register**, entitled, ''Workforce Investment Act (WIA) Standardized Record Data (WIASRD), Quarterly Summary Report, and Annual Report''.

5. Wage Record Data: Section 136(f)(2) requires States to use quarterly wage records, consistent with State law, to measure progress on the core indicators of performance, and authorizes the Secretary to make arrangements to ensure that the wage records of any State are available to other States. In order for States to meet this requirement, § 666.150(a) has been amended to authorize the collection and other use of social security numbers from registered participants and such other information as is necessary to accurately track the results of the participants through wage records. The use of quarterly wage records is essential to achieving full accountability under the WIA performance accountability system, by ensuring high quality, comparable data upon which to identify and reward high performing States and localities, and, if necessary, to sanction low performing States and localities. Matching participant social security numbers against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system. For this reason, we interpret WIA section 136(f)(2)'s express requirements that States use quarterly wage records and that the Secretary arrange for State to State disclosure of quarterly wage records for WIA performance purposes as indicating Congress' intent to supersede the limitation on disclosure of social security numbers in Social Security Act section 205(c)(2)(C)(viii)(I). Section 666.150(b) clarifies that each State must describe its strategy for using quarterly wage record data, including appropriate safeguards for disclosure, in the State Plan.

We received comments that reliance on the UI wage data will be plagued by problems of uncovered employment, out-of-state employment, incomplete reporting, and other issues that may make comparisons difficult.

Response: The requirement to use wage records is quite clear, but, in consultation with partners and stakeholders, we have provided guidance on when additional information may be used to supplement the wage records in Training and Employment Guidance Letter No. 7–99.

Other comments urged specific regulatory language regarding the confidentiality of wage records, both from commenters who wished to access the data, as well as from commenters who wanted to ensure protection for the employers and workers.

Response: UI wage records are owned and managed by the States, and are subject to the rules and protections established by the States, within general provisions of Federal law and guidance. We are working with the State Agencies that have responsibility for these records to ensure that information will be available as necessary, and that protections will be provided in accordance with State law, without attempting to mandate procedures. Therefore, no changes were made to these regulations.

Subpart B—Incentives and Sanctions for State Performance

1. Incentive Process: Section 666.200 restates the eligibility criteria for States to apply for an incentive grant. The process for applying for incentive grants is described in § 666.205, which explains the timing of the applications, and § 666.220, which defines what must be included in an application. The process for determining the amount of the incentive grant awards is discussed in § 666.230. These grants will be provided to States in recognition of performance that exceeds negotiated levels, and the incentive grant award process will be administered by the Secretary of Labor in consultation with the Secretary of Education.

We received several comments about the implementation of the performance requirements during the first year following implementation of WIA. The comments suggested that incentives and sanctions be delayed for a year.

Response: WIA establishes new requirements and expectations for the workforce investment system that went into effect on July 1, 2000, but that will not be the end of the process to reform and improve the system. We are committed to working with the system to effectively implement the Workforce Investment Act, including the principle of increased accountability, and continue to seek input from the partners and stakeholders about the best way to measure and acknowledge performance. We do not see any programmatic advantage to delaying implementation of the incentives and sanctions process. The Adult, Youth and Dislocated Worker programs under WIA Title I B are replacing programs under the Job Training Partnership Act that have

measured and reported performance for over 15 years. States that are able to achieve good performance and satisfy their customers should be recognized and should be able to apply for the incentives and rewards Congress has authorized. Conversely, States that experience problems in achieving positive outcomes for their customers deserve the assistance authorized under the Act so that they may be able to modify and improve. Thus, we see no reason to postpone awarding Incentive Grants. We will provide technical assistance to the system and to the States throughout the first year to help achieve the highest possible levels of performance from the very beginning.

Some comments pointed out that the States are very different, and that the principle of State and local flexibility means that not only will performance vary from State to State, but the quality of the data and the methods for capturing the data used to measure performance will vary as well. For these reasons, the commenters took exception to comparing a State's relative performance to other States' performance when determining the amount that would be available under an incentive grant award.

Response: The incentive grant awards will be made to those States that exceed levels negotiated specifically for that State. The incentive grant will not be awarded or denied on the basis of relative performance; but the concept of comparing the performance of the States is firmly and clearly rooted in the Act, which requires the Secretary to disseminate State-by-State comparisons of the information. Also, as described in § 666.120(c)(4), one of the required factors in developing the negotiated levels of performance for the State is a comparison with other States. However, we believe that relative performance is a legitimate factor to be considered in apportioning a limited pool of incentive funds. Thus, the regulation explains that the Secretary ''may consider'' a list of 6 possible factors, including relative performance. We will be working with the States to make sure that the data collection process is as consistent as possible, and will consider this as a possible factor for establishing the amount of awards when it is appropriate. No change has been made in the regulation.

2. Sanctions: Section 666.240 explains that States failing to meet for any program adjusted levels of performance for core indicators and the customer satisfaction indicators for any program, in any year, will receive technical assistance, if requested. If a State fails to meet the required indicators for the same program for a second consecutive year, the State may receive a reduction of as much as five percent of the succeeding year's grant allocation.

We received several comments suggesting that the limited experience in using wage records to measure performance, plus the energy and resources being focused on the creation of new partnerships and the establishment of new customer-focused, streamlined service designs, may have a negative impact on performance, possibly exposing States to sanctions. The comments proposed delaying the application of sanctions until baseline data could be developed, and States would be better prepared to negotiate realistic levels of performance against which they would be measured.

Response: We recognize that the changes being undertaken with the implementation of WIA should ultimately lead to higher performance and a more sophisticated and accurate performance measurement system. Nonetheless, as a result of consultation with partners and stakeholders, we have clarified the process for determining acceptable and unacceptable performance by establishing a range so that a State's performance will be deemed to be acceptable if the actual performance falls within 20 percent of the negotiated level. Therefore, sanctions will not be considered unless actual performance is more than 20 percent below the negotiated level. This rule has been included as a new provision at § 666.240(d).

Subpart C—Local Measures of Performance

Section 666.300 explains that each local workforce investment area will be subject to the same 15 core performance indicators and two customer satisfaction indicators that States are required to address. Governors may elect to apply additional performance indicators to local areas. Section 666.310 states that local performance levels will be based on the State adjusted levels of performance and negotiated by the Local Board and chief elected official and the Governor to account for variations in local conditions.

Some commenters were concerned that local programs and partners were going to be faced with performance levels imposed as a result of negotiations between the State and the Department, and suggested that establishment of performance standards should be negotiated at the local Workforce Board level first.

Response: The Governor's authority to identify and require additional measures of performance is clearly spelled out in WIA section 136(c)(1). The local levels of performance may be an important factor the State takes into account when negotiating or re-negotiating levels of performance with the Department. While we continue to support collaboration and partnership between the State and local partners, how that process occurs within the state is not a matter on which we can limit the Governor's authority by regulation.

Subpart D—Incentives and Sanctions for Local Performance

Section 666.400(a) restates local area eligibility for State incentive grants. Under section 666.400(b) the amount of funds available for incentive grants and specific criteria to be used are determined by the Governor. Section 666.420 also explains that local areas failing to meet agreed-upon levels of performance will receive technical assistance for any program year. Governors must take corrective actions for local areas failing to meet the required indicators for two consecutive years.

We received one comment on incentive grants being available to only States or local Workforce Investment Areas. The commenter requested that Indian and Native American grantees who meet or exceed their performance standards during a program year be eligible to receive incentive grants.

Response: The reasons why we do not provide incentive grants for the WIA Indian and Native American program are addressed in the Preamble discussion of comments on part 668, covering Indian and Native American programs under the Workforce Investment Act.

Part 667—Administration Provisions

Introduction

This part establishes the administrative provisions that apply to all WIA title I programs conducted at the Federal, State and local levels, and to continued service to Job Training Partnership Act enrollees.

Subpart A—Funding

Subpart A addresses fund availability. One commenter expressed concern about the appeals processes associated with the selection of grantees under the Indian and Native American (INA) and National Farmworker Jobs Program (NFJP) (formerly known as the Migrant and Seasonal Farmworker program).

Response: Section 667.105, which covers grant instruments and grant award processes, is being modified in response to this comment. The only

remedy which may be provided to successful appellants from designation actions is designation for the remainder of the grant period. However, under § 667.825(b), this remedy cannot be provided if less than six months remains in the grant period. Due to the average length of appeals, few appellants qualify for relief during the two-year grant period. In order to improve the fairness and effectiveness of the appeals process, we are modifying § 667.105(c) to permit INA grants to be awarded to a particular grantee without competition only once during a four year period. Similar procedures are already included in § 667.105(d) for the MSFW program. It is DOL's position that the successful appellant does have the right to compete for a grant award for the second two years of a four year designation period, and we have revised section 667.825 to provide that we will not give a waiver of competition for the second two-year grant period in these situations.

Several commenters asked for information about the treatment of summer youth funds for the years 1999 and 2000.

Response: JTPA funds for the 1999 summer youth employment program were distributed in the same manner as in previous years and were unaffected by WIA. Year 2000 WIA youth funds were available beginning in April 2000 to States with approved WIA plans or approved Youth transition plans addressing youth activities for PY 2000. Since this issue is addressed in § 667.100(b), no change has been made to the regulations.

One commenter thought that WIA Youth funds should be distributed in July instead of April because the summer youth employment program is not authorized for the Summer of 2000.

Response: It is true that there is no longer a separate summer youth employment program, but WIA summer employment opportunities are an important component of local areas' comprehensive youth programs. We wish to enable States and local areas that want to plan for and offer WIA Youth services on the JTPA time schedule to do so under the conditions indicated in Field Memorandum (FM) 52–99, dated September 9, 1999, which is accessible on the Internet at www.usworkforce.org. FM 52–99 permits a State to plan for and operate WIA youth programs before we have approved the State's full five year strategic plan, which covers all WIA activities. However, the State's WIA Youth Plan must satisfy WIA criteria, which are more extensive than the criteria were for the JTPA summer youth employment program. For example, 30% of the youth funds in each local area must be used to serve out-of-school youth.

We received many comments about expected reductions in State allotments and within-State allocations due to the application of the allotment and allocation factors prescribed by sections 128 and 133 of WIA—the relative number of unemployed individuals, the relative excess number of unemployed individuals, and the relative number of disadvantaged individuals. Beginning with the third year of WIA, workforce investment areas will be allocated at least 90 percent of the average of the two preceding years' allocations of Adult funds and Youth funds as a ''hold harmless''. (WIA sections 128(b)(2)(A)(ii) and 133(b)(2)(A)(ii)). However, many grantees expect to experience severe funding reductions and possible service interruptions in their workforce programs in the first two years of WIA.

Response: Consistent with the new hold-harmless policy we announced in October 1999, we are addressing this problem by adding a new section, § 667.135, which permits States to apply Job Training Partnership Act hold harmless provisions during the first two years of WIA, and sets forth the WIA hold harmless procedures, which take effect in subsequent years. We are making the JTPA hold harmless procedures available for the first two years of WIA as a transition measure under the authority of WIA section 506. States may elect to use JTPA hold harmless procedures in allocating PY 2000 and PY 2001 funds to local areas. A State that elects to use JTPA hold harmless procedures for PY 2000 and/or PY 2001 must allocate at least 90% of the average allocation to each workforce investment area that received an allocation under either JTPA or WIA for the two preceding fiscal years. (JTPA sections 202(b)(2)(A) and 262(b)(2)(A)). States may use JTPA hold harmless procedures even where the geographical boundaries of some or all JTPA service delivery areas are different from those of the State's WIA Workforce Investment Areas. This can be done for the PY 2000 WIA allotment by (1) taking the amount allocated to WIA local areas, (2) calculating the amount each local area would have received using the PY 1998 and PY 1999 JTPA allocations (JTPA proxy amounts), and (3) calculating 90 percent of the average JTPA proxy amounts for each local area. Under either the permitted JTPA hold harmless or the WIA 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 667.140 describes the authority of Local Boards to transfer funds between programs. We received several comments suggesting that the regulation authorize local areas to transfer funds between the Youth funding stream and either Adult funds or Dislocated worker funds.

Response: The Act does not authorize transfers involving Youth program funds. The regulation has not been changed.

Section 667.150, which covers allotments, recapture of unobligated balances of allotments, and reallotments is being modified to exclude certain amounts from coverage by the recapture provision, namely: (1) amounts allocated to a single State local area or to a balance of State local area administered by a unit of the State government; and (2) inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities. The reasons for this modification are discussed earlier in this preamble in the discussion on the addition of a definition of ''obligation'' to § 660.300.

Section 667.170 sets forth our authority to perform a responsibility review of potential grant applicants. We may review any information that has come to our attention as part of an assessment of applicant's responsibility to administer Federal funds. The responsibility tests include the items set forth in paragraphs (a)(1) through (a)(14). In this section, the term ''include'' is used as it is throughout the Interim Final Rule, to indicate an illustrative, but not exhaustive list of examples. One commenter requested clarification of § 667.170(a) about the identity of the party(ies) subject to the responsibility review requirements, particularly with regard to the taking of ''final agency action.''

Response: Section 667.170(a) refers to the organization that is the direct recipient of a grant from the Department. The agency referred to in the phrase ''final agency action'' in § 667.170(a)(1) is the awarding agency which awarded the funds in question in the debt recovery action. No change has been made to the regulations.

Subpart B—Administrative Rules, Costs and Limitations

1. *Fiscal and Administrative Rules:* Subpart B specifies the rules applicable to WIA grants in the areas of fiscal and administrative requirements, audit

requirements, allowable cost/cost principles, debarment and suspension, a drug-free workplace, restrictions on lobbying, and nondiscrimination. This subpart also addresses State and Local Board conflict of interest and program income requirements, procurement contracts and fee-for-service use by employers, nepotism, responsibility review for grant applicants, and the Governor's prior approval authority in subtitle B programs.

We have updated references to the nondiscrimination regulations at 29 CFR part 37 in paragraph 667.200(f) and made three other changes to § 667.200 to correct inadvertent errors in the Interim Final Rule. The first is to include commercial organizations among the types of organizations listed in § 667.200(a)(2), which specifies the covered organizations identified at 29 CFR 95.1. The second change is to insert a new paragraph (a)(7) in § 667.200, to indicate that interest income earned on funds received under this title is to be treated as program income, as required by WIA section 195(7)(B)(iii) and to renumber the existing paragraph (a)(7) as (a)(8).

The third change is to insert a new paragraph (c)(6) in § 667.200, which provides that the costs of claims against the Government, including appeals to the Administrative Law Judges, are unallowable costs. This provision clarifies our long-standing application of the cost principles of OMB Circulars A–87 and A–122, and A–21, which was inadvertently left out of the Interim Final Rule. The provision distinguishes the allowable costs of informally resolving findings from audits and monitoring reviews from the unallowable costs of making formal claims against the Government at a later point in the process.

Several comments suggested including specific requirements in § 667.200(a) about the use and contents of particular types of agreements between particular types of organizations for providing goods and services for WIA purposes. Section 667.200 incorporates the uniform administrative requirements at 29 CFR Parts 95 and 97 into these regulations by reference, including requirements covering procurement actions by grantees and subrecipients. Most of these comments want us to require grantees and subrecipients to increase the opportunities for potential providers to compete to provide services to grantees, subrecipients, and participants, including the operation of One-Stop centers. One commenter wanted us to clarify whether the uniform procurement requirements apply to the selection of one-stop operators and service providers. Other commenters wanted us to require DOL direct grantees to require their subgrantees to make all awards to one-stop operators and service providers in accordance with the Department's uniform procurement procedures. Another commenter wanted us to say as little as possible on the subject due to the complexity of local procurement rules and the inevitable conflicts which would result from issuance of additional Federal requirements.

Response: We have, for many years, aggressively sought to maximize competition throughout the JTPA system so that JTPA grantees and subgrantees obtain the best possible workforce development and related services (employment and training services) at the lowest possible cost. Under WIA, vigorous competition to provide workforce services is embedded in the design of the program through the use of ITA's. In addition, use of generally applicable cost principles and administrative requirements under § 667.200 should assist grantees and subrecipients to obtain the goods and services needed for operation of the program with less administrative effort than was the case under JTPA. Consequently, it is premature to begin regulating the details of how grantees and subrecipients obtain goods and services for their own WIA activities, as well as how they conduct the administrative activities necessary to obtain and pay for training and supportive services for participants. We have, therefore, decided that we will not impose procedural requirements on awards of WIA-funded procurement contracts and financial assistance on grantees and subrecipients, beyond those generally applicable requirements which apply to all Federal and non-Federal activities of the grantee or subrecipient. This issue is also discussed in the preamble discussion of part 660. It should be noted that the Act specifies a few circumstances in which a competitive process is not needed, such as the designation or certification of a One-Stop operator by a consortium of One-Stop partners under WIA section 121(d)(2)(A)(ii). No change has been made to the regulations.

We received a number of comments on cost allocation issues particular to WIA and One-Stop organizations. One comment suggested that we should seek the issuance of special cost principles for One-Stops using cost allocation basis other than benefits received, or other widely used basis.

Response: Our policy on WIA cost determination is to let the parties involved negotiate appropriate cost allocation methodologies which reflect local factors and local needs, and to refrain from imposing program-wide regulations unless a general need exists. However, we are working with the other WIA federal partner agencies, such as the Department of Education, to develop joint guidance on this issue.

One commenter thought it was inconsistent to require in § 667.200(a)(3) that procurement and other relationships between governments be conducted on a cost-reimbursement basis, while also requiring in § 667.200(a)(6) that any excess of revenue over costs earned by governmental or non-profit organizations be treated as program income.

Response: Both the cost-reimbursement and program income provisions are statutory in origin. The cost reimbursement provision in WIA section 184(a)(3)(B) is similar to the Uniform Administrative Standards provision in 29 CFR 97.22, allowable costs, which prohibits the use of grant funds for any fee, or other increment over cost sought, by governmental grantees and subgrantees. The program income provision in WIA section 195(7)(A) ensures that any amount remaining on hand after all receipts and expenditures have been accounted, regardless of the source of the receipts, will be treated as program income and added to available program resources, (see change to § 667.200 noted above). Both provisions seek to maximize grant resources by assuring that governmental grantees only charge the grant for their actual costs and return any excess funds to the program. Thus, there is no necessary conflict between the two provisions.

One commenter proposed that we establish audit requirements for contractors which are commercial organizations. Section 667.200(b)(2) makes commercial organizations which are subrecipients subject to audit requirements like those applicable to governmental and non-profit recipients and subrecipients.

Response: Under 29 CFR part 96 (subpart B), the Department is responsible for the audit of commercial organizations which are direct recipients. There is no Federal requirement for audits of commercial organizations which are vendors. If a grantee or subgrantee chooses to require audits of such vendor organizations, they can do so by contract if the parties agree that such requirements are necessary. No change has been made to the regulations.

2. *Administrative Costs:* Section 667.210 restates the provisions in section 128(b)(4) of the Act which set a State level administrative cost limit of five percent of total funds allotted to the State by the Department and a local administrative cost limit of 10% of funds allocated by the State to the local area. It also provides that the cost limitation applicable to awards under subtitle D will be specified in the grant agreement. We received many comments on the administrative cost limits. Almost all of the comments said that the limits were too low and that they would jeopardize the program's prospects for success. Comments addressed how particular groups would be especially burdened by the cost limitations. Many INA and NFJP grantees, as well as individuals and groups concerned about INA and NFJP programs, appeared to believe that the Subtitle B cost limitations also applied to Subtitle D INA and NFJP grants.

Response: Section 667.210(b) provides that the applicable cost limitations for subtitle D programs will be identified in the award document. The administrative cost limitation for INA and MSFW grants under subtitle D of Title I may exceed the 10 percent limitation applicable to Subtitle B activities. However, no such flexibility is available for Subtitle B activities, since the Subtitle B cost limitations are established by law. Accordingly, no changes were made to paragraphs (a) and (b) of this section.

Paragraph (c), which excepts hardware and software costs of participant tracking and monitoring systems from the administrative cost limitation, has been removed from the final regulation. This provision became unnecessary after administrative costs were redefined in response to public comments and our own re-examination of how administrative costs were defined in other DOL-funded programs and the programs of other partner agencies whose programs were represented in One-Stop centers.

Definition of Administrative Costs—Section 667.220 provides our definition of Administrative Costs. To comply with the statutory requirement for consultation with the Governors in developing this definition, we have continuously consulted with representatives of the Governors, and State and local stakeholders. In addition to the input received through the consultation, we received suggestions about the definition of administrative costs in various forums and by direct communications from a number of different sources including comments on the Interim Final Rule. The key theme which emerged from this public consultation is that the function and intended purpose of an activity should be used to determine whether the costs associated with it should be charged to the program or administrative cost category. We received a number of comments on this subject and on the WIA cost limitations, to which it is closely related. In addition, we did some sampling studies of how modifications of the definition of administrative costs would affect WIA program administration generally and the ability of the States and of Local Boards to comply with the cost limitations.

A common criticism of the administrative cost definition in the Interim Final Rule was that redefining administrative costs and, in particular, treating the cost of first tier supervision of direct program staff as program costs would have little impact on total administrative costs or compliance with the administrative cost limitation. The same criticism was directed at the treatment of computer hardware/software costs incurred for participant tracking and monitoring as excepted from the administrative cost limitation. One comment recommended saying that all staff costs associated with the tracking and monitoring of participants should be classified as program (non-administrative) costs; another commenter suggested that all tracking and monitoring system development and utilization costs be charged to program costs.

We received numerous suggestions on how particular categories of costs should be defined. Many, but not all of these suggestions were based on the effect such changes would have on compliance with the administrative cost limitation. For example, one comment suggested either treating all One-Stop or contractor costs as programmatic, or retaining the 15 percent cost limitation under JTPA title III; several comments recommended treating all costs incurred by One-Stop operators and service providers as program costs regardless of the functions they were performing. Several comments were directed to obtaining clarification of the phrase ''direct provision of workforce investment activities'' in § 667.220(c)(1), and to associate the term with the activities of One-Stop operators and service providers. Several commenters suggested that the ''intended purpose'' language in § 667.220(c)(5) should be clarified so that administrative costs would not have to be broken out from contracts with for-profit organizations. One comment requested that a clear distinction be made between tracking and monitoring costs on the one hand and program monitoring costs on the other.

Several commenters suggested that other Federal agencies' criteria for administrative costs in grants to other One-Stop partners are more liberal than DOL's criteria, especially their criteria for costs incurred by service providers and other contractors. A few commenters suggested that no costs incurred by for-profit contractors should be treated as administrative. One comment suggested that all continuous improvement costs be charged to training (program) based on language in § 666.120(a) relating improvement to program participation rather than systemic changes. Finally, one commenter suggested that all reasonable administrative costs be funded, or that we reduce our level of expectations with regard to oversight, procurement, and fiscal requirements.

Response: Section 667.220 has been extensively revised as a result of these comments, and of our own review of the effect of various administrative cost definition proposals on efficiency and ease of administration, as well as compliance with the cost limitations. As part of the review process, a sample of subrecipients' costs were compared under three different formulations of the administrative costs definition. The revised definition provides that administrative costs are only those costs incurred for overall program management purposes by State and local workforce boards, direct WIA grant recipients, local grant subrecipients, local fiscal agents, and One-Stop operators. The only One-Stop operators' costs which are to be classified as administrative costs are those for one or more of the functions enumerated in § 667.220(b) and discussed in the following paragraph. All costs of vendors and subrecipients, other than local grant subrecipients, are program costs with the single exception of awards to such vendors and subrecipients which are *solely* for the purpose of performing functions enumerated in the following paragraph. Thus, incidental administrative costs incurred by a contractor whose contract's intended purpose is to provide identifiable program services do not have to be identified, broken out from other costs incurred under the contract, and tracked against the administrative cost limitation. Costs incurred under contracts whose intended purpose *is* administrative have to be charged to the administrative cost category.

The enumerated administrative functions performed by the identified

administrative entities are the following: accounting and budgeting; financial and cash management; procurement and purchasing; property management; payroll and personnel management; general oversight, audit and coordinating the resolution of findings from audits, reviews, investigations, and incident reports; general legal services; developing and operating systems and procedures, including information systems, required for administrative functions; and oversight and monitoring of administrative functions. Only these enumerated administrative functions are to be charged as administrative costs. The costs of first line supervisors of staff providing direct services to participants are program costs. The discussion of this cost item has been removed from this new definition because it is no longer needed.

Two types of costs that were specifically previously classified as administrative costs, preparing program-level budgets and program plans, and negotiating MOU's and other program-level agreements, are now classified as program costs, even though they are often associated with general organizational management. Costs of such activities as information systems development and operation, travel, and continuous improvement are charged to program costs or administration, according to whether the underlying functions which they support are classified as programmatic or administrative. For example, the costs of developing an information system which serves both administrative functions and the tracking and monitoring of participants would be allocated between program costs and administrative costs in proportion to the utilization of the system for each intended purpose.

We believe that these changes in the definition of administrative costs not only address the varying concerns and perspectives expressed in the comments, but also take advantage of the opportunities for simplifying program administration offered by the changes in the way program services will be delivered under WIA. Under WIA, the role of the One-Stop center operator is broader than just that of provider of programmatic services; it is also responsible for the operation of the One-Stop center and the coordination of all activities within the center. The definition of administrative costs in this Final Rule was tested using a sample drawn from a group of JTPA subrecipients whose administrative costs had previously been reviewed to test the Interim Final Rule definition of administrative costs. The results showed a significant reduction in the level of administrative costs at all but one of the sampled sites. That site was one in which all JTPA activities were provided by the subrecipient, which is quite unlike the service delivery methodology envisioned by WIA. These results indicate that local areas should be able to operate within the WIA cost limitations, using the revised definition of administrative costs at § 667.220.

3. Eligibility Determinations: Our partners in the Veterans Employment and Training Service indicated that workforce investment programs may not be fully aware of special rules applying to veterans when income is a factor in eligibility determination. Therefore, we have added a new § 667.255 which refers programs to 38 U.S.C. 4213, which exempts military pay and certain other benefits from past income for eligibility purposes.

4. Prohibited Activities: Sections 667.260 through 667.270 address a number of prohibited activities that are located in various sections of the Act. We have revised § 667.266 to provide the appropriate cross-reference to the nondiscrimination regulations at 29 CFR 37.6(f), which implement the WIA limitations on the use of financial assistance for sectarian activities. Section 667.269 specifies where the procedures for resolution of violations of these prohibitions, as well as the sanctions and remedies, may be found.

Section 667.260 prohibits the use of WIA funds for the purchase or construction of facilities or buildings with certain exceptions. This is an exception to the generally applicable cost principles, incorporated by reference in § 667.200(c), under which such costs are allowable with prior grantor approval as direct costs, provided they are not specifically prohibited, as they are here. We received several comments asking that we clarify or expand the exception to the purchase and construction ban under which the costs of repairs, alterations, and renovations are allowable for grantee-owned buildings acquired with JTPA, Wagner-Peyser, or UI grant funds to also cover leased buildings. Several comments suggested permitting the use of WIA funds for capital costs and current operating costs of leased and ''loaned'' buildings.

Response: WIA funds may be used for renovations and other capital expenditures on grantee/subrecipient-owned or leased buildings in order to provide reasonable accommodation under section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, section 188 of WIA, and the regulations implementing these statutory provisions. WIA funds may also be used for repairs, alterations, and other current operating costs incurred for this purpose.

In general, repairs and alterations are current operating costs; use of WIA funds for such costs is not restricted in the statute or in these regulations. Renovation costs are usually capital expenditures. Capital expenditures, that is expenditures of $5,000 or more which increase the value or a useful life of property, are subject to the restrictions of § 667.260(b), which apply to grantee/subrecipient-owned real property. In response to the comments, this paragraph has been clarified to explicitly cover renovations to grantee/subrecipient-owned real property acquired with JTPA, Wagner-Peyser, or UI grant funds. Neither the Act nor the regulation restricts the use of WIA funds for capital expenditures or current operating costs of leased and loaned properties. Consequently, these expenditures are allowable if consistent with generally applicable grantee/subrecipient policy relating to leased premises and lease cost adjustments for tenant expenditures for improvements to the landlord's property, and if consistent with the other provisions of § 667.260(b).

One comment suggested that ETA consider an additional exception to the prohibition of building or buying real property in the case of capital leases.

Response: Consistent with the OMB allowable cost circulars, we consider capital leases, for example, rental-purchase agreements and leases with an option to purchase, to be purchases of property with borrowed funds. They are leases in form only. Consequently, WIA funds cannot be used for the costs of such an arrangement. Allocable depreciation and interest costs would however, be allowable. No change has been made to the regulations.

One comment suggested changing § 667.262, which covers employment generating activities (EGA), to include contacts with labor organizations and resource centers, and contacts with joint labor-management committees under permissible employer outreach and job development activities.

Response: The regulation has been modified accordingly. We have not acceded to a related suggestion that grantees specifically account for EGA costs because we think this is not necessary in view of the fact that the financial management standards included in 29 CFR Parts 95 and 97 already require recipients to be able to account for the source and application of grant funds.

One comment suggested making an exception to the prohibition in § 667.264 against foreign travel in the case of cross-border official business conducted by border State staff.

Response: We have not changed the regulation because the statute explicitly prohibits foreign travel for programs under Title I, subpart B.

Section 667.268 which prohibits the use of WIA funds to encourage business relocation, provided several comments asking if there is a national site where interested parties can obtain information relative to the relocating establishment requirements of § 667.268.

Response: No such site exists at present and we have no current plans for establishing such a site.

A commenter suggested adding consultation with labor organizations and councils to the pre-award review of new and expanded establishments in § 667.268.

Response: We have added a new paragraph(b)(2) to § 667.268 to provide for permissive consultation with labor organizations in the affected area.

A comment, which concerned the applicability of the Davis-Bacon Act to training activities, is not dealt with here because it is a subject which is considered in connection with training program requirements rather than general administrative requirements.

5. Impairment of Collective Bargaining Agreements: Section 667.270 lists the safeguards that ensure that participants in WIA activities do not displace other employees. These include the prohibition on impairment of existing contracts for services or collective bargaining agreements that is contained in WIA section 181(b)(2). When an employment and training activity described in WIA section 134 would be inconsistent with a collective bargaining agreement, the Rule requires that the appropriate labor organization and employer provide written concurrence before the activity begins.

6. Nondiscrimination: Section 188 of the Act prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, participant status, and against certain noncitizens. It also requires the Secretary to issue regulations ''necessary to implement this section not later than one year after the date on enactment'' of the Act. Interim Final Regulations implementing this section were published at 29 CFR part 37 and are available at 64 FR 61692 (Nov. 12, 1999). We have revised references to the section 188 regulations throughout this Final Rule to specifically refer to 29 CFR part 37.

Section 667.275(a) provides that recipients must comply with the section 188 nondiscrimination and equal opportunity provisions of the Act and its implementing regulations at 29 CFR part 37. This provision is substantially similar to that found in § 627.210, the companion section of the regulations implementing the JTPA. Slight modifications have been made to the language to eliminate any possible confusion about who is covered by section 188 and 29 CFR part 37. In the context of those provisions, a recipient is any entity that receives financial assistance, as defined in 29 CFR 37.4, under title I of the Act (except for the ultimate beneficiary), whether the assistance comes directly from the Department, through the Governor, or through another recipient. A variety of terms not specifically listed in the definition at 29 CFR 37.4, such as vendors or subrecipients, may be used to identify such entities. However, any entity that receives financial assistance under title I of WIA is a recipient and is, therefore, subject to section 188 of WIA and its implementing regulations at 29 CFR part 37, and to § 667.275 of this part, to the extent that those entities participate in the One-Stop delivery system.

Several comments on §§ 667.270 and 667.275 suggested enhancing the protections afforded incumbent workers against displacement, and the non-discrimination and equal opportunity protections afforded participants through such means as the Department notifying employees about these protections or requiring the States to do so, requiring One-Stops to provide information on the availability of non-traditional opportunities for women in order to reduce the incidence of gender-tracking, specifying coverage of OJT or other employer-provider services to individuals in these provisions, and banning the use of WIA funds to subsidize new employees that an employer would have hired without WIA support.

Response: We are not modifying the non-discrimination provisions here because this subject is covered in much greater detail in the WIA section 188 nondiscrimination regulations at 29 CFR part 37. We are not modifying the incumbent workers protections provision of § 667.270 because the maintenance of effort requirement which the commenter seeks to impose on employers receiving WIA funds exceeds the protections authorized by WIA section 181. Several of the commenters' requests are discussed in more detail in other parts of this preamble.

Subpart C—Reporting Requirements

Section 667.300 indicates that we will issue instructions and formats for financial, participant and performance reporting. A request for public comment on the Department's WIA Standardized Record Data, Quarterly Summary Report, and Annual Report was published in the **Federal Register** on April 3, 2000. A copy of the notice can be found on the Internet at *www.usworkforce.org.* We anticipate that DOL reporting will be done electronically. We will issue reporting guidance which discusses such specific matters as the anticipated lag-time in using UI wage records at follow-up. Section 667.300 also provides that a grantee may impose different reporting requirements on its subrecipients including different forms, shorter due dates, etc. When a State is the grantee and plans to impose different reporting requirements, it must describe them in its State Plan. Some comments suggested that flexibility be provided in imposing additional reporting requirements on subrecipients.

Response: We have not changed the regulation since it already permits grantees to impose different requirements on subrecipients, provided they are consistent with the State WIA plan and produce the information required for grantee reports.

Section 667.300(e), concerning the Annual Performance Progress Report, specifies the situations under which a sanction, including a possible reduction in the subsequent year's grant amount, may be imposed. Two comments expressed concern that unspecified verification procedures would be used for imposing sanctions and that there needed to be flexibility in the imposition of sanctions.

Response: Specifications regarding sanctions have been issued in ETA Training and Employment Guidance Letter 8–99, *Negotiating Performance Goals and Incentives and Sanctions Process under Title I of WIA.*

Other comments suggested the due date for financial reports be extended past the 45 days stated in the regulation, but no specific reason for an extended time period was given.

Response: We are unaware of any reason why additional time is required for submitting reports. No change has been made to the regulations.

Subpart D—Oversight and Monitoring

We have modified § 667.410(b) to include a reference to 29 CFR part 37 relating to the State's monitoring system. Subpart C of 29 CFR part 37 contains additional provisions regarding

the Governor's nondiscrimination-related oversight responsibilities.

Subpart E—Resolution of Findings from Monitoring and Oversight Reviews

1. Resolution of Findings and Grant Officer Resolution Process: This subpart addresses the resolution of findings that arise from audits, investigations, monitoring reviews, and the Grant Officer resolution process. The processes are essentially the same as they were under JTPA. One comment raised the question of what findings resolution process should be used where more than one process is available to, and could be used by, the grantee to resolve findings relating to WIA activities.

Response: Our position is that such matters are State matters; what procedures to use is left to the States to determine. The exception is that resolution of findings related to discrimination issues arising under section 188 of WIA or 29 CFR part 37 must be conducted in accordance with the procedures set forth in that part.

A commenter suggested allowing 90 days instead of 60 for commenting on and taking appropriate corrective action on findings from monitoring and investigative reports.

Response: We believe that 60 days is sufficient for taking the required actions, based on our experience with other work and training programs operated by governmental grantees.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

Section 667.600 describes the grievance and complaints procedures required by WIA. We have revised § 667.600(g)(1) to clarify that complaints alleging discrimination must be handled in accordance with procedures that meet the requirements of 29 CFR part 37. Paragraph 667.600(g)(2) gives the address of the Department of Labor's Civil Rights Center, where individuals can send questions or complaints alleging violation of WIA section 188. The address is: U.S. Department of Labor, Civil Rights Center, 200 Constitution Avenue, NW, Room N4123, Washington, DC 20210. Individuals may also contact the Civil Rights Center by telephone at 202–219–6118 (voice) or 1–800–326–2577 (TTY/TDD).

We received numerous comments on grievance procedure requirements for States, local areas, and other direct recipients. Most concerned assuring that participants and other potential greivants receive sufficient notice of their rights in a format understandable to youth or to persons with limited English proficiency. Some comments asked that we impose a requirement on grantees and subrecipients that they require One-Stops and other providers to notify participants of their appeal rights. Other comments urged us to establish particular requirements governing procedures to be used for assuring procedural due process, conducting investigations, adjudicating complaints, conducting discovery, providing for informal hearings, enforcement, review by United States courts, protection against retaliation, and the use of mediators. Some commenters sought clarification or greater specificity in particular areas, such as coverage of employers of participants, and particular sanctions available against non-compliant employers. One comment objected to using the denial of procedural rights as a ground for appeals of local area designations to the Secretary under section 116(a)(5) of the Act.

Response: We are quite interested in assuring that all persons affected by WIA are aware of their rights under the Act. We also want to assure persons who believe their rights have been negatively affected by WIA-related actions of non-Federal parties, as well as by the Department of Labor and its Federal partners, have access to appropriate remedies. In response to the comments on informing participants who are youth or persons with limited English proficiency, we are modifying the regulation by inserting a new paragraph § 667.600(b) to require States and local areas to assure that all participants and other interested parties are notified of their appeal rights in language which can be understood by youth and persons of limited English proficiency. Such efforts must comply with the requirements of 29 CFR 37.35 about the provision of services and information in languages other than English. We cannot authorize appeals to United States District courts by regulation because it exceeds the authority Congress has given us. WIA section 187 specifies that appeals of Administrative Law Judge (AJL) decisions be taken to the appropriate United States Court of Appeals, (as provided in § 667.850). With regard to the other issues raised by commenters, we have not modified the regulation. While we agree that State and local grievance procedures should contain full due process protections, we have not modified the regulations to include the specific protections requested by commenters in the interest of affording States and local areas flexibility to design effective grievance procedures that work in their particular circumstances.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

This subpart addresses sanctions and corrective actions, waiver of liability, advance approval of contemplated corrective actions, as well as the offset and State deduction provision. We have modified § 667.700(a) and (b) to clarify that the processes outlined in 29 CFR part 37 must be followed in matters involving claims of discrimination. The only comments received on this subpart were on § 667.705(c), which requires CEO's of local governments comprising a WIA local area to specify the joint liability of such local governments in a written agreement. Two of the comments took opposing positions on whether there should be any joint liability at all. The third comment said the regulation should ''clarify'' the local governments' liability for misuse of funds.

Response: Section 117(d)(3)(B)(i) of WIA designates local CEO's as grant recipients and makes them liable for misuse of funds unless they obtain the Governor's agreement to serve as recipient for their area and assume their liability. The regulation interprets this provision to mean that the local jurisdictions are liable for misuse of funds and where multiple jurisdictions receive funding under a single grant, the liability assumed by each local government must be clearly stated in a written agreement between the parties. It is our intention in this provision that the liability of the local governments in a multiple jurisdiction local area be determined by those governments. We did not to imply that governments in multiple jurisdiction local areas must be ''jointly and severally'' liable, although they may choose to share liability in that manner. Therefore, we have dropped reference to the phrase ''joint liability'' in § 667.705(c) and replaced it with ''liability''.

Sections 667.700 and 667.710 have been revised to more accurately specify the Grant Officer's and the Secretary's authority to impose corrective actions, including plan revocations and reorganizations, directly against local areas, and to terminate or suspend financial assistance. As revised, § 667.700(d) provides that if the Governor does not promptly take corrective actions against a local area for substantial violations of WIA and its regulations, the Grant Officer, under WIA section 184(b)(3), may impose corrective actions directly against the local area. Sections 667.700(c) and 667.710(c) provide that if the Governor

has failed to promptly take corrective actions against a local area for not complying with the uniform administrative requirements, or if the Governor has not monitored and certified local area compliance with those requirements, the Grant Officer, under WIA section 184(a)(7), may require the Governor to take the necessary actions. If the Governor fails to take the corrective actions required by the Grant Officer, the Secretary may immediately suspend or terminate financial assistance under WIA section 184(e).

Subpart H—Administrative Adjudication and Judicial Review

This subpart specifies those actions which may be appealed to the Department's Office of Administrative Law Judge (OALJ), and the rules of procedure and timing of decisions for OALJ hearings. Section 667.825 sets forth special requirements that apply to reviews of NFJP and INA grant selections. A change has been made to § 667.105 (discussed above, in subpart A), which relates to this provision. We have corrected an error in § 667.830(b), to provide that any appeal accepted by the Administrative Review Board must be decided within 180 days of acceptance, as required by WIA section 186(c). Section 667.840 also provides for an alternate dispute resolution process. In addition, § 667.850 describes the authority for judicial review of a final order of the Secretary.

One commenter recommended increasing DOL's burden of production in OALJ appeals to require presentation of a prima facie case.

Response: We have not changed these procedural rules, which have worked well over the years and have provided appellants procedural due process.

Subpart I—Transition

Section 667.900 indicates that a Governor may reserve up to two percent of Program Years 1998 and 1999 JTPA formula funds, of which not less than 50% must be made available to local entities, for expenditure on WIA transition planning activities. It specifies that the source of funds may be any one or more of JTPA's titles or subtitles. It includes a provision that expressly excludes funds so reserved from any calculation of compliance with JTPA cost limitations. The Governor must decide to make the funds available to one or more local entities. These might include a local JTPA entity, a local entity established for the purpose of operating WIA programs, or any other local entity.

One commenter suggested replacing the references to program years 1998 and 1999 with fiscal year references.

Response: We have replaced the reference to program years in § 667.900 with fiscal years.

Another comment suggested clarifying which local entities were to receive transition funding from the State.

Response: This matter was not addressed in the statute and we not aware of any reason for reducing State flexibility in this area. Accordingly, we will not prescribe how transition funds are to be allocated to local entities.

We have received a number of questions about how JTPA enrollees are to be transitioned over to WIA. We have responded to several situations in a Question and Answer format which can be found through our website at http://usworkforce.org/q&a-transition.htm. In order to emphasize the importance of ensuring a smooth transition from JTPA to WIA for participants, we have added a new § 667.910 clarifying that all JTPA participants who are enrolled in JTPA must be grandfathered into WIA. These participants can complete the JTPA services specified in their individual service strategy, even if that service strategy is not allowable under WIA, or if the participant is not eligible to receive these services under WIA.

Part 668—Indian and Native American Programs under Title I of the Workforce Investment Act

Introduction

This part establishes the operation of employment and training programs for Indians and Native Americans under the authority of section 166 of the Act. This part is broken into subparts dealing with: purposes and policies; service delivery systems; customer services; youth services; services to communities; grantee accountability; planning and funding; administration; and miscellaneous provisions such as waivers. In crafting these regulations, we have attempted to organize part 668 in a way which is relatively easy to follow and as comprehensive as possible without repeating major sections of the general WIA administrative regulations contained in part 667. Cross-references to that part are provided in the body of these regulations, when appropriate.

During the comment period on the WIA Interim Final Rule, we received written comments submitted by more than one hundred current JTPA Indian and Native American grantees. In addition, we held several ''town hall'' meetings in ''Indian Country'' which produced additional comments submitted in writing or presented orally in the course of discussion of relevant issues. We also received input from the Native American Employment and Training Council (the Advisory Council) and its regulations work group. We will discuss the most frequently raised issues first and then discuss the other comments.

We have condensed the remaining comments into several major areas of general concern to most commenters. Issues involving administrative cost limitations and representation on State and Local Workforce Investment Boards are primary concerns of some section 166 grantees. They are concerned with regulations outside of part 668, and so are covered as part of the general discussion.

Administrative Cost Limitation

The issue which concerned commenters most was the administrative cost rate, and its application to section 166 grantees under WIA. Commenters expressed the concern that section 166 grantees would be held to a 10% administrative cost limitation. They viewed this limitation as providing inadequate funding for the administrative work they have to do to administer their grants. They pointed out that the WIA requirements for active partnership in local Workforce Investment Areas and for negotiating One-Stop MOU's, place new administrative burdens on section 166 grantees. Some commenters suggested that the regulations adopt a 20% limitation on administrative costs.

Response: The provision on administrative cost limitations, at 20 CFR 667.210(b), does not specify a given administrative cost rate for section 166 programs; rather it provides that each grantee's limit on administrative costs will be identified in the grant document. The regulations reflect our intent to provide section 166 grantees adequate administrative funding through the grant negotiation process. Thus, suggestions that we exempt amounts spent on indirect costs from the administrative costs definition (and thus from any cost limits), or that we fund indirect costs from a separate funding source which would not be subject to any cost limits are not necessary to accomplish the commenters' goals. We consider both suggestions to be either contrary to Departmental practices or contrary to the funding formula(s) contained in this Rule. However, to provide additional clarification, we have added a new section to part 668 (§ 668.825) stating that limits on administrative costs for section 166

grants will be negotiated with the grantee and identified in the grant award document.

General Issues of Representation and Workforce Investment System Governance

The rules relating to the participation of INA grantees in the state and local workforce investment system generated many comments. Below, we discuss issues relating to alternative entities and representation on State Boards, Local Boards and Youth Councils. Similar issues are discussed in relation to the National Farmworker Jobs Program in the preamble to part 669, and for the workforce investment system in general in the preamble to part 661.

Alternative Entities

Indian and Native American grantees expressed concern over the effects of the designation of alternative entities under WIA on their ability to play a partnership role in the local workforce investment system. Although alternative entities are permitted by section 117(i) of WIA, commenters feel that alternative entities violate WIA section 117(b)(2)(A)(vi) which mandates that each Local Board contain ''a representative of each of the one-stop partners''. Since section 121(b)(1)(B)(i) of the Act identifies section 166 grantees as mandatory (''required'') partners in the One-Stop System, most grantees feel this requires that they be given a seat on their Local Board.

Response: We recognize that lack of representation on Local Boards is a legitimate and serious concern. WIA section 117(i) does, however, permit the use of alternative entities. We certainly encourage as broad a representation as possible on all WIA boards or councils, especially representation of those entities identified as ''required partners'' in the Act. The Interim Final Rule, at 20 CFR 661.330(b)(2), addresses this problem by requiring that, if an alternative entity is used, ''the local workforce investment plan must explain the manner in which the Local Board will ensure an ongoing role for any such group in the local workforce investment system'' if that entity is not represented on the board of an alternative entity. To clarify that the required partners must be included among ''any such group'' ensured of an ongoing role, we amended this provision, by replacing that phrase with the phrase ''the unrepresented membership group,'' and by inserting the phrase ''including all the partners'' following ''each of the categories of required Local Board membership under WIA section 117(b).'' 20 CFR 661.330(b)(3) provides that the ongoing role requirement may be met by providing for ongoing consultations with an unrepresented One-stop partner program. It also provides that, as part of its ''ongoing role'' responsibility, the alternative entity must undertake good faith negotiations with each unrepresented partner on the terms of its Memorandum of Understanding (MOU) with the unrepresented partner.

We expect that local workforce investment areas will follow the regulations and that the States will ensure that all partners have appropriate and effective representation on Local Boards or alternate entities. We encourage local parties to resolve issues of representation to their mutual satisfaction, in accordance with the Act and regulations.

Representation on State Boards

Several grantees expressed a belief that there is no requirement for Native American representation on the State Workforce Investment Boards. Others were concerned that Governors were appointing individuals to represent INA grantees who did not have INA program expertise. Although not specifically required in the statute, our grantees have expressed the desire that the Final Rule include at least the encouragement (if not the requirement) that all types of WIA grantees (Indians, farmworkers, etc.) at least be represented on the State Board by a member of that class of service provider.

Response: While the Act does not require that the interests of section 166 grantees be represented by a representative appointed by the grantee, section 111(b)(1)(C)(vi)(II) of the Act clearly requires that those interests, and the interests of all One-Stop partner programs, be represented on State Boards by either the lead State agency officials with responsibility for the program or, if there is no such official, by a representative with expertise in the program.

In many cases, there will not be a lead State agency with responsibility for Indian and Native American programs, so the interests of section 166 grantees will be represented by a person having expertise in Indian and Native American programs. While we encourage Governors to appoint a representative nominated by Indian and Native American programs and Migrant and Seasonal Farmworker programs to represent those programs on State Boards, we cannot require them to do so. We have, however, revised the regulations in 20 CFR part 661 to clarify the requirements for representation of One-Stop partner programs on the State Board. Under new 20 CFR 661.203(b), the representation of a One-stop partner program may be fulfilled by an official from the program partner, such as the section 166 grantee, or the Governor may appoint a representative in the State having ''documented expertise relating to'' the required partner program in the State. An agency official or other individual representing a One-stop partner program also must be an official with optimum policy-making authority in the organization he or she represents. As defined in 20 CFR 661.203(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. We think that these new definitions will provide grantees with significant assurance of appropriate and effective representation on the State Boards.

Representation on State and Local Boards as Employers

Several grantees have expressed the desire that the regulations be revised to suggest that, where appropriate, tribal entities be included on State and Local Boards as employers, which would be especially appropriate for some tribes with significant economic development activities which may make them a significant employer in their portion of the State.

Response: While we see the merit in this approach and encourage Governors and chief elected officials to consider it as an option, we think the Act gives Governors and chief elected officials broad discretion in selecting business members of State or Local Boards from among those nominated. We do not think we can limit that discretion as the grantees request. Thus, we have not made the suggested regulatory change. However, we have revised 20 CFR 661.200 and 661.315 to expressly authorize multiple representation by an individual appointed to a State or Local Board. Therefore, where the Governor or CEO selects an individual who meets the representation requirements for the 166 partner program and for business representation, the regulations authorize that person to represent both groups.

Grantee Representation on Local Boards

Many grantees have commented that States and local areas are not clear on the WIA representation requirements even where Local Boards are newly created and must meet the representation requirements of the Act. Questions have arisen about whether Local Boards must include all section 166 grantees in their area, or just ''a

representative'' of Native American grantees. Commenting Native American grantees urged that the regulations at 20 CFR 661.315(a) be strengthened to specify that each individual section 166 grantee in a local WIA is entitled to a seat on the local board. Some commenters have suggested that the grantee should have the authority to select the individual who is to represent them on the Board.

Response: While we agree that section 166 grantees must be represented on the Local Board, we also recognize the problem, raised by a number of other commenters, of the potentially large size of Local Boards. We strongly encourage local elected officials to give representation to all partner programs within their local area, but we do not interpret WIA as requiring that each local grantee be individually represented on the Local Board, in cases where there is more than one grantee of a particular One-Stop partner program operating in a local area. As discussed below, the part 661 regulations now clarify that CEO's may appoint one individual to represent multiple entities, but also clarify that CEO's may solicit nominations for appointments from the grantees.

Nor are we able to change the regulations to permit a One-stop partner program to choose who it wishes to represent it. While we cannot require that the CEO select a representative nominated by the grantee to represent it/them on the Local Board, there are significant protections in the Act and regulations to assure that grantees are properly represented. The CEO has discretion in determining who to appoint to a Local Board. That discretion is, however, constrained by the requirement in WIA section 117(b)(3) and in 20 CFR 661.315 that the representative of a partner have ''optimum policymaking authority within'' the partner entity. In cases where there is a single section 166 grantee in a local area, the CEO's discretion is quite limited. In cases where there are more than one grantee in the local area, the CEO's discretion is a little broader since, as provided in 20 CFR 661.317, the CEO is only required to appoint one representative of the partner program. In either case, however, the interests of section 166 grantees must be represented by an individual who has optimum policymaking authority and, therefore, can knowledgeably and effectively represent the partners' interests.

Youth Councils

Commenters asked for clarification of the role of the youth councils in the WIA process, and especially the role of section 166 grantees in the youth councils. For example, to what degree will the youth council ''coordinate'' youth activities in a local area? Will section 166 grantees who sit on the local board be entitled to sit on the youth council if they provide services to youth, but don't get supplemental youth services funding (such as an urban grantee)? To what degree will a section 166 grantee which receives supplemental youth services funding be required to ''coordinate'' its youth program with or through the youth council?

Response: Neither the regulations in part 668, subpart D, nor the regulations in 20 CFR part 664 currently address these issues. Commenters basically asked for further definition of the whole area of youth services, either in regulations or other administrative guidance. Unlike the requirements for Local Board membership in WIA section 117(b), section 117(h) contains no entitlement for specific organizational representation on a local youth council. However, as stated in WIA section 117(h)(1), members of the youth council are appointed by the Local Board in cooperation with the chief elected official(s) in the local area. Among the categories of youth council representatives, paragraph (2) of WIA section 117(h) provides that the youth council must include Local Board members described in paragraph (A) or (B) of section 117(b)(2) with special interest or expertise in youth policy. Therefore, section 166 grantees who are members of the Local Board and have an interest or expertise in youth issues may be appointed to the youth council under this provision. Additionally, WIA section 117(h)(2) requires that youth councils contain representatives of youth service agencies and provides that the chairperson of the Local Board, in cooperation with the CEO's, may appoint other ''appropriate'' individuals to the youth council. While we encourage Local Boards and CEO's to create broadly representative youth councils, including representatives of section 166 grantees which operate youth programs, we do not read the Act to authorize us to require that specific organizations be represented on the Youth Council. This is another ''representation and implementation issue'' which involves the operation of WIA at the local level. We prefer to allow local people to resolve local issues on their own, in a mutually satisfactory manner.

Those section 166 grantees which serve reservation areas will have to include a section on the provision of supplemental youth services in their comprehensive services plan, as required by §§ 668.420, 668.710, and 668.720. While the section 166 youth program is separate from the WIA title I youth program, and is not subject to any mandatory authority of the youth council, we encourage section 166 grantees to coordinate their provision of supplemental youth services with other providers of youth services in the local area.

Following is a discussion of a variety of other comments on the Interim Final Rule. The comments are organized by the subparts of the Interim Final regulations to which they pertain.

Subpart A—Purposes and Policies

Technical Corrections: The regulations work group pointed out that the language in the second part of the definition of ''underemployed'' at § 668.150 would seem to be limited to instances where the individual is working below his or her education level, without regard to the attainment or establishment of other work skills, knowledges, or abilities. We agree with this observation and have modified the definition to include reference to ''skill achievement''. We have also made a grammatical modification to the question in § 668.140, and have added a new paragraph (d) to § 668.140 to clarify that the Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) apply to INA programs and activities.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Clarification of Designation Requirements for Potential Pub. L. 102–477 Participants: Section 668.200(b)(3) of the Interim Final Rule provided that a new entity applying for a section 166 grant must have a service area resulting in formula funding of at least $100,000, including any amounts received for supplemental youth services, except in the case where the entity is a tribe submitting a plan for participation under Public Law 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 *et seq.*). In those cases, the total resources in the ''477 plan'' must add up to at least $100,000 for the entity to be designated under section 166 of WIA.

When the regulations were drafted, we did not anticipate that any extremely small entities (*i.e.,* with service populations under a hundred people) would submit ''477 plans'' and, as a result, apply for WIA designation. However, during the first WIA

designation cycle, this possibility occurred. We have determined that designating an entity which would receive only a few hundred or a few thousand dollars in total WIA funds would not be cost effective, and would serve to unduly fragment already scarce program resources. In consultation with the designation work group of the Native American Employment and Training Council, we have revised this requirement by placing a minimum funding threshold of $20,000 in WIA formula funding on entities applying for section 166 designation for the purpose of ''going 477'' (this minimum corresponds to the allotment of our smallest current JTPA grantee). We applied this limit in the WIA section 166 designation cycle for Program Years 2000–2001. We have, however, provided for the possibility of an exception for those entities which are close to the limit and which have demonstrated the capability to operate an employment and training program successfully under such related programs as Native Employment Works or the Indian set-aside under the Welfare-to-Work Program.

Accordingly, § 668.200(b)(3) is revised to provide that the exception will apply to grantees wishing to participate in the demonstration program if all resources to be consolidated total at least $100,000, with at least $20,000 derived from section 166 funds as determined by the most recent Census data. The revised regulation also provides that exceptions to this $20,000 limit may be made for those entities which are close to the limit and which have demonstrated the capacity to administer Federal funds and operate a successful employment and training program.

Clarification of Requirements for Designation

The issue of State-recognized tribes is a point of contention in ''Indian Country,'' because of the inconsistent nature of the process of State recognition between different States. There are great differences between State-recognized tribes which exercise certain quasi-governmental authority and provide their members with services, and those entities designated as State-recognized for purely political or social/cultural purposes. The majority of commenters favored the elimination of any priority for State-recognized tribes as such, reasoning that they could still qualify as Indian-controlled organizations.

Response: Section 166 does not include State-recognized tribes in its definition of ''Indian, Indian Tribe and Tribal Organization.'' We decided that the inclusion of State-recognized tribes as an independent basis for qualifying for designation in § 668.200(d)(5) is not supported by section 166(b) of the Act, which refers to section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) for the definitions of Indians and Indian tribes. It also appears to be in conflict with the underlying principles of section 166, as expressed in the Indian Self-Determination and Education Assistance Act. However, there is also the need to comply with the ''grandfathering'' provision of Section 166(d)(2)(B), which addresses the continued WIA eligibility of individuals who were eligible under JTPA. We addressed the grandfathering issue in a provision of the recently-issued SGA for designation of section 166 grantees for Program Years 2000–2001, which reads as follows: ''It should be noted that, pursuant to WIA section 166(d)(2)(B), individuals who were eligible to participate under section 401 of JTPA on August 6, 1998, shall be eligible to participate under WIA. Organizations serving such individuals shall be considered 'Indian controlled' for WIA section 166 purposes.'' We have rewritten § 668.200 to eliminate the mention of State-recognized tribes as specifically eligible for designation based solely upon such status, but have adapted the above-quoted language, as new paragraph 668.200(e), to permit existing State-recognized tribal grantees to continue to serve their members. These changes continue the eligibility of individuals who were eligible under JTPA as a result of being members of State-recognized tribes, as well as establishing the status of those State-recognized tribal grantees as ''Indian-controlled organizations''.

Clarification of Designation Priority

The regulations work group pointed out that the designation priorities in § 668.210(a) do not specifically mention situations, which occur primarily in Oklahoma, where grantees are designated to serve only their own tribal members in a given county or counties.

Response: We agree and have revised that paragraph to indicate that ''populations'' (over which the grantee has jurisdiction) are also included in addition to geographic areas.

Technical Correction to § 668.240

Section 668.240 describes the process for applying for designation as an INA grantee. We have added a new paragraph to this section specifying that the assurance contained in the WIA nondiscrimination regulations at 29 CFR 37.20 must be contained in the application for financial assistance.

Funding Formula

A comment on the funding formula, found at § 668.296, is discussed below in subpart G, under the heading Cost of Living Factor.

Mandatory Quotas Based on Race and Population

In the implementation discussions held around the country, several grantees recommended that we require that States with significant Native American populations expend a percentage of their total State WIA budgets on Native American clients which would correspond to their percentage of State population, and that Local Workforce Investment Boards not be allowed to refer all Native American applicants to the local section 166 grantee for services.

Response: While we realize there is a shortage of resources in ''Indian Country,'' there is no legal authority in WIA which would allow us to establish and enforce ''service quotas'' on any State or Local Area. In addition, as described in WIA section 188(a)(2), it is unlawful for recipients of WIA financial assistance to use race, color or national origin, including tribal affilitation, to determine which individuals will receive services. We certainly agree that the section 166 program is intended to provide additional services for Native Americans and is not to be used as a substitute for Local Board services to eligible Native Americans or as an excuse for not serving that population. The concept of One-Stop and core services is based on the provision of universal service, without regard to race or ethnicity. A fair and effective way to address these concerns, while ensuring that these nondiscrimination provisions are complied with, may be to describe the provision of other services, in addition to WIA core services, in the MOU. The regulations at 29 CFR part 37 provide specific requirements on the issue of nondiscrimination.

Subpart C—Services to Customers

Clarification of Allowable Activities

The regulations work group suggested that the Interim Final Rule, at § 668.340(d)(8), appears to allow the attainment of a GED only in conjunction with other training services, and not as a stand-alone objective.

Response: To eliminate possible confusion or misinterpretation, we have modified § 668.340(d)(8) to indicate that the listed services (including GED attainment) may be provided alone or in

combination with any other training or intensive service(s).

Technical Change to § 668.350(e)

We have inserted the term ''WIA'' before ''funds'' to more clearly indicate that the requirement that funds be used for activities in addition to those otherwise available applies to WIA funds.

Clarification of Grantees' Role(s) in the One-Stop System

The requirements for negotiation of MOU's have been a source of confusion to some grantees, especially the provision in § 668.360 concerning the ''field office'' requirement. Grantees have asked for further definition of this term, and have asked about the status of grantees which have no ''field offices'' as such, but whose service area includes all or part of several local workforce investment areas. Grantees also raised questions about the provision of services, the design of the One-Stop system, and the nature of the MOU within States with only one local area.

Response: We agree that this is an issue requiring clarification, and have changed the regulatory language in § 668.360. We have dropped the term ''field office'' and rewritten § 668.360 to indicate that an INA grantee is a required partner when the grantee ''provides substantial services,'' either by having a permanent, year-round presence or by being present on a seasonal or part-time basis (*e.g.,* one day of the week or daily for four months of the year). The regulation has been revised to refer to 20 CFR 661.330(b)(2), to assure that in the cases where the INA grantee provides substantial services in a local area that uses an alternate entities which does not include a representative of the grantee, the INA grantee will have an ongoing role in the workforce investment system. The revised regulation also addresses the situation in which there is a significant Native American presence in a local area in which the INA grantee does not provide substantial services, but which is within the INA grantee's service area. Language has been added encouraging the INA grantee to encourage eligible individuals to use the services of the One-Stop. Issues of MOU negotiation and/or representation will be addressed on an individual basis. Here again, we hesitate to dictate specific representation requirements for any given local area, preferring that all required partners reach mutually satisfactory arrangements which implement the inclusive spirit of the Act. We suggest that grantees, and other partners, refer to the discussion of MOU issues in the preamble to part 662. The same MOU requirements apply to single local area States as apply to States composed of multiple local areas.

Status of Community Service Employment

Commenters questioned the reason for elimination of Community Service Employment (CSE) and lamented its demise, questioning what would become of CSE participants when the transition to WIA occurred.

Response: WIA, at section 195(10), prohibits ''public service employment,'' except as specifically authorized under title I of WIA. This differs from JTPA which prohibited public service employment only in the adult and youth programs. Although section 166 states that its purpose is to ''promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities * * *,'' this does not provide specific authorization of Community Service Employment. Grantees who are concerned about transitioning current CSE participants should refer to 20 CFR 667.910 which provides that JTPA participants who transition into WIA programs must be allowed to finish their JTPA activity, in accordance with the terms of their Individual Employment Plan, even if it is not authorized under WIA.

Subpart D—Supplemental Youth Services

Flexibility in the Supplemental Youth Services Funding Formula

Grantees raised questions about the supplemental youth services funding formula, specifically about the formula's relation to participant eligibility for program services. The grantees argued that, since services are to be limited to ''(economically) disadvantaged youth,'' the funding formula should be based on the number of economically disadvantaged youth residing ''on or near'' the reservation, rather than on the total number of youth, as is currently the case.

Response: This suggestion appears logical, and we are looking into the possibility of extracting (and the impact of implementing) such information from the 1990 Census file we use to calculate the funding formulas for the section 401 program. Section 668.440(a) has been changed to reflect the possibility of altering the supplemental youth services funding formula at a future date.

Lower Level of Supplemental Youth Services Funding Under WIA

One commenter was concerned that the projected funding for the supplemental youth services program will be slightly less than what is currently available for the JTPA title II–B program, which will make it impossible to operate a year-round youth effort (since the current allotment is not sufficient to finance the tribe's Summer Youth Program under JTPA).

Response: While we recognize that reductions in available funding may lead to reductions in service levels, the matter of allocations is one of budget and not regulations. Also, there is no requirement in the section 166 program that grantees operate a year-round youth effort, or that they continue to operate a summer youth component. Section 668.450(a) provides that grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks in the school year at the grantees discretion. The parameters of each supplemental youth services grantee's youth program must be described in its Comprehensive Services Plan which is applicable to each local area.

Expanded Availability of Supplemental Youth Services Funds

Several commenters noted that supplemental youth services funding is only being made available to grantees who serve reservations, and urged that we broaden the definition of ''on or near'' to include urban/suburban/rural areas within a specified distance of a reservation, and make non-tribal grantees serving these areas eligible to receive supplemental youth services funds and to provide youth services in those areas.

Response: When this issue was raised with the regulations work group of the Advisory Council, it was the general consensus that no changes be made to the way INA grantees are currently provided youth services funding. The members of the work group did not feel that the ''on or near'' reference in the Act was intended to divert funds away from reservations or from the tribes/grantees serving those reservations. We agree with the regulations work group, and have made no change in the final regulations.

Subpart E—Services to Communities

Technical Corrections

We have made a technical correction to move a misplaced phrase in § 668.500(b). In addition, we have moved § 668.630(i) to § 668.350 as new paragraph (g), where a cross reference to 20 CFR 667.266, about limitations on sectarian activities set forth in 29 CFR 37.6(f), has been added.

Subpart G—Section 166 Planning/Funding Process

Clarification of Budget Justification Requirements for Administrative Costs

Members of the Native American Employment and Training Council suggested that § 668.720(c) seems to require that a detailed administrative budget must be submitted as part of the Comprehensive Services Plan. This could present grantees with an extra planning burden which had never been required under JTPA and is not in keeping with other recent planning decisions which require that the grantee justify the need for administrative costs based on actual costs.

Response: We agree that the regulation was drafted at an earlier time, when the entire issue of administrative costs was viewed in a different light by all parties involved. Accordingly, we have modified § 668.720(c) to remove the requirement that grantees submit a detailed budget of proposed administrative costs and to indicate that the grantees need to be prepared to justify the amount of proposed administrative costs.

Cost of Living Factor

A commenter recommended that we build a cost-of-living factor into the funding formula (which is described at § 668.296) so that grantees serving areas which are more costly could receive additional funds to offset the high cost of living (primarily in urban areas).

Response: While we sympathize with those grantees trying to operate programs in high cost areas, the Census data used in the formula and the current regulatory funding formula(s) for adult and youth programs do not provide for such cost-of-living adjustments. We see no fair way to balance the higher cost of goods and services in an urban area against the higher costs for transportation and other services incurred by reservation and/or rural grantees serving areas which lack the infrastructure of cities and suburban areas. No change has been made in the final regulations.

Availability of Incentive Grants to Section 166 Grantees

Commenters questioned why ''incentive grants'' are not being made available to section 166 grantees who exceed their planned performance levels.

Response: The statutory language in WIA section 503, which authorizes the Department to provide incentive grants, only applies to States which exceed their State adjusted levels of performance. There are no statutory provisions authorizing incentive grants for section 166 grantees, nor is there specific authorization to build such a factor into the current funding formula(s). At this time, we have not determined a fair way to account for the myriad of differences between our grantees in a way that ensures an equal opportunity for any type of performance incentive. We note that WIA section 166(c)(2)'s waiver of competition is one form of recognizing successful performance.

Mandatory Cost Sharing Among Section 166 Grantees

One commenter suggested that costs associated with enrolled tribal members be charged back to their tribes, or that tribes be required to pay employment and training costs for their tribal members participating in programs operated by urban grantees.

Response: Although we have never opposed individual grantees working out funding reciprocity agreements on a voluntary basis, the service area concept currently in place through the designation process mandates that grantees serve those eligible clients residing in their service areas, regardless of tribal affiliation. While other entities have, from time to time suggested that we provide funds to tribes to serve their own members only, regardless of where they may reside, we feel that to operate the section 166 program in this manner would be chaotic and ultimately unworkable, and would not be in the best interests of Native American employment and training programs authorized under the Workforce Investment Act. Moreover, as described in WIA section 188(a)(2), it is unlawful for recipients of WIA financial assistance to use race, color or national origin, including tribal affilitation, to determine which individuals will receive services.

Information To Be Contained in Plans

We have revised § 668.740(a)(1) to clarify that plans must include information specified in these regulations as well as Departmental planning guidance.

Technical Correction To Remove Requirements Applicable Only to PY 1999

Finally, we have removed § 668.200(a) which refers to designation criteria for PY 1999. We have also removed from §§ 668.720(e) and 668.730(b) references to planning requirements applicable only to PY 1999.

We received many other comments as part of this process. However, they involved such topics as reporting requirements, including frequency and specific data elements, section 166 performance measures and standards, and the closeout of JTPA section 401 grants. While important to the overall scope of program transition and implementation, these issues are not covered in these regulations. These and other programmatic details will be handled administratively through DINAP Bulletins or other policy guidance, issued after consultation with the grantee community.

Part 669—National Farmworker Jobs Program Under Section 167

New Name of the MSFW (WIA Sec. 167 & JTPA Sec. 402) Training Program

On August 27, 1999, the Secretary's Migrant and Seasonal Farmworker Advisory Committee voted to name the job training portion of the workforce investment program for farmworkers, ''The National Farmworker Jobs Program (NFJP)''. We have incorporated the name in the definitions section, § 660.300, to establish the NFJP as the farmworker training and assistance program that is a required One-Stop partner, and to distinguish the NFJP from the other workforce investment grants and activities funded under WIA section 167, such as the farmworker housing assistance grants. We have adopted the NFJP name in the portions of the 20 CFR Part 669 regulations that apply exclusively to the NFJP, and the NFJP name is used to identify the program in this preamble.

Introduction

The comments we received about the regulations governing the operation of the National Farmworker Jobs Program under WIA section 167 primarily came from the current NFJP grantee community. The grantees submitted written comments during the formal comment period. Additionally, we consulted with the migrant and seasonal farmworker grantee community during ETA's Seasonal Farmworker Program National Conference and through the Secretary's Migrant and Seasonal Farmworker Program Advisory Committee. The comments reflect a substantial level of interest in how the regulations will impact the program as it implements under the Workforce Investment Act. The commenters seek to make the WIA regulations' impact on their ability to serve their farmworker customers under WIA as positive for the farmworkers as possible.

During these consultations, the NFJP grantees reported on their initial experiences in seeking partnership participation on Workforce Investment

Boards in a number of states and local areas. The conditions these NFJP grantees encountered in a significant number of locations, as their state and local systems prepare for WIA implementation, are not conducive to their successful participation in the local One-Stop systems. As reported, the specific approach being taken by the representatives from some State and Local Boards fails to recognize the independent standing of the NFJP program partner as a party with which the Local Board must negotiate a Memorandum of Understanding. A required objective of the negotiations is to develop the arrangements, including costs or cost sharing, for making the services of the Local One-Stop Center available to the farmworker community the grantee serves. We expect the terms for participating in a local One-Stop service delivery system to develop rationally from the negotiations when the task is approached in good faith by both parties.

The grantees reported that they most often encountered an adverse negotiating climate in those States and local workforce investment areas where the States have exercised their authority under the alternative entity provisions of WIA sections 111(e) and 117(i) (20 CFR 661.210 and 661.330, respectively) by approving existing boards to serve as the State and/or Local Workforce Investment Boards under WIA. The grantees reported that some States and Boards exercise the alternative entity option in a manner that seriously impairs the NFJP grantee's ability to participate as a One-Stop partner by failing to provide an opportunity for good faith negotiation over the terms of the MOU. Consequently, the necessary arrangements for making the services of the local One-Stop Centers available to the farmworker customers served by the NFJP program grantee may be inadequately developed.

Through a motion unanimously passed by the Migrant and Seasonal Farmworker Employment and Training Advisory Committee, MSFW grantees communicated their concerns in a letter to Secretary Alexis Herman, dated September 27, 1999. In their letter, the grantees made specific recommendations for changes to the Interim Final Rule that may be summarized as follows: (1) To clarify that the composition of State Workforce Investment Boards must include representation from the required partner; (2) where the State Board is established under the alternative entity authority of WIA section 111(e), the States be advised through policy guidance that representation of farmworker and other subtitle D operators is the ''preferred response to the spirit of the Act''; and (3) that where a Local Workforce Board is an approved alternative entity, there must be a way to ensure that an ongoing role is actually provided to the required partners that are not members of the alternative entity, or provision for regulatory relief from the required partner obligations should be available for the national grantees. These issues and other comments are discussed below.

The NFJP and Workforce Investment System Governance

As discussed above, the rules relating to the participation of NFJP grantees in the state and local workforce investment system generated many comments from the NFJP community. Below, we discuss issues relating to alternative entities and representation on State Boards and Local Boards. Similar issues are discussed in relation to the WIA section 168 Indian and Native American Program in the preamble to part 668, and for the workforce investment system in general in the preamble to part 661.

General Representational Question Regarding the NFJP and Appointments to State and Local Workforce Investment Boards

The answer to the representational issue raised by the Farmworker Advisory Committee is found within the design of the One-Stop system and in the requirement that it be operated through the collaboration of the required partners. In order for a partner's participation to be viable, the regulations provide that the partner must have representation in the One-Stop system, either through Local Board representation or, when the partner is not represented on an alternative entity, through an on-going role in the workforce investment system.

We are not able to change the regulations to permit One-stop partner programs to choose whom they wish to represent them. Under WIA, the authority to select State and local board members lies with the Governor and local chief elected official, respectively. However, there are objective standards to ensure that all parties have a voice in the workforce investment system through *bona fide* representation. We expect that Local Workforce Investment Areas will follow the regulations and that States will ensure that all required partners have appropriate and effective representation on Local Boards. The final regulations attempt to facilitate this process by providing local areas with flexibility to find the right mix of representatives on the Local Board, while ensuring that the Board is an effective policy-making body by protecting the rights of all participants in the system and by stressing the requirement that members be individuals with optimum policy-making authority. We believe that the party who may most authoritatively speak for any partner program is an official of the partner in the State or local area or a representative acceptable to the partner. Consequently, for effective governance, official representation of the partner program on the State and Local Workforce Investment Boards will usually be by such a person.

As discussed in the preamble to 20 CFR part 661, above, changes have been made to the regulations governing board membership to clarify the role of One-stop partner representatives. For example, when there is more than one partner program grantee in a local area, 20 CFR 661.317 permits the appointment of one member to represent the group of grantees. This section also authorizes the chief elected official to solicit nominations from One-Stop partner program entities to facilitate the selection of such representatives. Of course, the chief elected official can opt to appoint more than one member to represent this program, if he or she so chooses and the selection criteria permit it. Also, as discussed below, we have added new regulations defining the terms ''optimal policy-making authority'' and ''expertise relating to [a] program, service or activity.''

State Board Representation for Required National Program Partners

The Farmworker Advisory Committee commenters indicated that the Interim Final Rule is unclear as to whether representation on the State Boards is mandatory for all required partners such as the national program partners. As a result, the commenters reported that many States are claiming to represent the NFJP on the State's Workforce Investment Board through a non-partner surrogate, possibly a State agency representative having familiarity with farmworker or related agricultural issues, such as the State Monitor Advocate or a representative from the State's Farm Bureau.

Response: WIA section 111(b)(1)(C)(vi)(II) requires representation of the Title I partner on the State Board by its provision for ''the lead State agency officials with responsibility for the programs'' or ''a representative in the State with expertise relating to such [section

121(b)] program.'' WIA section 111(b)(2) requires that Board members who represent organizations, agencies or other entities be individuals with ''optimum policy-making authority'' within the program they represent. We believe WIA section 111(b)(1)(C)(vi)(II) is clear that a State agency official may only be appointed to represent those One-stop partner programs over which the official has ''responsibility.'' Where there is no such state agency official, an individual with expertise relating to the One-stop partner program must be appointed to represent the program. We have revised the regulations in part 661 to clarify this. Under new 20 CFR 661.203(b), the representation of a One-Stop partner program may be fulfilled by an official from the program partner, such as the NFJP grantee, or the Governor may appoint a representative in the State having ''documented expertise relating to'' the required partner program in the State. For purposes of the NFJP, we believe that documented expertise in the NFJP is shown by a minimum of two years combined managerial level experience in the operation of the NFJP or with an NFJP grantee association, and suggest that Governors adopt this standard when selecting representatives for the NFJP program.

Without the clarification that representation must be specific to the required partner program, appointments made to represent the interests of a required partner could include a person who may have no vested interest to represent the partner. This condition, which leaves the required national partners vulnerable to the consequences of unqualified representation, is what the NFJP grantees reported has been occurring initially in some States. An agency official or other individual representing a One-stop partner program must be an official with optimum policy-making authority in the organization he or she represents. As defined in 20 CFR 661.205(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.

Local Boards Authorized by Governors Under the Alternative Entity Provisions

Commenters reported that the national programs, possibly without exception, are not included on a Local Workforce Investment Board where the Local Board is an alternative entity approved by the Governor under WIA section 117(i) (and under 20 CFR 661.330). This is to be expected because the composition of Local Boards approved under the alternative entity provision is derived from arrangements developed under JTPA, and the JTPA did not provide for the participation of the national programs in local workforce systems as now required by WIA. However, where the membership of the approved alternative entity does not provide for the representation required by WIA section 117(b), the Interim Final Rule at § 661.330(b)(2) required Local Boards to ''ensure an ongoing role for any such group in the local workforce investment system'' which is not represented on the alternative entity Local Board.

The commenters found that the use of the word ''group'' in the Interim Final Rule, to be too generalized to make a clear requirement that the local workforce investment plan must provide an ongoing role for each unrepresented partner category whenever the membership requirement of WIA section 117(b)(2) is not matched by the incumbent membership of the alternative entity Local Board. At the National Conference, the commenters described instances of alternative entity boards refusing to negotiate MOU's with their NFJP program representatives. They pointed out that in the instance of a required partner, a Local Board cannot have established a working relationship or demonstrated that it has provided for an ongoing role for the unrepresented partner until it has attempted good faith negotiations of an MOU with that partner.

Response: To clarify that the required partners must be included among ''any such group,'' we have amended the local governance provision at 20 CFR 661.330(b)(2), by replacing that phrase with the phrase ''the unrepresented membership group,'' and by inserting the phrase ''including all the partners'' following ''each of the categories of required Local Board membership under WIA sec. 117(b).'' We have added a new paragraph (b)(3) to 20 CFR 661.330 which provides that the ongoing role requirement may be met by providing for ongoing consultations with an unrepresented One-stop partner program, such as the NFJP grantee operating in the State of local area. It also provides that, as part of its ''ongoing role'' responsibility, the alternative entity must undertake good faith negotiations with each unrepresented partner on the terms of its Memorandum of Understanding with the unrepresented partner. We have added a corollary requirement to the NFJP regulations by adding a new third sentence to § 669.220(a) requiring the NFJP grantee to negotiate with the Local Board on the terms of its ongoing role in the workforce investment system.

Ensuring Fair Treatment When Negotiations Between a Partner and an Alternative Entity Board Fail

In connection with the reports from NFJP grantees of the instances where they had been approached by State and Local Boards with non-negotiable terms or they were not offered an ongoing role, the grantee commenters expressed their concern over how such practices might influence the outcome of the next NFJP competition in the State. The commenters explained that where the State does not foster an environment supporting good faith negotiations between its State and Local Boards and the non-governmental NFJP grantee, the consequent nonparticipation by the NFJP grantee in the State's local workforce investment systems could be viewed unfavorably. The commenters were concerned that such a condition could result in an unfair rating of the incumbent non-State agency grantee.

Response: To promote competitions that are perceived as fair and merit-based in their treatment of all the eligible applicants, we have revised § 669.200 by adding to the eligible applicant criteria in paragraph (a), the capacity to work effectively as a One-Stop system partner. The manner by which applicants may demonstrate this capacity is explained in a new paragraph (c). Where an incumbent grantee cannot demonstrate its capacity to work as a One-Stop partner, it will be found to lack the capacity to work as a One-Stop partner under § 669.200(a)(4) unless the policies or actions of a Local Board that is established under the alternative entity provisions of WIA section 117(i) precluded such participation or contributed to the failure to reach agreement on an MOU. Wherever a Local Board is an alternative entity and fails to agree on terms for its MOU with the incumbent NFJP grantee, despite good faith negotiations on the part of the grantee, new paragraph (d) requires the Grant Officer to consider the impact of the policies and actions of the alternative entity board on the incumbent grantee's ability to participate in the One-Stop system and determine whether the policies or actions contributed to the failed participation of the incumbent NFJP grantee. Where the Grant Officer finds the local policy actions of an alternative entity Board precluded or failed to promote the participation of the incumbent NFJP grantee through an MOU, and the eligible applicant is a State-controlled entity, or is an entity represented on the alternative entity

Board within the State, the Grant Officer must consider this fact when weighing the capacity of the competitors. Under this provision, the Grant Officer has the discretion to determine that the incumbent has the capacity to work effectively as a One-Stop partner. (The provisions of § 669.200 (d)(1) apply only when the incumbent grantee does not have voting status in the alternative entity Local Board.)

The Judge Richey Court Order and the NFJP

Several non-NFJP commenters raised a question about the relationship between the Judge Richey Court Order and the NFJP for serving migrant and seasonal farmworkers under WIA section 167. The comments basically inquire whether the NFJP is the program for farmworkers under WIA, and, as such, whether it brings to an end the system of monitor advocates created by the Order.

Response: These commenters seem to be unaware of the fact that the NFJP has been authorized continuously since its creation under the Economic Opportunity Act of 1964, and most recently under section 402 of JTPA. The NFJP supplements the workforce investment activities of the States with services that respond to the unique needs of farmworkers and their families. The NFJP is not a substitute for the other WIA services that must be made available to the farmworker job seekers in the State.

The States are required to make the services of the One-Stop systems in the State available to all job seekers in an equitable fashion. The services available from the Adult and Dislocated Workers program, from the Job Service, and from all other DOL-funded Workforce Investment System partners in the State, must be available to farmworkers in an equitable fashion, appropriate to their needs as job seekers as well as to their needs as farmworkers. Judge Richey's decision in the case brought against the Employment Service required the entire system to serve farmworkers equitably. That requirement has not changed under WIA.

Subpart A—Purpose, Definitions, and Federal Administration

Technical Corrections to Definitions

The commenters noted several typographical errors and suggested clarifications in the definitions for the farmworker program in § 669.110 of the Interim Final Rule.

Response: The word ''be'' is missing from the definition of ''work experience'' in the Interim Final Rule and is added in the Final Rule. The definition of ''farmwork'' is corrected by removing the reference to the allocation formula. To correct for an omission, the definition of ''allowances'' is amended to permit receipt of allowance payments to participants enrolled in intensive services as well as in training services.

Add Definition of ''Related Assistance''

Questions about the characterization of emergency assistance as a form of related assistance in § 669.360 led some commenters to ask about the nature of related assistance and what other services it includes.

Response: We have added a definition of ''related assistance'' in § 669.110. We discuss related assistance further in the discussion below of ''Classification of Emergency Assistance and Other Named Activities as Related Assistance.''

Eligibility

There were a variety of comments asking that we define certain terms related to participant eligibility, in particular that we specify which dependents of a farmworker are eligible for NFJP assistance and that we add an adjustment for family-size to the definition of ''disadvantaged'' for eligibility purposes. Other comments raised a variety of issues that include: clarification of the floating 12 month eligibility determination period; allowing for exceptions to the eligibility period for formerly institutionalized and hospitalized applicants; identifying the qualifying farmwork occupations and defining the farmwork thresholds—expressed in terms of income from farmwork and time employed in farmwork—that must be met by an applicant to qualify as a farmworker who is eligible for NFJP services.

Response: While most requests for clarification of eligibility provisions will be addressed in the policy guidance on participant eligibility to be provided by the Division of Seasonal Farmworker Programs (DSFP), we have revised the definitions section in response to these comments. We have added a definition of ''dependent'' to the Final Rule to specify the family member relationships within the family of an eligible farmworker who qualify for receipt of assistance from the NFJP. Because of comments suggesting that the definition of ''disadvantaged'' needed to be clarified to consider family size when making eligibility determinations, we have revised the definition of ''disadvantaged'' by adding ''adjusted for family size'' to be clear that the requirement to be economically disadvantaged, as determined under the poverty line or the Lower Living Standard Income Level, must take family size into account.

The comments about the clarification of the floating 12 month eligibility determination period, formerly institutionalized and hospitalized applicants, identifying the qualifying farmwork occupations and defining the farmwork thresholds topics will be addressed in policy guidance on participant eligibility. Grantees should refer to WIA nondiscrimination regulations, at 29 CFR 37.8, for guidance on whether an extension of the eligibility period for formerly institutionalized and hospitalized participants may be a form of reasonable accomodation.

The commenters raised a related concern that allowance be made for situations where a farmworker may be disqualified by the income of an abusive spouse and the family unit may technically remain in place. The commenters prefer that there be the flexibility available to accommodate such situations where appropriate.

Response: We have revised the definition of ''disadvantaged'' to recognize this concern by permitting consideration of circumstances where, due to known instability of the family unit, the inclusion of income from certain members would be inappropriate or unjust. We will provide policy guidance in consultation with the grantee partners to provide clarification for determining what is appropriate.

Additional Technical Corrections

We have removed the definition of ''Department'' from § 669.110 since it appears in 20 CFR 660.300. In addition, we have added a new paragraph (e) to § 669.170 clarifying that the Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) apply to NFJP grants.

Subpart B—MSFW Program's Service Delivery System

Clarification of the Areas of a State Where the NFJP Program Operates

Commenters reported that there was confusion between the NFJP grantees and the States and Local Boards over the areas within the States where the NFJP grantee is a mandatory partner in the local One-Stop system. The grantees asked that the regulations be amended to clarify that the NFJP is a One-Stop partner in those local workforce investment areas where the NFJP operates by serving NFJP customers, not necessarily where there is ''field office'' presence, as provided in § 669.220(a) of the Interim Final Rule.

Response: We have modified § 669.220(a) to clarify that the NFJP grantee is a required One-Stop partner for the local workforce investment areas where it operates its NFJP program.

Subpart C—The National Farmworker Jobs Program Customers and Available Program Services

Classification of Emergency Assistance and Other Named Activities as Related Assistance

Commenters questioned the consistency of classifying emergency assistance as a form of related assistance and of classifying certain non-occupational training activities as training services. Specifically, the commenters questioned the classification of ''workplace safety'' training and ''farmworker pesticide training'' as training services in § 669.410(a)(2) of the Interim Final Rule. The commenters suggested that the designation of emergency assistance as a form of related assistance, without further clarifying the nature of related assistance, also contributed to the confusing organization of the service classifications.

Response: Pesticide safety instruction for farmworkers means educational instruction on health and safety information about agricultural pesticides. To protect their health, farmworkers need to have a general understanding of this information and a full appreciation of the seriousness of these hazzards when approved procedures are compromised or disregarded. The instruction typically includes information on the hazzards associated with pesticide exposure, the physical symptoms of toxic exposures, use of protective equipment and the importance of adhering to the manufacturer's instructions on when fields may be entered following application. These activities are considered supportive services under JTPA and are often provided under JTPA in a ''non-training related'' context that advance the farmworker's welfare as a farmworker. These types of farmworker ''training'' activities are very short term instructional services. They are not occupational skills training. Although they may be provided to participants enrolled in intensive services or training services, these activities are principally designed to assist farmworkers who are continuing to be employed in farmwork. We agree with the commenters that the classification of these non-skills-training activities as training services and the classification of emergency assistance as the only form of ''related assistance'' is confusing.

To resolve the confusing classifications, we have decided to combine the short-term, non-occupational skills training activities with supportive services such as emergency assistance. This will form a classification of congruous services that historically have been provided to MSFW's and that are uniquely required by them. To accomplish this, we have amended § 669.310 to create a fourth basic service component of the NFJP service delivery strategy, called ''related assistance services.'' Related assistance consists of short-term forms of direct assistance to eligible farmworkers and their family members. The related assistance services are ones that stabilize farmworkers' agricultural employment. The activities include such services as emergency assistance, English language instruction, short duration basic education, workplace safety training, farmworker pesticide safety instruction, and farmworker housing development assistance. The services under related assistance encompass all the activities formerly classified under JTPA as ''services-only.'' Related assistance activities also include the non training-related ''enhancement-only'' services that were recognized under JTPA. These forms of assistance predominantly assist farmworkers to maintain their current lifestyle within the agricultural community by supporting them in their endeavors to remain employed in farmwork, thereby contributing collaterally to the economic stabilization of the agricultural community. Related assistance services also may be used to support farmworkers who have enrolled in either intensive or training services.

To establish the ''related assistance services'' category, we made a number of changes. We added a definition of ''related assistance,'' as described above, in § 669.110. Related assistance services are identified in § 669.310 as one of the four basic components of the NFJP service delivery strategy. A new § 669.430 is added to classify the activities that are included in related assistance services as described above. The description of training services in § 669.410 has been revised to reflect that training services are activities focusing on occupational training, including basic education activity. A new § 669.440 provides that related assistance services may be provided at any time there is a need identified for any eligible farmworker or family member. This includes farmworker youth enrolled in the MSFW Youth program. Accordingly, we added a clause to § 669.680 clarifying that the related assistance services available under § 669.430 are authorized under the MSFW Youth program. The need for related assistance may be documented by the grantee or in a statement by the farmworker that is acceptable to the grantee.

We also added a definition for ''farmworker housing development assistance'' as requested by comments made at the National Conference. Finally, a technical correction is made by adding the word ''grantee'' to § 669.360(b) where it was omitted from the Interim Final Rule.

Work Experience Classification

We received a number of comments about the treatment of work experience in the Interim Final Rule. The comments addressed two issues. One issue is the authorization under § 669.370(b)(3)(i) to develop arrangements with private for-profit businesses to host work experience activities. The commenters were concerned that this will lead to abuse of program resources by providing favored businesses with free, albeit unskilled, WIA-funded laborers. Commenters were also concerned that the authorization for unpaid work experience contained in the definition could lead to abuses.

Response: Unlike ETA's relationship with the States, the NFJP grantees are the program operators in most instances. After considering the commenters' concerns, we agree that a closer federal-level oversight of work experience is appropriate to ensure the farmworker program participants are adequately protected where the activity will be unpaid or will be hosted by for-profit entities.

We have changed § 669.370(b)(3)(i) to authorize NFJP work experience in the for-profit sector only when there is a system described in the approved grant plan for the use of for-profit businesses to host the structured learning experience for NFJP participants. Similarly, to reconcile the authorization for unpaid work experience to the requirement in § 669.370(b)(3)(ii), which establishes a minimum compensation rate for paid work experience, we have revised § 669.370(b)(3)(ii) to require that the grantee's unpaid work experience activity be described in the approved grant plan. To be acceptable, the plan must show how the work experience participation at a for-profit host or in an unpaid activity will provide tangible benefits to the work experience participant. The plan must show that such benefits will be commensurate

with the participant's contributions to the hosting agency.

We also received comments about the classification of work experience as an intensive service under § 669.370. A number of commenters urged that work experience be considered a training service. Some commenters explained that work experience is effectively used to ''train'' farmworker participants on the different working conditions of non-agricultural work environments, since the participants have developed the basic workplace-values from their farmwork experiences.

Response: In our view, work experience primarily functions as a workplace-values activity, while training activities are about the acquisition of specific occupational or job skills. Work experience provides an opportunity for new entrants in the workforce to acquire, through close supervision, an appreciation of workplace norms that may include self-discipline, relating to others, attendance and accountability, understanding compensation and learning to appreciate and meet employers' reasonable expectations. The concept of intensive services in WIA is more than sufficiently broad to encompass the full range of activities traditionally undertaken as work experience. The classification of work experience as a WIA intensive service does not change the nature of work experience as it was authorized and operated under the predecessor laws: the Job Training Partnership Act, the Comprehensive Employment and Training Act and the Economic Opportunity Act. As a practical matter, the grantees retain the same degree of flexibility in designing service strategies for meeting the needs of their customers, regardless of perceived differences caused by the classification nomenclature used under WIA. The adult program under § 663.200(b) also classifies work experience as an intensive service.

WIA section 134(d)(4)(D) does recognize ''job readiness training'' as a training service. Job readiness training provides, through classroom lecture and role play, the development of the same set of skills and understanding to be acquired through work experience. It is generally offered as pre-vocational world-of-work skills that may include showing up on time, work place attitudes and behaviors, and the like. Job readiness training usually does not include an associated work component, but it may.

For these reasons, we have made no change to the Final Rule about the classification of work experience as an intensive service.

Subpart D—Performance Accountability, Planning and Waiver Provision

Administrative Costs Limitation

The issue on which we received the largest number of comments during the formal comment period is the administrative costs limitation. The Interim Final Rule, at 20 CFR 667.210(b), provides that the administrative costs for the NFJP ''will be identified in the grant or contract award document.'' In the guidance (Farmworker Bulletin No. 99–04) to grantees for preparation of their 1999 Program Year plans, we established an administrative cost limitation policy for those grantees implementing WIA for the 1999 Program Year. The policy limited the amount budgeted for administration to 20 percent, with costs over 15 percent requiring justification satisfactory to the Grant Officer. It was anticipated that, after WIA transition, the rates could be expected to fall. The grantees have traditionally operated within a 20 percent limitation for administrative costs, without having to justify the administrative cost rates to the Department.

The grantees' comments on administrative costs limitations were based on the historical context of this stated policy. They expressed concern that a 10–15% administrative costs limitation was unjust because of the state-wide scope of most NFJP operations and the continuing need to participate in the business of the State Board and to serve on and negotiate MOU's with numerous Local Boards.

Response: In order to provide clarification on this issue, we are adding a new section, § 669.555 to the Final Rule stating that limits on administrative costs for NFJP grants will be negotiated with the grantee and identified in the grant award document. In addition, 20 CFR 667.210 (b), which provides that the administrative costs limitation for Subtitle D programs (INA and NFJP) will be identified in the grant award document, is unchanged.

Part 670—Job Corps

Introduction

This part provides regulations for the Job Corps program, authorized in title I, subtitle C of WIA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to selection of sites for Job Corps centers; selection and funding of service providers; screening, selection and assignment of eligible youth to Job Corps centers; operation of Job Corps centers; and required services for Job Corps students. This part also provides regulations covering new WIA requirements such as the establishment of a business and community liaison, and an industry council for each Job Corps center, and the focus on accountability, including specific performance measures for Job Corps centers and service providers. Our intent in these regulations is to incorporate the requirements of title I, subtitle C of the Act, and to describe the programs and services which must be available for Job Corps students, as well as the requirements dictated by the unique residential environment of a Job Corps center (such as provision of meals, transportation, recreational activities and related services).

Subpart A—Scope and Purpose

Purpose

Subpart A describes the purpose of the program and provides definitions. Section 670.100 explains that references in this part referring to guidelines or procedures issued by the Secretary mean that the Job Corps Director will issue such guidelines. Section 670.130 specifies that the Job Corps Director has been delegated authority to carry out the Secretary's responsibilities under title I, subtitle C of the Act for the operation of the Job Corps program. As section 670.100 explains, procedures guiding day-to-day operations are provided in a Policy and Requirements Handbook (PRH). The PRH includes minimum program requirements and expected outcomes for specific program components, such as education and training, student support, and administration. In addition, general guidance and best practices are provided in a number of program areas in Job Corps Technical Assistance Guides issued by the Job Corps Director.

Partnership

The regulatory provision on program purpose (§ 670.110) incorporates the Act's intent that Job Corps will operate as a national, residential program in partnership with States and local communities. This partnering relationship is carried throughout various sections of part 670, such as in requirements for Job Corps centers and service providers to serve on local youth councils, to operate as a One-Stop partner, and to work with employers.

During the development of the Interim Final Rule, several parties noted that the regulations in this subpart provide that Job Corps is a national program which operates in partnership with States, communities, Local Boards, youth councils, One-Stop centers and

partners, and other youth programs. They argued that the language relating to partnership with One-Stops was not strong enough in other regulatory provisions governing services (such as outreach/admissions and placement). They believed that the regulations should clearly state that services would be provided by One-Stop centers or partners to the extent practicable. Our intent in using language such as ''to the extent practicable'' or ''to the fullest extent possible'' is not to limit or discourage the development of linkages between Job Corps and One-Stops, but to recognize (1) the language in section 145(a)(3) of the Act which requires the Secretary to conduct outreach and screening activities ''to the extent practicable'' through arrangements with applicable One-Stop centers, community action agencies, business organizations, labor organizations, and entities that have contact with youth; (2) the requirements in section 147 of the Act for selection of Job Corps center operators and other service providers (such as outreach/admissions, placement, and provision of continued services) on a competitive basis in accordance with Federal procurement law and regulations; and (3) the language in sections 148(d) and 149(b) of the Act which requires the Secretary to give priority to ''One-Stop partners'' in selecting a provider for continued services for graduates and to ''utilize One-Stop delivery systems to the fullest extent possible'' for the placement of graduates into jobs. The use of these phrases should not be interpreted as a limitation, but as a statement of intent to enter into partnerships in all situations where it is feasible to do so.

Subpart B—Site Selection and Protection and Maintenance of Facilities

Subpart B 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 requirements in this subpart are not significantly different from the corresponding requirements in the JTPA Job Corps regulations.

Subpart C—Funding and Selection of Service Providers

Subpart C describes entities which are eligible to receive funds to operate Job Corps centers and to provide operational support services. It also describes how contract center operators and operational support service contractors are selected, emphasizing the requirements for competitive contract awards. Section 670.300 specifically describes the kinds of entities that are eligible to receive funds to operate centers and provide training and operational support services as specified in sections 147(a) and (d), 145(a)(3) and 149(b) of the Act.

One commenter suggested that § 670.300 be revised to expand the list of entities eligible to receive funds to operate centers and provide training and operational support services by adding ''including service or conservation corps'' to paragraphs (a)(1) and (a)(2) of that section.

Response: We have not revised this section because these entities were not specifically listed in the Act and the existing regulatory language does not preclude service or conservation corps from responding to requests for proposals (RFP's) for operation of Job Corps centers or provision of training and support services.

New requirements, including consultation with the appropriate Governor, center industry council, and Local Board in development of requests for proposals for center operators, are included in § 670.310(a). In addition, § 670.310(c), restates the criteria, specified in WIA section 147(a)(2)(B), that must be included in center requests for proposals. These criteria include an assessment of providers' past performance, their ability to coordinate Job Corps center activities with State and local activities (including One-Stop centers), and their ability to provide vocational training that reflects employment opportunities in areas where students will seek jobs. Several commenters recommended adding a fifth criterion category to § 670.310(c) that would require that criteria for selection of center operators include the degree to which the entity would provide access to non-traditional jobs and career paths for women and girls.

Response: Each Job Corps center must offer training in occupational areas which will enable all students—male and female—to get jobs in their home communities after completing the program. In selecting their occupational training, students go through an occupational exploration program which provides exposure to all types of training offered by the center as well as information on training requirements, qualifications for job entry and average wages for each occupational area. Existing regulatory language and policies regarding student services require that young women be provided access to occupational training, including training in non-traditional occupations. Accordingly, we have not revised § 670.310.

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

Subpart D describes who is eligible for Job Corps under WIA and provides additional factors which must be considered in selecting an eligible applicant for enrollment. This subpart also discusses who will conduct outreach and admissions activities for the Job Corps, and the responsibilities of those organizations. Section 670.450(a) describes the new requirements of section 145(c) of WIA for an assignment plan for Job Corps centers. Assignment plans will be developed and used to establish a target for each Job Corps center for the percentage of students enrolled who will come from the State or Department of Labor region in which the center is located, and the regions surrounding the center. In addition, § 670.450(b) and (c) addresses the requirement of section 145(d) of the Act which requires that students be assigned to the center closest to their homes, with consideration given to the special needs of applicants or their parents or guardians, as listed in the regulation, when making assignments. Section 670.490 provides authorization for extensions of enrollment of students for up to one year in special cases, such as when additional time is required for a student to complete an advanced program or to reasonably accommodate a student's disability.

Several commenters supported the regulatory exclusion in § 670.400 of an upper age limit for an otherwise Job Corps eligible individual with a disability. Several other commenters noted that parenting and child care responsibility in the Job Corps program are mentioned in §§ 670.400 (eligibility), 670.410(c) (factors for selection of applicants for enrollment), 670.460 (nonresidential enrollment), and 670.550 (center responsibility to assist students with child care needs), and suggested that the regulations be clarified to require contractors to provide on-site or nearby child care for students.

Response: WIA section 148(e) requires that ''The Secretary shall, to the extent practicable, provide child care at or near Job Corps centers, for individuals who require child care for their children in order to participate in Job Corps.'' In response to Congressional reports accompanying recent appropriations, some Job Corps centers now have on-site child care programs operated by other Federally-funded initiatives such as Head Start. However, provision of child care at or near all Job Corps centers is not always feasible due to

space, center size and other factors such as their remote or rural location. Where Job Corps centers do not have on-site child care, Job Corps admissions counselors and center staff must work with students to assist them in making off-center arrangements to make sure their children are properly cared for during the time they are enrolled in the program. Accordingly, these sections have not been revised.

Subpart E—Program Activities and Center Operations

Program Activities

Subpart E describes the services and types of training each Job Corps center must provide, as well as center responsibilities in the administration of work-based learning. This subpart also describes the residential support services Job Corps centers must provide, and centers' responsibility for student accountability. Under § 670.520, required residential support services include providing a safe, secure environment, an ongoing counseling program, food service, access to medical care, recreation, leadership programs for students and a student welfare association. In addition, centers must account for the whereabouts, participation, and status of students while they are enrolled in Job Corps.

Section 670.555 discusses religious rights of students. Based on comments received, § 670.555 has been revised to clarify that students may file a complaint under the procedures set forth in 29 CFR part 37 if they believe their religious rights have been violated.

Behavior Management and Zero Tolerance for Violence and Drugs

Subpart E establishes requirements for Job Corps centers to have student behavior management systems. Section 670.540 describes Job Corps' zero tolerance policy for violence, drugs, and unauthorized goods. The regulatory language in this section continues current requirements for automatic dismissal of students who commit specific offenses (the one strike and you're out policy) specified in the Policy and Requirements Handbook (PRH) in Job Corps' zero tolerance policy. The Secretary will issue procedures which continue this practice. Section 670.540(b) also addresses the requirements of section 145(a)(2) of the Act for drug testing of all students. Section 670.545 of this subpart also contains requirements to ensure that students are provided due process in disciplinary actions. This process includes center fact-finding and behavior review boards, notification of potential penalties and appeal procedures, including going to a regional appeal board.

Experimental, Research, and Demonstration Projects

Subpart E section 670.560 also addresses the authorization, provided in section 156 of the Act, for experimental, research and demonstration projects related to the Job Corps program.

Subpart F—Student Support

Subpart F includes authorization of leave for students from center activities, and provisions of cash allowances, bonuses and clothing for students. In addition to being eligible to receive transportation, students are eligible for other benefits, including basic living allowances to cover personal expenses, such as toiletries, snacks, etc., in accordance with guidance issued by the Secretary. The allowance and bonus system is structured to provide incentives for specific accomplishments of students, such as vocational completion. Students are also provided with a modest clothing allowance to enable them to obtain clothes that are appropriate for class and for the workplace.

Subpart G—Placement and Continued Services

Placement Services

Subpart G discusses placement services for graduates of the Job Corps program in accordance with section 149 of the Act. The regulations focus on graduates, which is a significant change from previous Job Corps policy and practice, since placement services have traditionally been provided for all students who leave Job Corps, no matter how long they were enrolled or how much of the program they completed. The regulatory language in subpart G is substantially different from the language in the JTPA Job Corps regulations in order to reflect this new emphasis on providers of services to graduates. This subpart also discusses who provides placement services, and the responsibilities of Job Corps placement agencies in placing graduates in jobs.

The authority provided in section 149(d) of the Act, to allow for placement of former students (non-graduates), is reflected in §§ 670.710 and 670.720; however, placement services are not required for anyone other than graduates. Implementation of new requirements for provision of 12 months of continued services for graduates and for 6 and 12 month follow-up tracking of graduates placed in jobs (§ 670.980 (a)(4) and (a)(5)) will require a realignment of existing financial resources to support these new initiatives. The ability to provide placement services for former students in addition to the required placement services for graduates will be contingent on having the funding resources to do so. We anticipate that some funds used in the past to provide placement services for all former enrollees will have to be realigned to support the new required services for graduates, therefore, it is likely that the level of placement services for graduates and for former enrollees will differ.

Continued Services for Graduates

Subpart G discusses section 148(d) of the Act, which requires provision of 12 months of continued service for graduates. Sections 670.740 and 670.750 discuss this requirement and who may provide those services. Provision of 12 months of continued services is a new requirement, which requires a new level of effort for Job Corps service providers. As discussed above, this will likely divert some funding resources which have been used in the past for provision of placement services for all students. As we implement the new requirement for 12 months of continued services for graduates, we will use various approaches in order to learn what these services should consist of and how best to procure and provide them. We anticipate that provision of continued services for graduates may be handled by placement and support contractors, by Job Corps centers, and/or by One-Stops.

Subpart H—Community Connections

Subpart H describes new requirements for Job Corps representatives to serve on local youth councils, as provided for in section 117(h) of the Act, as well as for center business and community liaisons, and for center industry councils, as provided for in WIA sections 153 and 154, respectively. Section 670.800(f) describes the role and responsibilities of center industry councils, as prescribed in section 154(c) of the Act, to analyze labor market information and identify job opportunities in areas where students will seek employment and the skills needed for those jobs, and to recommend changes in center vocational training offerings as appropriate. The intent of this subpart is to provide regulatory language to tie Job Corps centers more closely to their local communities and local employers to ensure that the vocational and other training students receive will enable them to obtain meaningful jobs in their home communities upon graduation.

Subpart I—Administrative and Management Provisions

Student Benefits and Protections

Subpart I provides requirements relating to Tort Claims (§§ 670.900 and .905), Federal Employees Compensation Act (FECA) benefits for students (§§ 670.910 through 930), safety and health (§ 670.935), and law enforcement jurisdiction on Job Corps center property (§ 670.940).

Financial and Audit Responsibilities

Subpart I also discusses financial management responsibilities of Job Corps center operators and other Job Corps service providers, as well as Federal audit requirements.

Program Accountability and Performance Indicators

Subpart I also incorporates specific requirements relating to performance assessment and accountability contained in section 159(c) of the Act, as well as requirements for performance improvement plans, as provided for in WIA section 159(f)(2), for Job Corps center operators or other service providers who fail to meet expected levels of performance. Sections 670.975 and 670.980 describe how performance of the Job Corps program will be assessed and the required indicators of performance. Indicators of performance include: placement rates of graduates in jobs, including jobs related to vocational training received; average wage at placement at six months and twelve months after job entry; retention in employment six and twelve months after job entry; the number of graduates who achieved job readiness and employment skills; and the number who entered postsecondary or advanced training programs.

Disclosure of Information and Resolution of Complaints

Subpart I includes requirements relating to student records and disclosure of information about Job Corps students. It also contains the procedures that center operators and service providers must follow when resolving complaints and disputes of students and other parties.

Part 671—National Emergency Grants for Dislocated Workers

Introduction

Section 170 of WIA provides for technical assistance, and section 171 provides for demonstration, pilot, multiservice, research and multistate projects. Although we have not regulated on these sections, it is again important to note these activities for the general workforce investment system.

Section 170(a) provides that the Secretary will provide, coordinate and support the development of training, technical assistance, staff development and other activities to States and localities, and in particular, assist States in making transitions from carrying out JTPA to carrying out activities under title I of WIA.

Section 170(b) provides that a portion of the funds reserved by the Secretary under WIA section 132(a)(2) be used to: (1) Assist States that do not meet the State performance measures for dislocated workers; (2) assist other States, local areas and other entities involved in providing assistance for dislocated workers and promote continuous improvement to dislocated workers under title I of WIA; or (3) assist staff who provide rapid response services, including training of those staff in proven methods of promoting, establishing and assisting labor-management or transition committees to plan for effective adjustment assistance for workers impacted by dislocation events.

Section 171(a), (b) and (c) of WIA describe employment and training projects which may be funded, as well as the processes for such funding. Section 171(d) provides for dislocated worker demonstration projects and pilot projects, multiservice and multistate projects. The purpose of dislocated worker demonstration projects is to test innovative approaches that address priorities established by the Secretary, are consistent with the goals described in WIA, and subsequently may prove beneficial in providing adjustment assistance to larger dislocated worker populations. Generally, projects will be funded as a result of competitive solicitations published in the **Federal Register**, however, the Secretary may negotiate and fund projects other than through such solicitations.

Part 671 describes the availability of a portion of the funds reserved by the Secretary under WIA section 132(a)(2)(A) for assistance to dislocated workers.

National Emergency Grants

Part 671 contains limited regulations about dislocated worker funds reserved for national emergency grants. Section 173 of WIA authorizes the Secretary to award discretionary funds to serve dislocated workers in certain situations. These regulations describe circumstances under which funds may be available, including to provide employment and training assistance to workers affected by major economic dislocations (such as plant closures, mass layoffs, closures or realignments of military installations, dislocations due to federal policies, etc.); and to provide assistance to Governors of States when FEMA has determined that a major disaster, as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 (1) and (2)), has occurred in the area.

These regulations emphasize the importance of rapid response assistance for the development of requests for national emergency funds. We set a high priority on the early collection of information about workers being laid off, so that requests for funds will be made promptly when it is determined that there are insufficient State and local formula funds available to meet the needs of workers being laid off. This process ensures that there are funds available in the local area when the workers first need the assistance. Early intervention to assist workers being dislocated is critical to enable them to find or qualify for new jobs as soon as possible after the dislocation occurs. While these regulations highlight some of the key elements and requirements for applying for national emergency funds, guidelines to apply for national emergency funds will be published separately in the **Federal Register**.

We received several comments on § 671.120, including requests that we add language to allow labor organizations the opportunity to comment on and grieve decisions regarding eligible applications to the Department, and that we add language that cites labor organizations as an example of an organization with unique capabilities to respond to a dislocation.

Response: WIA provides for labor organization membership on both State and Local Boards. In addition, labor organizations are represented on labor-management committees, where such committees are formed. These boards and committees would be involved in the development and review of National Emergency Grant requests and, therefore, labor organizations, as well as other interested parties, should have sufficient opportunity to comment on applications through those roles. While we agree that labor organizations are often valuable partners in, or operators of, dislocated worker programs, we have not granted the request to specifically name them in the regulations. Employers and other organizations may also be excellent partners or operators. To list one group to the exclusion of others could be considered unfair. Section 671.120(b) and (c), identifying ''other private entities'' and ''other entities,'' respectively, as potential

eligible applicants for National Emergency Grants are sufficiently inclusive of a wide variety of organizations, including labor organizations.

Section 671.140(c)(1) describes the deadline for a National Emergency Grant participant to be enrolled in training to be eligible for needs-related payments under the grant. The current deadline is by the end of the 6th week following the date of grant award. Comments focused on extending this deadline. The commenters viewed the time frame as overly restrictive, given the new requirements under WIA, such as receipt of core and intensive services and the use of ITA's.

Response: This provision is based on prior years' JTPA appropriations language, and is included to give States additional flexibility, beyond the 13/8 week enrollment in training requirement at WIA section 134(e)(3)(B), in the event that there is a lack of formula or emergency grant funds in the State or local area at the time of the dislocation. We have not granted the request to extend the deadline, as this deadline is only to prevent a participant from losing their eligibility for needs-related payments because funds are not available in the State or local area to enroll the participant in training by the 13/8 week deadline. We have, however, revised the regulations to include other exceptions ''as described in the National Emergency Grant application guidelines''. Early intervention is critical in getting workers back to work quickly, potential grant participants should be receiving core and intensive services while a National Emergency Grant application is being developed and reviewed, then enrolled in training once the grant funds become available. While 20 CFR 663.160 and 663.240 require that an individual receive at least one core and one intensive service, respectively; 20 CFR 663.165 and 663.250 provide that there is no minimum time period in which an individual must participate in core services before receiving intensive services, nor in intensive services before moving to training services, that would hinder a grant participants from meeting the six week time frame.

Part 652—Establishment and Functioning of State Employment Services

Introduction

In amending the Wagner-Peyser Act in title III of the Workforce Investment Act (WIA) of 1998, Congress intended to encourage coordination in the planning and delivery of Wagner-Peyser Act and WIA title I services, while retaining State agency administration of a separate Wagner-Peyser Act program and funding stream for the delivery of services in a One-Stop environment. The amendments to the Wagner-Peyser Act require the State agency to provide labor exchange services delivered by State merit-staff employees as part of a One-Stop delivery system, and to ensure that the delivery of services funded under the Wagner-Peyser Act is coordinated with other One-Stop partner programs in accordance with a five-year strategic plan.

Subpart A—Employment Service Operations

The rules governing the operation of the basic labor exchange program have been located in 20 CFR part 652, subpart A for many years and are well known to State agencies administering the Wagner-Peyser Act. The rules governing Wagner-Peyser Act services in a One-Stop delivery system environment, as required by WIA, are contained in subpart C of 20 CFR part 652.

The final regulations at part 652 subpart A contain revisions that update definitions and update references in administrative provisions.

Under the authority of the Wagner-Peyser Act, the Governor is required to designate a State agency to administer funds authorized under the Wagner-Peyser Act and to provide labor exchange services to employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and persons with disabilities.

We received no written comments about the Interim Final Rule's changes to subpart A. However, we have made some technical changes to conform the regulations to WIA requirements. The words ''Planning and'' are removed from the heading of subpart A to reflect the previous removal of §§ 652.6 and 652.7 that discussed planning. Regulations for State plans are now located in subpart C at §§ 652.211 through 652.214. The definition of State Job Training Coordinating Council (SJTCC), at § 652.1, is removed. Citation errors are corrected in the revision to § 652.5.

Technical changes to § 652.8, Administrative Provisions, consist of revised references to specified federal regulations and OMB Circular A–87 (Revised). We have made a technical change to § 652.8(j)(1), to clarify that Wagner-Peyser Act grantees are required to comply with all applicable Federal nondiscrimination laws, including laws prohibiting discrimination on the basis of the factors specified in the regulation. As it is used in the WIA regulations, the term ''including'' in this provision is used to indicate an illustrative, but not exhaustive list of examples. Additionally, the term ''handicap'' has been changed to ''disability'' to correspond to the phrase normally used in laws prohibiting discrimination on the basis of handicap or disability.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Part 652, subpart C, describes requirements for the establishment and functioning of State Wagner-Peyser Act services in a One-Stop delivery system environment. Governors must designate a State agency responsible for administering Wagner-Peyser Act funds as a distinct funding source. The rule requires that the State agency retain responsibility for, and oversight of, all Wagner-Peyser Act labor exchange services provided through the One-Stop delivery system.

Employment Services in the One-Stop Delivery System

Funds allocated to States under section 7(a) of the Wagner-Peyser Act must be used by the State agency to provide the three methods of labor exchange services (self-service, facilitated self-help service, and staff-assisted service) in at least one comprehensive physical center in each local workforce investment area during normal and customary hours of operation, and in accordance with a local Memorandum of Understanding (MOU). Within the local area, there also may be affiliated sites, as described in § 652.202(b), that provide the labor exchange services described at section 7(a) of the Wagner-Peyser Act. In accordance with the local MOU, and, consistent with State and Local Plans, these affiliated sites should be an important part of the State's network of local sites that provide job seekers and employers multiple access points to One-Stop partners' services through the One-Stop delivery system. We have revised §§ 652.202 and 652.207 to add the word ''comprehensive'' which was omitted in error in the Interim Final Rule. To ensure coordination of service delivery with title I of WIA, we have revised § 652.202(b)(1) to reference § 652.207(b). For the same reason, we have revised § 652.202(b)(2) to reference 20 CFR 662.100. Finally, we emphasize that Wagner-Peyser Act funded services must be available to and accessible by individuals with disabilities.

Wagner-Peyser Act Funds

We received comments about funds authorized under section 7 of the Wagner-Peyser Act. One commenter expressed concern that § 652.205 had given State legislatures the authority to distribute funds under section 7(c) of the Wagner-Peyser Act.

Response: Under section 4 of the Wagner-Peyser Act, the Governor is required to designate or authorize the creation of a State agency responsible for cooperating with the Secretary under the Wagner-Peyser Act. The State agency, under the direction of the Governor, is responsible for the distribution and oversight of all authorized funds under section 7 of the Wagner-Peyser Act, as described in § 652.203. Section 7(c) of the Wagner-Peyser Act does not authorize State legislatures to distribute Wagner-Peyser Act funds. Thus, no change needs to be made to § 652.205. While the State legislature may not distribute the funds, it may have the authority to set priorities for the uses of Wagner-Peyser funds.

Another commenter suggested that § 652.206 clearly indicate the limitations on the use of funds under section 7(b) of the Wagner-Peyser Act.

Response: Since § 652.204 references the specific activities authorized for funds reserved by the Governor under section 7(b), no change has been made to § 652.206.

Wagner-Peyser Act Services

Wagner-Peyser Act funds must be used to provide core services and may be used to provide applicable intensive services, as defined in title I of WIA. One commenter asked that core and intensive services be defined in the regulations and asked how it would be determined whether to provide intensive services.

Response: Section 652.206 contains cross-references to the definitions of core and intensive services, which are found on 20 CFR 663.150 and 663.200. The regulations allow the State agency discretion in providing required core and applicable intensive Wagner-Peyser Act services under section 7(a) of the Wagner-Peyser Act. Applicable intensive services include services such as individual and group counseling, job search and placement assistance, staff-assisted referrals to jobs, and staff-assisted employer services. These services must be provided consistent with the needs of job seekers and employers, in accordance with a local MOU. State agencies must ensure the availability of an appropriate mix of services, ranging from electronic self-services to staff-assisted services, in their One-Stop delivery systems. No change has been made to § 652.206.

Two commenters suggested that Wagner-Peyser Act resources should be used solely, or to the greatest extent possible, to provide the core services delivered through the One-Stop delivery system.

Response: The rule, at 20 CFR 662.250, discusses the requirements to provide core services funded under other One-Stop partner programs. However, both the Wagner-Peyser Act and § 652.206 permit the expenditure of Wagner-Peyser Act funds on applicable intensive services as well. Funding of core services authorized and traditionally provided by the Wagner-Peyser program and other One-Stop partner programs should be determined by the local MOU. No change has been made to the regulations.

Services to UI Claimants

One commenter suggested that the term ''other activities'' referred to at section 3(c)(3) of the Wagner-Peyser Act, be specified in the regulations.

Response: We agree with the commenter and have revised § 652.209 to specify what are considered ''other activities.'' These ''other activities'' are: (1) coordination of labor exchange services with the provision of UI eligibility services as required by section 5(b)(2) of the Wagner-Peyser Act; and (2) administration of the work test and provision of job finding and placement services as required by section 7(a)(3)(F) of the Wagner-Peyser Act.

The commenter also expressed concern about the availability of Wagner-Peyser Act funds to provide reemployment services to UI claimants who are required to participate in reemployment services as a condition for receipt of benefits.

Response: Section 652.209 requires the provision of Wagner-Peyser Act reemployment services to those UI claimants required by Federal or State law to participate in reemployment services as a condition for receipt of UI benefits, to the extent that funds are available. An individual's requirement to participate in reemployment services also may be met through the provision of services funded through sources other than the Wagner-Peyser Act. States have discretion in determining the sources of funding for services to these claimants. Moreover, UI claimants who are not required to participate in reemployment services as a condition for receipt of UI benefits, also may request reemployment services provided under § 652.210.

State Planning Requirements

One commenter identified the need to make clear that the detailed Wagner-Peyser Act plan is part of the Strategic Five-Year Plan for Title I of the Workforce Investment Act and the Wagner-Peyser Act submitted by the Governor in accordance with WIA regulations at 20 CFR 661.220.

Response: We have made a technical change to § 652.211 to indicate that the State agency must prepare that portion of the Strategic Five-Year Plan for Title I of the Workforce Investment Act and Wagner-Peyser Act describing the delivery of services provided under the Wagner-Peyser Act. Further, to correct an editorial error in § 652.214, the requirement on modifications to the State Plan to adjust service strategies if performance goals are not met has been moved to the list of requirements in § 652.212(b).

Delivery of Wagner-Peyser Act Services by State Merit-Staff Employees

We received several comments about the Secretary's authority under sections 3(a) and 5(b) of the Wagner-Peyser Act to require the delivery of labor exchange services by merit-staff employees. Section 652.215 of the final regulations reflects the Department's authority under the Wagner-Peyser Act, affirmed in *State of Michigan* v. *Alexis M. Herman,* 81 F.Supp. 2d 840 (W.D. Mich. 1998), to require that job finding, placement, and reemployment services funded under the Wagner-Peyser Act, including services to veterans, be delivered by State merit-staff employees.

Two commenters suggested that § 652.215 be clarified to stipulate that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Three commenters suggested that the interpretation of the merit-staffing requirement be broadened specifically to include units of general local government.

Response: After carefully examining and considering all of the comments received, we have revised § 652.215 to make clear that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Since the beginning of the Federal-State Wagner-Peyser Act program, we have required that annual State Wagner-Peyser Act service plans include a merit system of personnel administration. To ensure consistency in the application of merit personnel systems and to promote greater statewide administrative efficiency, merit-staff employees of the State agency must deliver Wagner-Peyser Act services, as a condition for

receipt of grants. We have determined that State agency merit-staffing preserves and maintains competence, impartiality, and nonpartisanship in the administration of Wagner-Peyser Act services to job seekers and employers as part of the One-Stop delivery system.

Under section 3(a) of the Wagner-Peyser Act, prior to issuance of the Interim Final Rule, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services utilizing non-State agency employees in the States of Colorado, Massachusetts, and Michigan. These three demonstrations were permitted as exceptions to the long-standing policy described above in order to assess the effectiveness of alternative delivery systems. We have determined that these three demonstrations reflect a sufficient range of delivery options utilizing non-State agency employees to determine whether using such employees is an effective and efficient way to deliver Wagner-Peyser services. Therefore, the Department is not authorizing other States to demonstrate Wagner-Peyser Act service delivery using non-State agency employees. Failure to comply with the State merit staffing requirements of § 652.215 may result in revocation of authority to draw down Wagner-Peyser Act funds, disallowance of costs, and/or decertification of a State to receive Wagner-Peyser Act funds.

One commenter suggested that the Department develop federal procedures to ensure compliance with State merit-staffing requirements.

Response: We believe that State merit-staffing compliance is ensured through the final regulations at 20 CFR part 652 and the federal review guidelines contained in the *Wagner-Peyser Act Review Guide for Basic Labor Exchange Services* (ETA Field Memorandum No. 14–99, January 12, 1999). Thus, at this time, we do not believe there is a need to issue further guidance.

Guidance by the One-Stop Operator

One commenter suggested that the provision in § 652.216 which limits the ability of a One-Stop operator, other than the State agency, to provide only guidance to State agency merit-staff employees is contrary to the concept of service integration by preventing the operator from providing supervision to all employees in the One-Stop center. Other commenters recommended that the regulations remain silent on the issue of guidance. Another suggestion was that labor unions, whose members and/or bargaining agreements are affected by the terms of a local MOU that defines ''guidance,'' must provide written concurrence.

Response: The focus of these comments was on whether the word ''guidance'' in § 652.216 gives the One-Stop operator too little or too much control over State agency employees. After careful consideration of the comments, we are retaining the term ''guidance'' to describe the level of supervision of State merit-staff employees by the One-Stop operator. This term best reflects the appropriate relationship that should exist between a non-State agency One-Stop operator and State merit-staff employees funded under the Wagner-Peyser Act in the day-to-day operation of the One-Stop center. To ensure consistency with collective bargaining agreements, we have revised § 652.216 to allow the One-Stop operator to provide guidance to merit-staff employees of the State agency consistent with the provisions of the Wagner-Peyser Act, the local MOU, and applicable collective bargaining agreements.

Finally, a commenter indicated that the wording regarding delegation to ''any other public agency'' contained in the parenthetical phrase in § 652.216 of the Interim Final Rule may appear to be contradictory.

Response: We agree that the parenthetical phrase is unnecessary since the State agency is solely responsible for personnel matters pertaining to merit-staff employees of the State agency funded by the Act. Thus, the parenthetical phrase is removed.

Additional Comments

We received a number of comments that did not pertain directly to 20 CFR part 652 subpart A or C, but which did refer to the Wagner-Peyser Act. One was a question of whether priority of service to veterans under the Wagner-Peyser Act has been maintained.

Response: The rule, at 20 CFR 652, Subpart B—Services to Veterans is retained. Subpart B refers to 20 CFR part 1001 which contains criteria for priority of service to veterans under the Wagner-Peyser Act.

Another commenter asked whether the current migrant and seasonal farmworkers' regulations for the Employment Service remain in effect.

Response: The requirements for services to migrant and seasonal farmworkers and other requirements pertaining to the administration of Wagner-Peyser Act services at 20 CFR parts 653 and 658 remain in effect.

A commenter expressed concern about the lack of a limit on administrative costs for Wagner-Peyser Act services as well as the lack of a requirement to track the income of job seekers.

Response: The WIA amendments to the Wagner-Peyser Act did not include a limitation on administrative costs or a requirement to track the income of job seekers. The Employment Service system created by the Wagner-Peyser Act has always been universally available to all job seekers regardless of income. Nothing in WIA has changed this requirement. Thus, we can see no need to track job seekers' income. We intend, however, to develop a system of performance measures for Wagner-Peyser funded labor exchange services and will soon publish for comment a proposal describing such measures.

III. Regulatory Flexibility and Regulatory Impact Analysis

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. ''Small entities'' are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). We have assessed the potential impact of this Final Rule by consulting with a wide range of small entities, in order to identify and address any areas of concern. Based on that assessment, we certify that the Final Rule, as promulgated, will not have a significant impact on a substantial number of small entities. We are transmitting a copy our certification to the Chief Counsel for Advocacy of the Small Business Administration.

The WIA Final Rule implements major reforms to the nation's job training system. The WIA will provide resources to States, localities, and other entities, including small entities, to assist youth, adults, and dislocated workers in preparing for, obtaining and retaining employment. This Rule sets forth the rights, responsibilities and conditions under which State and local governments may receive grants to operate programs in local workforce investment areas with these funds. Governments in local workforce investment areas are not small governmental entities. These areas generally have a population of at least 500,000 and are intended to replace existing service areas under the Job Training Partnership Act (JTPA) which generally have a population of at least 200,000. Consequently, we do not

foresee an adverse impact on small governmental entities. Nevertheless, we have consulted extensively with State and local officials and their representatives to insure that any potential effect would be minimal. These consultations included two week-long conferences in which State and local governmental participants worked in groups divided by specialized area of interest, and the participation of State and local governmental officials under the Intergovernmental Personnel Act.

As during the development of the Interim Final Rule, we also provided a number of opportunities, through a variety of media, for the input of small businesses, non-profits and any other interested parties. These opportunities included town hall meetings spanning the nation in eleven locations, and an interactive web site providing ETA policy and responses to questions from the public. Additionally, in order to solicit comments from the widest possible audience, we broadly disseminated our developing policies through the publication of consultation documents which were available on the Internet, published in the **Federal Register** and distributed throughout the employment and training community. These documents were published before all the issues had been fully resolved so that stakeholders could truly have a voice in the policy making process. In addition to the Interim Final Rule, which was posted on our web site in addition to being published in the **Federal Register**, we also used the Internet to publish guidance about policy issues and to engage the system in discussions around those issues.

The Final Rule provides significant flexibility to States and local governments to design programs and to determine policy and spending priorities for the use of WIA grant funds. This policy-making flexibility is embodied in 20 CFR 661.120. The Rule provides States and local governments with additional flexibility to design systems that meet the specific needs of each State and local area through the general and work-flex waiver provisions at 20 CFR 661.410 and 661.430. We have taken steps to further ameliorate any potential burdens through 20 CFR 667.210 of the Final Rule, which provides that States and localities may use a portion of their grant funds (up to five percent at the State level and up to ten percent at the local level) for management and administration of the grant, rather than for the direct provision of services to participants. Because the WIA statutory limit on administrative costs is lower than the existing JTPA limit, we extensively consulted with States and localities about the regulatory definition of these administrative costs to ensure that this cost category is defined as flexibly as possible. We also initiated a pilot study of ten JTPA service delivery areas (SDA's), to assess the Interim Final Rule's definition of administrative costs. As a result of those consultations and our study, we made significant adjustments to the definition of administrative costs in the Final Rule in order to take account of the practical realities of implementing and maintaining this new system.

A portion of WIA funds is available to certain communities in direct grants from the Department. We have consulted with representatives of the migrant and seasonal farm worker community, and Indian and Native American tribal governments to minimize any burdens that provisions of the Rule would have on those communities. The Rule also provides limited authority to these grantees to receive waivers of certain provisions of the Rule, to lessen any burden on these communities.

To further ameliorate any burden on WIA direct grantees, the Rule permits direct grantees to use a portion of WIA funds for administrative costs expenditure. Unlike formula funds, the administrative cost limit for direct grantees is not specified in the Rule but will be negotiated in the grant agreement to take into account individual circumstances. Due to some confusion, new regulatory provisions have been added to expressly state this. Similarly, the period of availability for expenditure of grant funds is established in the grant agreement rather than set by Rule to take into account individual circumstances. Based on provisions such as these, we have concluded that the Rule will not place undue burdens on small entities. In addition, under the Small Business Regulatory Fairness Act (SBREFA) (5 U.S.C. Chapter 8), we have determined that this Final Rule is not a ''major rule,'' as defined in 5 U.S.C. 804(2). We certify that this Final Rule has been assessed in accordance with Pub. L. 105–227, 112 Stat. 2681, for its effect on family well-being.

IV. Executive Order 12866

Under Executive Order 12866, we have evaluated this Final Rule and have determined its provisions are consistent with the statement of regulatory philosophy and principles promulgated by the Executive Order. The Department of Labor is required by statute to prescribe regulations for the WIA program. We have made every reasonable effort to obtain input in a purposeful manner from a variety of interested parties (State and local government officials, community-based organizations, Intergovernmental Organizations, other stakeholders, and the general public). The WIA grants increase the resources available to the public and private organizations that promote long-term employment and self-sufficiency. We have determined the Final Rule will not have an adverse effect in a material way on the nation's economy.

We have developed the Final Rule in close consultation with the Department of Education, and with other interested Federal agencies. Based on those consultations, we have determined that this Final Rule will not create a serious inconsistency or otherwise interfere with any action taken or planned by another Federal Agency.

This Final Rule implements the Workforce Investment Act, which is the first major reform of the nation's job training and employment system in over 15 years. Consequently, this Final Rule raises novel policy issues. Therefore, this is a significant regulatory action which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

V. Unfunded Mandates

The Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Section 202 of UMRA requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

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

We have determined that the WIA Final Rule will not mandate the expenditure by the State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and

advising any significant or uniquely impacted small government.

VI. Executive Order 12988

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

VII. Executive Order 13132

Federalism Impact Statement

There are some federalism implications in this rule, for example, the regulations implementing sections 3(a) and 5(b) of the Wagner-Peyser Act may have a direct effect on the States' personnel management policies. Specifically, 20 CFR 652.215 and 652.216, reiterate, in regulation, the long-standing policy of requiring that the delivery of Wagner-Peyser Act labor exchange services be provided by State merit staff employees in the context of the One-Stop delivery system. Since the implementation of the Wagner-Peyser Act of 1933, there has been an uninterrupted application of this requirement as a condition imposed upon States for receipt of grants for the administration of Wagner-Peyser Act services. The requirement that job finding, placement, and reemployment services funded under the Wagner-Peyser Act, including services to veterans, be delivered by merit-staff employees was affirmed by the Federal District Court in *Michigan* v. *Alexis M. Herman*, 81 F.Supp. 2d 840 (W.D. Mich. 1998).

Throughout the development of the Interim Final Rule and the Final Rule, we participated in numerous consultations with State and local officials, including organizations representing elected officials, about these particular provisions as well as the regulations in general. These consultations began with the development of the Interim Final Rule before the issuance of Executive Order 13132 and continued throughout the rulemaking process. The groups consulted included the National Governors Association, the U.S. Conference of Mayors, the National Association of State Legislators, the Interstate Conference of Employment Security Agencies, the National Association of Counties, the National League of Cities, and the U.S. Conference of Black Mayors. Perhaps because 20 CFR 652.215 and 652.216 merely reiterate the long-standing policy of the Department, State and local government officials and representatives did not raise any concerns with this on-going policy. During these consultations we did receive questions regarding the scope and duration of the three demonstrations authorized by the Secretary, to which we promptly responded. Although not from State and local government officials, we did receive some written comments on these provisions. These are discussed and responded to in detail in the preamble section on part 652.

After consulting with the groups specified above, and carefully examining and considering all of the concerns raised, we have revised 20 CFR 652.215 to more clearly state our long-standing policy position that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Since the beginning of the Federal-State Wagner-Peyser Act program, we have required that annual State Wagner-Peyser Act service plans include a merit system of personnel administration. To ensure consistency in the application of merit personnel systems and to promote greater statewide administrative efficiency, merit-staff employees of the State agency must deliver Wagner-Peyser Act services, as a condition for receipt of grants. Under 20 CFR 652.216 non-merit staff employees are not prohibited from providing guidance to merit staff employees. We have determined that State merit-staffing preserves and maintains competence, impartiality, and nonpartisanship in the administration of Wagner-Peyser Act services to job seekers and employers as part of the One-Stop delivery system.

Under section 3(a) of the Wagner-Peyser Act, before issuance of the Interim Final Rule, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services using non-State agency employees in the States of Colorado, Massachusetts, and Michigan. These three demonstrations were permitted as exceptions to the long-standing policy described above in order to assess the effectiveness of alternative delivery systems. We have determined that these three demonstrations reflect a sufficient range of delivery options using non-State agency employees to determine whether using such employees is an effective and efficient way to deliver Wagner-Peyser services. No additional demonstrations will be authorized.

We, therefore, have promulgated these regulations only after extensive consultations as well as initiating actual demonstrations in three States.

VIII. Effective Date

WIA became effective upon the date of enactment, August 7, 1998. We determined, in accordance with 5 U.S.C. 553(b)(3)(B), that the statutory mandate to promulgate regulations within 180 days of the enactment of the statute constituted good cause for waiving notice and comment proceeding in order for the timely issuance of regulations to assist States in operating under WIA as early as possible. Congress also recognized this urgency in section 506(c) of the Act, by specifically authorizing the issuance of an Interim Final Rule. The Interim Final Rule set a comment period to elicit any concerns raised by the rule for consideration in the development of this Final Rule. We provided a comment period of 90 days to provide a significant period for public input into any revisions to part 652, and parts 660 through 671 for the Final Rule. We fully reviewed all comments received, and considered the input provided by our State, local and Federal partners through our many consultations. This Final Rule will become effective on September 11, 2000.

IX. Catalog of Federal Domestic Assistance Number

The program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.255.

List of Subjects in 20 CFR Parts 652 and 660 through 671

Employment, Grant programs, Job training programs, Labor.

Signed at Washington, DC, this 24th day of July, 2000.

Alexis M. Herman,

Secretary of Labor.

For the reasons stated in the preamble, 20 CFR Chapter V is amended as follows:

1. Parts 660 through 671 are revised to read as follows:

PART 660—INTRODUCTION TO THE REGULATIONS FOR WORKFORCE INVESTMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Sec.

660.100 What is the purpose of title I of the Workforce Investment Act of 1998?
660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?
660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

§ 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

The purpose of title I of the Workforce Investment Act of 1998 (WIA) is to provide workforce investment activities that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation's economy. These goals are achieved through the workforce investment system. (WIA sec. 106.)

§ 660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?

The regulations found in 20 CFR parts 660 through 671 set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIA. This part 660 describes the purpose of that Act, explains the format of these regulations and sets forth definitions for terms that apply to each part. Part 661 contains regulations relating to Statewide and local governance of the workforce investment system. Part 662 describes the One-Stop system and the roles of One-Stop partners. Part 663 sets forth requirements applicable to WIA title I programs serving adults and dislocated workers. Part 664 sets forth requirements applicable to WIA title I programs serving youth. Part 665 contains regulations relating to Statewide activities. Part 666 describes the WIA title I performance accountability system. Part 667 sets forth the administrative requirements applicable to programs funded under WIA title I. Parts 668 and 669 contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 670 and 671 describe the particular requirements applicable to the Job Corps and other national programs, respectively. In addition, part 652 describes the establishment and functioning of State Employment Services under the Wagner-Peyser Act, and 29 CFR part 37 contains the Department's nondiscrimination regulations implementing WIA section 188.

§ 660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

In addition to the definitions set forth at WIA section 101, the following definitions apply to the regulations in 20 CFR parts 660 through 671:

Department or DOL means the U.S. Department of Labor, including its agencies and organizational units.

Designated region means a combination of local areas that are partly or completely in a single labor market area, economic development region, or other appropriate contiguous subarea of a State, that is designated by the State under WIA section 116(c), or a similar interstate region that is designated by two or more States under WIA section 116(c)(4).

Employment and training activity means a workforce investment activity that is carried out for an adult or dislocated worker.

EO data means data on race and ethnicity, age, sex, and disability required by 29 CFR part 37 of the DOL regulations implementing section 188 of WIA, governing nondiscrimination.

ETA means the Employment and Training Administration of the U.S. Department of Labor.

Grant means an award of WIA financial assistance by the U.S. Department of Labor to an eligible WIA recipient.

Grantee means the direct recipient of grant funds from the Department of Labor. A grantee may also be referred to as a recipient.

Individual with a disability means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). For purposes of WIA section 188, this term is defined at 29 CFR 37.4.

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 Board means a Local Workforce Investment Board established under WIA section 117, to set policy for the local workforce investment system.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or a future period. For purposes of the reallotment process described at 20 CFR 667.150, the Secretary also treats as State obligations any amounts allocated by the State under WIA sections 128(b) and 133(b) to a single area State or to a balance of State local area administered by a unit of the State government, and inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities.

Outlying area means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Participant means an individual who has registered under 20 CFR 663.105 or 664.215 and has been determined to be eligible to participate in and who is receiving services (except for follow up services) under a program authorized by WIA title I. Participation commences on the first day, following determination of eligibility, on which the individual begins receiving core, intensive, training or other services provided under WIA title I.

Recipient means an entity to which a WIA grant is awarded directly from the Department of Labor to carry out a program under title I of WIA. The State is the recipient of funds awarded under WIA sections 127(b)(1)(C)(I)(II), 132(b)(1)(B) and 132(b)(2)(B). The recipient is the entire legal entity that received the award and is legally responsible for carrying out the WIA program, even if only a particular component of the entity is designated in the grant award document.

Register means the process for collecting information to determine an individual's eligibility for services under WIA title I. Individuals may be registered in a variety ways, as described in 20 CFR 663.105 and 20 CFR 664.215.

Secretary means the Secretary of the U.S. Department of Labor.

Self certification means an individual's signed attestation that the information he/she submits to demonstrate eligibility for a program under title I of WIA 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 Board means a State Workforce Investment Board established under WIA section 111.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money made under a grant by a grantee to an eligible subrecipient. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *Grant* in this part.

Subrecipient means an entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided. DOL's audit requirements for States, local governments, and non-profit organizations provides guidance on distinguishing between a subrecipient and a vendor at 29 CFR 99.210.

Unobligated balance means the portion of funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Vendor means an entity responsible for providing generally required goods or services to be used in the WIA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. DOL's audit requirements for States, local governments, and non-profit organizations provides guidance on distinguishing between a subrecipient and a vendor at 29 CFR 99.210.

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 20 CFR parts 660 through 671, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIA section 188 in 29 CFR part 37.

Workforce investment activities mean the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, as described in WIA section 134, and youth activities, as described in WIA section 129.

Youth activity means a workforce investment activity that is carried out for youth.

PART 661—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A —General Governance Provisions

Sec.
661.100 What is the workforce investment system?
661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?
661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

Subpart B—State Governance Provisions

661.200 What is the State Workforce Investment Board?
661.203 What is meant by the terms ''optimum policy making authority'' and ''expertise relating to [a] program, service or activity''?
661.205 What is the role of the State Board?
661.207 How does the State Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of WIA section 111(g)?
661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?
661.220 What are the requirements for the submission of the State Workforce Investment Plan?
661.230 What are the requirements for modification of the State Workforce Investment Plan?
661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?
661.250 What are the requirements for designation of local workforce investment areas?
661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?
661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?
661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?
661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

Subpart C—Local Governance Provisions

661.300 What is the Local Workforce Investment Board?
661.305 What is the role of the Local Workforce Investment Board?
661.307 How does the Local Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of WIA section 117(e)?
661.310 Under what conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?
661.315 Who are the required members of the Local Workforce Investment Boards?
661.317 Who may be selected to represent a particular One-Stop partner program on the Local Board when there is more than one partner program entity in the local area?
661.320 Who must chair a Local Board?
661.325 What criteria will be used to establish the membership of the Local Board?
661.330 Under what circumstances may the State use an alternative entity as the Local Workforce Investment Board?
661.335 What is a youth council, and what is its relationship to the Local Board?
661.340 What are the responsibilities of the youth council?
661.345 What are the requirements for the submission of the local workforce investment plan?
661.350 What are the contents of the local workforce investment plan?
661.355 When must a local plan be modified?

Subpart D—Waivers and Work-Flex

661.400 What is the purpose of the General Statutory and Regulatory Waiver Authority provided at section 189(i)(4) of the Workforce Investment Act?
661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?
661.420 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under WIA section189(i)(4)?
661.430 Under what conditions may the Governor submit a Workforce Flexibility Plan?
661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—General Governance Provisions

§ 661.100 What is the workforce investment system?

Under title I of WIA, the workforce investment system provides the framework for delivery of workforce investment activities at the State and local levels to individuals who need those services, including job seekers, dislocated workers, youth, incumbent workers, new entrants to the workforce, veterans, persons with disabilities, and employers. Each State's Governor is required, in accordance with the requirements of this part, to establish a State Board; to designate local workforce investment areas; and to oversee the creation of Local Boards and One-Stop service delivery systems in the State.

§ 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?

(a) Successful governance of the workforce investment system will be achieved through cooperation and coordination of Federal, State and local governments.

(b) The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have flexibility to design systems and deliver services in a manner designed to best achieve the

goals of WIA based on their particular needs. The WIA regulations provide the framework in which State and local officials can exercise such flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are broadly defined, and are subject to State and local interpretation.

(c) The Secretary, in consultation with other Federal Agencies, as appropriate, may publish guidance on interpretations of statutory and regulatory provisions. State and local policies, interpretations, guidelines and definitions that are consistent with interpretations contained in such guidance will be considered to be consistent with the Act for purposes of § 661.120.

§ 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

(a) Local areas should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and the regulations issued under the Act, Federal statutes and regulations governing One-Stop partner programs, and with State policies.

(b) States should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and the regulations issued under the Act, as well as Federal statutes and regulations governing One-Stop partner programs.

Subpart B—State Governance Provisions

§ 661.200 What is the State Workforce Investment Board?

(a) The State Board is a board established by the Governor in accordance with the requirements of WIA section 111 and this section.

(b) The membership of the State Board must meet the requirements of WIA section 111(b). The State Board must contain two or more members representing the categories described in WIA section 111(b)(1)(C)(iii)–(v), and special consideration must be given to chief executive officers of community colleges and community based organizations in the selection of members representing the entities identified in WIA section 111(b)(1)(C)(v).

(c) The Governor may appoint any other representatives or agency officials, such as agency officials responsible for economic development, child support and juvenile justice programs in the State.

(d) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(e) A majority of members of the State Board must be representatives of business. Members who represent business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policy making or hiring authority, including members of Local Boards.

(f) The Governor must appoint the business representatives from among individuals who are nominated by State business organizations and business trade associations. The Governor must appoint the labor representatives from among individuals who are nominated by State labor federations.

(g) The Governor must select a chairperson of the State Board from the business representatives on the board.

(h) The Governor may establish terms of appointment or other conditions governing appointment or membership on the State Board.

(i) For the programs and activities carried out by One-Stop partners, as described in WIA section 121(b) and 20 CFR 662.200 and 662.210, the State Board must include:

(1) The lead State agency officials with responsibility for such program, or

(2) In any case in which no lead State agency official has responsibility for such a program service, a representative in the State with expertise relating to such program, service or activity.

(3) If the director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, does not represent the State Vocational Rehabilitation Services program (VR program) on the State Board, then the State must describe in its State plan how the member of the State Board representing the VR program will effectively represent the interests, needs, and priorities of the VR program and how the employment needs of individuals with disabilities in the State will be addressed.

(j) 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 (d) through (f) of this section, for each entity. (WIA sec. 111)

§ 661.203 What is meant by the terms ''optimum policy making authority'' and ''expertise relating to [a] program, service or activity''?

For purposes of selecting representatives to State and local workforce investment boards:

(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 ''expertise relating to [a] program, service or activity'' includes a person who is an official with a One-stop partner program and a person with documented expertise relating to the One-stop partner program.

§ 661.205 What is the role of the State Board?

The State Board must assist the Governor in the:

(a) Development of the State Plan;

(b) Development and continuous improvement of a Statewide system of activities that are funded under subtitle B of title I of WIA, or carried out through the One-Stop delivery system, including—

(1) Development of linkages in order to assure coordination and nonduplication among the programs and activities carried out by One-Stop partners, including, as necessary, addressing any impasse situations in the development of the local Memorandum of Understanding; and

(2) Review of local plans;

(c) Commenting at least once annually on the measures taken under section 113(b)(14) of the Carl D. Perkins Vocational and Technical Education Act;

(d) Designation of local workforce investment areas,

(e) Development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas, as permitted under WIA sections 128(b)(3)(B) and 133(b)(3)(B);

(f) Development and continuous improvement of comprehensive State performance measures, including State adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State, as required under WIA section 136(b);

(g) Preparation of the annual report to the Secretary described in WIA section 136(d);

(h) Development of the Statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and

(i) Development of an application for an incentive grant under WIA section 503. (WIA sec. 111(d).)

§ 661.207 How does the State Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of WIA section 111(g)?

The State Board must conduct its business in an open manner as required by WIA section 111(g), by making available to the public, on a regular basis through open meetings, information about the activities of the State Board. This includes information about the State Plan prior to submission of the plan; information about membership; the development of significant policies, interpretations, guidelines and definitions; and, on request, minutes of formal meetings of the State Board.

§ 661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?

(a) The State may use any State entity that meets the requirements of WIA section 111(e) to perform the functions of the State Board.

(b) If the State uses an alternative entity, the State workforce investment plan must demonstrate that the alternative entity meets all three of the requirements of WIA section 111(e). Section 111(e) requires that such entity:

(1) Was in existence on December 31, 1997;

(2)(i) Was established under section 122 (relating to State Job Training Coordinating Councils) or title VII (relating to State Human Resource Investment Councils) of the Job Training Partnership Act (29 U.S.C.1501 *et seq.*), as in effect on December 31, 1997, or

(ii) Is substantially similar to the State Board described in WIA section 111(a), (b), and (c) and § 661.200; and

(3) Includes, at a minimum, two or more representatives of business in the State and two or more representatives of labor organizations in the State.

(c) If the alternative entity does not provide for representative membership of each of the categories of required State Board membership under WIA section 111(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 investment system. The State Board may maintain an ongoing role for an unrepresented membership group, including entities carrying out One-stop partner programs, by means such as regularly scheduled consultations with entities within the unrepresented membership groups, by providing an opportunity for input into the State Plan or other policy development by unrepresented membership groups, or by establishing an advisory committee of unrepresented membership groups.

(d) If the membership structure of the alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the State Board. In such case, the Governor must establish a new State Board which meets all of the criteria of WIA section 111(b).

(e) A significant change in the membership structure includes any significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made. A significant change in the membership structure is considered to have occurred when members are added to represent groups not previously represented on the entity. A significant change in the membership structure is not considered to have occurred when additional members are added to an existing membership category, when non-voting members are added, or when a member is added to fill a vacancy created in an existing membership category.

(f) In 20 CFR parts 660 through 671, all references to the State Board also apply to an alternative entity used by a State.

§ 661.220 What are the requirements for the submission of the State Workforce Investment Plan?

(a) The Governor of each State must submit a State Workforce Investment Plan (State Plan) in order to be eligible to receive funding under title I of WIA and the Wagner-Peyser Act. The State Plan must outline the State's five year strategy for the workforce investment system.

(b) The State Plan must be submitted in accordance with planning guidelines issued by the Secretary of Labor. The planning guidelines set forth the information necessary to document the State's vision, goals, strategies, policies and measures for the workforce investment system (that were arrived at through the collaboration of the Governor, chief elected officials, business and other parties), as well as the information required to demonstrate compliance with WIA, and the information detailed by WIA and the WIA regulations, including 29 CFR part 37, and the Wagner-Peyser Act and the Wagner-Peyser regulations at 20 CFR part 652:

(c) The State Plan must contain a description of the State's performance accountability system, and the State performance measures in accordance with the requirements of WIA section 136 and 20 CFR part 666.

(d) The State must provide an opportunity for public comment on and input into the development of the State Plan prior to its submission. The opportunity for public comment must include an opportunity for comment by representatives of business, representatives of labor organizations, and chief elected official(s) and must be consistent with the requirement, at WIA section 111(g), that the State Board makes information regarding the State Plan and other State Board activities available to the public through regular open meetings. The State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) The Secretary reviews completed plans and must approve all plans within ninety days of their submission, unless the Secretary determines in writing that:

(1) The plan is inconsistent with the provisions of title I of WIA or the WIA regulations, including 29 CFR part 37. For example, a finding of inconsistency would be made if the Secretary and the Governor have not reached agreement on the adjusted levels of performance under WIA section 136(b)(3)(A), or there is not an effective strategy in place to ensure development of a fully operational One-Stop delivery system in the State; or

(2) The portion of the plan describing the detailed Wagner-Peyser plan does not satisfy the criteria for approval of such plans as provided in section 8(d) of the Wagner-Peyser Act or the Wagner-Peyser regulations at 20 CFR part 652.

(3) A plan which is incomplete, or which does not contain sufficient information to determine whether it is consistent with the statutory or regulatory requirements of title I of WIA or of section 8(d) of the Wagner-Peyser Act, will be considered to be inconsistent with those requirements.

§ 661.230 What are the requirements for modification of the State Workforce Investment Plan?

(a) The State may submit a modification of its workforce investment plan at any time during the five-year life of the plan.

(b) Modifications are required when:

(1) Changes in Federal or State law or policy substantially change the assumptions upon which the plan is based.