

Federal Register

TUESDAY, OCTOBER 18, 1977

PART III



**DEPARTMENT OF
LABOR**



**COMPREHENSIVE
EMPLOYMENT AND
TRAINING ACT**

**Compilation of Current Regulations for
Titles I, II and VI**

[4510-30]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Compilation of Current Regulations for Titles I, II and VI

AGENCY: Employment and Training Administration, Labor.

ACTION: Compilation of current regulations.

SUMMARY: These rules are published to provide FEDERAL REGISTER readers with a compilation of the current regulations for titles I, II, and VI of the Comprehensive Employment and Training Act of 1973 (CETA), as amended.

EFFECTIVE DATE: These regulations are effective immediately, except for those amendments published in the September 30, 1977, FEDERAL REGISTER (42 FR 52790-52805), which will take effect on October 31, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: During the 16 months since the regulations for titles I and II of the Comprehensive Employment and Training Act (CETA) were last published in their entirety, they have been amended on eight separate occasions. Each time, only the amendments were published. This compilation puts the amendments in context, and includes the newly revised title VI regulations as well.

Also included in this compilation are those technical changes noted in the July 8, 1977, FEDERAL REGISTER (42 FR 35318):

Because of the proposed changes to simplify the grant process, in reading all the changes in conjunction with unrevised portions of Parts 95, 96, and 98, whenever the terms "Comprehensive Manpower Plan" or "plan" appear in the unrevised portions, the terms "grant application" or "grant", as appropriate, shall be substituted; except that in §§ 95.17(b) (7), 96.13, 96.24(e) (2), 98.6(f) (1), 98.8(b) (1), 98.15(b), 98.16, 98.27(g), 98.30(a), 98.32(b) in the last line, and 98.32(b) (1), the term "Annual Plan" shall be substituted for the terms "plan" and "grant".

Accordingly, 29 CFR Parts 94, 95, 96, 98, and 99 have been revised, for the operation of the Fiscal Year 1978 grants, to read as follows:

PART 94—GENERAL PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Sec.

94.1 Scope and purpose of the Act.

94.2 Format for the regulations promulgated under the Act.

Sec.

94.3 Consolidated table of contents for Parts 94-99.

94.4 Definitions.

AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839, Pub. L. 93-567, 88 Stat. 1845), sec 702(a) unless otherwise noted.

§ 94.1 Scope and purpose of the Act.

(a) It is the purpose of the Act to provide job training and employment opportunities for economically disadvantaged, unemployed and underemployed persons, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency. The purpose of the Act is to be accomplished by the establishment of a flexible and decentralized system of Federal, State and local programs.

(b) The Act is comprised of eight titles, as follows:

(1) Title I establishes a program to provide comprehensive manpower services throughout the Nation, including the development and creation of job opportunities, and the training, education and other services needed to enable individuals to secure and retain employment at their maximum capacity.

(2) Title II authorizes public service employment and manpower training programs for unemployed and underemployed persons in areas of substantial unemployment.

(3) Title III provides for the establishment and administration by the Secretary of Labor of:

(i) Special programs for Indians, seasonal farmworkers both migratory and non-migratory;

(ii) Manpower services for youth, offenders, older workers, persons of limited English-speaking ability and other special target groups; and

(iii) Research, training and evaluation of programs and activities conducted under the Act.

(4) Title IV establishes a Job Corps within the Department of Labor to provide residential and non-residential manpower services for low-income disadvantaged young men and women.

(5) Title V establishes a National Commission for Manpower Policy. The responsibilities of the Commission include the examination of national manpower issues, the suggestions of ways and means of dealing with such issues and advising the Secretary on national manpower issues.

(6) Title VI, authorizes additional public service jobs and training programs for unemployed and underemployed persons and provides special provisions for programs in areas of excessively high unemployment.

(7) Title VII sets forth the general provisions, including applicable definitions, under the Act.

(8) Title VIII establishes a Young Adult Conservation Corps, administered by the Department of Labor through inter-agency agreements with the Departments of Agriculture and Interior.

§ 94.2 Format for the regulations promulgated under the Act.

(a) The regulations promulgated to carry out the Act are set forth in Parts 94 through 99 of Title 29, Code of Federal Regulations.

(b) As each substantive Title of the Act provides for the establishment of a specific type of program, the regulations promulgated in Parts 94 through 99 provide for a separate part for each basic type of activity (e.g., Part 95 deals with comprehensive manpower programs; Part 96 deals with Title II programs). Two parts are also included which deal with general matters relating to the Act: Part 94 deals with basic explanatory and definitional matters, and Part 98 deals with general administrative matters.

(c) Statutory authority for the regulations contained in Parts 94 through 99 may be found in Section 702(a) of the Act, as well as in other substantive provisions of the Act. Applicable statutory provisions, other than section 702(a), are noted generally in these regulations.

§ 94.3 Consolidated table of contents for Parts 94-99.

The table of contents for Parts 94-99 is as follows:

PART 94—GENERAL PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Sec.

94.1 Scope and purpose of the Act.

94.2 Format for the regulations promulgated under the Act.

94.3 Consolidated table of contents for Parts 94-99.

94.4 Definitions.

PART 95—PROGRAMS UNDER TITLE I OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

SUBPART A—GENERAL

95.1 Scope and purpose of Part 95.

95.2 Allocation of funds.

95.3 Eligibility for funds.

95.4 Data base for determining eligibility.

SUBPART B—GRANT PLANNING, APPLICATION AND MODIFICATION PROCEDURES

95.10 General.

95.11 Preapplication for Federal Assistance; consortium agreements.

95.12 Prime sponsor designation.

95.13 Planning process; advisory councils.

95.14 Content and description of grant application.

95.15 Comment and publication procedures relating to submission of grant application.

95.16 Submission of grant application.

95.17 Standards for reviewing grant applications.

95.18 Application approval.

95.19 Application disapproval.

95.20 Use of alternative prime sponsors; services by the Secretary.

95.21 Modifications.

SUBPART C—PROGRAM OPERATION

95.30 General.

95.31 Basic responsibilities of prime sponsors.

95.32 Eligibility for participation in a Title I Program.

95.33 Types of manpower program activities available.

95.34 Training allowances.

95.35 Wages.

RULES AND REGULATIONS

55727

- Sec.**
 95.36 Minimum duration of training and reasonable expectation of employment.
 95.37 Training for lower wage industries; relocation of industries.
 95.38 Cooperative relationships between prime sponsor and other manpower agencies.
 95.39 Federal Supplemental Benefit Claimants; beneficiaries under Title II of the Trade Act.

SUBPART D—SPECIAL GRANTS TO GOVERNORS

- 95.50 General.
 95.51 Distribution of funds.
 95.52 Grant application.
 95.53 Application approval and disapproval.
 95.54 Modifications.
 95.55 Governor's distribution of vocational education funds.
 95.56 Program operations.
 95.57 Funding: grant administration.
 95.58 Nonfinancial agreement between prime sponsor and State Vocational Education Board.
 95.59 Coordination with prime sponsor.

PART 96—PROGRAMS UNDER TITLE II OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

SUBPART A—GENERAL

- 96.1 Scope and purpose.
 96.2 Allocation of funds.
 96.3 Eligibility for funds.

SUBPART B—GRANT APPLICATION

- 96.10 General.
 96.11 "Preapplication for Federal Assistance"; consortium agreements.
 96.12 Eligible applicant designation.
 96.13 Planning process; advisory councils.
 96.14 Content and description of grant application.
 96.15 Comment and publication procedures relating to submission of grant application.
 96.16 Submission of grant application; standards for reviewing grant applications.
 96.17 Application approval; application disapproval; grant agreement.
 96.18 Use of alternative eligible applicant; services by the Secretary.
 96.19 Modifications.

SUBPART C—PROGRAM OPERATION

- 96.20 General.
 96.21 Basic responsibilities of eligible applicants.
 96.22 Basic responsibilities of program agents; relationship with eligible applicants.
 96.23 Acceptable public employment positions.
 96.24 Maintenance of effort.
 96.25 Responsibility for selecting participants.
 96.26 Place of residence for participants.
 96.27 Eligibility for participation in a Title II Program.
 96.28 Equitable service to the unemployed population; serving significant segments.
 96.29 Groups to be provided special consideration within the significant segment groups served.
 96.30 Serving the most severely disadvantaged persons.
 96.31 Training and supportive services.
 96.32 Linkages with other manpower programs.
 96.33 Placement goals.
 96.34 Compensation for participants.
 96.35 Administrative staff.
 96.36 Use of Title II funds for programs under Titles I and III-A.

SUBPART D—SPECIAL CONDITIONS FOR GRANTS TO INDIAN TRIBES ON FEDERAL AND STATE RESERVATIONS

- Sec.**
 96.40 General.
 96.41 Distribution of funds.
 96.42 Eligibility for funds.
 96.43 Funding of eligible applicants.
 96.44 Planning process; advisory councils.
 96.45 Comment and publication procedures relating to submission of Indian grant applications.
 96.46 Assistance by the Director, Division of Indian and Native American Programs.
 96.47 Participant eligibility.
 96.48 Nepotism.
 96.49 Nondiscrimination.
 96.50 Subgrants.
 96.51 Travel requirements.

PART 97—SPECIAL FEDERAL PROGRAMS AND RESPONSIBILITIES UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

SUBPART A—SUMMER PROGRAM FOR ECONOMICALLY DISADVANTAGED YOUTH UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

- 97.1 Scope and purpose.
 97.2 Allocation of funds.
 97.3 Unexpended previous year Summer Program funds.
 97.4 Eligibility for funds.
 97.5 Preapplication for Federal assistance.
 97.6 Program planning; planning council.
 97.7 Application for grants; standards for reviewing grant applications.
 97.8 Assistance by the Director, Division of Indian and Native American Programs.
 97.9 Content and description of grant application.
 97.10 Comment and publication procedures relating to submission of grant application.
 97.11 Modification of grant agreement; modification of the CETA Summer Plan.
 97.12 Application approval and disapproval.
 97.13 Use of alternative sponsor and services by the Secretary.
 97.14 Basic responsibilities of sponsors.
 97.15 Eligibility for participation.
 97.16 Types of manpower services available in the Summer Program.
 97.17 Vocational exploration program.
 97.18 Participant benefits.
 97.19 Worksite standards.
 97.20 Training for lower wage industries and relocation of industries.
 97.21 Cooperative relationships between sponsors and other manpower services.
 97.22 Nepotism.
 97.23 Nondiscrimination in Indian Programs under this Subpart.
 97.24 Subgrants in Indian Programs under this Subpart.
 97.25 Reporting requirements.
 97.26 Termination date for the Summer Program.

SUBPART B—INDIAN EMPLOYMENT AND TRAINING PROGRAMS

General

- 97.101 Scope and purpose of Title III, section 302, programs.
 97.102 Scope and purpose of this subpart.
 97.103 Definitions.
 97.104 Eligibility for funds; allocation of funds.

Grant Planning, Application and Modification Procedures

- 97.110 Grant planning, application and modification procedures in general.

- Sec.**
 97.111 Notifications of intent to apply for prime sponsorship; consortium agreements.
 97.112 Prime sponsor designation.
 97.113 Planning process; advisory councils.
 97.114 Content and description of grant application.
 97.115 Comment and publication procedures relating to submission of grant application.
 97.116 Submission of grant application.
 97.117 Standards for reviewing grant application.
 97.118 Application approval, grant application.
 97.119 Application disapproval.
 97.120 Use of alternative prime sponsors; services by the Secretary.
 97.121 Modification of grant agreement.
 97.122 Modification of Comprehensive Manpower Plan.

Program Operation

- 97.130 Program operation in general.
 97.131 Basic responsibilities of prime sponsors.
 97.132 Eligibility for participation in a Title III, section 302, program.
 97.133 Types of manpower program activity available.
 97.134 Training allowances.
 97.135 Wages; minimum duration of training and reasonable expectation of employment.
 97.136 General benefits and working conditions for program participants.
 97.137 Prime sponsor review.
 97.138 Non-Federal status of participants.
 97.139 Retirement benefits for participants.
 97.140 Training for lower wages industries; relocation of industries.
 97.141 Prime sponsor contracts and subgrants.
 97.142 Cooperative relationships between prime sponsor and other manpower agencies.

Grant Administration

- 97.150 Grant administration in general.
 97.151 Payment.
 97.152 Letter of credit.
 97.153 Payment by Treasury check.
 97.154 Financial management systems.
 97.155 Audit and evaluation.
 97.156 Reporting requirements in general.
 97.157 Quarterly Progress Report.
 97.158 Summary of Client Characteristics Report.
 97.159 Report of Federal Cash Transactions.
 97.160 Reallocation of funds.
 97.161 Allowable Federal costs.
 97.162 Allocation of allowable costs among program activities.
 97.163 Basic personnel standards for prime sponsors.
 97.164 Adjustments in payments.
 97.165 Termination of grant.
 97.166 Grant closeout procedures.
 97.167 Maintenance and detention of records.
 97.168 Program income.
 97.169 Procurement standards.
 97.170 Nondiscrimination and equal employment opportunities.
Assessment and Evaluation
 97.180 Assessment and evaluation in general.
 97.181 Responsibilities of the prime sponsor.
 97.182 Responsibilities of the Secretary.
 97.183 Limitation.
 97.184 Consultation with the Secretary of Health, Education, and Welfare.

RULES AND REGULATIONS

Sec.	Hearings and Judicial Review	Sec.	Program income and limitations on program expenditures.	Sec.	Monitoring and reporting program performance.
97.190	Purpose and policy.	97.270	Procurement standards.	97.350	Payment procedures.
97.191	Review of plans and applications; violations.	97.271	Labor standards.	97.351	Budget revision procedures.
97.192	Complaints; filing of formal allegation; dismissal.	97.272	Allowances and reimbursements for board and advisory council members.	97.352	Grant closeout procedures.
97.193	Form.	97.273		97.353	Property management standards.
97.194	Contents of formal allegations; amendment.		ASSESSMENT AND EVALUATION	97.355	Procurement standards.
97.195	Investigations.	97.280	Assessment and evaluation.		<i>Administrative Standards for Program Agreements With Public and Private Institutions of Higher Education, Public and Private Hospitals and Other Public and Private Nonprofit Organizations</i>
97.196	Opportunity for hearings; when required.		ADMINISTRATION REVIEW	97.361	General.
97.197	Hearings.	97.290	Purpose and policy.	97.362	Cash depositories.
97.198	Initial certification, decisions, and notices.	97.291	Procedure for complaints by eligible individuals and program participants.	97.363	Bonding and insurance.
	SUBPART C—MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKER PROGRAMS	97.292	Procedure for complaints arising from the selection of potential grantees.	97.364	Records maintenance.
	GENERAL			97.365	Program income.
97.201	Scope and purpose of Title III, Section 303 Programs.		SUBPART D—SPECIAL TARGET GROUPS AND YOUTH PROGRAMS AND OTHER SPECIAL PROGRAMS	97.366	Matching share.
97.202	Scope and purpose of this subpart.		General	97.367	Standards for recipient financial management systems.
97.203	Definitions.	97.301	Scope.	97.368	Financial reporting requirements.
97.204	Allocation of funds.	97.302	Purpose.	97.369	Monitoring and reporting program performance.
97.205	Eligibility for allocable funds.	97.303	Definitions.	97.370	Payment procedures.
	GRANT PLANNING AND APPLICATION PROCEDURES		Allocation of Available Resources	97.371	Budget revision procedures.
97.210	Grant planning and application procedures in general.	97.304	General.	97.372	Closeout procedures.
97.211	Announcement of State Planning estimates and invitation to submit Funding Requests.	97.305	Allocation planning.	97.373	Suspension and termination procedures.
97.212	Preapplication for Federal Assistance.	97.306	Public notification.	97.374	Property management standards.
97.213	Content and description of Funding Requests.		Award of Federal Funds	97.375	Procurement standards.
97.214	Submission of Funding Requests.	97.307	General.		<i>Private Profitmaking Organizations—Contract Administration</i>
97.215	Review of Funding Requests.	97.308	Eligibility for funds.	97.381	Administration.
97.216	Notification of selection.	97.309	Soliciting applications for Federal funds.		Interagency Agreements
97.217	Negotiation of final grant.	97.310	Submitting a proposal or application.	97.386	Administration.
97.218	Grant award.	97.311	Proposal or application format and content.		Assessment and Evaluation
97.219	Annual competition.	97.312	Review.	97.391	General.
97.220	Modifications.	97.313	Rejection of a proposal or application.	97.392	Responsibilities of the Secretary.
	PROGRAM OPERATIONS	97.314	Negotiation.	97.393	Limitation.
97.230	General.	97.315	Award.		<i>Consultation With the Secretary of Health, Education, and Welfare</i>
97.231	Basic responsibilities of grantees under Section 303.		Program Operation	97.396	General.
97.232	Eligibility for participation in Section 303 programs.	97.317	General.	97.397	Youth programs.
97.233	Type of program activities available.	97.318	Basic responsibilities of program sponsors.		Subpart G—Youth Community Conservation and Improvement Projects
97.234	Complaint procedure.	97.319	Cooperative relationships.		GENERAL
97.235	Training for lower wage industries; relocation of industries.	97.320	Eligibility for participation.	Sec.	
97.236	Cooperative relationships between grantee and other manpower agencies.	97.321	Permissible activities.	97.601	Scope and purpose.
97.237	Performance Standards.	97.322	Services to persons of limited English-speaking ability.	97.602	Definitions.
	GRANT ADMINISTRATION	97.323	Services to offenders.	97.603	Eligible applicants.
97.250	Grant administration in general.	97.324	Training for lower wage industries and relocation of industries.	97.604	Allocation of funds; program funding estimates.
97.251	Private nonprofit organizations; financial management systems.	97.325	Non-Federal status of participants.	97.605	Award of funds.
97.252	Audit.	97.326	Training allowances.	97.606	Reallocation of funds.
97.253	Reporting requirements.	97.327	Wages, minimum duration of training, and reasonable expectation of employment.	97.607	Redistribution of funds.
97.254	Reallocation of funds.	97.328	General benefits and working conditions for program participants.		GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES
97.255	Allowable Federal costs.	97.329	Adverse actions.	97.608	Eligible applicant planning process.
97.256	Training Allowances.	97.330	Labor standards.	97.609	Pre-application for Federal assistance (Standard Form 424).
97.257	Wages.	97.331	Nondiscrimination and equal employment opportunities.	97.610	Project planning process.
97.258	Minimum duration of training; expectation of employment.	97.332	Nepotism.	97.611	Project application content.
97.259	General benefits and working conditions for program participants.	97.333	Special limitations on participant activities.	97.612	Project application submission.
97.260	Allocation of allowable costs among program activities.	97.334	Maintenance of effort.	97.613	Project approval.
97.261	Bond coverage of officials.	97.335	Limitations on Federal funds.	97.614	Project prioritization.
97.262	Basic personnel standards for grantees and subgrantees.	97.336	Subagreements.	97.615	Submission of the proposed plan.
97.263	Non-Federal status of participants.		Administrative Requirements for Program Grants to State and Local Governments	97.616	Application for Federal assistance.
97.264	Grantee contracts and subgrants.	97.341	General.	97.617	Narrative description.
97.265	Adjustments in payments.	97.342	Cash depositories.	97.618	Budget information summary and program planning summary.
97.266	Termination of a grant.	97.343	Bonding and insurance.	97.619	Special assurances and certifications.
97.267	Suspension and debarment.	97.344	Records maintenance.	97.620	Plan review and approval.
97.268	Grant closeout procedures.	97.345	Single State agency not required.	97.621	Modifications.
97.269	Maintaining and retention of records.	97.346	Program income.		ADMINISTRATIVE PROVISIONS
		97.347	Matching share.	97.622	Administrative provisions.
		97.348	Standards for grantee financial management systems.		PROGRAM OPERATIONS
		97.349	Financial reporting requirements.	97.623	Eligibility for participation.
				97.624	Acceptable project activities.
				97.625	Participant benefits.

- Sec.**
 97.626 Academic credit.
 97.627 Substitution for Title I programs.
 97.628 Supervisory personnel.
 97.629 Materials, equipment, and supplies.
 97.630 Earnings disregard.
 97.631 Limitation on use of funds.
- Subpart H—Youth Employment and Training Programs**
GENERAL
 97.701 Scope and purpose.
 97.702 Definitions.
 97.703 Allocation of funds.
 97.704 Reallocation procedures.
- GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES**
 97.705 Eligible applicant planning process.
 97.706 Content and description of the grant application.
 97.707 Approval request letter.
 97.708 Application for Federal assistance (Standard Form 424).
 97.709 Narrative description; program and planning forms; additional documentation.
 97.710 Special assurances and certifications.
 97.711 Youth plan, review, and approval.
 97.712 Modifying the grant.
- ADMINISTRATIVE PROVISIONS**
 97.713 Administrative provisions.
- PROGRAM OPERATIONS**
 97.714 Eligibility for participation.
 97.715 Eligibility for participation (extraordinary).
 97.716 Allowable activities and services.
 97.717 In-school programs.
 97.718 Payments to participants.
 97.719 Maintenance of effort.
 97.720 Substitution for Title I programs.
- GOVERNORS YOUTH PROGRAMS**
 97.721 Governors youth programs.
- PART 97A—JOB CORPS PROGRAM UNDER TITLE IV OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT**
SUBPART A—PURPOSE AND SCOPE
 97a.1 Purpose and scope.
- SUBPART B—DEFINITIONS**
 97a.10 Definitions.
- SUBPART C—FUNDING, SITE SELECTION AND FACILITIES MANAGEMENT**
 97a.20 Available funds.
 97a.21 Eligibility for funds and eligible deliverers.
 97a.22 Funding procedures.
 97a.23 Center performance measurement.
 97a.24 Site selection and facilities management.
 97a.25 Capital improvement.
 97a.26 Protection and maintenance of facilities.
 97a.27 Facilities surveys.
- SUBPART D—JOB CORPS PARTICIPANT ENROLLMENT, TRANSFERS, TERMINATION AND PLACEMENT**
 97a.30 Recruitment and screening of corpsmembers.
 97a.31 Selection, assignment and enrollment of corpsmembers.
 97a.32 Enrollment by readmission.
 97a.33 Transfers.
 97a.34 Extensions of enrollment.
 97a.35 Federal status of corpsmembers.
 97a.36 Terminations.
 97a.37 Exit procedures.
 97a.38 Certificate of attainment.
 97a.39 Transportation.
 97a.40 Placement and job development.

- SUBPART E—CENTER OPERATIONS**
Sec.
 97a.50 Reception and orientation.
 97a.51 Corpsmember handbook.
 97a.52 Job Corps basic education program.
 97a.53 Vocational training.
 97a.54 Occupational exploration program.
 97a.55 Off-center training.
 97a.56 Scheduling of training.
 97a.57 Certification and/or licensing.
 97a.58 Purchase of tools by corpsmembers.
 97a.59 Work experience.
 97a.60 Leisure time employment.
 97a.61 Health care and services.
 97a.62 Physical standards and medical evaluations.
- 97a.63 Ocular care.
 97a.64 Immunization.
 97a.65 Communicable disease control.
 97a.66 Dental care.
 97a.67 Pregnancy.
 97a.68 Mental health.
 97a.69 Drug use and abuse.
 97a.70 Sex related issues.
 97a.71 Death.
 97a.72 Reporting critical medical situations.
- 97a.73 Residential support services.
 97a.74 Recreation/avocational programs.
 97a.75 Laundry, mail, and telephone service.
 97a.76 Counseling.
 97a.77 Intergroup relations program.
 97a.78 Incentives system.
 97a.79 Corpsmember government and leadership program.
- 97a.80 Corpsmember welfare association.
 97a.81 Evaluation of corpsmember progress (maximum benefits system).
 97a.82 Food service.
 97a.83 Allowances and allotments.
 97a.84 Clothing.
 97a.85 Tort and other claims.
 97a.86 Federal employee's compensation.
 97a.87 Social security.
 97a.88 Income taxes.
 97a.89 Emergency use of personnel, equipment and facilities.
- 97a.90 Limitations on the use of corpsmembers in emergency projects.
 97a.91 Corpsmember absences.
 97a.92 Legal services to enrollees.
 97a.93 Voting rights.
 97a.94 Rights relative to religion.
 97a.95 Right to privacy.
 97a.96 Disclosure of information.
 97a.97 Disciplinary procedures and appeals.
 97a.98 Civil rights and equal opportunity.
 97a.99 Cooperation with agencies and institutions.
- SUBPART F—APPLIED VOCATIONAL SKILLS TRAINING (VST) THROUGH WORK PROJECTS AT CIVILIAN CONSERVATION CENTERS**
 97a.100 Applied vocational skills training (VST) projects.
 97a.101 Annual VST plans.
 97a.102 VST project proposals.
 97a.103 VST project review and approval.
 97a.104 Modification of approved VST projects.
 97a.105 Cancellation or deferment of approved VST projects.
 97a.106 VST budgeting.
 97a.107 Monitoring of VST project progress.
 97a.108 Public identification of VST projects.
 97a.109 Supplementation of VST project funds.
- SUBPART G—ADMINISTRATION PROVISIONS**
 97a.110 Basic personnel standards for operators.
 97a.111 Non-discrimination and equal opportunity.
 97a.112 Limitation on political activities.
 97a.113 Staff training.

- Sec.**
 97a.114 Corpsmember records management.
 97a.115 Safety.
 97a.116 Environmental health.
 97a.117 Security.
 97a.118 Job Corps forms and documents.
 97a.119 Property management and procurement.
 97a.120 Imprest and petty cash funds.
 97a.121 Contract center financial management and reporting.
 97a.122 Federally operated CCC's financial management and reporting.
 97a.123 Audit.
 97a.124 General reporting requirements.
 97a.125 Review and evaluation.
- SUBPART H—A-95 PROCEDURES**
 97a.130 Notification of intent.
 97a.131 Content and description of notification of intent.
 97a.132 Review and comment.
- PART 98—ADMINISTRATIVE PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT.**
SUBPART A—GRANT ADMINISTRATION
 98.1 General.
 98.2 Payment.
 98.3 Letter of credit.
 98.4 Payment by Treasury check.
 98.5 Financial management systems.
 98.6 Audit.
 98.7 Reporting requirements in general.
 98.8 Program Status Summary, Financial Status Report and Monthly Progress Report.
 98.9 Quarterly Summary of Participant Characteristics.
 98.10 Report of Federal Cash Transactions.
 98.11 Reallocation of funds.
 98.12 Allowable Federal costs.
 98.13 Allocation of allowable costs among program activities.
 98.14 Basic personnel standards for grantees.
 98.15 Adjustments in payments.
 98.16 Termination of grant; suspension of grant in emergency situations.
 98.17 Annual Plan settlement procedures.
 98.18 Maintenance and retention of records.
 98.19 Program income.
 98.20 Procurement and property management standards.
 98.21 Nondiscrimination and equal employment opportunities.
 98.22 Nepotism.
 98.23 Special limitations on participant activities.
 98.24 General benefits and working conditions for program participants.
 98.25 Retirement programs.
 98.26 Procedures for resolving issues between grantees and complainants.
 98.27 Grantee contracts and subgrants.
 98.28 Non-Federal status of participants.
 98.29 Applicability of Davis-Bacon wage rates to projects under the Act.
 98.29a Job Corps training opportunities for CETA grantees.
- SUBPART B—ASSESSMENT AND EVALUATION**
 98.30 General.
 98.31 Responsibilities of the prime sponsor or eligible applicant.
 98.32 Responsibilities of the Secretary.
 98.33 Limitation.
 98.34 Consultation with the Secretary of Health, Education, and Welfare.
- SUBPART C—HEARINGS AND JUDICIAL REVIEW**
 98.40 Purpose and policy.
 98.41 Review of plans and applications; violations.
 98.42 Complaint; filing of formal allegations; dismissal.

Sec.	
98.43	Forms.
98.44	Contents of formal allegation; amendment.
98.45	Investigations.
98.46	Opportunity for hearings; when required.
98.47	Hearings.
98.48	Initial certification, decisions and notices.
98.49	Judicial review.

PART 99—PROGRAMS UNDER TITLE VI OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Subpart A—General

Sec.	
99.1	Scope and purpose of this Part 99.
99.2	Allocation of funds.
99.3	Eligibility for funds.

Subpart B—Grant Application

99.10	General.
99.11	Planning process; advisory councils.
99.12	Content and description of grant application.
99.13	Application for Federal assistance.
99.14	Comprehensive Title VI plan.
99.15	Assurances and certificates.
99.16	Grant signature sheet.
99.17	Comment and publication procedures relating to submission of grant application.
99.18	Submission of grant application; standards for reviewing grant applications.
99.19	Application approval; application disapproval; grant agreement.
99.20	Use of alternative eligible applicant; services by the Secretary.
99.21	Modifications.

Subpart C—Program Operation Requirements for Prime Sponsors

99.30	General.
99.31	Basic responsibilities of prime sponsors; basic responsibilities of program agents.
99.32	Program performance requirements for prime sponsors.
99.33	Public service job activities in the Title VI level of sustainment.
99.34	Maintenance of effort.
99.35	Linkages with other employment and training programs; training and supportive services.
99.36	Placement goals.
99.37	Compensation and working conditions for participants.
99.38	Place of residence for participants.

Subpart D—Program Operation Requirements Under the Emergency Jobs Programs Extension Act of 1976

99.40	Apportionment of the prime sponsor's allocation.
99.41	Project approval.
99.42	Eligibility for participation in Title VI programs.
99.43	Verification of participant eligibility.
99.44	Special considerations on selection.
99.45	Administrative staff selection and compensation.

Subpart E—Administrative Provisions

99.70	General.
99.71	Payments, financial management systems and audit.
99.72	Reporting requirements.
99.73	Reallocation of funds.
99.74	Allowable Federal costs.
99.75	Grantee contracts and subgrants.
99.76	Allocations of allowable costs among program activities.
99.77	Basic personnel studies for eligible applicants.
99.78	Adjustments in payments.
99.79	Termination of grant and closeout procedures.
99.80	Retention of records.

Sec.	
99.81	Program income and procurement standards.
99.82	Nondiscrimination, equal employment opportunities, nepotism and restriction on political activities.
99.83	Assessment and evaluation.
99.84	Hearings and judicial review.

Subpart F—Special Conditions for Grants to Indian Tribes and Alaskan Native Villages

99.90	General.
99.91	Grant responsibility.
99.92	Distribution of funds.
99.93	Eligibility for funds.
99.94	Funding of prime sponsors.
99.95	Participant eligibility.
99.96	Comments and publication procedures relating to submission of application for funding.
99.97	Planning process; advisory councils.
99.98	Travel requirements.
99.99	Nepotism and conflict of interest.
99.100	Nondiscrimination; political activities.
99.101	Subgrants.

§ 94.4 Definitions.

The following definitions consistent with section 701(a) of the Act apply to Parts 94 through 99, inclusive except as otherwise set forth in Parts 94 through 99:

(a) "Act" shall mean the Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845).

(b) "Allocation" shall mean the distribution of funds among prime sponsors or eligible applicants according to the formulas contained in the Act.

(c) (1) "Area of substantial unemployment" shall mean for Title II any area within a prime sponsor's jurisdiction, other than in relation to an Indian tribe:

(i) which has a population of at least 10,000 persons;

(ii) which qualifies for a minimum allocation of \$25,000 under Title II of the Act;

(iii) which has a rate of unemployment of at least 6.5 percent for a period of three consecutive months, as determined by the Secretary of Labor at least once each fiscal year; and

(iv) where such units comprising the area (census tracts, census divisions, cities, counties, etc.) are contiguous.

(2) "Area of substantial unemployment" shall mean for Title II, in relation to an Indian tribe, an Indian reservation, as a whole, with a rate of unemployment of at least 6.5 percent for a period of three consecutive months, as determined by the Secretary of Labor at least once each fiscal year.

(d) "Audit" shall mean a systematic review or appraisal to determine and report whether:

(1) Financial operations are being properly conducted;

(2) Financial reports are presented fairly; and

(3) Applicable laws and regulations are being complied with. A selected number of operational audits will include a review of economy and efficiency and/or program results of programs under the Act.

(e) "Audit Standards" shall mean those standards set forth in *The Standards for Audit of Government Organiza-*

tions, Programs, Activities and Functions promulgated by the Comptroller General of the United States.

(f) "Balance of county" shall mean the area within the jurisdiction of a county, as a prime sponsor or eligible applicant, that is not included in the comprehensive manpower plan of another prime sponsor or eligible applicant.

(g) "Balance of State" shall mean the area within the jurisdiction of a State, as a prime sponsor or eligible applicant, which is not included in the comprehensive manpower plan of another prime sponsor or eligible applicant.

(h) "Capital improvement" shall mean any modification, addition, or restoration which increases the value, usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment which is classified for accounting purposes as "fixed asset" and the recorded value of which is increased by the cost of the improvement and subject to depreciation.

(i) "Certification" shall mean a legally binding statement that certain requirements have been fulfilled.

(j) "Chief elected official" and "chief executive officer" shall include their designees.

(k) "Community-based organizations" shall mean organizations which are representative of communities or significant segments of communities and which provide manpower services (for example Opportunities Industrialization Centers, Urban League, Jobs for Progress, Mainstream, Community Action Agencies and other community organizations).

(l) "Compensation" as applied to a participant in a Title II program shall mean the wages and salary payable, but does not include fringe benefits or supportive services.

(m) "Consortium" shall mean an entity formed by an agreement among local units of government, consistent with the requirements of § 95.3, to plan and operate a comprehensive manpower program under the Act.

(n) "Contractor" shall mean any person, corporation, partnership, or similar entity or a public agency, which enters into a contract with the Department, with a grantee, or with a subgrantee under the Act.

(o) "Construction" shall mean the erection, installation, or assembly of a new facility or a major addition, expansion, or extension of an existing facility, and the related site preparation, excavation, filling and landscaping or other land improvements.

(p) "Department" shall mean the United States Department of Labor and includes each of its operating agencies and other organizational units.

(q) "Dependent" shall mean:

(1) Any relative for whom the participant has assumed a responsibility for support; and who is either: (i) a member of the immediate household, or (ii) one of the following relatives:

(A) A parent of the participant;

(B) A child of the participant;

(C) A relative of the participant who is unemployed because of a physical or mental disability; or

(2) Any individual who is currently being supported by the participant, is a member of the participant's immediate household; and during the preceding twelve months, earned less than \$750.

(r) "Disabled veteran" shall mean a person who served in the Armed Forces and who was discharged or released therefrom with other than a dishonorable discharge and who has been given a disability rating of 30 per centum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

(s) "Economically disadvantaged" shall mean a person who:

(1) is a member of a family which receives cash welfare payments under Federal, State or local welfare programs;

(2) is a member of a family which has a total family income, as defined in paragraph (xxx) of this section, which in relation to family size, does not exceed the poverty level determined in accordance with criteria established by the Office of Management and Budget or 70% of the lower living standard income level, whichever is higher. Family income shall be computed by:

(i) Annualizing all family income received during the 3 months preceding the assignment of the economically disadvantaged classification, or

(ii) If, due to seasonal unemployment (e.g., teachers), seasonal employment, summer employment for youth, or other circumstances, the 3 month period is unrepresentative, totaling family income received during the 12 months preceding the assignment of the economically disadvantaged classification; or

(3) is a foster child on behalf of whom State or local government payments are made.

(t) "Eligible applicant" for purposes of Title II shall mean a prime sponsor or an Indian tribe on a Federal or State reservation which includes an area or areas of substantial unemployment.

(u) "Employing agency" for purposes of public service employment programs shall mean any employer designated by an eligible applicant, program agent, or other subgrantee, or by the Secretary of Labor, to employ participants pursuant to public service employment programs under the Act. The term shall include an eligible applicant, program agent, or other subgrantee when acting as employer. Private for profit organizations shall not be considered employing agencies under the Act. The administrative arm of a consortium may be an employing agency only for the purpose of hiring participants as administrative staff.

(v) "Family" shall mean one or more persons living in a single household who are related to each other by blood, marriage or adoption. A stepchild who receives at least 50% of his/her support from the stepparent shall be counted as a member of the stepparent's family. A member of a household:

(1) Who is 18 or older;

(2) Who receives less than 50% of his/her maintenance from the family; and

(3) Who is not the head of the household or the spouse of the head of the household, shall not be considered a member of the family. Such an individual shall be considered a family residing alone or in group quarters.

(w) "Federal Audits" shall mean those audits conducted by the U.S. Department of Labor and its agents.

(x) "Federal reservation" shall mean lands which have been set aside for Indian tribes and for which the United States is trustee, as identified by the Bureau of Indian Affairs, including non-trust land under the tribal jurisdiction.

(y) "Governor" shall mean the chief executive officer of a State or his designee.

(z) "Grantee" shall mean any individual or organization, including a prime sponsor under Title I or Title III of the Act, or an eligible applicant under Title II or Title VI of the Act which receives a grant from the Department to establish or operate any program or activity under the Act.

(aa) "Grant Allotment" shall mean the total amount of funds planned at any given time to be granted to a prime sponsor or eligible applicant for any fiscal year under Title I or Title II of the Act.

(bb) "Health care" includes but is not limited to preventive and clinical medical treatment, voluntary family planning services, nutritional services, and appropriate psychiatric, psychological and prosthetic services, to the extent any such treatment or services are necessary to enable a participant to obtain or retain employment under the Act.

(cc) "Indian tribe" shall mean a tribe, group or band of American Indians or Alaska natives identified on the basis of historical, geographical or cultural characteristics, or subpart of such a tribe, group or band.

(dd) "Low-income level," which is a definition used only in the allocation of funds under Title I, shall mean an annual income of \$7,000 with respect to income in 1969; for any later year it shall mean that amount which bears the same relationship to \$7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest \$1,000.

(ee) "Manpower Allotment" means sums received by a prime sponsor distributed under Secs. 103(a)(1); 103(a)(2); 103(a)(4); and those portions of 103(f) of the Act which provide each prime sponsor with an amount for any fiscal year equal to 90 percent of such area's manpower allotment in the preceding fiscal year.

(ff) "Multijurisdictional Agreement" shall mean an agreement, consistent with the requirements of § 95.3, between a State and any unit of general local government within the State that has a population of at least 100,000 persons, to plan and operate a comprehensive manpower program under the Act.

(gg) "Non-Federal Audits" shall mean those audits conducted by State, county, and city governments or their agents.

(hh) "Obligation" shall mean the amount of funds which a grantor has legally committed and authorized a grantee, subgrantee, or contractor to expend.

(ii) "Offender" shall mean: (A) any person who is or has been confined in any type of correctional institution, or assigned to a community-based facility, or who is or has been subject to any stage of the judicial, correctional or probationary process where manpower training and services may be beneficial, as determined by the Secretary of Labor, after consultation with judicial, correctional, probationary or other appropriate authorities; or (B) any adult or juvenile who is confined in any type of correctional institution and also includes any individual or juvenile assigned to a community based facility or subject to pre-trial, probationary, or parole or other stages of the judicial correctional or probationary process where manpower training and services may be beneficial, as determined by the Secretary, after consultation with judicial, correctional, probationary, or other appropriate authorities.

(jj) "OMB" shall mean the Office of Management and Budget.

(kk) "Participant" shall mean an individual who is eligible for and takes part in activities under provisions of the Act or receives services funded under the Act, except for an individual who receives only outreach and intake services. An individual applicant becomes a participant when:

(1) The individual is declared eligible upon intake; and

(2) The individual receives employment, training or services funded under the Act following intake, except for an individual who receives only outreach and/or intake services.

(ll) "Participant community" shall mean the group or groups of people to be served by a program or program activity; for example, the unemployed, persons of limited English speaking ability, seasonal farmworkers either migratory or non-migratory, non-reservation Indians, and economically disadvantaged.

(mm) "Placement" shall mean the hiring into unsubsidized employment by an employer of an individual referred by the prime sponsor or its subgrantee or contractor for a job or an interview, providing that the prime sponsor, subgrantee or contractor completed all of the following steps:

(1) Made prior arrangements with the employer for referral of an individual or individuals;

(2) Referred an individual who has not been specifically designated by the employer;

(3) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(4) Recorded the transaction on an employer form or other appropriate form.

(mm-1) There are three levels of placement based on the expected duration of the job:

RULES AND REGULATIONS

(1) Short-term placements in jobs which are expected to have a duration of three days or less;

(2) Mid-term placements in jobs which are expected to have a duration from four days to one-hundred-fifty days; and

(3) Long-term placements in jobs which are expected to have a duration of more than one-hundred-fifty days.

Placement does not include referral to another program activity, enrollment in education or training courses not supported under the Act, or entrance into the Armed Forces.

(nn) "Poverty level" shall mean the annual income threshold below which families are considered to live in poverty, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

(oo) "Prime sponsor" shall mean a unit of government, combinations of units of government, or a rural Concentrated Employment Program grantee, as set forth in § 95.3, which has entered into a grant with the Department to provide comprehensive manpower services under Title I of the Act.

(pp) "Professional work" shall mean work performed by an individual acting in a bona fide professional capacity, as such term is used in section 13(a)(1) of the Fair Labor Standards Act.

(qq) "Program agent" for purposes of Title II shall mean a subgrantee within the jurisdiction of an eligible applicant which is a unit of general local government or a combination of such units having a population of 50,000 or more which contains an area of substantial unemployment or is part of an area of substantial unemployment. In determining whether a combination of units of general local government qualifies as a program agent, the eligible applicant shall use the following standards:

(1) The combination of units as a subgrantee possesses the legal authority to receive Federal funds, and to transact business as a representative of the population within its jurisdiction; and

(2) The combination of units as a subgrantee possesses the administrative capability to plan, administer, and operate a manpower program; in making this determination, the eligible applicant may consider whether a combination of units of general local governments which consists of units which are not contiguous to each other is capable of planning, administering and operating a manpower program.

(rr) "Program of demonstrated effectiveness" shall mean a manpower program, including a program conducted by a community-based organization, which has a history of providing manpower services to the economically disadvantaged, which has demonstrated the capacity to meet contractual goals at reasonable costs, and is either (1) a program which has demonstrated to the prime sponsor that it has performed effectively within the prime sponsor's jurisdiction, or (2) a program which can demonstrate to the prime sponsor that

it has carried out effectively a similar program under similar circumstances in other jurisdictions and can carry out such a program effectively within the prime sponsor's jurisdiction.

(ss) "Public assistance" shall mean supplemental income or money payments received pursuant to a State plan approved under the Social Security Act, Title IV (Aid to Families with Dependent Children), or under the Social Security Act, Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled), and pursuant to the Indochina, Migration and Refugee Assistance Act of 1975, Pub. L. 94-23.

(tt) "Public service" shall mean service normally provided by government and includes, but is not limited to, work in such fields as beautification, conservation, crime prevention and control, education, child care, environmental quality, fire protection, health care, housing and neighborhood improvements, manpower services, parks, street and other public safety, recreation, rural development, solid waste removal, transportation, veterans outreach, and other fields of human betterment and community improvement. It includes part-time work for individuals who are unable to work full-time because of age, handicap or other factors. It excludes building and highway construction work (except that which is normally performed by the prime sponsor or eligible applicant) and other work which inures primarily to the benefit of a private profit-making organization.

(uu) "RA" shall mean the Department of Labor's Regional Administrator for Employment and Training Administration or his designee, having the responsibility for the area in which a prime sponsor or eligible applicant is located.

(vv) "Rate of unemployment" shall mean the number of unemployed persons, as a percentage of the total number of persons in the civilian labor force, as determined by the Secretary.

(ww) "Secretary" shall mean the Secretary of the United States Department of Labor, or his designee.

(xx) "SESA" shall mean a State employment security agency affiliated with the United States Employment Service, established by the Wagner-Peyser Act of 1933, as amended. The term shall include the State public employment services offices and Unemployment Insurance offices.

(yy) "Significant segments" shall mean those groups of people to be characterized, if appropriate by racial or ethnic, sex, age, occupational or veteran status, which causes them to generally experience unusual difficulty in obtaining employment and who are most in need of the service provided by the Act. Other descriptive categories may be used to define a "significant segment," if appropriate.

(zz) "Special veteran" shall mean an individual who served in the Armed Forces in Indochina or Korea, including the waters adjacent thereto, between August 5, 1964, and May 7, 1975, who re-

ceived other than a dishonorable discharge.

(aaa) "State" includes the fifty states, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(bbb) "State reservation" shall mean an Indian reservation recognized by the State in which it is located.

(ccc) "Subgrantee" shall mean any governmental unit or private nonprofit agency which receives a grant from a prime sponsor, grantee, or eligible applicant under the Act.

(ddd) "Sufficient size and scope" shall mean for Title II an area or combination of areas, other than an Indian reservation, which has a population of 10,000 or more persons and qualifies for a minimum allocation under Title II of \$25,000.

(eee) "Supportive or manpower services" shall mean services which are designed to contribute to the employability of participants, enhance their employment opportunities, assist them to retain employment, and facilitate their movement into permanent employment not subsidized under the Act.

(fff) "Underemployed person" shall mean:

(1) A person who is working part-time but has been seeking full-time work, and who is a member of a family whose total family income (as defined in paragraph (xxx) of this section) in relation to his or her family size, does not exceed the poverty level determined in accordance with criteria established by OMB, or

(2) A person who is working full-time and who is a member of a family whose total family income (as defined in paragraph (xxx) of this section) in relation to his or her family size, does not exceed the poverty level determined in accordance with criteria established by OMB.

(3) Family income shall be computed by:

(i) Annualizing family income received during the 3 months preceding the assignment of the underemployed classification, or

(ii) If, due to seasonal unemployment, seasonal employment, summer employment for youth or other circumstances, the 3 month period is unrepresentative, totaling family income received during the 12 months preceding the assignment of the underemployed classification.

(ggg) "Unemployed person" shall mean for Title I activities except in the case of welfare recipients;

(1) A person who is without a job and who wants and is available for work, defined as follows:

(i) A person who is without a job is a person who did not work during the calendar week preceding the week in which the determination of his eligibility for participation is made. Except in the case of persons described in paragraph (ggg)(2) of this section, the determination of who wants and is available for work will be made by the prime sponsor or his designee. Persons who have been

discouraged from seeking work but are currently available for work, shall not be excluded from eligibility.

(ii) If a person is confined in a jail, penitentiary, or other institution and there is a reasonable expectation that release will follow the completion of training within a reasonable time, the individual shall be considered unemployed.

(2) In the case of welfare recipients, and except for purposes of sections 103 and 202 of the Act, the term "unemployed person" shall mean an adult who, or whose family, receives supplemental security income or money payments pursuant to a State plan approved under the Social Security Act, Title IV (Aid to Families with Dependent Children), or under the Social Security Act, Title XVI (Supplemental Security Income for the Aged, Blind and Disabled), or would be eligible for such payments according to the standards set forth at 45 CFR Part 233 and 20 CFR Part 416 if both parents were not present in the home, and

(i) Who is available for work, and

(ii) Who is either without a job or working in a job providing insufficient income to enable such a person and his family to be self-supporting without welfare.

(3) A veteran who has served on active duty for a period of more than 180 days or who was discharged or released from active duty for a service connected disability, shall be immediately eligible, upon release or discharge, for participation in a program under Title I of the Act without regard to the previous calendar week unemployment requirement which would otherwise pertain (38 U.S.C. 2013: *Provided*, The veteran has not obtained permanent, full-time, unsubsidized employment between the time of release and the time of application for participation in Title I.

(hhh) "Unemployed person" shall mean for Title II activities:

(1) A person who is without a job and who wants and is available for work. Except in the case of persons described in subparagraph (2) of this paragraph, the determination of who wants and is available for work will be made by the prime sponsor or his designee. Persons who have been discouraged from seeking work but are currently available for work, shall not be excluded from eligibility.

(2) Except for the purposes of sections 103 and 202 of the Act, an adult who, or whose family, receives supplemental security income or money payments pursuant to a State plan approved under the Social Security Act, Title IV (Aid to Families with Dependent Children), or under the Social Security Act, Title XVI (Supplemental Security Income for the Aged, Blind and Disabled) or would be eligible for such payments according to the standards set forth at 45 CFR Part 233 and 20 CFR Part 416 if both parents were not present in the home, and

(i) Is available for work, and

(ii) Who is either without a job or working on a job providing insufficient income to enable such a person and his

family to be self-supporting without welfare assistance.

(3) A person is "without a job" if, during the 30 days preceding his application, he has worked no more than a total of 10 hours or has earned no more than \$30 in any calendar week during the 30 days.

(iii) "Unemployment compensation" shall mean the compensation payable in accordance with the provisions of a State or Federal unemployment compensation law, and payments of unemployment assistance in accordance with the provisions of the Disaster Relief Act, trade readjustment allowances in accordance with the provisions of the Trade Expansion Act or the Trade Act of 1974, and payments or similar assistance or allowances in accordance with the provisions of any other Federal law.

(jjj) "Unit of general local government" shall mean any city, municipality, county, town, township, parish, village or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers.

(kkk) "Unsubsidized employment" shall mean employment not financed from funds provided under the Act.

(ii) Was discharged or released from who:

(i) Served on active duty for a period of more than 180 days, and was discharged, separated, or released therefrom with other than a dishonorable discharge, or

(ii) Was discharged or released from active duty for a service-connected disability.

(mmm) "Wagner-Peyser Act" shall mean "An act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes," approved June 6, 1933, (48 Stat. 113), as amended (29 U.S.C. 49 et seq.).

(nnn) "Lower living standard income level" shall mean that income level (adjusted for selected SMSA's and regional, metropolitan and non-metropolitan differences and family size) determined annually by the Secretary based upon the most recent lower living standard budget level issued by the Bureau of Labor Statistics of the Department of Labor.

(ooo) "Project" shall mean, for purposes of Part 99 of this title the same thing as the term "project and activity" used in Sections 607-9 of the Act, that is, "project" shall mean a definable task for group of related tasks which:

(1) Will be completed within a definable time period, not exceeding one year;

(2) Will have a public service objective;

(3) Will result in a specific product or accomplishment; and

(4) Would otherwise not be done with existing funds.

(ppp) "Project applicant" shall mean;

(1) A State;

(2) A State agency;

(3) A unit of general local government;

(4) An agency of a unit of general local government;

(5) A combination or association of units of general local government the primary purpose of which is to assist the governmental units to provide public services;

(6) A special purpose political subdivision having the power to levy taxes and spend funds within an area served by one or more units of general local government;

(7) A local education agency as defined in section 801(f) of the Elementary and Secondary Education Act of 1965;

(8) An institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965;

(9) A community based organization as defined in paragraph (k) of this section;

(10) A community development corporation;

(11) A nonprofit group or organization serving Indians or Native Hawaiians; or

(12) A private non-profit organization or institution engaged in public service.

(qqq) "Rehire" shall mean an individual who has been laid-off from regular unsubsidized employment and who is subsequently recalled as a participant by the former employer into a position funded under the Act.

(rrr) "Exhaustee" shall mean an individual who has made a claim for unemployment compensation and has exhausted all such benefits to which the individual was entitled including Extended Benefits (EB), Federal Supplemental Benefits (FSB), Disaster Unemployment Assistance (DUA), Trade Readjustment Allowance (TRA), Special Unemployment Assistance (SUA), Unemployment Compensation for Federal Employees (UCFE), and/or Unemployment Compensation for Exservicemen (UCX). Exhaustee status will continue through the existing regular benefit year, at which time a new claim may be filed creating a new status of eligible or ineligible for unemployment compensation.

(sss) "Ineligible for unemployment compensation" shall mean the status of an individual who is for any reason, including disqualification ineligible for unemployment compensation benefits including SUA, DUA, EB, TRA, FSB, UCX; and UCFE. This includes any individual who is employed in an occupation not covered by unemployment compensation laws, or who is a new entrant or reentrant to the labor force, or who has been unemployed for such an extended period of time that the individual has no work history for unemployment compensation purposes.

(ttt) "Level of sustainment" shall mean, the number of Title II and Title VI slots which the prime sponsor may sustain throughout FY 1977, that is, the number of slots which the program contained on June 30, 1976, or on October 31, 1976, whichever was higher.

(uuu) "Unemployed person" shall mean for Title VI purposes a person who is without a job and who wants and is available for work, including any person

RULES AND REGULATIONS

who has been discouraged from seeking work but is currently available for work. For purposes of this definition a person is considered to be "without a job" during any calendar week in which he/she has worked no more than a total of ten (10) hours and/or has earned no more than \$30.

(vvv) "Hawaiian Native" shall mean any individual, any of whose ancestors were natives of the areas which consisted of the Hawaiian Islands prior to 1778 (Sec. 701(a)(16)).

(www) "Vietnam-era veteran" shall mean a person who:

(1) Served on active duty in the Armed Forces for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, inclusive, and was discharged or released with other than a dishonorable discharge; or

(2) Was discharged or released from active duty in the Armed Forces for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975, inclusive.

(xxx) "Family income" shall mean the sum of all income received from all sources determined as follows:

(1) *Family income shall include*—(i) *Gross wages or salary.* The total money earnings received for work performed as an employee; it represents the amount paid before deductions for income taxes, social security, bond purchases, union dues, etc. (Wages and salaries received by individuals through public service employment and on-the-job training shall be included in income computations);

(ii) *Self-employment income.* Net money income (gross receipts minus operating expenses) from a business firm, farm, or other enterprise in which a person is engaged on his/her own account; and

(iii) *Other Income.* Money income received from such sources as net rents, social security benefits (OASI and disability insurance), pensions, alimony, payments for child support and periodic income from insurance policy annuities.

(2) *Family income shall exclude:* (i) General.

(A) Non-cash income, such as food stamps and wages received in the form of food or housing.

(B) Imputed value of owner-occupied property, i.e., rental value.

(C) Cash welfare payments.

(D) Payments made to participants in employment and training programs, such as payments for training, work experience, transportation, and dependency allowances except for those payments specified in paragraph (xxx)(1)(i) of this section.

(E) Capital gains and losses.

(F) One-time unearned income, such as the following (Not intended to be an all-inclusive list, but designed to illustrate the conceptual framework of one-time unearned income):

(1) Payments received for a limited fixed term under income maintenance programs and supplemental unemployment benefit plans.

(2) One-time (or fixed term) scholarship and fellowship grants.

(3) Accident, health, and casualty insurance proceeds.

(4) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits.

(5) One-time awards and gifts.

(6) Inheritances, including fixed term annuities.

(7) Fixed term workers' compensation awards.

(8) Terminal leave pay.

(9) Soil bank payments.

(10) Agriculture crop stabilization payments.

(11) *Veterans.* (A) Amounts received as pay or allowances by any person while serving on active duty in the Armed Services.

(B) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38, United States Code.

(yy) "Comprehensive manpower plan (CMP)" shall mean the Prime Sponsor Agreement and the Annual Plans executed pursuant to the Prime Sponsor Agreement.

PART 95—PROGRAMS UNDER TITLE I OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Subpart A—General

Sec.	
95.1	Scope and purpose of Part 95.
95.2	Allocation of funds.
95.3	Eligibility for funds.
95.4	Data base for determining eligibility.

Subpart B—Grant Planning Application and Modification Procedures

95.10	General.
95.11	Preapplication for Federal Assistance, consortium agreements.
95.12	Prime sponsor designation.
95.13	Planning process; advisory councils.
95.14	Content and description of grant application.
95.15	Comment and publication procedures relating to submission of grant application.
95.16	Submission of grant application.
95.17	Standards for reviewing grant applications.
95.18	Application approval.
95.19	Application disapproval.
95.20	Use of alternative prime sponsors; services by the Secretary.
95.21	Modifications.

Subpart C—Program Operation

95.30	General.
95.31	Basic responsibilities of prime sponsors.
95.32	Eligibility for participation in a Title I Program.
95.33	Types of manpower program activities available.
95.34	Training allowances.
95.35	Wages.
95.36	Minimum duration of training and reasonable expectation of employment.
95.37	Training for lower wage industries; relocation of industries.
95.38	Cooperative relationships between prime sponsor and other manpower agencies.
95.39	Federal Supplemental Benefit Claimants; beneficiaries under Title II of the Trade Act.

Subpart D—Special Grants to Governors

Sec.	
95.50	General.
95.51	Distribution of funds.
95.52	Grant application.
95.53	Application approval and disapproval.
95.54	Modifications.
95.55	Governor's distribution of vocational education funds.
95.56	Program operations.
95.57	Funding; grant administration.
95.58	Nonfinancial agreement between prime sponsor and State Vocational Education Board.
95.59	Coordination with sponsor.

AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845), Sec. 702(a) unless otherwise noted.

Subpart A—General

§ 95.1 Scope and purpose of Part 95.

(a) This Part 95 contains the Department of Labor's regulations for the establishment and provision of comprehensive manpower services, including public service employment, under Title I of the Act.

(b) This Part 95 should be read in conjunction with Parts 94 through 99 of this Title 29, Code of Federal Regulations. These parts, in total, comprise the regulations promulgated by the Secretary pursuant to the authority in the Act.

(c) Definitions for acronyms and major terms may be found in Part 94.

(d) Statutory authority for the regulations contained in this Part 95 may be found in section 702(a) of the Act, as well as other substantive provisions of the Act. Applicable statutory provisions, other than section 702(a), are noted generally in these regulations.

§ 95.2 Allocation of funds.

(a) *General.* (1) This § 95.2 sets out the procedures for allocating funds under Title I of the Act. Of the funds available for Title I in any fiscal year, 80 percent shall be allocated according to the procedures set forth in paragraph (b) of this section. The remaining 20 percent shall be allocated as set out in paragraphs (c) and (d) of this section. (sec. 103)

(2) Allocations made to prime sponsors under this section shall be published in the FEDERAL REGISTER as soon as possible after the enactment of any fiscal year appropriation. The Secretary may publish preliminary allocations to assist prime sponsors in planning for programs under Title I of the Act.

(3) The Secretary may reallocate Title I funds as provided in § 98.11.

(b) *Prime sponsor basic allocations.*

(1) Eighty percent of the funds available under Title I of the Act shall be allocated as provided in this paragraph (b). Funds provided pursuant to this paragraph are for prime sponsors, as defined in § 95.3, except for prime sponsors which are rural Concentrated Employment Programs (CEP). This paragraph (b) does not apply to rural CEP's.

(2) One percent of the amount available under this paragraph (b) shall be allocated by the Secretary to State prime sponsors for the costs incurred in staffing

and servicing State Manpower Services Councils. If such funds exceed the amount needed for these costs, the excess may be used to carry out State services under Section 106 of the Act. Allocations under this paragraph shall be made according to the paragraph (b) (4) and (5) (i) allocation formula.

(3) Not less than \$2,000,000 of the funds under this paragraph (b) shall be allocated among Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, consistent with the factors set out in paragraph (b) (4) of this section.

(4) Subject to the requirements of paragraph (b) (5) of this section, funds remaining after application of paragraphs (b) (2) and (3) shall be allocated to prime sponsors according to the following basic formula:

(i) Fifty percent of the funds subject to formula allocation shall be allocated on the basis of each prime sponsor area's proportion of the manpower allotment for all prime sponsor areas in the prior fiscal year;

(ii) Thirty-seven and one-half percent of the funds subject to formula allocation shall be allocated on the basis of a prime sponsor's proportion of the total number of unemployed persons (as defined by the Bureau of Labor Statistics) in all prime sponsor areas;

(iii) Twelve and one-half percent of the funds subject to the allocation formula shall be allocated on the basis of a prime sponsor's proportion of the number of adults in low income families in all prime sponsor areas.

(5) (i) No prime sponsor shall be allocated an amount under the paragraph (b) (4) allocation formula which is more than 150 percent of the amount of the manpower allotment obligated by the RA in the prior fiscal year for the area served by the prime sponsor; except that if the amount so allocated is less than 50 percent of the amount of manpower funds to which it is entitled under the (b) (4) allocation formula, such allocation shall be increased to 50 percent of its entitlement under the formula.

(ii) If any prime sponsor, pursuant to the paragraph (b) (4) and (5) allocation formula, is allocated less than 90 percent of the manpower allotment that was obligated by the RA to that area in the previous fiscal year, that prime sponsor shall, to the extent feasible, be provided an amount from the Secretary's discretionary fund, set out in paragraph (d) of this section, that will bring its funding during the current fiscal year to the 90 percent level.

(c) *Additional prime sponsor allocations.* This paragraph describes those prime sponsor allocations that are not subject to the basic allocation procedures of paragraph (b).

(1) *Consortia incentive funds.* In order to encourage consortia, as defined in § 95.3, that also comprise substantial portions (e.g., 75 percent) of labor market areas, the Secretary may use up to 5 percent of the funds available for Title I of the Act to provide additional funding for such consortia. Consortia which

do not serve such areas shall not be eligible for additional funds. Prior to making decisions concerning these funds, the RA shall consult with the Governors of the appropriate States and afford them an opportunity to make recommendations.

(2) *State manpower services allocations.* The Secretary shall allocate to the States, according to the paragraph (b) (4) and (5) (i) allocation formula, 4 percent of the funds available under Title I of the Act, to enable the States to provide services, as set out in Subpart D of this Part 95.

(3) *Allocations for prime sponsors which were rural CEP's.* The Secretary shall fund a limited number of prime sponsors which were rural CEP's from any funds available to carry out Title I, except funds allocated under paragraph (b).

(4) *Vocational education allocation.* The Secretary shall allocate to the Governors, according to the paragraph (b) (4) and (5) (i) allocation formula, 5 percent of the funds available under Title I to provide financial assistance for vocational education. Each Governor shall allocate these funds as required in Subpart D of this Part 95.

(d) *Secretary's discretionary fund.* Any funds available under Title I that are not allocated under paragraphs (b) and (c) shall be first utilized by the Secretary to assure each prime sponsor, including rural CEP prime sponsors, of funding at the 90 percent level, as set out in paragraph (b) (5) (ii) of this § 95.2. The Secretary shall utilize the remainder of the funds available under this paragraph at his discretion, taking into consideration (1) the provision of incentive funds for multijurisdictional agreements entered into by States, as set out in § 95.3 (b) and (d); (2) continued funding through prime sponsors of programs of demonstrated effectiveness; and (3) other factors the Secretary deems necessary to the carrying out of his responsibilities under the Act.

§ 95.3 Eligibility for funds.

(a) Funds may be allocated by the Secretary to prime sponsors (sec. 102). Prime sponsors are:

(1) States;

(2) Units of general local government which have a population of 100,000 or more persons;

(3) (i) Consortia consisting of general local governments which are (A) located in reasonable proximity to each other; (B) each of which retains responsibility for operation of the program; (C) at least one of which has a population of 100,000 or more persons; and (D) which, as a consortium, can plan and operate a comprehensive manpower program that provides administrative and programmatic advantage over the other methods of delivering services under the Act;

(ii) A consortium, under this subparagraph (3), which consists of units of local government in more than one State, may be approved by the RA after the approval of the Governors of the States involved has been obtained.

(iii) No consortium agreement will be approved if one of the parties to the agreement is a unit of local government which is not eligible to be a prime sponsor under the Act and if, in addition, the effect of the agreement is to render ineligible the prime sponsor otherwise responsible for serving the area of the ineligible local government; *Provided, however,* That nothing in this paragraph shall prohibit the otherwise responsible prime sponsor from granting its consent to such a consortium agreement;

(4) (i) Any unit of general local government, or any combination of such units, without regard to population, which, in exceptional circumstances, is determined by the Secretary, after giving serious consideration to comments from the prime sponsor otherwise responsible for the area and the Governor, to serve a substantial portion (e.g., 75 percent) of a functioning labor market area or to be a rural area with a high level of unemployment and to have demonstrated that (A) it has the capability for effectively carrying out a comprehensive manpower program under the Act, evidenced by its effective operation of programs such as CEP or other multicomponent programs, (B) there is a special need for services provided by the Act (e.g., the area has a high proportion of such groups within the population as older workers, high school dropouts, or has a high unemployment rate, substantial outmigration or unique commuting problems), and (C) it will afford administrative and programmatic advantages over other methods of delivering services under the Act;

(ii) The following units of general local government or combination of such units shall automatically be considered as exceptional circumstance prime sponsors since such unit(s) have been determined by the Secretary to meet the requirements of paragraph (a) (4) (i) of this section:

(A) A unit of general local government which was a prime sponsor in the previous fiscal year, had a population of 100,000 or more persons according to the previous year's census update estimate, and has since fallen below 100,000 (but not below 90,000) in population; and

(B) A combination of units of general local government which meet the requirements of paragraph (a) (3) (i) (A), (B), and (D) of this section, which were members of the same consortium in the previous fiscal year, and which contain at least one unit which had a population of 100,000 or more persons according to the previous year's census update estimate, but has since decreased below 100,000 (but not below 90,000) in population; and

(5) A limited number of CEP grantees existing at the time of the enactment of the Act, serving rural areas having a high level of unemployment which the Secretary determines have demonstrated through prior performance a special capability for carrying out programs in such areas and are designated for that purpose.

(b) (1) A State may enter into a multi-jurisdictional agreement with any unit

RULES AND REGULATIONS

of local government within the State that has a population of at least 100,000 persons in order to provide services within a designated area. Such an agreement may be approved by the RA when, to the extent consistent with State and local law, each party signatory to the consortium agreement accepts responsibility for the operation of the program, and the RA believes that the parties will, pursuant to the agreement, plan and operate a comprehensive manpower program which provides administrative and programmatic advantages over other methods of delivering services under the Act. All requirements for consortia in Parts 94 through 99 apply to such State multijurisdictional agreements unless otherwise stated.

(2) Incentive funds may be provided for an agreement under paragraph (1) if the agreement includes every eligible prime sponsor in the State.

(c) A consortium which comprises a substantial portion of a functioning labor market (e.g., 75 percent) shall be eligible for incentive funds, as provided in § 95.2(c)(1). The RA shall make such determinations, taking into consideration the definition and listing of labor market areas published by the Department, and the recommendations of the Governors.

(d) Incentive funds for consortia or State multijurisdictional agreements shall be nationally uniform percentage increase of the amount due them under § 95.2(b)(4), but shall not exceed 10 percent of the amount.

(e) No State, unit of general local government, or consortium may apply to be designated as a prime sponsor for any area within its jurisdiction that is also within the jurisdiction of another prime sponsor unless that other prime sponsor consents or fails to submit an approvable grant application or has its grant terminated, in whole or in part, by the Secretary.

(f) Any unit of general local government that does not intend to be served by the prime sponsor which would normally serve it under Title I shall inform that prime sponsor of its determination.

§ 95.4 Data base for determining eligibility.

In order to determine prime sponsor eligibility, the Secretary shall use the 1970 official Census as published by the U.S. Bureau of the Census or Bureau of the Census certified updates which are satisfactory to the Secretary of Labor.

Subpart B—Grant Planning, Application, and Modification Procedures

§ 95.10 General.

This Subpart B provides the procedures for obtaining and modifying a grant to operate programs under Title I of the Act. Specifically, this subpart describes the procedures in the grant award process—from preapplication through the grant application process, to review by the Department, approval or disapproval of the grant, and modification. This subpart also describes the

functions of prime sponsor manpower planning councils and State Manpower Services Councils.

§ 95.11 Preapplication for Federal Assistance: consortium agreements.

(a)(1) The Secretary of Labor, through a notice in the FEDERAL REGISTER, shall annually inform all potential prime sponsor applicants of their eligibility to receive funds under Title I. A prime sponsor applicant interested in receiving financial assistance shall submit by a date specified by the Secretary in the FEDERAL REGISTER notice and not later than 30 days prior to the submission of its completed grant application to the clearinghouses for formal review, as specified in § 95.15(c), a preapplication to the RA, the Governor and the appropriate State and areawide A-95 clearinghouses (See Part I of Attachment A, OMB Circular A-95). The preapplication shall consist of Standard Form 424 as prescribed by Federal Management Circular (FMC) 74-7, with an attachment giving the following information:

(i) Population of area(s) to be served;

(ii) Certification that the prime sponsor applicant, except for CEP and consortia prime sponsor applicants, has the required general government authority as defined in § 94.4 of this subtitle;

(iii) Name of any ineligible unit of general local government located within the prime sponsor applicant's jurisdiction that has informed the prime sponsor applicant that it will not be participating in the prime sponsor applicant's grant.

(iv) Certification that the development of the prime sponsor applicant's grant application will be in accordance with the requirements of the Act and regulations; and

(v) The signature of the chief elected official(s) or chief executive officer(s), as appropriate, of each prime sponsor applicant. For a newly formed consortium, and for a consortium in which one or more members have joined or withdrawn, the signature of the chief elected official or chief executive officer of each consortium member is required. In the case of an established consortium with no membership changes, the preapplication may, with the consent of all consortium members, be signed by the consortium's chief executive officer.

(2) State and areawide clearinghouses may request information in addition to that furnished on the preapplication form. Such a request shall be made within a reasonable period of time in order to avoid delay in a prime sponsor applicant's preparation of its grant application.

(3) The A-95 clearinghouses shall, within 30 days of receiving the preapplication, inform the prime sponsor applicant of any actual or potential problems with the preapplication and notify the prime sponsor applicant if they wish to review the completed application. If the prime sponsor applicant receives no such notification, the prime sponsor applicant has fulfilled its obligation under A-95

and it may submit its application to the RA without submitting it to the A-95 clearinghouses as specified in § 95.15(d).

(b) In addition to the preapplication, each consortium of local governments shall, at a date established by the RA, submit for RA approval an agreement covering programs funded under Title I and Title II. The agreement shall include the items required by this paragraph (b). The agreement shall be signed by the chief elected official or chief executive officer of each consortium member. The agreement shall include the following:

(1) A statement that the agreement has been formed under the Comprehensive Employment and Training Act of 1973, as amended, and the dates through which the consortium takes effect. An agreement shall be written to establish a consortium arrangement for the express purpose of conducting a program under the Act or an existing joint powers or other agreement shall be amended to include reference to the Act as part of the agreement.

(2) A listing of the units of government which are parties signatory to the agreement (i.e., the governmental units which are members of a consortium; not those governmental units merely served by a consortium).

(3) A listing of any ineligible governmental unit which would normally be within the jurisdiction of the consortium but has informed the members of the agreement of its desire not to have services provided through the consortium;

(4) A description of the geographical areas which will be served through the agreement.

(5) The population to be served;

(6) A certification that State and local law permits services under the consortium agreement to be provided within the entire geographical area covered by the agreement, including the jurisdiction of any local government located within the geographical area covered by the agreement (i.e., that the agreement is not prevented by State or local law from taking effect in the entire geographical area which it intends to serve);

(7) An attached letter from each unit's chief legal officer assuring that each party signatory has the legal authority, under State or local law, to enter into the consortium agreement (these letters are made part of the agreement);

(8) A statement that one of the following procedures shall be used for signing grant agreements with the Department:

(i) That grant agreements with the Department shall be signed by the chief elected official or chief executive officer of each party to the consortium agreement; or

(ii) That, pursuant to a specific designation in the consortium agreement, grant agreements with the Department shall be signed by the chief elected official or chief executive officer of one or more of the parties to the consortium agreement, or by the chief executive officer of the administrative unit established under paragraph (e)(1) of this section;

(9) A certification that to the extent consistent with State or local law, each

party signatory to the consortium agreement accepts responsibility for the operation of the program (i.e., each member of the consortium, rather than any administrative arm, has ultimate responsibility for the program's operation and success);

(10) A description of the powers, functions and responsibilities reserved by the parties to the consortium agreement specifying the process by which decisions will be made, the process by which each party to the agreement will review and approve the grant application, and the procedure by which chief elected officials will participate in the planning and operation of the program, if they so desire. However, no agreement that has been validly entered into prior to the establishment of this requirement by the regulations for this Act published March 19, 1974, need be modified to include this provision.

(11) A statement of the powers, functions and responsibilities which will be delegated to an administrative entity to operate the program and the name and organizational structure of that entity.

(c) An established consortium which submitted an agreement in a prior year shall attest in writing that the agreement remains the same or has been changed in certain specific respects which it shall set forth in the attestation and this attestation shall be signed by the chief elected official or chief executive officer of each consortium member.

(d) In signing grant agreements with the Department, the authorized consortium signator(s) shall certify that the procedures described in the consortium agreement pursuant to paragraph (b) (10) of this section have been utilized.

(e) (1) The consortium shall be the prime sponsor under the Act. An administrative unit or one member of the consortium must be designated to operate the program.

(2) The division of powers, functions, and responsibilities between the consortium members and the administrative unit shall be workable and clearly delineated. The administrative unit may be delegated the power to enter into contracts and subgrants and other necessary agreements, to receive and expend funds, to employ personnel including participants under the Act for the purposes of administering the program only, to organize and train staff, to develop procedures for program planning, operation, assessment and fiscal management, to evaluate program performance and determine resulting need to reallocate resources, and to modify the grant agreement with the Department. The administrative arm of the consortium should have responsibility for the entire operation of the program, but the consortium members shall reserve to the consortium the right of evaluation and the decision to reprogram funds.

(f) A consortium established under these regulations shall have a stated duration at least equal to the period of the grant.

(g) All preapplications from applicants which are eligible only in exceptional

circumstances, as defined in § 95.3(a) (4) shall, in addition to the requirements of paragraph (a), include in their preapplications a statement and justification that they meet the requirements of § 95.3(a) (4). Consortia formed in exceptional circumstances shall also submit an agreement as required in paragraph (b).

§ 95.12 Prime sponsor designation.

Upon receipt of a completed preapplication, the RA shall determine whether the applicant is eligible to be designated as a prime sponsor and shall notify the applicant of the determination. Exhibit M-2, Notice of Preapplication Review Action, FMC 74-7 will be used. A grant application package (§ 95.14(b)) shall be sent to each applicant designated as being eligible.

§ 95.13 Planning process; advisory councils.

(a) *General.* An applicant for financial assistance shall submit an approvable grant application, as set out in § 95.14. In developing and modifying such a plan, an applicant shall utilize the advisory councils set out in this section (sections 104, 105, and 107).

(b) *Planning process.* (1) The prime sponsor shall have a planning process for the development of its grant application. That process shall utilize, as appropriate, the advisory councils established in this section and shall also assure the participation in program planning of community-based organizations and the population to be served.

(2) In planning the methods for providing services that will be funded under the Act, the prime sponsor shall review existing services and facilities in the community and give due consideration to the utilization of these facilities which are available from Federal, State, and local agencies, including community based organizations. In reviewing the existing services and facilities, consideration shall be given to the costs, responsiveness, adequacy, and effectiveness of each agency's services to assure that unnecessary duplication has been avoided.

(3) In developing the Title I Annual Plan, the prime sponsor shall not reduce services to youth because of the availability of financial assistance under Subpart 3, Part C of Title III (sec. 346(2)).

(c) *Prime sponsor Manpower Planning Council.* (1) Each prime sponsor shall appoint a Manpower Planning Council representative of the geographic area to be served. The Planning Council function is advisory. The Council's advisory authority does not free the prime sponsor from its final decision-making responsibilities under the Act.

(2) The Planning Council shall advise the prime sponsor in the setting of basic goals, policies, and procedures for its program under Title I and Title II of the Act. It shall make recommendation regarding program plans, and provide for continuing analyses of needs for employment, training and related services in such areas. Planning Councils shall

monitor all manpower programs funded under Title I and Title II of the Act and provide for objective evaluation of other manpower and related programs operating in the prime sponsor's areas, for the purpose of improving the utilization and coordination of the delivery of such services. The procedures for evaluating programs not funded under Title I and Title II of the Act will be developed in cooperation with the agencies affected. The Planning Council shall make recommendations based upon its analyses to the prime sponsor, which will consider them in the content of its overall decisionmaking responsibility.

(3) Each prime sponsor shall, to the extent practical, include as appointments to its Planning Council members who are representative of the participant community (e.g., women, persons of limited English-speaking ability, and other minority groups) and of community-based organizations, the SESA, education and training agencies and institutions, business (e.g., representatives of a locally based business firm, the National Alliance of Businessmen, or Chamber of Commerce) organized labor, and where appropriate, agriculture. Additionally, each prime sponsor shall invite representatives of appropriate veterans' organizations or groups to serve as temporary members of its Planning Council. (Sec. 305(a) of Pub. L. 95-93.) Generally, staff of State or local government agencies should not take the place of representatives of the participant communities which their agencies serve. Persons representative of other interested groups may also be appointed. The prime sponsor shall appoint a chairperson of the Planning Council and provide professional, clerical and technical staff to serve it. Funds for supportive services and related staff costs for the Planning Council may be made available from a prime sponsor's basic allocation.

(4) No member of the Planning Council shall cast a vote on any matter which has direct bearing on services to be provided by that member (or any organization with which that member is associated).

(d) *State Manpower Services Council.* (1) A State prime sponsor shall establish, in addition to its Planning Council under paragraph (c), a State Manpower Services Council (SMSC) representative of the geographic area to be served. The SMSC function is advisory and does not relieve the State of its final decisionmaking responsibilities under the Act.

(2) Consistent with the requirements of Section 107 of the Act, the Governor shall appoint Council members, as follows:

(i) At least one-third of the membership of the Council shall be composed of representatives of prime sponsors who have been designated in accordance with procedures agreed upon by the chief executive officers of such prime sponsors. (All prime sponsors within the State need not be represented; whatever the size of the Council, one-third of its membership shall be representatives of prime sponsors within the State).

(ii) One representative shall be appointed from each of the following: The State Board of Vocational Education, the State Advisory Council on Vocational Education, the State employment service, and any State agency the Governor believes has an interest in manpower or manpower-related services within the State (Sec. 203 of the Vocational Education Act of 1973, as amended (Pub. L. 94-482)).

(iii) Representatives shall be appointed from organized labor, business and industry, the general public, community-based organizations, and from the population to be served under the Act (including representation of women, persons of limited English-speaking ability, and other minority groups when such persons represent a significant portion of the participant population). Additionally, representatives of appropriate veterans' organizations or groups shall be invited to serve as temporary members. Generally, staff of State or local government agencies should not take the place of representatives of the participant communities which their agencies serve (sec. 305(a) of Pub. L. 95-93).

(3) The Governor shall appoint a chairman for the Council and provide the Council with professional, technical, and clerical staff. The Council shall meet as it deems necessary.

(4) Council responsibilities shall include, but not be limited to:

(i) Reviewing prime sponsor grant applications, proposed modifications, and comments thereon, particularly for utilization of and coordination with State agencies and for coordination of plans and operations in contiguous areas.

(ii) Reviewing State agency plans for providing services to prime sponsors;

(iii) Making recommendations to prime sponsors, agencies providing manpower services, the Governor, and the general public on improving the coordination and effectiveness of manpower services within the State;

(iv) Monitoring continuously (A) the operation of programs conducted by prime sponsors in the State and (B) the availability, responsiveness, adequacy, and effective coordination of State services provided by all manpower-related agencies. The monitoring conducted by SMSC's shall include an emphasis upon reviewing statewide and inter-prime sponsor issues of utilization and coordination of manpower resources of State agencies, and the coordination of plans and operations in contiguous areas. The extent and procedures for monitoring prime sponsors and State agencies must be defined by the SMSC and publicized to all prime sponsors and State agencies affected prior to their being implemented;

(v) Submitting an Annual Report to the Governor which shall be a public document, and issuing such other studies, reports or documents to the Governor and prime sponsors as the SMSC believes necessary to effectively carry out the Act. The Annual Report shall include an analysis of the coordination achieved during the previous year, efforts taken

to effect such coordination, and recommendations on potential actions that would further facilitate effective coordination. This report shall be submitted no later than 120 days after the end of the Federal fiscal year. A copy of this report shall also be submitted to the State Advisory Council on Vocational Education. Comments received from the State Advisory Council on Vocational Education shall be incorporated into the Annual Report to the Governor (Sec. 203 of the Vocational Education Act of 1973, as amended (Pub. L. 94-482));

(vi) Consulting with the State Advisory Council on Vocational Education in order to identify the employment and training vocational education needs within the State and to assess the extent to which employment training, vocational education, vocational rehabilitation and other programs assisted under this and related Acts represent a consistent, integrated and coordinated approach to meeting such needs Sec. 203 of the Vocational Education Act of 1973, as amended (Pub. L. 94-482)); and

(vii) Commenting at least once annually on the reports of the State Advisory Council on Vocational Education and incorporating those comments in the Annual Report to the Governor (Sec. 203 of the Vocational Education Act of 1973, as amended (Pub. L. 94-482)).

(5) The Governor shall appoint a representative of the Council to represent the SMSC on the State Advisory Council on Vocational Education.

(6) The Governor shall appoint a representative of the Council to represent the Council on the State Occupational Information Coordinating Committee.

(e) *Combined planning and services councils.* In any State where the State is the only prime sponsor, the prime sponsor planning council may also perform the functions of the State Manpower Services Council. In such instances, the membership of the prime sponsor's planning council shall reflect the membership requirements of the State Manpower Services Council, in addition to meeting the membership requirements of a prime sponsor planning council, except that the provision of § 95.13(d) (2) (i) is not required.

§ 95.14 Content and description of grant application.

(a) *General.* This section describes the grant application which designated prime sponsors shall use to apply for funds under title I. The application shall consist of two documents, the Prime Sponsor Agreement (PSA) and the Annual Plan (AP). Detailed instructions for completing the application, which is described in summary form below, are contained in the *Forms Preparation Handbook*.

(b) *Prime Sponsor Agreement.* A designated prime sponsor applying for assistance for the first time shall submit to the RA a signed copy of the PSA. A designated prime sponsor which has already entered into a PSA in a previous year shall submit to the RA with its Annual Plan, a certification that the

PSA remains the same or that it is revised as described in attachments to the certification. The initial submission and subsequent certification of the PSA are subject to the comment and publication procedures of § 95.15. The PSA shall consist of the Signatory Page, the Narrative Description of General Information, Assurances and Certifications, and, for consortia, the approved consortium agreement.

(1) *Signatory page.* The Signatory Page, when signed by the designated prime sponsor and the authorized representative of the RA, shall constitute a legal and binding document by which the designated prime sponsor agrees that all work performed under its Annual Plan will be in accordance with the Act, the Assurances and Certifications and the regulations of 29 CFR Parts 94, 95, 96 and 98.

(2) *Narrative description of general information.* The Narrative Description of General Information shall include a detailed statement on the following items:

(i) *Program purpose.*

(ii) *Geographic description and economic conditions of area to be served.* A brief description of the geographic area to be served and the economic conditions of the area.

(iii) *Approach.* (A) A description of the recruitment and selection methods to be used.

(B) A description of the efforts to be undertaken to increase the participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age.

(C) A description of the placement and follow-up mechanisms and procedures to be used.

(D) *Public Service employment program.* (1) A description of actions to insure compliance with personnel procedures and collective bargaining agreements for jobs in other than the entry level.

(2) A description of the training for supervisory personnel.

(3) A description of efforts to remove artificial barriers.

(4) A description of the specific steps to be undertaken to provide consideration to special veterans, those veterans who have received other than a dishonorable discharge within four years prior to application, and welfare recipients.

(5) A description of the emphasis which will be placed on the development of jobs for veterans which will utilize skills acquired through their military experience.

(iv) *Delivery agents.* (A) An explanation of the methods and criteria to be used in the selection of deliverers of service.

(B) A description of priority given to area skill centers.

(C) A description of efforts to utilize apprenticeship or other on-the-job training opportunities available under Section 1787 of Title 38, United States Code.

(v) *Prime sponsor planning.* (A) A description of the role and procedures of the planning council in submitting rec-

ommendations, monitoring, and analyses, as well as information on the location, frequency, and publicizing of meetings, and whether minutes are kept and meetings are open to the public.

(B) A description of the staff support of the council.

(C) A list of the sectors represented on the council.

(D) A description of the participation of community-based organizations and groups in the program plan.

(vi) *Management and administrative plan.*—(A) *Organizational structure.* A description of the prime sponsor's organizational structure.

(B) *Administrative controls.* A description of the internal administrative controls including:

(1) Monitoring system;

(2) Evaluation system;

(3) Personnel or merit system (including the prime sponsor's plan for obtaining an acceptable personnel system as required in § 98.14(b));

(4) Accounting system;

(5) Fiscal reporting and participant tracking system(s);

(C) *Allowance payments system.* A description of the details of the allowance payments system, including waiver provisions.

(D) *Grievance procedures.* A description of the procedures for resolving any complaints, alleging violation of the Act, regulations, PSA, or Annual Plan, of CETA participants, contractors, subgrantees and other parties.

(E) *Equal employment opportunity.* A description of the mechanisms which will be used to assure nondiscrimination and equal employment opportunities.

(3) *Assurances and Certifications.* The Assurances and Certifications form is a signature sheet on which the prime sponsor assures and certifies that it will comply with the Act, the regulations of the Department, other applicable laws, and applicable Federal Management Circulars and Office of Management and Budget (OMB) circulars. The Assurances and Certifications form appears in the *Forms Preparation Handbook*. Following is a summary of the items which are described in detail on that form:

(1) General Assurances:

(A) Compliance with the Act and regulations, including conformance to amendments;

(B) Compliance with FMC 74-4 and 74-7 and OMB Circular A-95;

(C) Legal authority to apply for the grant (secs. 102(a), 701(a) (9) and (10));

(D) Compliance with Title VI of the Civil Rights Act of 1964;

(E) Non-discrimination (secs. 703(1) and 712);

(F) Compliance with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (FMC 74-7);

(G) Compliance with the Hatch Act as amended and restrictions on political activities (sec. 710);

(H) Prohibition on use of position for private gain (sec. 702(a));

(I) Access of Comptroller General and Secretary to records and documents pertaining to the Act (sec. 713(2));

(J) Non-support of religious facilities (sec. 703(4));

(K) Maintenance of required health and safety standards (sec. 703(5));

(L) Provision of appropriate employment and training conditions in regard to type of work, geographical region and proficiency of the participant (sec. 703(4));

(M) Provision of workmen's compensation protection to participants in on-the-job training, work experience, or public service employment programs under the Act at the same level and to the same extent as other employees of the employer who are covered by a State or industry workmen's compensation statute; and provision of workmen's compensation insurance or medical and accident insurance for injury or disease resulting from their participation to those individuals engaged in any program activity under the Act, i.e., work experience, on-the-job training, public service employment, classroom training, services to participants, and other activities, where others similarly engaged are not covered by an applicable workmen's compensation statute (secs. 703(6) and 208(4));

(N) Use of funds under the Act to supplement, rather than supplant funds otherwise available, prohibition on displacement of employed workers by participants employed under the Act, and prohibition on impairment of existing contracts for services (secs. 703(11) and 703(7));

(O) Training only in occupations which require two or more weeks of pre-employment training, unless these are immediate employment opportunities (secs. 703(8), and 105(a) (6));

(P) Training which has a reasonable expectation to lead to unsubsidized employment and which provides for the development of participants' potential consistent with their capabilities (secs. 703(9), 105(a) (6), and 703(10));

(Q) Use of funds to supplement rather than supplant the level of funds otherwise available for the planning and administration of the program (sec. 703(11));

(R) Compliance with reporting and recordkeeping requirements of the Act and regulations (secs. 703(12) and 311(c));

(S) Contribution to the occupational development or upward mobility of individual participants (sec. 703(13));

(T) Provision of required administrative and accounting controls (sec. 703(14));

(U) Provision for the manpower needs of youth in the area served (sec. 703(15));

(V) Compliance with minimum wage requirements specified under the Act (secs. 111(a) and (b) and 208(a)(2));

(W) Compliance with applicable labor standards pertaining to the worksite or training facility (secs. 111(b) and 706);

(X) Services and activities provided under this Act will be administered by or under the supervision of the applicant (sec. 105(a) (1)(B));

(Y) No funds shall be used for lobbying activities in violation of 18 USCA 1913;

(Z) Compliance with Department of Treasury Regulations found at 31 CFR 205.

(AA) Compliance with the provisions in the Clean Air Act and Federal Water Pollution Control Act.

(i) Additional assurances for Title I programs, as required by the Act:

(A) Provision of manpower services to those most in need of them, and consideration of the need for continued funding of programs of demonstrated effectiveness to serve them (sec. 105(a) (1)(D));

(B) Design of programs of institutional skill training for skill shortage occupations (sec. 105(a) (6));

(C) Submission of a comprehensive plan in accordance with section 105(a) and compliance with the provisions of section 105(b);

(D) Arrangements to assist the Secretary in carrying out his responsibilities under sections 105 and 108 of the Act (sec. 105(a) (7));

(E) Appropriate steps taken to provide for the increased participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age;

(F) Arrangements to promote maximum feasible use of apprenticeship or other on-the-job training opportunities available under Section 1787 of Title 38, United States Code. (Sec. 105(a) (3)(e)).

(G) Non-reduction in the numbers of youth to be served from the previous year in anticipation of the availability of funds under Subpart 3, Part C of Title III and prohibition against decreasing the extent of services offered to these youth, (e.g., replacing classroom training with only counseling. (Sec. 346(a) (2)).

(iii) Additional assurances relating to public service employment programs as follows:

(A) Special consideration be given to the filling of jobs which provide prospects for advancement or continued employment by providing complementary training and manpower services in accordance with procedures established in section 205(c) (4);

(B) Provision of public service jobs, to the extent feasible, in occupational fields most likely to expand within the public or private sector as the unemployment rate recedes (sec. 205(c) (6));

(C) Special consideration in filling transitional public service jobs be given to persons most severely disadvantaged in terms of length of unemployment and prospects for finding employment unassisted, but not authorize the hiring of any person when another person is on lay-off from the same or equivalent job (sec. 205(c) (7));

(D) Prohibition against the use of funds to hire any person to fill a job

RULES AND REGULATIONS

opening created by the action of an employer in laying off or terminating the employment of any other regular employee not supported under the Act in anticipation of filling such vacancy by hiring an employee to be supported under the Act (sec. 205(c)(8));

(E) Consideration of persons who have participated in manpower training programs (sec. 205(c)(9));

(F) Compliance with periodic review procedures pursuant to section 207(a) of the Act (sec. 205(c)(17));

(G) Removal of artificial barriers to public employment by agencies and institutions receiving financial assistance and contributing, to the maximum extent feasible, to the elimination of artificial barriers to employment and occupational advancement (secs. 205(c)(18) and 205(c)(21));

(H) Maintenance or provision of linkages with upgrading and other manpower programs to assist persons employed in public employment programs to fulfill their career goals (sec. 205(c)(19));

(I) Employment of not more than one-third of the participants in a bona fide professional capacity except in the case of classroom teachers; the Secretary may waive this limitation in exceptional circumstances (sec. 205(c)(22));

(J) Allocation of jobs equitably to local governments and agencies (sec. 205(c)(23));

(K) Provision of jobs in each promotional line which will not infringe upon the promotional opportunities of unsubsidized current employees and provision of jobs only at the entry level in each promotional line until applicable personnel procedures and collective bargaining agreements have been met (sec. 205(c)(24));

(L) Provision of jobs in addition to those that would otherwise be funded by the prime sponsor without assistance under the Act (sec. 205(c)(25));

(M) Appropriate steps taken to provide for the increased participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age.

(N) Selection of other than necessary technical supervisory and administrative personnel from the unemployed and underemployed population. (sec. 205(c)(20)).

(iv) Special certification for State grantees: Compliance with requirements and provisions of sections 106 and 107 of the Act.

(v) Additional assurance for Title II programs:

(A) Hiring of residents of areas of substantial unemployment for all jobs created under Title II and providing services to benefit residents of such areas.

(vi) Additional assurance for Title VI programs:

(A) Only persons residing in the area served by the eligible applicant under title VI of the Act will be hired to fill jobs created under the Act and that the public services provided by such jobs

shall, to the extent feasible, be designed to benefit the residents of such areas except that funds allocated under title VI of the Act (section 603(a)(2)(B)), to an area eligible for assistance under title II of the Act shall only be used to provide project and program opportunities to persons residing in those areas of substantial unemployment as defined in section 204(c). (Sec. 603(a)(2).)

(c) On a date set by the Secretary, an Annual Plan for Title I must be submitted by designated prime sponsors in order to obtain funds under Title I. The Annual Plan is subject to the comment and publication procedures of § 95.15. The Annual Plan shall consist of the following:

(1) *Application for Federal assistance.* The Application for Federal Assistance shall identify the designated prime sponsor and the amount of funds requested and provide information concerning the area to be served and the number of people expected to benefit from the program. Standard Form 424 contained in FMC 74-7 shall be used.

(2) *Annual narrative description of program.* The Annual Narrative Description of Program shall contain a detailed statement of the following items:

(i) *Objectives and needs for assistance.* (A) A description of the significant segments which are most in need of service, including a description of the local goals developed for qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age; and

(2) A breakout of the demographic groups (in terms of age, race, and sex) of the unemployed population, a breakout of the plan of service to each of the demographic groups, and justification for a plan of service to any of the demographic groups which is more than 15 percent below the group's incidence in the unemployed population. Variances in excess of 15 percent which occur because of the prime's concentration on serving its economically disadvantaged and/or underemployed population will be considered adequate justification.

(B) An assessment of job opportunities in the area.

(ii) *Results and benefits expected.* (A) A statement of the specific participant goals the prime sponsor intends to accomplish.

(B) A statement of other goals.

(iii) *Approach.*—(A) *Program activities and services.* (1) A description of the activities and services to be provided.

(2) A description of the participant flow and the relationship among the activities to be provided.

(3) A description of programs, if any, designed for persons of limited English-speaking ability.

(4) For those applicants intending to request funds under section 303, of the Act, a discussion of how migrants and seasonal farmworkers will be served.

(B) *Delivery agents.* (1) A list of deliverers and the services to be provided by each.

(2) A description of the linkages established.

(3) A list of the manpower related services and facilities which are available from Federal, State, and local agencies and an indication of which have been determined to have demonstrated effectiveness in providing manpower services.

(4) An explanation for non-use or duplication of existing services and facilities including programs of demonstrated effectiveness listed in § 95.14(c)(2)(iii)(B).

(C) *Discussion of program planning summary (PPS) and budget information summary (BIS).* (1) An explanation of how the PPS reflects the goals, objectives, and activity description provided above.

(2) An explanation of how costs were determined by the BIS.

(D) *Property.* A list of any items of capital equipment which individually cost more than \$1,000 including quantity and prices.

(iv) *Public service employment program.* (A) For those Title II applicants whose geographic area differs from the Title I areas described in the PSA, a description of the Title II area.

(B) *Analysis of public service needs.* A description of the unmet public service needs.

(C) *Approach.* A description by employing agency of the types of jobs to be funded including: (1) An explanation of how these jobs relate to the public service needs identified in paragraph (c)(2)(iv)(B) of this section.

(2) A description of determination of rates of compensation when they differ from what is normally paid by the employer.

(3) A description of the education, training, and supportive services to participants.

(4) A maintenance of effort verification.

(5) A description of plans to improve and expand employment and advancement opportunities of the target population.

(6) An explanation of how the public service employment program is integrated with other activities and services.

(7) A narrative explanation for basis of funding and job allocation to each local government and agency.

(3) *Program planning summary.* The Program Planning Summary requires a prime sponsor to provide a quantitative statement of planned enrollment levels, the participants to be served by each program activity (classroom training, on-the-job training, public service employment, work experience, and other activities) and planned outcomes for program participants. It shall also include an identification of the significant segments of the population and the number of individuals in each to be served.

(4) *Budget information summary.* The Budget Information Summary shall include a quantitative statement of yearly planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services), planned quarterly obligations, and

planned quarterly expenditures by program activity.

(5) *Public service employment occupational summary.* The Public Service Employment Occupational Summary shall include a description of proposed public service job opportunities, occupations and wages, including a comparison of such wages for similar unsubsidized jobs in each employing agency. If, at the time of submission of the Annual Plan, final decisions have not yet been made on all jobs to be filled, the Occupational Summary need not be submitted with the Annual Plan. Instead, it shall be submitted to the RA as soon as all jobs are selected but not later than 60 days after the date the Annual Plan is executed.

§ 95.15 Comment and publication procedures relating to submission of grant application.

(a) (1) Prime sponsor applicants are required to make public, provisions of the grant application prior to submission to the RA (Secs. 105(c)(2) and 108).

(2) The requirement to make the grant application public, which is necessary to create public awareness of the proposal and to obtain comments from interested parties, may be fulfilled through public hearings on the grant application or through public notice in newspapers, bulletins, or other media sources. At a minimum, each prime sponsor applicant shall make the proposed grant public as provided in paragraphs (b), (c), and (d) of this section.

(b) (1) Each prime sponsor applicant shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) which will provide for a general circulation throughout the area to be served by the prime sponsor's grant, a statement indicating the following information:

(i) The source of funds under which the grant is requested;

(ii) The amount of grant allotment;

(iii) A brief summary of the purpose of the grant, e.g., an explanation of the employment and training opportunities which are proposed for funding; and

(iv) The location and hours when the complete grant application and a comparison of performance against prior year's plan through the most recent quarter can be reviewed and the address and phone number where questions and comments may be directed.

(2) The publication shall be made 30 days prior to the submission of the application to the RA. A copy of the newspaper article shall be transmitted to the R.A.

(c) Each prime sponsor applicant shall provide a copy of its application for the purpose of commenting thereon, to the Governor 30 days prior to its submission to the R.A. At the same time it shall provide a summary to appropriate units of general local government within its jurisdiction with a population of at least 25,000 persons, to appropriate Indian prime sponsors, and to labor organizations representing employees engaged in similar work in the same areas as that

for which enrollees will receive subsidized employment or training.

(d) Each applicant that, in response to the submittal of its preapplication, has received notification from the appropriate State and sub-State clearinghouse(s) that it wishes to review the completed application (see § 95.11(a)(3)) should also provide a copy of its application to such clearinghouse(s) 30 days prior to its submission to the R.A.

(e) Comments pursuant to paragraph (b), (c), and (d) of this section shall be made to the prime sponsor applicant and the RA within 30 days of publication. A prime sponsor applicant shall acknowledge any written comment made pursuant to this section. It shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for the prime sponsor applicant's determination. The prime sponsor applicant shall provide copies of all written comments to the Planning Council and the Governor. In addition, all substantive written comments and responses will be transmitted to the RA with the grant application, unless the comments which were made during the 30 day period are received after the application's submission, in which case they will be sent separately to the RA.

(f) Where no comments have been received from an A-95 clearinghouse, or where the clearinghouse has not requested to review the grant application, the prime sponsor applicant shall so indicate in the appropriate item on Standard Form 424, noting clearinghouses which sent no response after reviewing the application, and clearinghouses which did not request to review the application after receiving the preapplication.

§ 95.16 Submission of grant application.

(a) Except as indicated in paragraph (b) of this section, each designated prime sponsor shall simultaneously submit to the RA on or before a date set by the Secretary:

(1) An Annual Plan for Title I,

(2) A certification that the PSA remains the same or is revised in certain respects, which are described in attachments, and

(3) An Approval Request Letter.

(b) Newly designated prime sponsors shall submit the PSA no later than 30 days prior to the submission of the Annual Plan, on or before a date set by the Secretary. An Approval Request Letter shall accompany the submission. A signed copy of the signatory page will be provided to the designated prime sponsor by the RA indicating approval of the PSA before submittal by the designated prime sponsor of its Annual Plan.

§ 95.17 Standards for reviewing grant applications.

(a) A grant application will be reviewed to determine if it meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law.

(b) In reviewing a grant application as provided in paragraph (a) of this section, the RA shall determine whether:

(1) The application is complete;

(2) The needs and priorities identified in the application are supported and justified by the documentation provided by the prime sponsor;

(3) The planned expenditures for program activities are substantiated by documentation of the needs and priorities identified in the application;

(4) The performance goals identified in the application are reasonable in light of past program experience in the same or similar activities and the documentation provided by the prime sponsor;

(5) Documentation is presented that reasonable arrangements have been made to involve the population to be served and community-based organizations in the planning process, through representation on the Prime Sponsor Manpower Planning Council or through participation in the specific planning of the program;

(6) The prime sponsor applicant's selection of the method of delivery of services is supported by adequate documentation based on availability and capability of delivery agents and appropriateness of services for the population to be served and provides evidence that due consideration has been given to the utilization of those services and facilities available from Federal, State, and local agencies (sec. 105(a)(3)(B));

(7) Maximum efforts have been made to meet the goals of the prior year's Annual Plan; such efforts shall include monitoring, evaluation, and remedial activities, such as, but not limited to, modification of the Annual Plan to reflect significant economic changes within the jurisdiction (sec. 105(c)(3));

(8) The administrative costs in the application are reasonable and provide, to the maximum extent feasible, for Federal funds to be expended for direct program activities and services, and, if administrative costs exceed 20 percent of non-public service employment activities whether the prime sponsor has cited an adequate reason and provided supporting documentation. Costs for public service employment other than wages and fringe benefits may not exceed 15 percent (secs. 108(d)(2) and 203(b));

(9) The prime sponsor has adequate internal administrative controls, accounting requirements, personnel standards, monitoring and evaluation procedures, availability of in-service training and technical assistance, and such other policies as may be necessary to promote the effective use of funds provided under Title I of the Act;

(10) All parties required to be afforded an opportunity to comment on the grant application have been afforded such an opportunity;

(11) Any comment on a grant application evidences noncompliance with the Act, the regulations promulgated pursuant to the Act, or any other applicable law;

(12) Documentation is presented that programs of institutional training are

designed for occupations in which skill shortages exist (sec. 105(a)(6)); and

(13) The public service employment job opportunities satisfy the requirements set forth in § 96.23 with the exception of § 96.23(b)(13);

(14) The manpower plan provides for appropriate arrangements by the prime sponsor to promote maximum use of apprenticeship or other on-the-job opportunities pursuant to Section 1787 of Title 38, United States Code (Sec. 105(a)(3)(E)).

§ 95.18 Application approval.

(a) An application for a grant shall be approved if it meets the requirements of the Act, the regulations promulgated under the Act and other applicable law, and if the RA determines that the prime sponsor has demonstrated maximum efforts to meet the goals of the prior year's annual plan.

(b) An application for a grant from a consortium, or pursuant to a State multijurisdictional agreement, shall be approved if, in addition to meeting the specifications in paragraph (a) of this section, an agreement among the parties has been submitted to and approved by the RA.

(c) (1) A prime sponsor applicant, the Governor, and the A-95 clearinghouse shall be notified by the RA within 7 days after taking action on the application. The Standard Form 424, as prescribed by FMC 74-7, shall be used for this purpose. If any party commenting to the RA pursuant to the A-95 clearinghouse review process recommends disapproval of the grant in whole or in part and if the RA after review of the recommendation determines that the grant should be approved, the RA shall inform the party making the comment of the reasons for the RA's determination on the Standard Form 424, along with the notification of action taken.

(2) Where a clearinghouse has recommended against approval of an application because it conflicts with or duplicates another Federal or federally assisted project, the RA shall consult with the agency assisting the referenced projects prior to taking action on the application.

(d) In addition to notifying the designated prime sponsor as provided in paragraph (c)(1) of this section, if an Annual Plan is approved, the RA shall provide the prime sponsor with a letter indicating approval.

(e) Funding authority will be issued by a Notice of Funding Availability.

§ 95.19 Application disapproval.

(a) An application for a grant shall be disapproved if it fails to meet any requirement of the Act, the regulations promulgated under the Act, or any other applicable law (secs. 105 and 108).

(b) No application shall be disapproved solely because of the percentage of total funds devoted to any allowable program activity.

(c) No application for a grant shall be disapproved until:

(1) The prime sponsor applicant has been notified that its application fails to meet a requirement of the Act, regulations promulgated under the Act, or other applicable law; and

(2) The prime sponsor applicant is provided with suggestions as to those corrective steps which may be utilized to remedy any defect found in the application; and

(3) The prime sponsor applicant has been provided a reasonable opportunity, but not less than 30 days, to remedy any defect found in the application, but has failed to do so.

(d) When an application is disapproved, a notice of disapproval shall be transmitted to the prime sponsor and the Governor, accompanied by a statement of the grounds of the disapproval. Such disapproval shall not be effective until notice and opportunity for a hearing has been provided, as required in Subpart C of Part 98.

§ 95.20 Use of alternative prime sponsors: services by the Secretary.

If an application is not filed, as required, or is denied, or if a grant is terminated in whole or in part during a fiscal year, the Secretary may make provision for the funds so released to be used by the State or another alternative prime sponsor to service the area originally to be served by the primary prime sponsor, or the Secretary may serve such an area directly. In so doing, the Secretary shall make every effort to minimize or prevent any disruption in participant activities (sec. 110(a)).

§ 95.21 Modifications.

(a) *Modifications of the prime sponsor agreement.* (1) The Signatory Page and the Assurances and Certifications shall only be modified at the initiation of the RA, after consultation with the prime sponsor, to insure compliance with the regulations.

(2) *The narrative description of general information of the PSA.* The Narrative Description shall be modified as follows:

(i) *RA initiated modifications.* RAs may require modification to insure compliance with the regulations, after consultation with the prime sponsor.

(ii) *Prime sponsor initiated modifications.* (A) When significant changes are planned in the systems and procedures, such as a change in the allowance payment system, prior regional office approval is necessary.

(B) The prime sponsor may make any changes other than those described in paragraphs (a)(1), (a)(2)(i), and (ii)(A) of this section without prior regional office approval, but must notify the RA of these changes in writing by the end of the quarter in which the change occurs. Revised portions of the PSA need not be submitted with the notice.

(3) *Format.* Modifications pursuant to paragraphs (a)(1), (a)(2)(i), and (ii)(A) of this section shall consist of the following:

(i) Approval request letter;

(ii) Revised Assurances and Certifications or revised Narrative Description of General Information, as appropriate; and

(iii) A copy of the newspaper announcement required in paragraph (c) of this section.

(b) *Modifications to the annual plan.*

(1) A modification to the Annual Plan requiring prior Regional Office approval is required under any of the following conditions:

(i) Change in duration of the annual plan;

(ii) Change in annual plan allotment;

(iii) Substantial change in program design and/or program goals defined as follows:

(A) When the cumulative number of individuals to be served, planned enrollment levels for program activities, planned placement terminations or individuals to be served within significant segments, is to be increased or decreased by 15 percent or more.

(B) For grants of \$100,000 or less, when the cumulative transfer of funds among program activities or cost categories exceeds \$15,000.

(C) For grants of over \$100,000, when the cumulative transfer of funds among program activities or cost categories exceeds \$50,000 or 15 percent of the total grant budget whichever is greater.

(D) When the program design is altered significantly such as when there is development or elimination of a program activity, or when 10% or more of the public service employment positions (except for Title VI) are to be used for rehiring laid-off employees.

(iv) At the initiation of the RA, after consultation with the prime sponsor, to insure compliance with the regulations and/or to insure responsiveness to changing economic conditions. A prime sponsor is responsible for assuring that its programs are responsive to the changing economic situation in its jurisdiction and for making appropriate modifications to its plan. The RA may request a reassessment and appropriate modification when the RA believes that the changing economic situation in a jurisdiction makes such a reassessment appropriate. If the prime sponsor disagrees with the RA's request for a modification pursuant to the conditions in this paragraph (iv), it may initiate a hearing pursuant to § 98.47.

(2) Annual Plan modifications will not be initiated solely to adjust planned performance to meet actual performance.

(3) *A-95 Clearance.* (i) Modifications require clearance through the A-95 clearinghouses only under the following conditions:

(A) There is a cumulative increase or decrease in funds equal to or more than 15 percent of the Annual Plan allotment for the current program year and/or;

(B) The Annual Plan is extended for a period of more than 3 calendar months and/or

(C) The RA directs that A-95 clearance is required for a particular modification.

(ii) (A) When A-95 clearance is required, the prime sponsor, whenever possible, shall provide notification to the appropriate A-95 State and areawide clearinghouses of its intent to modify its Annual Plan 60 days prior to submission of the formal modification to the RA. The notification of intent should consist of a revised form SP 424 and a brief description of the anticipated modification. If within 30 days from submission of such notification, the prime sponsor receives no notification from the A-95 clearinghouses that they wish to review the modification, the prime sponsor has fulfilled its obligation under A-95 and may submit its modification to the RA without submitting it to the A-95 clearinghouses as specified in paragraph (b) (3) (ii) (B) of this section.

(B) When a prime sponsor has not provided notification as specified in paragraph (b) (3) (ii) (A) of this section, or when it has provided this notification and the clearinghouses have requested to review the completed modification, the prime sponsor shall in all cases submit a copy of its modification to the clearinghouses for comment 30 days prior to its submission to the RA.

(C) Where no comments have been received from A-95 clearinghouses, or where the clearinghouses have not requested to review the completed modification, the prime sponsor shall so indicate in the appropriate item on the revised Standard Form 424, noting clearinghouses which sent no response after receiving the modification and clearinghouses which did not request to review the completed modification after being notified of the prime sponsor's intent to modify.

(4) A prime sponsor may make any change, consistent with the regulations in this Part and Part 98, in its Program Planning Summary, Budget Information Summary, or narrative description which is not set out in paragraph (b) (1) of this section without prior approval, but must show any such change in the First Program Status Summary and Financial Status Report, as appropriate, submitted to the Department after the change has been made. At the same time this report is submitted, an updated Program Planning Summary, Budget Information Summary, or Annual narrative description, as appropriate, shall also be submitted to the RA. Only those lines and columns or portions of the annual narrative affected by the modification need be submitted. Comments and publication requirements do not apply to changes described in this subparagraph (4).

(5) *Format.* Modifications pursuant to paragraphs (b) (1) and (3) of this section shall consist of the following:

(i) Approval Request Letter;

(ii) Revised form SF 424 (if A-95 clearance is required);

(iii) Revised Program Planning Summary and Budget Information Summary for current and future quarters only; except that a modification not involving a change in the annual plan allotment must be received in the regional office within 30 days of the beginning of the

current quarter in order to include changes to the current quarter goals.

(iv) Narrative description of the changes made and certification that the publication and comment procedures in paragraph (c) of this section have been complied with.

(v) A copy of the newspaper announcement required in paragraph (c) of this section.

(vi) Revised portions of the program narrative description, if appropriate.

(vii) Revised Occupational Summary, if appropriate.

(6) *Incremental Funding.* When the Annual Plan allotment is obligated by the RA in increments, each subsequent obligation by the RA requires a new Notice of Fund Availability (NFA) to be signed by an authorized representative of the Department of Labor. This NFA does not require a revised Annual Plan, and does not require publication, comment or A-95 clearance procedures to be followed.

(c) *Publication and Comment.* (1) No later than the date of submission to the RA, a copy of any proposed modification to the PSA and the Annual Plan pursuant to paragraph (a) (1), (a) (2) (i), (a) (2) (ii) (A), and (b) (1) and (3) of this section shall be forwarded to the Governor and summaries of the modifications shall be provided to appropriate units of general local government with a population of at least 25,000, to appropriate Indian sponsors, and to labor organizations representing employees engaged in similar work in the same area as that for which participants will receive subsidized employment or training; and the prime sponsor shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) of general circulation throughout the area to be served a notice of the prime sponsor's intent to request a modification, a brief summary of the purpose of the proposed modification, and the location, and hours when the complete modification can be reviewed and the phone number where questions and comments may be directed.

(2) Comments pursuant to paragraphs (b) (3) (ii) (B) and (c) (1) of this section shall be made to the prime sponsor and the RA within 30 days of publication. All substantive written comments and responses will be transmitted to the RA with the modification, unless comments are received after the modification's submission, in which case they will be sent separately to the RA.

(3) A prime sponsor shall acknowledge any written comment made pursuant to this section. It shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for the prime sponsor's determination.

(d) *Notification of Action.* (1) RA shall take final action on approval or disapproval of any proposed modification within 30 days of receipt. Within 7 days after taking action, the RA shall notify the prime sponsor and the Governor of the action.

(2) A denial of a prime sponsor's request for a modification shall be subject to the appeal procedures set out in Part 98.

(3) The procedures in § 95.18(c) (1) and (2) shall apply to modifications under paragraph (b) (3) of this section.

Subpart C—Program Operations

§ 95.30 General.

This Subpart sets out the program operation requirements for comprehensive manpower services under Title I of the Act. The utilization of funds under Title I is conditioned upon adherence to the Act, the regulations promulgated under the Act, and other applicable law.

§ 95.31 Basic responsibilities of prime sponsors.

A prime sponsor shall be responsible for:

(a) Compliance with approved plans and assurances;

(b) Compliance with Part 98 of this title;

(c) Providing equitable service to the demographic groups (age, sex, race) within its unemployed population, taking into account the priorities identified by the Secretary, if any, the significant segments most in need of service and the incidence of underemployed and economically disadvantaged in the prime sponsor's jurisdiction. Where variances as specified in § 95.14 occur in service to the demographic groups, they shall be adequately justified in the Annual Plan.

(d) Designing program operating activities which are, to the maximum extent feasible, consistent with every participant's fullest capabilities and which will lead to employment opportunities enabling every participant to become economically self-sufficient, and which will contribute to the occupational development or upward mobility of every participant (secs. 101 and 703(9)).

(e) Advising all participants of their rights and responsibilities prior to entering the program and granting the opportunity for an informal hearing as provided in § 98.26; and

(f) Making maximum efforts to achieve the provisions of its grant.

§ 95.32 Eligibility for participation in a Title I program.

(a) A person who is economically disadvantaged, unemployed, or underemployed (as defined in § 94.4) may, subject to paragraph (b) of this section, participate in a program offered by the prime sponsor under Title I of the Act (secs. 105(a), and 108(d)).

(b) For the purpose of participating in a public service employment program under Title I of the Act, participation is permitted for persons who:

(1) Reside, as defined in paragraph (c) of this section, anywhere within the geographical area covered by the prime sponsor's grant; and

(2) Are unemployed (as defined for Title I in § 94.4), or underemployed (as defined in § 94.4), or economically disadvantaged (as defined in § 94.4); and are otherwise eligible for participation

consistent with the requirements of sections 205(c) and 208 of the Act (sec. 105(a)(5)).

(c) For the purpose of defining residence in paragraph (b) of this section, the term residence shall mean an individual's permanent dwelling place or home, both at the time the individual applies and is selected for participation in a public service employment program under Title I of the Act. In determining whether a particular place is an individual's dwelling place or home, the intention of the individual is the key element. Maintenance of an "address" is not necessarily the same as maintenance of a dwelling place or home.

(d) Program participation shall be limited to citizens of the United States, natives of American Samoa and the Trust Territory of the Pacific Islands, permanent resident aliens and other aliens who have been permitted to accept permanent employment in the United States by the Immigration and Naturalization Service.

(e) (1) Prime sponsors shall take appropriate steps to provide for the increased participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age in public service employment programs and job training opportunities under Title I. Specific effort should be made to develop appropriate full or part-time opportunities for such veterans. Each prime sponsor shall develop local goals for service to such veterans taking into consideration their numbers and the number of qualified persons in other significant segments of the population in the area served. These goals shall be included in the prime sponsor's Annual Plan. The prime sponsor should utilize the assistance of the State and local veterans employment service representative in meeting these goals. In addition, prime sponsors shall, in filling public service jobs, give special consideration to special veterans; and they shall exercise maximum efforts to design jobs and job training opportunities for veterans who have received other than a dishonorable discharge within four years before the date of their application. (sec. 305(a) of Pub. L. 95-93).

(2) Each prime sponsor shall, on a continuing and timely basis, provide information on job vacancies and training opportunities funded under Title I of the Act to the State and local veterans employment service representative for the purpose of disseminating information to eligible veterans sec. 104(b) of Emergency Jobs and Unemployment Assistance Act of 1974).

(f) Since all Title II, VI, Emergency Employment Act (EEA), participants, and participants under Title X of the Public Works and Economic Development Act (PWEDA) who are enrolled in Title II or VI activities funded through the Department, would also have qualified at time of enrollment for Title I, then a Title II, Title VI, EEA, or Title II or VI PWEDA participant for whom maximum efforts have been made to find unsubsidized employment or for whom

supplemental training or services is needed as a prerequisite to a job, may be transferred into or concurrently enrolled in a program offered by the prime sponsor under Title I of the Act without an intervening period of unemployment. Title III participants who met the eligibility criteria for Title I at the time of their enrollment may also be transferred into or enrolled concurrently in the Title I program (sec. 205(c) (14) and (19) and 105(a)(2)).

(g) While the selection of eligible full-time students for participation in programs, including summer programs, funded under Title I of the Act is not prohibited, prime sponsors should exercise caution in providing for such participation and should provide for such participation only in accordance with the regulations in this part. Prior to providing for such participation, prime sponsors should give special consideration to those most in need of service, including economically disadvantaged persons of all age groups.

§ 95.33 Types of manpower program activities available.

(a) A prime sponsor may provide any type of manpower program activity which is consistent with the purposes of Title I of the Act. Such program activities include but are not limited to the development and creation of job opportunities, and the training, education, and other services needed to enable an individual to secure and retain employment at the individual's maximum capacity. Program activities should be primarily directed toward the placement of individuals in unsubsidized employment, either directly at the outset of program participation as a result of intake and assessment or indirectly through provision of training or services (sec. 101). As provided in the nondiscrimination provisions of these regulations, the prime sponsors shall not include in the design of its program traditional hiring practices which result in discrimination based on race, creed, color, handicap, national origin, sex, age, political affiliation, or beliefs, and shall not permit such hiring practices to limit its responsiveness to the needs of the economically disadvantaged, unemployed, and underemployed population in the locality.

(b) A prime sponsor may, consistent with these regulations; determine the operating levels and program activities in its area. It may select any of the program activities described in paragraph (d) of this section or devise other activities within the framework of the Act. No prime sponsor plan will be disapproved solely because of the percentage of funds devoted to a particular program activity (sec. 108(c)).

(c) A prime sponsor shall develop special program provisions for persons of limited English-speaking ability when such persons constitute a significant portion of a prime sponsor's program. The prime sponsor shall establish operating procedures for (sec. 301(b)):

(1) Teaching occupational skills in the primary language of such persons for

occupations which do not require a high proficiency in English;

(2) Developing new employment opportunities for persons limited in English-speaking ability;

(3) Developing opportunities for promotion within existing employment situations for such persons;

(4) Disseminating appropriate information and providing job placement and counseling assistance in the primary language of such persons;

(5) Conducting training and employment programs in the primary language of such persons; and

(6) Conducting programs designed to increase the English-speaking ability of such persons.

(d) The basic types of manpower activities available to a prime sponsor include, but are not limited to the following:

(1) *Classroom training.* (i) This program activity is any training conducted in an institutional setting designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses in, for instance, remedial education, training in the primary language of persons of limited English-speaking ability, or English-as-a-second-language training.

(ii) Occupational training shall be designed for occupations in which skills shortages exist (sec. 105(a)(6)) and for which there is reasonable expectation of employment (sec. 703(10)). In making these determinations, a prime sponsor shall utilize available community resources such as the local SESA office, the National Alliance of Businessmen, etc.

(iii) Participants' benefits. Allowances and other benefits shall be provided in accordance with § 95.34 and § 98.24 to participants receiving training or education.

(iv) Vocational education services may be supported with funds provided through (A) the prime sponsor's Title I grant or (B) special grants to Governors for vocational education and services in prime sponsor areas. In order to obtain services under (B) of this paragraph the prime sponsor will negotiate nonfinancial agreements with State Vocational Education Boards utilizing the procedures described in Subpart D of this Part 95.

(2) *On-the-job training.* (i) On-the-job training (OJT) is training conducted in a work environment designed to enable individuals to learn a bona fide skill and/or qualify for a particular occupation through demonstration and practice. Such training may be conducted on a "hire first, train later" basis, or with ultimate placement with the training organization or an employer other than the training organization. OJT may involve individuals at the entry level of employment or be used to upgrade present employees into occupations requiring higher skills. Training shall be designed to lead to the maximum development of partici-

pants' potentials and to their economic self-sufficiency.

(ii) *Inducements to employers.* Prime sponsors may provide payments or other inducements to public or private employers for the bona fide training and related costs of enrolling individuals in the program; *Provided*, That payments to employers organized for profit are only made for the costs of recruiting, training and supportive services which are over and above those normally provided by the employer. Use of a formula which incorporates the trainee's wage as a factor and fixed unit cost contracting are acceptable methods of reimbursement to private-for-profit employers for extraordinary training costs associated with providing on-the-job training. When using a formula, the prime sponsor can reimburse the employer for extraordinary training costs for training on the job, up to a level not to exceed 50 percent of participant wages. Prime sponsors may design other methods of cost reimbursement provided that payments reflect only extraordinary training costs.

(iii) Direct subsidization of wages for participants employed by private employers organized for profit is not an allowable expenditure (sec. 101(5)).

(iv) *Labor organization consultation.* Appropriate labor organizations shall be consulted in the design and conduct of on-the-job training programs where collective bargaining agreements exist with the employer. Prime sponsors shall consider the advice and comments of such labor organizations, when designing OJT programs and negotiating OJT contract provisions and shall ensure that wages for covered positions conform with collective bargaining agreements.

(v) Participants' benefits. Wages and other benefits provided to OJT participants shall be in accordance with conditions specified in § 95.35 and § 98.24.

(3) *Public Service Employment.* (i) Public service employment is subsidized employment with public employers and private non-profit employers who provide public services as defined in § 94.4. This program activity may also include training, manpower services, and other services incident to such subsidized employment. Conditions for participation in public service employment under Title I are contained in § 95.32(b). Operating conditions and allowable expenditures applicable when Title I funds are used for this activity are the same as those used for this activity when Title II funds are used, as enumerated in Subpart C of Part 96 with the following exceptions: §§ 96.20, 96.22, 96.23(b)(13), 96.26(a)(1), (b), and (c), 96.27, 96.35(a), 96.36(c), and 96.37 (sec. 105(a)(5)).

(ii) Participants' benefits. Wages and benefits for persons in a public service employment program shall be as provided in Part 96 and § 98.24.

(4) *Work Experience.* (i) (A) Work experience is a short-term and/or part-time work assignment with a public employer or a private nonprofit employing agency and is designed to enhance the employability of individuals who

have either never worked or who recently have not been working in the competitive labor population for an extended period of time, i.e., new or recent entrants into the labor force and re-entrants into the labor force. The work experience activity is designed to increase the employability of such individuals by providing them with experience on a job, an opportunity to develop occupational skills and good work habits and an opportunity to develop specific occupational goals through exposure to various occupational opportunities.

(B) In addition, work experience may include a short-term work assignment while an appropriate classroom training, on-the-job training, or public service employment opportunity funded under this Act is being developed. Prime sponsors are encouraged to limit the participation of individuals placed in work experience while an appropriate activity is being developed to 90-days.

(C) Participation in work experience for purposes other than that indicated in paragraph (d)(4)(i)(B) of this section shall be for a reasonable length of time determined in accordance with the needs of the participant.

(D) Except as provided above, the participation in work experience of individuals whose only manpower need is for employment, e.g., unemployed individuals who have occupational skills and good work habits, is generally inappropriate.

(ii) Prime sponsors shall describe in their grant application the basic design of their work experience activity, including the characteristics of participants who will participate in the work experience activity, the objectives of the activity and the duration and planned outcomes of work experience. In addition, prime sponsors shall differentiate work experience programs from any public service employment provided by the prime sponsor.

(iii) Work experience activities for youth include part-time employment for students attending school, short-term employment for students during summer, short-term employment for out-of-school youth adjusting to a work setting and in transition from school to employment, short-term employment for recent graduates, and short-term or part-time employment for those youth who have no definite occupational goal.

(iv) Work experience for adults includes part-time or short-term employment for the chronically unemployed, retired persons, recently discharged military individuals, handicapped individuals, institutional residents and inmates and others who recently have not been working in the competitive labor population for extended periods of time.

(v) Prime sponsors shall periodically review the progress of each work experience participant to determine whether continued participation in work experience, transfer to another activity funded under this Part, placement in unsubsidized employment or some other action is most appropriate. The prime sponsor shall make this determination based on

whether the purposes of the work experience activity described in paragraph (d)(4)(i) of this section have been achieved.

(vi) Program outcomes for work experience participants include: (A) return to school; (B) enrollment in post secondary education; (C) enlistment in the military services; (D) enrollment in classroom training, on-the-job training or other manpower training and (E) placement in public service employment or unsubsidized employment.

(vii) Work experience in the private for profit sector is prohibited.

(viii) Participant benefits. Each participant in a work experience activity shall receive wages. Wages shall be commensurate with such factors as the type of work performed, the geographic region of the program, and the skill proficiency of the participant. (A) In no event shall the rate be less than the highest of the following: (1) The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exceptions to Section 6(a)(1) shall not apply to work experience participants except as provided in paragraph (B).

(2) The minimum wage prescribed by State or local law for similar employment.

(3) For participants on Federally funded or Federally assisted construction projects, the prevailing rate established by the Secretary, in accordance with the Davis-Bacon Act, as amended, when such rates are required by the Federal Statute under which the assistance was provided.

(B) Wages in the Commonwealth of Puerto Rico, the Virgin Islands, and American Samoa shall be consistent with provisions of Federal, State or local law otherwise applicable. Wages in the Trust Territory of the Pacific Islands shall be consistent with local law except on Eniwetok Atoll and Kwajalein Atoll where Section 6(a)(1) of the Fair Labor Standards Act applies.

(C) Participants in work experience activities shall be provided workmen's compensation and other fringe benefits as specified in § 98.24.

(D) When a participant in a work experience activity is performing the tasks of regular public service employment type job, wages must be comparable to those paid for the regular public service job, as specified in § 96.34.

(ix) Work experience participants may be outstationed at worksites, including Federal agencies and private nonprofit agencies. Outstationed participants are still to be considered employees of the prime sponsor or its subgrantees or contractors, as appropriate, and shall be assured of the same working conditions and benefits, as specified in § 98.24, as received by other similarly employed employees of the prime sponsor or its subgrantees or contractors (not the outstationed worksite).

(x) Work experience participants may be used in home repair and winterization/weatherization activities as provided in § 98.12(b)(3).

RULES AND REGULATIONS

(5) *Services to participants.* This program activity is designed to provide supportive and manpower services which are needed to enable individuals to obtain employment or retain employment through the postplacement services described in paragraph (d) (5) (iv) of this section or to participate in other manpower program activities funded under this Act or any other Act, leading to their eventual placement in unsubsidized employment. Such services include but are not limited to the following:

(i) *Services to applicants.* (A) Outreach;

(B) Intake: This includes screening for eligibility; completion of Part A, B, and C of the Participant Record; the initial determination as to whether the program can benefit the individual; the determination of the manpower activities and services which would be appropriate for the applicant; the determination of the availability of an appropriation manpower activity; a decision on selection; and dissemination of information on the program.

(ii) *Manpower Services.* (A) Orientation to the world of work;

(B) Counseling: This includes employment related counseling, testing, and vocational or career exploration;

(C) Job development;

(D) Job placement; and

(iii) *Supportive Service:* (A) Health care and medical services;

(B) Child care: Day care programs shall meet Federal Interagency Day Care Standards and comply with applicable State standards including State licensing requirements;

(C) Transportation;

(D) Residential support;

(E) Assistance in securing bonds;

(F) Family planning services, provided that such services are made available to a participant only on a voluntary basis, and are not to be a prerequisite for participation in, or receipt of, any services or benefit from the program; and

(G) Legal services.

(iv) *Post-placement services.* Manpower and supportive services, as described in paragraph (d) (5) (ii) and (iii) of this section, may be provided as appropriate to terminated participants who have been placed in unsubsidized employment. These services may be provided at the discretion of the prime sponsor in order to enable the terminated participant to retain employment. Such services may be provided during the 30 day period following a participant's termination from the program.

(v) *Participant benefits.* Allowances as described in § 95.34 may be paid to a participant enrolled in manpower services (e.g., orientation and counseling), as described in this paragraph (5) when such services are a component of another activity as described in § 95.33(d) or when such services are provided on a regularly scheduled basis.

(6) *Other manpower activities.* (i) These activities are manpower activities not described in the categories above, or manpower related activities designed

to expand job opportunities and enhance the participation of individuals who are eligible to participate in programs funded under the Act. The approved grant application must describe the basic design of activities undertaken as "other manpower program activities," and the manpower objectives to be accomplished through these activities. These program activities do not fit into any of the above categories, and include, but are not limited to, the following:

(A) Removal of artificial barriers to employment;

(B) Job restructuring;

(C) Employability Assessment other than that involved during intake;

(D) Job Development;

(E) Job Referral and Placement;

(ii) *Participant benefits.* Allowances as described in § 95.34 may be paid to a participant enrolled in other manpower activities as described in this subparagraph (6) when such activities are a component of another activity described in § 95.33(d) or when such activities are provided on a regularly scheduled basis and are described in the approved grant application.

(7) *Combined activities.* (i) A participant enrolled in any activity funded under the Act may be enrolled simultaneously in any other activity as a component of the participant's primary activity. The primary activity constitutes any activity in which the participant is enrolled for more than 50 percent of the scheduled time.

(ii) *Participant benefits.* A participant enrolled in a primary activity for which wages are payable and simultaneously in an activity for which allowances are payable may, at the prime sponsor's option, be paid wages for all hours of participation. A participant enrolled in a primary activity for which allowances are payable may, at the prime sponsor's option, be paid allowances for all hours of participation. However, in this latter case, before placing any individual in such an activity, the prime sponsor shall request a determination from the Internal Revenue Service as to whether income from the non-primary component is taxable.

§ 95.34 Training allowances.

(a) *The payment system.* To assure accountability and uniformity, and to facilitate the necessary coordination with other programs, the system for payment of allowances under the Act shall be maintained as a standard payment system which will insure prompt and efficient payment to all participants (sec. 111(a)). A standard payment system is one which consists of a uniform set of procedures, but which may be operated by one or more delivery agents. The payment system shall include the following elements:

(1) Determination of entitlement and computation of amount to be paid;

(2) Issuance and distribution of payments;

(3) Maintenance of payment records and preparation of required reports;

(4) Maintenance of a system to detect and collect overpayments; and

(5) Arrangements with other agencies to obtain necessary information to minimize payments which are unauthorized under this section. This shall include arrangements with:

(i) The State employment security agency to develop a procedure for obtaining information concerning the receipt and verification of unemployment compensation benefits by participants;

(ii) Appropriate agencies for verification of public assistance payments (e.g., local welfare agencies); and

(iii) Training facilities for submittal of payment requests and certification of attendance.

(b) *Selection of delivery agent.* The prime sponsor is required to provide a standard allowance payment system either directly or through contract with an organization or organizations it considers appropriate for its particular circumstances. The prime sponsor in selecting the delivery agent for the payment of participant allowances should give consideration to the use of existing agencies which have experience in operating an allowance payment system, e.g., the Unemployment Insurance Service.

(c) *Eligibility for allowances.* (1) Subject to paragraph (j) of this section and § 95.33(d) (7) (ii), allowances shall be paid to participants for time spent in classroom training. In addition, allowances may be paid for time spent in other activities as specified in § 95.33(d) (6), or manpower services such as orientation and counseling. However, allowances for participation in manpower services or other activities shall be provided only in accordance with § 95.33(d) (5) (v) and (d) (6) (ii).

(2) No allowances shall be paid for participation in any course or program of study (e.g., a B.A. or B.S. degree program) which exceeds 104 weeks. While prime sponsors may pay for the costs of tuition, books, and related training expenses of courses or programs of study exceeding 104 weeks, at no time during participation in such a course shall allowances be paid. (sec. 111(a)).

(d) *Application for unemployment compensation.* Participants should be encouraged to apply for and claim unemployment compensation benefits, as defined in § 94.4, if they are not already receiving such benefits.

(e) *Basic allowances.* (1) A basic allowance for one week shall, except under the provisions of paragraphs (i) and (j) of this section, equal the highest of:

(i) The minimum hourly wage prescribed by State or local law for employment in the prime sponsor's area, multiplied by the number of hours of participation in which the trainee attends as required, or is absent for good cause; or

(ii) The minimum hourly wage specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, multiplied by the number of hours of participation, which the trainee attends as required, or is absent from for good cause provided that for the Commonwealth of Puerto Rico, the Virgin Islands and American Samoa, the rate shall be consistent with the Fed-

eral, State, or local law otherwise applicable. Wages in the Trust Territory of the Pacific Islands shall be consistent with local law except on Eniwetok Atoll and Kwajalein Atoll where the rate in Section 6(a) (1) of the Fair Labor Standards Act applies.

(2) To compute the number of hours of participation the prime sponsor shall count the time spent in classroom training, and may count the time spent in manpower services or other activities as specified in § 95.33(d).

(3) Dependents allowances, incentive allowances, and additional allowances as described in § 95.34 (f), (g), and (h) are not to be included as a part of the basic allowances.

(f) *Dependents allowances.* (1) Dependents allowances of \$5 per week for each dependent in excess of two dependents, up to a maximum of \$20 for six or more dependents shall be provided to participants receiving basic allowances or who would be receiving basic allowances were it not for adjustments which are permitted pursuant to paragraph (i) of this section. Participants eligible for dependents allowances from other sources shall not be precluded from receiving dependents allowances funded under the Act.

(2) Dependents allowances may be reduced pro rata only for absences without good cause. The methodology for making the reduction shall be described in the approved PSA.

(g) *Incentive allowances for persons receiving public assistance or who are in institutions.* (1) Incentive allowances, in the amount of \$30 per week, in lieu of basic allowances, shall be paid to participants receiving public assistance, as defined in § 94.4, or whose needs or income are taken into account in determining such public assistance payments to others.

(i) Incentive allowances shall be reduced pro rata for absences without good cause. The methodology (e.g., daily or hourly proration) for making the reduction shall be described in the approved PSA.

(1) Incentive allowances shall be disregarded in determining the amount of public assistance payments individuals are entitled to receive under Federal or federally assisted public assistance programs (sec. 111(a)).

(2) Incentive allowances, in lieu of basic allowances, but not in excess of such allowances, may be paid institutionalized persons, including prison inmates participating in program activities. The determination as to whether such allowance will be paid, and the amounts thereof, shall be made by the prime sponsor in consultation with officials of the institutions. In the case of prison inmates, all or part of such payments, as determined by the prime sponsor and the head of the institution, may be held in reserve and delivered upon the participant's release from the institution.

(h) *Additional allowances.* Additional reasonable allowances may be paid to participants to cover extraordinary costs associated with participation in an ac-

tivity. The circumstances in which additional allowances will be paid shall be described in the approved grant application.

(i) *Adjustments in Allowances.* (1) The basic allowance shall be reduced, on a weekly basis, by the amount of unemployment compensation payments, if any, received by participants provided that such allowance is not reduced for any unemployment compensation received by an individual for a week or weeks prior to enrollment. If the unemployment compensation is paid on a bi-weekly basis, the compensation shall be prorated over the two weeks before the allowance is reduced.

(2) No basic allowance to which an individual may otherwise be entitled shall be diminished in any respect because of receipt of a separation payment provided under any collective bargaining agreement.

(3) The basic allowance may be adjusted upward to the degree that the local cost of living exceeds the national norm, if conditions for such increases are described in the approved grant application.

(4) Periodic increases to the basic allowance may be provided as an incentive to participation when such increases are described in the approved grant application.

(5) (i) The basic allowance may be reduced, at the option of the prime sponsor, on a weekly basis, by the total amount of any Basic Education Opportunity Grant (BEOG) entitlement which is received by the participant, during the period in which he/she is enrolled in the classroom training program, divided by the number of weeks in which the participant is enrolled in a classroom training program.

(ii) The prime sponsor may, however, make arrangements with the training institution to apply BEOG payments to tuition, books and related training costs normally funded by the prime sponsor. The prime sponsor should then pay the training institution the difference, if any, between the actual training costs and the BEOG. No BEOG adjustments to allowance payments shall be made when this procedure is used.

(6) The basic allowance may be reduced by the amount of wages received by classroom training participants who are concurrently enrolled during the same payment period in either full-time work experience, public service employment, or on-the-job training funded under the Act. The determination of whether the other activity is full-time shall be based on the number of hours that constitute full-time employment for regular employees similarly employed at the employing agency or worksite.

(7) Incentive allowances for public assistance recipients may, at the option of the prime sponsor, be adjusted downward, provided that the adjustment shall not result in an incentive allowance payment at a rate less than the higher of the Federal, State, or local minimum wage multiplied by the number of hours of participation, which the trainee at-

tends as required or is absent from for good cause.

(j) *Waivers of allowance payments.* (1) The payment of all or part of the basic allowance, described in paragraph (e) of this section, may be waived only in accordance with paragraphs (j) (2) or (3) of this section under the conditions described in the approved grant application or approved modifications to the grant.

(2) Waivers of basic allowance payments, as provided in paragraph (j) (1) of this section, shall be allowable only under the following conditions:

(i) That the waiver will be applied to the total enrollment in a course and will not be imposed on an individual basis, except as provided in paragraph (j) (3) of this section;

(ii) That the waiver will not have the effect of denying participation to individuals who could not participate without receipt of the allowances;

(iii) That the waiver will increase the number of individuals served;

(iv) That the waiver will otherwise promote the purposes of the Act; and

(v) That all participants for whom allowances are waived will be so notified in writing.

(3) In exceptional circumstances, individual waivers when described in the approved grant application or approved modifications to the grant, may be granted under the following conditions:

(i) The waiver is at the written agreement of the participant; and

(ii) Individual waivers may only be granted when all of the funds allocated in the Budget Information Summary for allowances have been obligated and training opportunities are still available and are unfilled.

(4) The dependents allowances described in paragraph (f) of this section may not be waived, except in cases where the entire basic allowance is waived.

(5) Allowance payments may not be waived solely because a participant is a veteran and receives benefits through the Vietnam Era Veteran's Readjustment Assistance Act, as amended.

(6) Incentive allowances shall not be waived.

(k) *Repayments.* Prime sponsors shall require participants to repay the amount of any overpayment of allowances under this part, except if the overpayment was made in the absence of fault on the part of the participant, in which case repayment shall be waived where such recovery would be against equity and good conscience or would otherwise defeat the purposes of the program. Any overpayment not repaid may be set off against any future allowance or other benefits under the Act to which the participant may become entitled.

§ 95.35 Wages.

(a) Participants in public service employment programs shall be paid wages as required by Part 96 of these regulations.

(b) Participants in work experience shall be paid wages as required by § 95.33 (d) (4) (viii).

(c) Participants in on-the-job training shall be compensated by the employer at such rates, including periodic increases, as are reasonable considering such factors as industry, geographical region, and trainee proficiency (sec. 111 (b)). In no event shall the rate be less than the highest of the following:

(1) The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exceptions to section 6(a)(1) shall not apply to on-the-job training participants, except as provided in paragraph (c).

(2) The State or local minimum wage for the most nearly comparable covered employment;

(3) The prevailing rates of pay for persons employed in similar occupations by the same employer; or

(4) The minimum entrance rate for inexperienced workers in the same occupation in the establishment or, if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area or any minimum rate required by an applicable collective bargaining agreement.

(5) For participants on Federally funded or Federally assisted construction projects, the prevailing rate established by the Secretary, in accordance with the Davis-Bacon Act, as amended, when such rates are required by the Federal statute under which the assistance was provided.

(d) For hours spent in the production of goods or services, the rate of compensation to be paid to trainees by employers, public or private shall be specified in a written agreement entered into by the training or employing facility and the prime sponsor. Where hours spent in production of goods or services are in positions covered by collective bargaining agreements, wages paid to trainees by the employer shall not conflict with the terms of the collective bargaining agreement.

(e) Wages in the Commonwealth of Puerto Rico, the Virgin Islands, and American Samoa shall be consistent with provisions of the Federal, State or local law, otherwise applicable. Wages in the Trust Territory of the Pacific Islands shall be consistent with local law, except on Eniwetok Atoll and Kwajalein Atoll, where Section 6(a)(1) of the Fair Labor Standards Act applies.

§ 95.36 Minimum duration of training; reasonable expectation of employment.

(a) *Duration of training.* An individual shall not be referred for training in an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities available in that occupation (sec. 703(8)).

(b) *Reasonable expectation of employment.* An individual shall not be referred to training unless the prime sponsor determines, after utilizing available and appropriate community resources, that there is a reasonable expectation of employment for such an individual in the

occupation for which the person is being trained (sec. 703(10)).

§ 95.37 Training for lower wage industries; relocation of industries.

(a) No participant may be enrolled in any activity or service under this Act in any lower wage industry in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high.

(b) Funds under this Act may not be used to assist in any relocation of an establishment from one area to another unless the Secretary determines that such relocation will not result in an increase in unemployment in the area of original location or any other area where it conducts business operations (sec. 704 (a)).

§ 95.38 Cooperative relationships between prime sponsor and other manpower agencies.

(a) (1) Each prime sponsor shall, to the extent feasible, establish cooperative relationships or linkages with other manpower and manpower-related agencies in the area within its jurisdiction, in particular, with agencies operating programs funded through the Department (Section 105(a)(3)(D)). Prime sponsors are encouraged to utilize the free direct placement services offered by the SESA's.

(2) Prime sponsors are required to establish cooperative linkages with SESAs in order to serve Federal Supplemental Benefit claimants and persons eligible under Title II of the Trade Act of 1974.

(b) Prime sponsors shall, to the extent feasible, notify the appropriate apprenticeship agency of training activities in apprenticeable occupations (sec. 105(a)(3)(D)).

(c) Any prime sponsor which intends to provide services under the Act to recipients of Aid to Families with Dependent Children (AFDC) should coordinate such services with the local sponsor of the Work Incentive Program, if any, to assure that the delivery of services under this Act is consistent with the WIN requirements. The provision of comprehensive manpower services to recipients of AFDC who are required to register for the WIN program may be affected by provisions of Title IV of the Social Security Act. Limitations on length of training, requirements to accept work in lieu of training, and other regulatory requirements may affect the AFDC recipient's participation in programs under the Act.

§ 95.39 Federal Supplemental Benefit claimants; beneficiaries under Title II of the Trade Act of 1974.

(a) (1) As outlined in the notice in the FEDERAL REGISTER (40 FR 49540) on October 22, 1975, each prime sponsor is responsible for entering into a cooperative agreement with the employment service in order to provide training and other opportunities, as appropriate, to FSB claimants.

(2) If an individual receiving FSB is enrolled in a classroom training program

and subsequently defers his or her FSB payments, the prime sponsor may:

(i) Permit the individual to remain in the training opportunity which was developed per the cooperative agreement for an FSB recipient; however, the prime sponsor is not obligated to pay allowances in such an instance because the opportunity was developed on the basis that the individual was receiving FSB and would therefore, receive no or minimal allowances, or

(ii) Terminate the individual as he/she is filling a training opportunity created for FSB claimants but is not receiving FSB payments. Such an individual may reapply for participation as an applicant who is not in FSB status.

(b) Prime sponsors should, to the extent feasible, make training opportunities available to workers who have been adversely affected by United States trade policy and who have been found eligible under Title II of the Trade Act of 1974.

Subpart D—Special Grants to Governors

§ 95.50 General.

(a) Funds shall be allocated to each State through a special grant for the support of:

(1) Vocational education services for prime sponsors;

(2) The State Manpower Services Council; and

(3) State manpower services.

(b) Funds available under paragraph (a) shall be granted to each Governor in accordance with the formula allocation set out in § 95.2 of these regulations. Each Governor shall distribute these funds as provided in § 95.55. (secs. 103, 106, 107, and 112).

(c) Provisions generally applicable in parts 94 through 99 of these regulations shall apply to special grants under this subpart unless otherwise provided.

§ 95.51 Distribution of funds.

(a) Five percent of the funds available under Title I of the Act shall be allocated to the Governors of the States to provide needed vocational education and services for prime sponsors through State Vocational Education Boards as set out in § 95.2. These services are to be provided to participants enrolled in Title I programs in prime sponsor areas.

(b) State Manpower Services Councils shall be supported with funds as set forth in § 95.2(b)(2).

(c) State manpower services provided under Section 106 of the Act shall be funded as set forth in § 95.2(c)(2).

§ 95.52 Grant application.

(a) (1) Upon notification by the Secretary of the amount of funds available for a special grant to the State, the Governor shall submit a Special Grant Application to the RA on a date set by the Secretary. Copies of all forms and instructions for the application for Special Grants are contained in the Forms Preparation Handbook.

(2) The Governor shall comply with the preapplication and comment and publication requirements specified in § 95.11 and § 95.15 (a), (b), (d), (e) and

(f). In addition, the Governor shall provide 30 days prior to submission of the grant application for the purposes of commenting thereon:

(1) A summary of the grant application to each prime sponsor in the State and to units of general local government within the Balance-of-State with a population of at least 25,000;

(ii) A summary of the grant application to appropriate Indian prime sponsors and to labor organizations representing employees engaged in similar work in the same areas as that for which participants will receive subsidized employment or training; and

(iii) A summary of any programs to be funded within a prime sponsor's area with State Manpower Services funds to the prime sponsor in whose jurisdiction the program is to be funded.

(b) The Special Grant Application shall contain the following:

(1) *Approval Request Letter.*

(2) *Application for Federal Assistance.* Standard Form 424 as prescribed by FMC 74-7 is being used for the application for the special grant.

(3) *Special Grant Plan.* This plan consists of:

(i) *Special Grant-Program Planning Summary.* The Special Grant-Program Planning Summary is a multiprogram form providing for statistical entries on numbers of participants served by vocational education projects and State Manpower Services.

(ii) *Special Grant-Budget Information Summary.* The Special Grant-Budget Information Summary is a multiprogram form providing for entries on funds planned to be obligated and expended in vocational education projects, State Manpower Services Council and State manpower services.

(iii) *Special Grant Program Narrative.* The narrative for the special grant will be composed of three separate sections. The Program Narrative form contained in the *Forms Preparation Handbook* requires a detailed statement on the program including the following items:

(A) *Vocational Education Services Program Narrative.* (1) An explanation of the method used to allocate funds to prime sponsor areas and the rationale for the method used;

(2) An explanation for any nonfinancial agreement which was not reached between a prime sponsor and Vocational Education Board;

(3) A summary of all agreements required in § 95.56 between individual prime sponsors and the State Vocational Education Board. The summary should follow the procedures established for the development of individual program narratives supporting each nonfinancial agreement;

(4) A copy of each such agreement. If all of the nonfinancial agreements are not available when the application is submitted, the Governor shall describe the training and services which he expects to be supplied by the State Vocational Education Board to each prime sponsor. Nonfinancial agreements received after

the grant is made will be forwarded to the RA; and

(5) An explanation of administrative costs which exceed 20 percent;

(B) *State Manpower Services Council Program Narrative.* (1) A listing of members of the Council, identifying the group each member represents;

(2) Identification of the chairman.

(3) A statement of the procedures which will be followed in reviewing prime sponsor plans and plans of State agencies and making recommendations which will provide more effective overall coordination of manpower services in the State; including a discussion of how the Council functions, the location, frequency, and publicizing of meetings, and whether minutes are kept and meetings are open to the public;

(4) A description of the system to be used in monitoring other prime sponsors and State manpower services;

(5) A description of the types of data, materials, and information which will be included in the annual report to the Governor;

(6) If the Governor plans to use part of the funds authorized for the Council under Section 103(d) of the Act (one percent of the allocation) for Section 106 (State services), the specific use of the funds shall also be described, including the amount of funds and objectives to be accomplished.

(7) A breakdown of staff and other council costs. This breakdown should include administration, wages, and fringe benefits.

(C) *State Manpower Services Program Narrative.* (1) Explanation of steps taken to assure cooperation of State agencies with prime sponsors in implementing the program;

(2) Description of State plan for sharing of manpower resources and facilities for most efficient and economical operation;

(3) Coordination of programs financed under Wagner-Peyser Act to provide assistance to individuals in accordance with policies of this Act;

(4) An explanation of the arrangements made by the State to assist the Secretary in carrying out the Secretary's mandatory responsibilities for enforcing the requirements for Federal contractors to list all suitable employment openings with local offices of the State employment service and to take affirmative action as required in section 2012(a) of title 38, United States Code;

(5) A description of any arrangements for planning areas (see Part V of Attachment A, OMB Circular A-95) to serve geographical regions within the State;

(6) A description of provisions for coordination of the manpower and related services to be provided by the State in areas to be served by prime sponsors other than the State, including the exchange of information and coordination of manpower plans;

(7) A description of any of the activities allowable under Section 106(c) of the Act, that the State chooses to provide, detailing those activities to be

undertaken and the costs and goals of such activities, including:

(i) A description of allowable services being delivered under the Act throughout the State, by State agencies responsible for employment, training, and related services (sec. 106(c) (1));

(ii) A description of special programs and services for rural areas outside major labor market areas (sec. 106(c) (2));

(iii) A description of the extent to which information will be developed and published regarding economic, industrial, and labor market conditions;

(iv) A description of information and technical assistance to be provided to prime sponsors in the State; and

(v) A description of any model training and employment programs.

(2) It meets the requirements of the Act, the regulations promulgated under the Act, other applicable law, and if the RA determines that the Governor has demonstrated maximum efforts to meet the goals of the prior year's annual plan.

(c) Section 95.18(c) (1) and (2) applies to grants funded under subpart D of this Part 95.

(d) If an application is approved, the RA shall provide the Governor with a letter indicating approval.

§ 95.53 Application approval and disapproval; grant agreement.

(a) In reviewing the grant application, the RA shall utilize the standards specified in 95.17 (a) and (b) (1), (4), (7), (8), (9), (10), (11), (12), and (13):

(b) The RA shall approve any grant application which meets the following standards and requirements:

(1) It contains all the required forms, information, and certifications required by the regulations;

(e) An application for a special grant shall be disapproved if it fails to meet any requirement of the Act, the regulations promulgated under the Act, or any other applicable law. All other conditions set forth in § 95.19 shall apply to the disapproval of special grants.

(f) Upon approval, the Governor shall provide a summary of the Special Grant to each prime sponsor in the State.

§ 95.54 Modifications.

(a) A modification to a Governor's Special Grant Plan is required under any of the following conditions:

(1) Change in duration of the Plan;

(2) Change in the Plan allotment;

(3) Substantial change in program design and/or program goals defined as follows:

(i) When the cumulative number of individuals to be served or the planned placement terminations is to be increased or decreased by 15 percent or more.

(ii) When the cumulative transfer of funds among program activities or cost categories exceeds \$50,000 or 15 percent of the total grant budget whichever is greater.

(iii) When the program design is altered significantly (see § 95.21(b) (1) (iii) (D)).

(b) A-95 Clearance. (1) Modifications require clearance through the A-95 clearinghouse only under the following conditions:

(i) There is a cumulative increase or decrease in funds equal to or more than 15 percent of the Plan allotment for the current program year and/or;

(ii) The term of the Plan is extended for a period of more than 3 calendar months and/or;

(iii) The RA directs that A-95 clearance is required for a particular modification.

(2)(i) When A-95 clearance is required, the Governor, whenever possible, shall provide notification to the appropriate A-95 State and area wide clearinghouses of its intent to modify its Plan 60 days prior to submission of the formal modification to the RA. The notification of intent should consist of a revised form SF 424 and a brief description of the anticipated modification. If within 30 days from submission of such notification, the Governor receives no notification from the A-95 clearinghouses that they wish to review the modification, the Governor has fulfilled its obligation under A-95 and may submit the modification to the RA without submitting it to the A-95 clearinghouses as specified in paragraph (b) (2) (ii) of this section.

(ii) When the Governor has not provided notification as specified in paragraph (b) (2) (i) of this section or when the Governor has provided this notification and the clearinghouse(s) have requested to review the completed modification, the Governor shall in all cases submit a copy of its modification to the clearinghouses for comment 30 days prior to its submission to the RA.

(iii) Where no comments have been received from A-95 clearinghouses or where the clearinghouses have not requested to review the completed modification, the Governor shall so indicate in the appropriate item on the revised SF 424, noting clearinghouses which sent no response after receiving the modification, and clearinghouses which did not request to review the completed modification after being notified of the Governor's intent to modify.

(c) The Governor may make any change, consistent with the regulations in this Part and Part 98, in its Program Planning Summary, Budget Information Summary, or narrative description which is not set out in paragraph (a) of this section without prior approval, but must show any such change in the First Program Status Summary and Financial Status Report, as appropriate, submitted to the Department after the change has been made. At the same time this report is submitted, an updated Program Planning Summary, Budget Information Summary, or narrative description, as appropriate, shall also be submitted to the RA. Only those lines and columns or portions of the narrative affected by the modification need be submitted. Comments and publication requirements do not apply to changes described in this paragraph (c) of this section.

(d) Special Grant Plan modifications shall not be initiated solely to adjust

planned performance to meet actual performance.

(e) Format. Modifications pursuant to paragraphs (a) and (b) of this section shall consist of the following:

(1) Approval Request Letter.

(2) Revised Form SF 424 (if A-95 clearance is required).

(3) Revised Special Grant Program Planning Summary and Budget Information Summary for current and future quarters only; except that a modification not involving a change in the grant allotment must be received in the regional office within 30 days of the beginning of the current quarter in order to include changes to the current quarter goals.

(4) Narrative description of the changes made and certification that the review and comment procedures in paragraph (f) have been complied with.

(5) A copy of the newspaper announcement required in paragraph (f) of this section.

(6) Revised portions of the narrative description, if appropriate.

(f) Publication and Comment. (1) No later than the date of submission to the RA, the Governor shall provide a summary of any modification pursuant to paragraphs (a) and (b) of this section to each prime sponsor in the State and units of general local government within the Balance of State with a population of at least 25,000, to appropriate Indian sponsors, and to labor organizations representing employees engaged in similar work in the same area as that for which participants will receive subsidized employment or training; and the Governor shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) of general circulation throughout the area to be served a notice of the intent to request a modification, a brief summary of the purpose of the proposed modification, and the location and hours when the complete modification can be reviewed and the phone number where questions and comments may be directed.

(2) Comments pursuant to paragraphs (b) (2) (ii) and (f) (1) of this section shall be made to the Governor and the RA within 30 days of publication. All substantive written comments and responses shall be transmitted to the RA with the modification, unless comments are received after the modification's submission, in which case they shall be sent separately to the RA.

(3) The Governor shall acknowledge any written comment made pursuant to this section, and shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for such determination.

(g) Notification of Action. (1) The RA shall take final action on approval or disapproval of any proposed modification within 30 days of receipt. Within 7 days after taking action, the RA shall notify the Governor of the action.

(2) A denial of a Governor's request for a modification shall be subject to the appeal procedures set out in Part 98 of this chapter.

(3) The procedures in § 95.18(c) (1) and (2) shall apply to modifications under paragraph (b) of this section.

(h) The procedures for incremental funding are the same as those specified in § 95.21 of Subpart A.

§ 95.55 Governor's distribution of vocational educational funds.

(a) Upon notification of the funds available to the State for vocational education, the Governor shall inform in writing the State Vocational Education Board and each prime sponsor of the amount of funds available to be spent in each prime sponsor's area and the methodology used to determine that amount. If a prime sponsor elects not to use all or part of the funds provided for its area, it shall notify the Governor who will redistribute the funds among other eligible prime sponsors.

(b) The Governor shall determine the amount of funds to be made available in each prime sponsor's area assuring that such funds do not increase by more than 20 percent the amount of funds available to that prime sponsor's area under the basic allocation formula set out in § 95.2(b) (Sec. 103(c)).

§ 95.56 Program operations.

(a) Vocational education services and activities. (1) The Governor shall provide vocational education funds received by special grant to the State Vocational Education Board as described in § 95.55 of this Subpart D. The State Vocational Education Board will then provide the training and services detailed in a nonfinancial agreement with the prime sponsor as described in § 95.58 of this Subpart D. This agreement will be developed at the local level between prime sponsors and the State Vocational Education Board to provide vocational education and services which are consistent with provisions of the prime sponsors' comprehensive plan to participants enrolled in Title I programs in prime sponsor areas. This agreement will then be forwarded to the Governor, to become part of the special grant application which shall be submitted to the RA.

(2)(i) Vocational education services which may be provided by a State Vocational Education Board include, but are not limited to, basic or general education, educational programs conducted for offenders, institutional training, and supportive services as defined in § 95.33 (d) (5) or as authorized as supportive services in vocational education programs administered by a State Vocational Education Board. The services provided must be consistent with the provisions of the Act and regulations. Vocational education funds allocated under this Subpart D may also be utilized as appropriate, for the payment of allowances to participants in vocational education training and for administrative costs incurred for the vocational education programs funded under the Act.

(ii) Vocational education funds allocated under this Subpart D shall not be used for activities to be carried out with the State manpower services funds or by the State Manpower Services Council.

(3) If no Vocational Education Board exists within a State, the Governor may provide financial assistance to an alternate agency which serves the same purpose as a State Vocational Education Board.

(b) *State Manpower Services Council.* (1) The Governor shall, from funds available under § 95.2(b) (2), provide staff and other necessary services in support of the Manpower Services Council in performing its functions under § 95.13(d).

(2) Funds for State Manpower Services Councils may be used for State manpower services to the extent such funds are not needed for this council.

(c) *State manpower services.* Funds provided under § 95.2(c) (2) of these regulations are to be used for the following:

(1) Activities required to be performed by the State (sec. 106(b)) are as follows:

(i) Assurance that the State agencies providing manpower and manpower-related services either independently or as subgrantees or contractors will cooperate with prime sponsors and eligible applicants in implementation of the program.

(ii) Development of methods for the sharing of resources and facilities in order to carry out manpower programs throughout the State. The administration of such programs will be designed to meet the needs of the area with minimum duplication and in the most efficient and economical manner.

(iii) Coordination of programs financed under the Wagner-Peyser Act in accordance with such rules, regulations, and guidelines as the Secretary determines necessary for the purpose of providing coordinated and comprehensive assistance to those individuals requiring manpower and manpower-related services to achieve their full occupational potential in accordance with the policies of the Act;

(iv) Arrangements made by the State to assist the Secretary in carrying out his responsibilities for enforcing the requirements for Federal contractors to list all suitable employment openings with local offices of the State employment service and take affirmative action, as required in section 2012(a) of Title 38, United States Code. Such arrangements shall be explained in the State grant application and shall relate only to Federal contractors and subcontractors and should not be interpreted to include grantees, subgrantees or contractors under the Act (sec. 106(b) (5)).

(v) Arrangements for any planning areas (see Part V of Attachment A, OMB Circular A-95, to service geographical regions within the State, including a description of the roles and responsibilities of the planning area with particular emphasis on the steps taken to assure that plans of all State agencies for delivery of services have been effectively coordinated.

(vi) Coordination of the manpower and related services to be provided by the State in areas to be serviced by prime sponsors other than the State, and that

provision has been made for the establishment of mechanisms to (A) provide for the exchange of information between States and local governments on State, intrastate, and regional planning in areas such as economic development, human resource development, education, and such other areas that may be relevant to manpower planning; and (B) promote the coordination of all manpower plans in a State so as to eliminate conflict, duplication, and overlapping between manpower services under the Act and manpower services provided under other statutory authority.

(2) Activities which may be provided at the option of the State (sec. 106(c)) are as follows:

(i) Provision of allowable services under the Act which are being delivered throughout the State by State agencies responsible for employment and training and related services;

(ii) The provision of financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas;

(iii) Development and publication of information regarding economic, industrial, and labor market conditions, including but not limited to job opportunities and skill requirements, labor supply in various skills, occupations, and economic and business development and location trends;

(iv) Provision, without reimbursement and upon request, to any prime sponsor serving an area within the State, of such information and technical assistance to assist any such prime sponsor in developing and implementing its programs under the Act; and

(v) Development of special model training and employment programs and related services, including programs for offenders similar to programs described in Section 301(c) of this Act.

(3) When using funds provided under 95.2(c) (2) for manpower activities (e.g., work experience, classroom training, public service employment), the requirements of Subpart C of Part 95, and of Part 96, as appropriate, apply.

§ 95.57 *Funding; grant administration.*

(a) *Funding.* Special grants will be funded in the same way as basic grants under this Part 95.

(b) *Grant administration.* The requirements related to grant administration contained in Part 98 are applicable to special grants to Governors, except as provided in Subpart D of Part 95.

(1) The overall 20 percent limitation on funds used for administration as set out in § 98.12(f) (6) shall not apply to the special grant.

(i) Funds provided for vocational education services through the special grant are subject to the provisions of the 20 percent limitation on use of funds § 98.12(f) (6). At least fifty percent (50%) of the vocational education funds allocated to administration shall be made available to local prime sponsor areas unless adequate justification for not doing so is provided to the RA by the Governor.

(ii) There is no administrative cost limitation on funds for State Manpower Services Councils or State manpower services.

(2) When funds for vocational education services are used for the payment of allowances to participants, the method of payment utilized must be that of the prime sponsor whose participants are receiving such allowances.

(i) Where the prime sponsor has an established delivery system for the payment of allowances pursuant to § 95.34, the State Vocational Education Board shall utilize the agency or agencies administering that system.

(ii) Where the prime sponsor has no allowance payment delivery system, the method of payment shall be developed between the prime sponsor and the State Vocational Education Board, subject to the requirements of § 95.34.

(c) *Reports for special grants.* (1) The following reports are required:

(i) A Special Grant-Program Status Summary.

(ii) A Special Grant-Financial Status Report.

(iii) A Quarterly Summary of Participant Characteristics (QSPC). The QSPC shall be required for participants provided Vocational Education services and in instances where the State Manpower Services funds are utilized to fund training and employment opportunities. The prime sponsor shall submit a QSPC on its Title I participants receiving Vocational Education services to the Governor so that a summary QSPC can be compiled. The Governor shall make arrangements to insure that local agencies responsible for intake of any participants receiving employment and training opportunities funded under § 95.2(c) (2) supply the data required by the QSPC to the Governor so that a summary QSPC can be completed.

(2) The Governor shall supply to each prime sponsor to which vocational education services are provided a Special Grant Program Status Summary and a Special Grant Financial Status Report for funds expended in the sponsor's area, and shall submit a summary Special Grant-Program Status Summary and a Special Grant-Financial Status Report with copies of the individual prime sponsor reports attached, to the RA.

(3) Each of the three reports shall be submitted to the RA no later than 30 days after the end of the reporting period. If a Governor's period ends at a date other than the Federal fiscal year quarter, a fifth set of reports, covering the entire grant period will be required. Instruction for completion of these reports are in the *Forms Preparation Handbook*.

§ 95.58 *Nonfinancial agreement between prime sponsor and State Vocational Education Board.*

(a) (1) Upon notification of the funds available for its area, the prime sponsor shall develop a financial, statistical, and narrative plan for the expenditure of such funds by the Vocational Education Board in the prime sponsor's area. This

plan shall be developed in conjunction with the Vocational Education Board consistent with the prime sponsor's Comprehensive Manpower Plan. The plan will be signed by both the prime sponsor and the Board and when signed, will constitute a nonfinancial agreement.

(2) (i) If, within 90 days after notification of available funds for the area has been provided, the prime sponsor and the Board are unable to reach an agreement, the Governor shall mediate the dispute, with the intent of insuring that the local vocational education needs of the prime sponsor's area are met. The Governor retains the authority to determine, in consultation with the prime sponsor, the purposes for which the funds should be used. If mediation by the Governor does not result in a solution acceptable to both parties, it is incumbent upon the Governor to take action necessary to expeditiously and properly utilize those funds, including making other arrangements to insure that the prime sponsor's area is served or if such arrangements cannot be made, the Governor may then redistribute the funds to another prime sponsor area. The affected parties shall be informed prior to any action taken by the Governor.

(ii) If, within 120 days after notification of available funds for the area has been provided, the nonfinancial agreement still has not been finalized, the RA shall arbitrate the dispute.

(b) The Vocational Education Board shall provide services to the prime sponsor upon receipt of the necessary funds from the Governor. The nonfinancial agreement will consist of the following four sections:

(1) Prime sponsor vocational education nonfinancial agreement signature sheet;

(2) Part I of the Special Grant-Program Planning Summary;

(3) Appropriate columns of the Special Grant-Budget Information Summary;

(4) Vocational education program narrative, which shall include the identification of the potential recipient(s) of the funds specified in § 95.57(b)(1)(i) for program administration.

(c) After the agreement is signed, a copy will be sent to the Governor for his review and approval.

(d) The Governor shall develop procedures for the prime sponsors and the Vocational Education Board to follow when they desire to modify the nonfinancial agreement.

(e) The Governor shall develop procedures to assure that the Vocational Education Board provides services consistent with the Governor's Special Grant plan for vocational education services and the nonfinancial agreements between the Board and the prime sponsors.

§ 95.59 Coordination with prime sponsor.

(a) The financial and statistical information from the approved Nonfinancial Agreement Program Planning Summary and Budget Information Summary will be entered into the relevant columns

of the prime sponsor's basic grant Program Planning Summary and Budget Information Summary as provided in the *Forms Preparation Handbook*. If the Comprehensive Manpower grant has been signed prior to final approval of the Vocational Education Agreement, a modified prime sponsor's grant Program Planning Summary and Budget Information Summary will be submitted when the vocational education information is available.

(b) Information provided by the Vocational Education Program Status Report and Financial Status Report, supplied to the prime sponsor from the Governors, will be entered in the prime sponsor's basic grant Program Status Report and Financial Status Report.

PART 96—PROGRAMS UNDER TITLE II OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Subpart A—General

- Sec.
96.1 Scope and purpose.
96.2 Allocation of funds.
96.3 Eligibility for funds.

Subpart B—Grant Application

- 96.10 General.
96.11 Preapplication for Federal Assistance; consortium designation.
96.12 Eligible applicant designation.
96.13 Planning process; advisory councils.
96.14 Content and description of grant application.
96.15 Comment and publication procedures relating to submission of grant application.
96.16 Submission of grant application; standards for reviewing grant applications.
96.17 Application approval; application disapproval; grant agreement.
96.18 Use of alternative eligible applicant; services by the Secretary.
96.19 Modifications.

Subpart C—Program Operation

- 96.20 General.
96.21 Basic responsibilities of eligible applicants.
96.22 Basic responsibilities of program agents; relationship with eligible applicants.
96.23 Acceptance public employment positions.
96.24 Maintenance of effort.
96.25 Responsibility for selecting participants.
96.26 Place of residence for participants.
96.27 Eligibility for participation in a Title II program.
96.28 Equitable service to the unemployed population; serving significant segments.
96.29 Groups to be provided special consideration within the significant segment groups served.
96.30 Serving the most severely disadvantaged persons.
96.31 Training and supportive services.
96.32 Linkages with other manpower programs.
96.33 Placement goals.
96.34 Compensation for participants.
96.35 Administrative staff.
96.36 Use of Title II funds for programs under Titles I and III-A.

Subpart D—Special Conditions for Grants to Indian Tribes on Federal and State Reservations

- 96.40 General.
96.41 Distribution of funds.

Sec.

- 96.42 Eligibility for funds.
96.43 Funding of eligible applicants.
96.44 Planning process; advisory councils.
96.45 Comment and publication procedures relating to submission of Indian grant applications.
96.46 Assistance by the Director, Division of Indian and Native American Programs.
96.47 Participant eligibility.
96.48 Nepotism.
96.49 Nondiscrimination.
96.50 Subgrants.
96.51 Travel requirements.

AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845), sec. 702(a), unless otherwise noted.

Subpart A—General

§ 96.1 Scope and purpose.

(a) This part contains the Department of Labor's regulations providing for the establishment and operation of public service employment programs, and other manpower programs, under Title II of the Act.

(b) Provisions for Title II programs for Indian tribes on Federal and State reservations are found in Subpart D of this Part 96. The provisions of Subparts A, B, and C apply only to non-Indian eligible applicants except as otherwise noted in Subpart D.

(c) Definitions for every abbreviation and major term may be found in Part 94 of these regulations.

(d) Statutory authority for the regulations contained in this Part 96 may be found in section 702(a) of the Act, as well as in other substantive provisions of the Act. Applicable statutory provisions, other than section 702(a) are noted generally in these regulations.

§ 96.2 Allocation of funds.

(a) Funds appropriated under Title II of the Act are available only for areas of substantial unemployment and may be allocated by the Secretary only to eligible applicants (secs. 204(a) and 204(c)).

(b) (1) At least 80 percent of the funds available under Title II shall be allocated among eligible applicants in accordance with a ratio comparing the number of unemployed persons residing in areas of substantial unemployment within each eligible applicant's jurisdiction to the number of unemployed persons residing in all areas of substantial unemployment (sec. 202(a)).

(2) Funds not allocated as provided in paragraph (b) (1) of this section, may be distributed by the Secretary at his discretion taking into account the severity of unemployment in such areas and may include additional areas of substantial unemployment designated by the Secretary after the fiscal year allocation of Title II funds (sec. 202(b)).

(i) When any portion of these funds is to be allocated using a distribution based upon a formula, the Secretary shall not later than 30 days prior to such allocation publish for comment in the FEDERAL REGISTER the specific formula for such distribution, the rationale behind the selection of the formula and

the proposed amount for distribution to each eligible applicant. After consideration of comments received, the Secretary shall publish final allocations (sec. 202(c)).

(c) Except as provided in § 96.36(c), an eligible applicant shall distribute to a program agent through a formal subgrant agreement those funds that are allotted to the eligible applicant under the formula specified in paragraph (b) (1) for use within the program agent's jurisdiction unless the program agent declines to operate a program under Title II of the Act, in which case, the eligible applicant will make other arrangements to serve that jurisdiction (sec. 204(d) (1)).

§ 96.3 Eligibility for funds.

(a) Funds shall be allocated by the Secretary only to eligible applicants. Eligible applicants are those prime sponsors and Indian tribes on Federal or State reservations, as defined in § 94.4, which include areas of substantial unemployment (sec. 204(a)).

(b) For the purpose of allocating funds, the term "eligible applicant" shall include any entity which is eligible to be a prime sponsor under Title I of the Act and Indian tribes on Federal or State reservations as described in § 96.42 (sec. 204(b)).

(c) A State shall not qualify as an eligible applicant for any geographical area within the jurisdiction of any other eligible applicant within the State unless the non-State eligible applicant has not submitted an approvable application for Title II funds (secs. 204(a)(1) and 102(b) (1)).

(d) A unit of general local government shall not qualify as an eligible applicant with respect to any area within the jurisdiction of another eligible unit of general local government unless such smaller unit has not submitted an approvable application for such areas (secs. 204(b) and 102(a) (b) (2)).

(e) (1) Eligible applicants shall distribute funds to program agents, as provided in § 96.2(c) (sec. 204(d) (1)).

(2) (i) No program agent shall receive or continue to receive funds for any area of substantial unemployment within the jurisdiction of another program agent unless the RA determines that the smaller program agent has not carried out its administrative responsibility for developing, funding, overseeing, and monitoring programs within its area, consistent with the application for financial assistance developed by the eligible applicant in cooperation with the program agent (secs. 204(d) (3) and 102 (b) (2)).

(ii) No eligible applicant may make other arrangements, as specified in § 96.22(d), for serving an area of substantial unemployment being served by a program agent, which the eligible applicant determines is not carrying out its administrative responsibility for developing, funding, overseeing, and monitoring programs within its area, consistent with the application for financial assistance

developed by the eligible applicant in cooperation with the program agent, except with the review and the concurrence of the RA (sec. 204(d) (2)).

(f) (1) An eligible applicant or program agent, other than a State, whose entire jurisdiction qualifies as an area of substantial unemployment shall, to the extent feasible, allocate funds for identifiable subareas which meet the unemployment rate requirement of areas of substantial unemployment in § 94.4. Such allocation to subareas shall be based on the ratio of the number of unemployed persons residing in each subarea to the total number of unemployed persons within the eligible applicant or program agent's jurisdiction.

(2) Where the eligible applicant is a State that has an unemployment rate for its jurisdiction of at least 6.5 percent, the State shall, to the extent feasible, allocate its funds under Title II to individual areas of substantial unemployment within its jurisdiction. Such allocations shall be based on the ratio of the number of unemployed persons residing in each individual area of substantial unemployment to the sum of unemployed persons residing in all such areas of substantial unemployment within the State's jurisdiction.

(3) An eligible applicant or program agent with an overall unemployment rate of less than 6.5 percent shall allocate its funds only for those areas of substantial unemployment specified by the Secretary (secs. 201 and 202(a)).

(g) If an eligible applicant finds that there is an area of substantial unemployment within its jurisdiction that has not been designated by the Secretary to receive assistance, it may recommend that such area be considered for assistance by the Secretary. In making any such recommendation, the eligible applicant must include a precise geographical definition of the area to be served and its population. Such a recommendation shall be submitted to the RA. The Secretary shall, within a reasonable time, make a determination on the recommendation and inform the eligible applicant of the determination and the reasons therefor.

Subpart B—Grant Application

§ 96.10 General.

This Subpart B provides the procedures for obtaining grants to operate programs under Title II of the Act.

§ 96.11 Preapplication for Federal Assistance; consortium agreements.

Potentially eligible applicants, including consortia formed under § 95.11 of these regulations, shall be notified of their eligibility to apply for grants under Title II. At that time such applicants shall submit a preapplication following the procedures set forth in § 95.11(a) of this title.

§ 96.12 Eligible applicant designation.

Upon receipt of a completed preapplication the RA shall determine whether the applicant is eligible to operate a program under Title II of the Act. The RA

shall notify the applicant of the determination according to the procedures set forth in § 95.12 of this title.

§ 96.13 Planning process; advisory councils.

To receive financial assistance under Title II of the Act, eligible applicants shall submit an approvable Title II Annual Plan as set out in § 96.14. In developing and modifying such a plan, an eligible applicant shall utilize the planning process and the advisory councils as set out in § 95.13 (b), (c), (d) and (e) of this title.

§ 96.14 Content and description of grant application.

(a) *General.* (1) This section describes the grant application for funds under Title II of the Act. Copies of all forms and instructions are contained in the *Forms Preparation Handbook*.

(b) An Annual Plan for Title II must be submitted by prime sponsors on a date set by the Secretary. The Annual Plan consists of the following:

(1) *Application for Federal Assistance.* This form is described in § 95.14(c) (1).

(2) *Annual Narrative Description of Program.* The annual narrative description requirements for Title II are the same as those described in § 95.14(c) (2) for Title I programs. A detailed statement on each of those items must be provided as part of the Title II Annual Plan, except as provided below:

(i) The information required under § 95.14(c) (2) (iii) (A), program activities and services, shall only be provided if the Title II applicant intends to conduct Title I activities with Title II funds.

(ii) If the Title II applicant's geographical area differs from the Title I geographical area described in the PSA, the information required under geographical area to be served, as specified in § 95.14(b) (2) (ii) shall be provided for the Title II area.

(3) *Program Planning Summary.* This form is described in § 95.14(c) (3).

(4) *Budget Information Summary.* This form is described in § 95.14(c) (4).

(5) *Public Service Employment Occupational Summary.* This form is described in § 95.14(c) (5).

(6) *Monthly Schedule.* A monthly estimate of total individuals enrolled at the end of the month and total cumulative expenditures shall be provided. Such monthly schedule will reflect the activity for each month during the grant period under Title II.

(7) *Program Summary.* The Program Summary presents a distribution of jobs, training slots, and funds to be provided to eligible applicants and subgrantees. It designates the area to be served, the population and employing agencies of each area.

§ 96.15 Comment and publication procedures relating to submission of grant application.

Each eligible applicant shall provide an opportunity for comment on the application as set out in § 95.15 of this title.

§ 96.16 Submission of grant application; standards for reviewing grant applications.

(a) Each eligible applicant shall submit its grant application to the RA on or before a date set by the Secretary.

(b) A grant application shall include all items set out in § 96.14 of this Part 96.

(c) A grant application will be reviewed to determine if it meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law. In reviewing a grant application, the RA shall use the standards set forth in § 95.17(b) of this title.

§ 96.17 Application approval; application disapproval; grant agreement.

The procedures set forth in § 95.18 and § 95.19 shall apply for Title II applications and grant agreements.

§ 96.18 Use of alternative eligible applicant; services by the Secretary.

The provisions detailed in § 95.20 shall apply to applications and grants made pursuant to Title II of the Act.

§ 96.19 Modifications.

The modification procedures set forth in § 95.21 of this title shall apply to Title II grants. In addition, modifications pursuant to §§ 95.21(b) (1) and (3) of this title shall include a revised program summary, if appropriate.

Subpart C—Program Operation

§ 96.20 General.

This Subpart C sets out the program operation requirements for eligible applicants and subgrantees. The utilization of funds under Title II of the Act is conditioned upon adherence to the requirements of the Act, other applicable law, and other terms and conditions of the regulations promulgated in this part.

§ 96.21 Basic responsibilities of eligible applicants.

An eligible applicant is responsible for:

(a) Requesting, receiving and administering funds within its jurisdiction (secs. 203(a) and 205(c) (1));

(b) Allocating funds and jobs equitably, among public agencies within its jurisdiction (sec. 205(c) (23));

(c) Developing a plan to effectively implement a program of transitional public service employment and related training and manpower services (sec. 203(a));

(d) Developing, to the greatest extent possible, new careers and opportunities for career advancement for participants (sec. 205(c) (4));

(e) Performing reviews at 6-month intervals on the status of each participant to assure that the participant's job has potential for advancement or suitable continued employment (sec. 207(a));

(f) Administering or supervising all activities under its approved grant application including the establishment of hearing procedures, as set out in Part 98 of this title (sec. 205(c) (1));

(g) Undertaking analysis of job descriptions and reevaluations and, where shown necessary, revisions of qualification requirements at all levels of employment, including recommendations to State or local civil service commissions on needed revisions in civil service requirements and practices relating thereto, with a view toward removing artificial barriers to public employment of those whom it is the purpose of Title II to assist, as specified in §§ 96.27, 96.28, 96.29, and 96.30 (205(c) (18));

(h) Assuring that employing agencies provide information regarding their employment opportunities funded under the Act to the local State employment service and that such vacancies are filled, as specified in § 96.30(a).

(i) Requiring that all employing agencies maintain and make available for review by all interested parties job descriptions on all PSE positions.

§ 96.22 Basic responsibilities of program agents; relationship with eligible applicants.

(a) A program agent, as defined in § 94.4, shall be delegated by the eligible applicant through a formal subgrant agreement the administrative responsibility for developing, funding, overseeing and monitoring programs with respect to the funds made available to it under Title II of the Act.

(b) A program agent shall carry out its functions consistent with the grant application developed by the eligible applicant in cooperation with the program agent and shall be responsible to the eligible applicant for carrying out its program in a manner consistent with the application (sec. 204(d) (2)).

(c) Unreconciled differences between an eligible applicant and a program agent shall be submitted to the RA.

(d) If a program agent fails to comply with paragraph (b) of this section, it is the responsibility of the eligible applicant, consistent with the regulations, to initiate whatever action is necessary to assure program agent compliance. Such action may include the eligible applicant reallocating funds to an alternative program agent to serve the original area or deciding to serve the area itself. However, no such action shall be taken by an eligible applicant except with the review and concurrence of the RA.

§ 96.23 Acceptable public employment positions.

(a) Funds provided under Title II which are used for public service employment shall only be used to fund public service needs which have not been met and to implement new public services (sec. 201).

(b) In developing job opportunities under this Part 96 the following requirements shall apply:

(1) The job provided must meet public service needs as defined in the Act and the regulations promulgated in this Part 96 (sec. 205(a));

(2) Program emphasis shall be on transitional employment: jobs which are likely to lead to regular, unsubsidized

employment or opportunities for continued training (secs. 201, 205 (b) (4), (b) (6), (b) (11), and 205(c) (26));

(3) Jobs shall be provided, to the extent feasible, in occupational fields which are most likely to expand within the public or private sector as the unemployment rate recedes (sec. 205(c) (6));

(4) Jobs shall be allocated among State and local public agencies and subdivisions thereof, such as educational agencies, within the applicant's jurisdiction, taking into account the number of unemployed persons within each area, their needs and skill levels, the needs of the agencies and the ratio of jobs in the area at each governmental level. The eligible applicant has the ultimate responsibility for determining the equitable distribution and for selection, job structure, participant benefits, and all other aspects of the jobs funded under this Part (sec. 205(c) (23)).

(5) To the extent consistent with the maintenance of effort requirements of § 96.24, the participant activity limitations of § 98.23 and the personnel procedures and collective bargaining agreements of the eligible applicant and the private nonprofit agencies, jobs may also be allocated to private nonprofit agencies, such as educational, social service, and health agencies, which provide public services, as defined in § 94.4, within an eligible applicant's jurisdiction. Jobs may be allocated to such agencies provided: they offer public services for the general public and not primarily or exclusively for the benefit of their membership or constituencies; and they are determined to best serve the unemployed population based on the considerations stated in § 96.23(b) (4). Such jobs may include positions in Job Corps Centers other than those operated by private for profit organizations.

(6) To the extent consistent with the maintenance of effort requirements of § 96.24, Title II participants may be outstationed at worksites, including Federal agencies, such as Job Corps Civilian Conservation Centers and private nonprofit agencies: *Provided*, The employment is geared to the skills and abilities of the participant and is consistent with these regulations. Outstationed participants are still to be considered employees of the employing agency and shall be assured of the same working conditions and benefits, as specified by section 98.24, as received by other similarly employed employees of the employing agency (not of the outstationed worksite). However, maximum efforts should be made by the employing agency to accommodate the outstationed worksite by coordinating work hours and holidays.

(7) Jobs may be located only within the eligible applicant's or program agent's jurisdiction unless the eligible applicant or program agent determines that the effective operation of its program under Title II is possible only by creation of some jobs outside of its jurisdiction. In such cases, the jobs created must employ residents of the eligible applicant's or program agent's jurisdiction.

tion and be within reasonable commuting distance of the residents of the eligible applicant's or program agent's jurisdiction.

(8) Jobs will not be "dead end," but will contribute to career advancement and the development of the employment potential of participants. Opportunities for continued training are to be provided to support the upward mobility of participants (secs. 205(a), 205(c)(4), and 208(a)(6)).

(9) No more than one-third of the participants in any program may be employed in a bona fide professional capacity as defined in 29 CFR 541.3 issued pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exception to this limitation is the hiring of classroom teachers. (Generally, according to the F.L.S.A., a professional is an individual (i) with a professional education, usually requiring more education than a Bachelor's degree or whose work is original and creative in an artistic field, (ii) at least 80 percent of whose work requires discretion and judgment and is intellectual in nature, and (iii) who earns at least \$170 a week (\$150 in Puerto Rico, Virgin Islands, or American Samoa). A less stringent test applies to individuals earning \$250 or more a week. Lawyers, doctors and teachers working as such are professional without regard to their earnings (for further explanation see 29 CFR 541.3) (sec. 205(c)(22));

(10) The program excludes employment in building and highway construction work (except that which is normally performed by the prime sponsor or eligible applicant) and other work which inures primarily to the benefit of a private profit-making organization.

(11) Jobs in each promotional line shall in no way infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service jobs not subsidized under Title II. In accordance with § 98.24(b), when a promotional freeze affects non-CETA employees, it shall also apply to CETA participants similarly employed (sec. 205(c)(24));

(12) No job will be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective bargaining procedures have been complied with (sec. 205(c)(24));

(13) To the extent feasible, the public services provided by the jobs should be designed to serve the residents of the areas of substantial unemployment designated for Title II funds (sec. 205(c)(3)); and,

(14) Part-time jobs shall be allowed only for those individuals who, because of age, handicap, or other personal factors, are unable to work full-time.

(15) Consistent with the requirements of § 98.12(b)(3), of this subtitle, public service employment participants may be used in home repair and winterization/weatherization activities.

§ 96.24 Maintenance of effort.

(a) Public Service Employment funded under the Act shall only be in addition

to employment which would otherwise be financed by the eligible applicant without assistance under this Act (sec. 205(c)(25)).

(b) To assure maintenance of effort, a public service employment program under the Act:

(1) Shall result in an increase in employment opportunities over those which would otherwise be available;

(2) Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

(3) Shall not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and

(4) Shall not substitute public service jobs for existing federally assisted jobs (sec. 208(a)(1)).

(c) Eligible applicants, program agents, contractors and subgrantees may not terminate, layoff, or reduce the working hours of, an employee in anticipation of hiring an individual with funds available under the Act. In addition, no participant shall be used to fill positions or provide services normally provided by temporary, part-time, or seasonal workers or contracted out, or to fill full-time vacancies, unless documentation is maintained, as provided in paragraph (j) of this section, that such action does not constitute a substitution of Federal funds for purposes that would otherwise have been supported by other resources.

(d) These regulations do not authorize the hiring of any person when any other person is on lay-off from the same or any substantially equivalent job (sec. 205(c)(7)(8)). If lay-offs of regular employees occur during the grant period, participants may not remain working in the same or substantially equivalent job within the employing agency that is affected by the lay-off. Under these circumstances, the participants would either be transferred to positions not affected or be laid off or terminated. Prime sponsors shall try to transfer CETA participants to non-affected positions, transfer them to Title I, if appropriate, or attempt to place them into unsubsidized employment before laying them off or terminating them (sec. 205(c)(8)).

(e) The hiring of former employees who lost their jobs due to bona fide lay-off into positions supported under the Act is not prohibited if it does not constitute a violation of the maintenance of effort provisions of the Act and these regulations.

(1) The percentage of public service employment positions which may be used for the hiring of laid-off employees shall be reasonably consistent with that percentage of the total unemployed population in the jurisdiction which the laid-off employees comprise. In determining the reasonable percentage of positions to be made available for rehiring laid-off employees, eligible applicants shall assess the appropriateness of serving such persons by considering the following factors:

(i) The needs of the laid-off workers relative to the needs of other groups specified in the Act for special consideration, as well as the groups identified as significant segments by the prime sponsor in its grant application, including length of unemployment and prospects of obtaining employment.

(ii) The size of the public service employment program and the availability of funds to support rehires without disruption of services to, or termination of, regular participants.

(2) Eligible applicants shall document such assessment of equitability and need in the Annual Plan Narrative Description. RA's shall approve the rehire of laid-off employees only upon determining that the maintenance of effort provisions of the Act and these regulations have not been violated and that sufficient justification of equitability and need has been provided.

(f) (1) In most jurisdictions where an eligible applicant lays off some of its employees, the total number of individuals laid off by the eligible applicant constitutes less than ten percent of unemployed persons in the eligible applicant's jurisdiction. In such jurisdictions, an eligible applicant may, consistent with the requirements of paragraph (e) of this section, allocate up to ten percent of its Public Service Employment positions for the rehiring of such laid off employees, even if the number of laid off employees is less than ten percent of the total unemployed population in the jurisdiction.

(2) Any eligible applicant which is subject to the ten percent limitation of subparagraph (1), may submit a major modification to the Regional Administrator requesting that the eligible applicant be permitted to allot more than ten percent of the eligible applicant's Public Service Employment positions to the rehiring of its laid off employees. The major modification shall be supported by necessary documentation and shall demonstrate that approval of the request would further the purposes and policies of the Act, including the provision of special consideration to the most severely disadvantaged individuals in the jurisdiction, and that the eligible applicant has a compelling need for such a modification. If the Regional Administrator believes that these requirements have been satisfied, he shall certify the matter to the Assistant Secretary, who shall make the final decision. If the Regional Administrator does not believe that the requirements have been satisfied, he shall deny the request and so inform the eligible applicant.

(g) No participant may be placed or remain working in any position substantially equivalent to a position which is vacant due to a hiring freeze unless the eligible applicant can demonstrate that:

(1) The freeze resulted from a lack of funds to sustain former staff levels and was not established because of the availability of funds under the Act, and

(2) The promotional opportunities of regular employees are not infringed upon.

(h) Eligible applicants shall notify the RA in writing of the occurrence of any layoff or hiring freeze in a department or agency where participants are employed in positions substantially equivalent to those affected by the layoff or freeze.

(i)(1) When the total number of planned or actual rehires equals or exceeds ten percent of total public service employment positions, laid-off employees must be identified as a significant segment in the grant application. A modification is required if this point occurs during the term of the grant.

(2) Eligible applicants which, at the time these regulations become effective, have an approved grant application which permits more than ten percent of public employment positions to be used for rehires, are not required to immediately terminate participants in order to comply with paragraph (e)(1) of this section. However, such eligible applicants shall promptly notify the RA in writing of the measures proposed to be taken to reduce the level of rehires over a reasonable period of time to comply with the provisions of this section. The RA shall approve the proposal if it is reasonable in light of the conditions present in the jurisdiction. If an eligible applicant does not submit an approvable proposal, the RA may take such action as is appropriate under these regulations. Approval of a proposal eliminates the need to obtain a major modification under paragraph (f)(2) of this section.

(j) Eligible applicants, program agents, contractors, or subgrantees which utilize funds under this part to hire persons to fill positions previously supported by funds other than funds available under the Act or to provide services which are normally provided by temporary, part-time or seasonal workers or which is normally contracted out, shall maintain documentation that such use of funds does not constitute a violation of paragraph (c) or of any other requirement of this section. Such documentation shall be prepared and maintained in a form which clearly demonstrates that all requirements of this section are complied with and shall be readily available for the inspection of the RA for a period of not less than one year subsequent to the filing of any position to which these provisions are applicable. Prime sponsors shall, at the direction of the RA, submit such documentation or any budgetary expenditure records, revenue statements, and other information relevant to determinations under this section. RA's shall not approve any grant application unless prime sponsors have submitted, when directed by the RA, conclusive evidence that the proposed use of funds fully meets the requirements of this section.

§ 96.25 Responsibility for selecting participants.

(a) The ultimate responsibility for the selection of participants and the maintenance of participant records as indicated in § 98.18(a), rests with the eligible applicant. However, the eligible

applicant, subject to its direction, may delegate the administration of this responsibility to program agents, other subgrantees and employing agencies. The selecting agency must provide adequate documentation of each applicant's eligibility and retain in the participant's folder, as provided in § 98.18(b), the information on which this documentation is based. The selecting agency shall also retain, as provided in § 98.18(b), the applications of persons not selected for participation and the reasons for their nonselection (sec. 205(c)(2)(26)).

(b) Adequate documentation shall consist of a signed, and dated, complete application for employment, including the last date of employment, which attests that the information in the application is true, to the best of the applicant's knowledge.

§ 96.26 Place of residence for participants.

(a) *General.* (1)(i) At the time of both application and selection, program participants shall reside in an area of substantial unemployment within the jurisdiction for which funds have been designated. A program agent, therefore, may not hire persons outside of its jurisdiction nor may an eligible applicant hire a person from the jurisdiction of another eligible applicant or program agent within its own jurisdiction.

(ii) Because of changes in program agent designations each program year, this policy does not require the layoff of participants eligible under the residency requirement that were applicable at the time of their selection.

(2) An eligible applicant or program agent may receive additional funds as a subgrantee of another eligible applicant or program agent to enroll residents of the other eligible applicant's or program agent's jurisdiction in any public service job or other manpower program under Title II. The eligible applicant or program agent receiving funds must offer jobs or programs which are within reasonable commuting distance of residents of the other eligible applicant's or program agent's jurisdiction.

(b) *Consortia of eligible applicants.* In the case where two or more eligible applicants have formed a consortium to operate programs under Title I and Title II, residents of any designated area of substantial unemployment within the boundaries of the consortium may be employed in public service jobs or enrolled in any other manpower activity either within the geographical boundaries of the consortium or outside such boundaries in which case the provisions of § 96.23(b)(7) shall apply; provided, that the total amount of funds available for residents of each area of substantial unemployment of each participating eligible applicant equals the amount of funds that the area would have received if the consortium had not been formed.

(c) *Consortia of units of general local government formed in order to qualify as program agents; multijurisdictional eligible applicants.* The provisions of paragraphs (a) and (b) of this section shall

apply to consortia of units of general local government formed in order to qualify as program agents and shall apply to multijurisdictional eligible applicants.

§ 96.27 Eligibility for participation in a Title II program.

(a) A person residing, as defined in paragraph (f) of this section in an area of substantial unemployment who has been unemployed for at least 30 days prior to application or is underemployed is eligible to participate in a program under Title II of the Act (secs. 201 and 205(a)). A person who obtains permanent, full-time unsubsidized employment after application shall no longer be considered eligible for Title II, unless, even with his full-time employment, he still qualifies as underemployed or unemployed as defined in § 94.4(fff)(2) or § 94.4(hhh) of this title.

(b) A veteran who has served on active duty for a period of more than 180 days or who was discharged or released from active duty for a service connected disability, shall be immediately eligible, upon discharge or release for participation in a program under Title II of the Act without regard to the 30-day unemployment requirement which would otherwise pertain (38 U.S.C. 2013), provided such veteran has not obtained permanent full-time unsubsidized employment between the time of discharge or release from active duty and the time of application for participation in Title II.

(c) A person participating in a public employment program under a section 5 or section 6 grant funded by the Emergency Employment Act (EEA) who is currently, or was at the time of his selection for such participation, geographically eligible may be transferred into the Title II grant program covering that geographical area, in order to provide for the orderly phase out of the EEA grant, provided that maximum efforts have been made to place such an individual in unsubsidized employment or training.

(d)(1) Title I, Section 302 and 303 enrollees under the Act, and participants under Title X of the Public Works and Economic Development Act who are enrolled in Title II or VI activities funded through the Department, may be transferred into a Title II program only if they met the requirements of paragraphs (a) and (f) of this section prior to their entry into the program from which they are being transferred and if maximum efforts have been made to place such individuals in unsubsidized employment or training (sec. 105(a)(5)).

(2) Title VI participants who met the requirements contained in paragraphs (a) and (f) of this section prior to their entry into a Title VI program may be transferred into Title II, except for Title VI participants affected by the Emergency Supplemental Appropriations Act of 1976 who may be transferred to Title II without qualifying under paragraphs (a) and (f) of this section.

(3) A person participating in a WIN public service employment program un-

der Part C, Title IV of the Social Security Act, who leaves or is removed from the public service employment position, and wishes to enroll in Title II shall be treated in the same manner as any other Title II applicant.

(i) If such an individual is still receiving cash welfare payments, that individual meets the definition of unemployed for this title, and is immediately eligible for Title II if the individual also meets the requirements of paragraphs (f) and (g) of this section.

(ii) If the individual is no longer receiving welfare payments, that individual must meet the standard eligibility criteria for Title II, including the appropriate period of unemployment.

(e) A participant in a public service employment program under this Part 96 may change jobs within a particular eligible applicant's jurisdiction without an intervening period of unemployment, but may not be employed in a job for any other eligible applicant without an intervening period of unemployment of at least 30 days.

(f) For the purpose of this section, the term residence shall mean an individual's dwelling place or home, both at the time the individual applies and is selected for participation in a program under Title II of the Act. In determining whether a particular place is an individual's dwelling place or home, the intention of the individual is the key element. Maintenance of an "address" is not necessarily the same as the maintenance of a dwelling place or home.

(g) Program participation shall be limited to citizens of the United States, natives of American Samoa and the Trust Territory of the Pacific Islands, permanent resident aliens and other aliens who have been permitted to accept permanent employment in the United States by the Immigration and Naturalization Service.

(h) While selection of eligible full-time students for participation in programs funded under Title II of the Act is not prohibited, eligible applicants should exercise caution in providing for such participation and should provide for such participation only in accordance with these regulations. In providing for such participation, eligible applicants should give special consideration to those persons most severely disadvantaged in terms of length of time they have been unemployed and their prospects for finding employment without assistance under Title II.

§ 96.28 Equitable service to the unemployed population; serving significant segments.

(a) Providing equitable services to the demographic groups (age, sex, race) within its unemployed population, taking into account the significant segments most in need of service and the incidence of underemployed in the prime sponsor's jurisdiction. Where variances as specified in § 95.14 occur in service to the demographic groups, they shall be adequately justified in the Annual Plan.

(b) The prime sponsor shall take positive steps, such as active recruitment, to insure that the significant segments in its approved plan of service are served.

§ 96.29 Groups to be provided special consideration within the significant segment groups served.

Special consideration shall be given to:

(a) *Veterans.* (1) Eligible applicants shall take appropriate steps to provide for the increased participation of qualified disabled veterans and qualified Vietnam-era veterans who are under 35 years of age in programs under title II. Specific effort should be made to develop appropriate full or part-time opportunities for such veterans. Each eligible applicant shall develop local goals for service to such veterans, taking into consideration their numbers and the number of qualified persons in significant segments of the population in the area served. These goals shall be included in the eligible applicant's Annual Plan. The eligible applicant should utilize the assistance of the State and local veterans' employment service representatives in meeting these goals. In order to insure special consideration for veterans, all public service employment vacancies under title II, except those to which former employees are being recalled, and those into which CETA participants are being transferred, must be listed with the State employment service at least 48 hours (excluding Saturdays, Sundays, and holidays) before such vacancies are filled. During this period those veterans specified above who fall within the significant segments to be served will be referred by SESAs. If sufficient numbers of veterans are not available, the employment service, upon request, may also refer members of other significant segments. In addition, eligible applicants shall, in filling public service jobs, give special consideration to special veterans; and, they shall exercise maximum efforts to design jobs and job training opportunities for veterans who have received other than a dishonorable discharge within four years before the date of their application, (sec. 205(c)(5)).

(2) Each eligible applicant shall, on a continuing and timely basis, provide information on job vacancies and training opportunities funded under Title II of the Act to State and local veterans employment representatives and to other veterans organizations for the purpose of disseminating information to eligible veterans (sec. 104(b) of Emergency Jobs and Unemployment Assistance Act of 1974).

(b) *Welfare recipients.* Eligible applicants shall give special consideration to welfare recipients by taking them into account when selecting participants within significant segments and/or by identifying them as a significant segment in the Annual Plan.

(c) *Former manpower trainees.* Due consideration shall be given, in developing an eligible applicant's plan and enrolling individuals in the manpower pro-

grams funded under Title II of the Act to persons falling within the significant segments to be served, who have participated in manpower training programs and for whom work opportunities are not otherwise immediately available (sec. 205(c)(9)).

(d) *Teachers.* In filling teaching positions in elementary and secondary schools, each eligible applicant shall give special consideration to unemployed persons with previous teaching experience who are certified by the State in which that prime sponsor is located (Sec. 205(d)).

§ 96.30 Serving the most severely disadvantaged persons.

In meeting the requirements of §§ 96.28 and 96.29 above, the eligible applicant shall give priority to unemployed persons who are the most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance under Title II (secs. 205(c)(7) and 210).

§ 96.31 Training and supportive services.

Eligible applicants may provide training and supportive services to an individual participating in a public service employment program. Training may be that which is auxiliary to a participant's position or that which is of benefit to the participant in obtaining employment not subsidized under the Act. Eligible applicants may use Title II funds to provide training and supportive services or may utilize funds made available to its jurisdiction under other Titles of the Act, provided the funds from each Title are utilized consistent with the regulations for the funding source Title. Training may be provided directly or may be purchased from public or private organizations. Due consideration should be given to the utilization of existing services and facilities which are available, with or without reimbursement of the reasonable cost, from Federal, State and local agencies (secs. 105(a)(3)(B), 105(c)(2) and 205(c)(14) and (19)).

§ 96.32 Linkages with other manpower programs.

An eligible applicant shall, where appropriate, maintain or provide linkages with upgrading and other manpower programs for the purpose of (a) providing public service employment participants who want to pursue work with the employer, in the same or similar work, with opportunities to do so and to find permanent, upwardly mobile careers in that field, and (b) providing those persons so employed, who do not wish to pursue permanent careers in such field, with opportunities to seek, prepare for, and obtain work in other fields. Eligible applicants shall also maintain linkages with agencies, such as State vocational rehabilitation departments, to provide needed supportive services for participants, such as the elimination of any barriers to employment created by the architectural design of the work site.

RULES AND REGULATIONS

§ 96.33 Placement goals.

(a) Public service employment programs under the Act shall, to the extent feasible, be designed to enable all individuals to move from such employment programs into unsubsidized full-time jobs in the private or public sector, and shall emphasize the development of new careers and career development opportunities (secs. 201 and 205).

(b) Each eligible applicant, program agent, and subgrantee shall be responsible for efforts to place all participants in unsubsidized employment in both the private sector and the public sector, or in training programs.

(c) (1) To carry out the intent of paragraph (b) of this section, each eligible applicant, program agent and subgrantee, to the extent consistent with law and applicable collective bargaining agreements, shall have the goal of accomplishing on an annual basis at least one of the following:

(i) Placing half of the cumulative number of participants terminated in unsubsidized private or public sector employment;

(ii) Placing participants in half the vacancies occurring in suitable occupations in an eligible applicant, program agent, or subgrantee's permanent work force which are not filled by promotion from within the agency.

(2) When a suitable job offer or offer of referral to a suitable job is made to and rejected by a participant, this can be construed as being acceptable grounds for termination of the participant by the prime sponsor regardless of how long the individual has been in the program. Suitable job shall mean a job which is: comparable to the participant's CETA job in terms of working conditions and benefits; the same or equivalent to the participant's CETA job or otherwise commensurate with his/her skill level; located within a commuting distance of the participant's home comparable to the distance traveled by others in the jurisdiction similarly employed; and not vacant due to a strike or based on a requirement that an employee must join or resign from a union.

(d) Placement goals established consistent with paragraph (c) above are to be understood as goals and are not prescribed as placement requirements. (sec. 211(b)).

(e) Any eligible applicant shall have the right to request a waiver of such placement goals. The request for a waiver may be submitted at any time, and may be granted by the RA when in the RA's judgment local economic conditions and budgetary constraints warrant such a waiver. (sec. 211(b)).

(f) Whenever such a waiver has been granted by the RA, failure to meet the placement goals shall not be cited in any official review or evaluation of that eligible applicant's program. (sec. 211(b)).

§ 96.34 Compensation for participants.

(a) *Minimum wage for participants.* Each participant shall be paid at a rate no less than the highest of the following:

(1) The minimum hourly wage set out in sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. The exceptions to Section 6(a)(1) shall not apply to public service employment participants.

(2) The State or local minimum wage for the most nearly comparable covered employment;

(3) The prevailing rate of pay for persons employed in similar public occupations by the same employer (sec. 208(a));

(4) The minimum entrance rate for inexperienced workers in the same occupation in the establishments, or, if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area, or any minimum rate required by an applicable collective bargaining agreement; or

(5) The prevailing rate established by the Secretary, in accordance with the Davis-Bacon Act, as amended, for participants involved in employment covered by the Davis-Bacon Act as specified in § 98.29 of this title.

(b) Wages in the Commonwealth of Puerto Rico, the Virgin Islands, and American Samoa shall be consistent with provisions of the Federal, State or local law, otherwise applicable. Wages in the Trust Territory of the Pacific Islands shall be consistent with local law, except on Eniwetok Atoll and Kwajalein Atoll, where Section 6(a)(1) of the Fair Labor Standards Act applies.

(c) *Limitations on participant's salary.* (1) Compensation to any participant from Title II Federal funds is limited to a maximum full-time rate of \$10,000 per year, plus the cost of fringe benefits to the extent they do not exceed those paid to workers earning \$10,000 a year. This limitation shall also be applicable for participants in public service employment funded under other titles of the Act.

(2) When a participant is eligible for a promotion, a general salary increase or overtime pay that would mean a salary in excess of \$10,000, the participant is entitled to it if other employees similarly employed would receive such benefits. The employer must pay the amount above \$10,000 from non-CETA funds as well as a prorated share of the increased fringe benefits. Funds from other titles of the Act shall not be used to supplement the maximum salary limitation for participants.

§ 96.35 Administrative staff.

(a) *General.* To the extent possible, administrative staff shall be drawn from the unemployed and underemployed population. However, if necessary technical, supervisory and administrative personnel are not available in the unemployed and underemployed population, staff may be recruited from other available sources (sec. 205(c)(20)).

(b) *Compensation.* Eligible applicants may compensate administrative staff from:

(1) Funds not provided under the Act. No maximum salary limitation will apply in this case;

(2) Administrative funds allowed under Title II as specified in § 96.36. This applies only to non-participants on the administrative staff in which case no salary limitation will apply; or

(3) Funds expended under Title II for wages and fringe benefits for participants as specified in § 96.36 of this Part 96. In this case, the administrative staff member must meet the Title II participant eligibility requirements and be hired as a Title II participant. The salary limitation specified in § 96.34(b) shall apply. Any salary paid to a participant in excess of \$10,000 must be paid from funds other than those provided under the Act.

§ 96.36 Use of Title II funds for programs under Titles I and III-A.

Funds available to an eligible applicant may, at its option, be utilized for residents of the areas of substantial unemployment designated under this Part for programs authorized under Title I or Part A of Title III of the Act. Where Title II funds are used for activities other than PSE authorized under other Titles of the Act, all provisions under this part, except § 96.21 (b), (c), (e), (g), and (h), § 96.27(e), § 96.31, § 96.33, § 96.34, and § 96.36, shall apply in addition to those provisions applicable for programs under Title I or Part A of Title III (sec. 210); however, when Title II funds are used to fund public service employment, all of the provisions of this Part 96 shall apply.

Subpart D—Special Conditions for Grants to Indian Tribes on Federal and State Reservations.

§ 96.40 General.

This Subpart D contains special conditions for grants to Indian tribes on Federal and State reservations. To the extent that any provision of this Subpart D differs from any other provision of this Part 96, the provisions of this Subpart D shall govern. In all other matters the requirements of Part 96 apply to this Subpart D. The Division of Indian and Native American Programs in the Office of National Programs shall have full responsibility for all matters pertaining to funds allocated to Indian tribes on Federal and State reservations under Title II of the Act. All references to RA in Part 96 shall be read as Director, Division of Indian and Native American Programs.

§ 96.41 Distribution of funds.

(a) This section describes the methodology for the distribution of funds allocated to Indian tribes on Federal and State reservations as determined by the ratio prescribed in Subpart A, § 96.2.

(b) Funds for Indian tribes eligible for application under Title II shall be distributed as follows:

(1) Funds for use under this Subpart D shall be distributed on the basis of a ratio taking into account the total number of unemployed Indians on all Federal and State Indian reservations which have areas of substantial unemployment and comparing this number with the total number of unemployed persons in

all eligible applicant jurisdictions under this Part 96.

(2) Funds determined under paragraph (b) (1) shall be distributed for use by the individual Indian reservations which have areas of substantial unemployment according to the best available estimates of unemployment on each such reservation as compared to the total unemployment on all such reservations.

(c) Funds shall only be granted for individual reservations which have a governing body and either have a population of at least 1,000 resident Indians or are entitled to a Title III, Section 302, grant of at least \$50,000. Reservations which do not meet either of these requirements may, however, be combined to qualify for funds as provided in § 96.42 (sec. 204(c)).

(d) An eligible applicant which represents more than one reservation shall further allocate funds for use among those reservations in accordance, to the extent feasible, with the amounts indicated by the Secretary for each reservation.

(e) Within a single reservation, or within those small reservations which are members of a consortium, the eligible applicant shall, to the extent feasible, allocate granted funds among identifiable areas of high unemployment (sec. 204(c)).

§ 96.42 Eligibility for funds.

(a) An independently eligible applicant shall be an Indian tribe on a Federal or State reservation which includes areas of substantial unemployment.

(b) An eligible applicant shall come under one of the following categories:

(1) *Independently eligible applicant.* An independently eligible applicant shall be an Indian or Alaskan tribe which has:

(i) an identifiable resident population of at least 1,000 individuals or which is entitled to an allocation of at least \$50,000 under CETA Title III section 302 regulations, i.e., Part 97, Subpart B of this title; and

(ii) A governing body. A governing body is defined as one having substantive powers, i.e., consists of duly elected representatives who have authority to provide services and to enter into contracts and grants on behalf of the electorate and who are recognized as having such authority by the appropriate Federal or State agencies (sec. 204(c)). In the case of a reservation with more than one tribe, each tribe which is independently eligible according to the criteria of this paragraph shall be entitled to a separate grant. Such tribes, however, will be encouraged to form a consortium for the administration and operation of a comprehensive manpower program.

(2) *Consortium prime sponsor.* Indian or Alaskan entities which do not meet the criteria to be an independently eligible applicant as outlined in paragraph (b) (1) of the section may participate in a consortium as set forth below:

(i) Consortium including an independently eligible applicant. An Indian or Alaskan entity may enter into a consortium with an eligible applicant under paragraph (b) (1) of this section. The

consortium thus formed shall be the eligible applicant, and a member of the consortium, or an entity formed by the members, must be designated as the administrative arm and be delegated the responsibility for operating the program. Such a consortium may operate in more than one State. The administrative unit must be capable of performing both the functions required of a governing body and those necessary to carry out a public service employment program as prescribed by this Subpart.

(ii) Consortium where no member meets the criteria to be an independently eligible applicant. A consortium may be formed by Indian or Alaskan entities, none of which is eligible to be an independently eligible applicant under paragraph (b) (1) of this section, provided that:

(A) All of the members are in geographic proximity to one another; and
(B) The combination of entities has a resident population of at least 1,000 persons; or

(C) The combination of entities is entitled to an allocation of at least \$50,000, under CETA Title III section 302 criteria (Part 97, Subpart B of this title).

(iii) Consortium involving public or private non-profit agencies. An Indian or Alaskan entity may enter into a consortium with a public or private non-profit agency. The consortium thus formed shall be the eligible applicant and the public or private non-profit agency shall be the administrative arm. This type of consortium may be formed where such entity is not independently eligible to be an eligible applicant, chooses not to be an applicant, or determines that such a consortium will provide for a more effective and efficient program. Whenever an Indian or Alaskan entity joins with a public or private non-profit agency to form a consortium, such agency must be capable of performing both the functions required of a governing body and those necessary to administer a comprehensive manpower program. The minimum combined population requirement of 1,000 persons shall not be applicable to this type of consortium. However, the combined allocations for the members must be of such an amount that, in the opinion of the Secretary, it will be possible and feasible to provide public employment services to those unemployed and underemployed Indians who are in need of such services. Examples of eligible agencies are Intertribal Council, Title I prime sponsors and Tribal Chairman's Associations.

(c) Where there are Indian or Alaskan entities which do not meet the eligibility criteria to be an independently eligible applicant, or which do meet the criteria, but decline to operate a program, the Secretary shall designate an eligible applicant deemed appropriate and capable of providing the required services except that the Indian or Alaskan entities shall have the right of approval of such eligible applicant: *Provided:*

(1) The Indian or Alaskan entity meets the definition for Indian tribe, band, group, or Alaskan native village and can prove that it represents at least 1,000 individuals. In addition, the Indian or Alaskan entity must provide a written explanation of the official procedures utilized to select its spokesman. Such Indian or Alaskan entity shall either have determined it does not wish to sponsor a public service employment program, or have been declared ineligible for independent eligibility because of the lack of a governing body or because of its inability to perform the functions necessary to carry out a public service employment program; or

(2) A combination of entities, as defined in this Subpart, can prove, by providing the Secretary with a list of its members living within the designated areas, that, when combined, such combination represents at least 1,000 individuals. Such combination shall not be an independently eligible applicant either because it chooses not to become one, or lacks the ability to perform the functions required of a governing body, or lacks the ability to perform the functions necessary to administer a public service employment program, as defined by these regulations, or all of the above.

§ 96.43 Funding of eligible applicants.

(a) In order to be funded, a potentially eligible applicant must request to operate a program under Title II by complying with the provisions of § 97.111 of the regulations for Indian Employment and Training Programs funded under Section 302 of the Act.

(b) Each potentially eligible applicant will receive a tentative allocation against which it will prepare and submit its grant application.

(c) *General.* The grant application will consist of two documents, the Prime Sponsor Agreement (PSA) and the Annual Plan (AP). Detailed instructions for completing the application are contained in the Forms Preparation Handbook.

(1) *Prime sponsor agreement.* An applicant applying for the first time shall not later than 30 days prior to submission of the Annual Plan submit to the Director, Division of Indian and Native American Programs (DINAP), a signed copy of the PSA. An applicant who has already effected a PSA shall submit with the Annual Plan to the Director, DINAP, a certification that the PSA remains the same or is revised in certain respects which are attached to the certification. The initial submission and subsequent certifications are subject to the comment and publication procedures of § 96.45. The PSA consists of:

- (i) A signatory page (see § 95.14(b) (1));
- (ii) A narrative description of general information; and
- (iii) Assurances and certifications.

(2) *Annual plan.* On a date set by the Director, DINAP, an Annual Plan must be submitted to the Director, DINAP. The submission of the AP is subject to

the comment and publication procedures of § 96.45. The Annual Plan consists of:

- (i) An Application for Federal Assistance. (See § 95.14(c)(1));
- (ii) An Annual Narrative Description of program;
- (iii) A Program Planning Summary (see § 95.14(c)(3));
- (iv) A Budget Information Summary (see § 95.14(c)(4));
- (v) A Public Service Employment Occupational Summary (See § 95.14(c)(5));
- (vi) A Monthly Schedule (see § 96.14(b)(6)); and
- (vii) A Program Summary (see § 96.14(b)(7)).

§ 96.44 Planning process; advisory councils.

Eligible applicants should utilize the services of their planning councils authorized under § 97.113 of the regulations for Indian Employment and Training Programs funded under section 302 of the Act.

§ 96.45 Comment and publication procedures relating to submission of Indian grant applications.

(a) Each eligible Indian applicant which plans to apply for a grant shall, no later than the date of its submission of an application to the Director, Division of Indian and Native American Programs, provide an opportunity to comment on its application to the following officials in accordance with section 206 of the Act:

- (1) The Governor;
- (2) Appropriate officials of units of general local government; and
- (3) Officials of labor organizations representing employees who are engaged in similar work in the same area.

(b) Comments by those individuals and officials listed in paragraph (a) of this section shall be made to the eligible applicant and the Director within 30 days of the receipt of notice of the opportunity to comment.

(c) Eligible Indian applicants shall acknowledge any comments made pursuant to this section by providing the commenting party with appropriate information and notice regarding the actions or revisions the applicant intends to take or adopt, if any, due to the comment. All such comments and responses shall be transmitted to the Director, Division of Indian and Native American Programs.

(d) The Director, Division of Indian and Native American Programs, will notify the appropriate State and areawide clearinghouses of any applications from Federally recognized tribes, upon their receipt.

§ 96.46 Assistance by the Director, Division of Indian and Native American Programs.

Applicants eligible under this Subpart D may request technical assistance from the Director of Indian and Native American Programs in the preparation, submission, and/or implementation of a Title II program. Requests for assistance should be addressed to: Director, Divi-

sion of Indian and Native American Programs, 601 D Street NW., Washington, D.C. 20213.

§ 96.47 Participant eligibility.

Unemployed and underemployed Indians are eligible to participate in programs funded with eligible applicants under this Subpart D or in programs funded with all other eligible applicants in whose jurisdictions they reside.

§ 96.48 Nepotism.

(a) No eligible applicant or subgrantee under this Subpart D shall hire, or permit the hiring of, any person in a position funded under Title II of the Act if a member of the person's immediate family is employed in an administrative capacity by the eligible applicant. For the purposes of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister; the term "administrative capacity" includes those persons who have overall administrative responsibility for a program, including: All elected and appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under the Act as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director, and unit chiefs and persons who have selection, hiring, or supervisory responsibilities for participants in a program under this Part 96, or operational responsibility for the program.

(b) If a subgrantee under this Subpart D cannot hire program participants without an immediate family member being included, the Director, Division of Indian and Native American Programs may waive the requirement of paragraph (a) if adequate justification is received from such subgrantee that no other persons within the subgrantee's jurisdiction are eligible and available for participation.

(c) Where a tribal policy regarding nepotism exists which is more restrictive than this policy, the eligible applicant shall follow the tribal rule in lieu of this policy.

§ 96.49 Non-discrimination.

Section 98.21 shall be applicable to Indian programs funded pursuant to Title II of the Act, except to the extent that such provisions conflict with 42 U.S.C. 2000e(b).

§ 96.50 Subgrants.

In addition to the requirements as set forth in § 98.27 concerning subgrants, Indian tribes may require that subgrantees agree, to the maximum extent feasible, to hire qualified Indians to provide services called for pursuant to the subgrant in accordance with 42 U.S.C. 2000e-2(i).

§ 96.51 Travel requirements.

Travel regulations for grantees under this subpart shall be consistent with the travel regulations at § 97.161(f)(7) of this title.

PART 98—ADMINISTRATIVE PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

33. The table of contents for Part 98 is revised to read as follows:

Subpart A—Grant Administration	
Sec.	General.
98.1	Payment.
98.2	Letter of credit.
98.3	Payment by Treasury check.
98.4	Financial management systems.
98.5	Audit.
98.6	Reporting requirements in general.
98.7	Program Status Summary, Financial Status Report and Monthly Progress Report.
98.8	Quarterly Summary of Participant Characteristics.
98.9	Report of Federal Cash Transactions.
98.10	Reallocation of funds.
98.11	Allowable Federal costs.
98.12	Allocation of allowable costs among program activities.
98.13	Basic personnel standards for grantees.
98.14	Adjustments in payments.
98.15	Termination of grant; suspension of grant in emergency situations.
98.16	Annual Plan settlement procedures.
98.17	Maintenance and retention of records.
98.18	Program income.
98.19	Procurement and property management standards.
98.20	Nondiscrimination and equal employment opportunities.
98.21	Nepotism.
98.22	Special limitations on participant activities.
98.23	General benefits and working conditions for program participants.
98.24	Retirement programs.
98.25	Procedures for resolving issues between grantees and complainants.
98.26	Grantee contracts and subgrants.
98.27	Non-Federal status of participants.
98.28	Applicability of Davis-Bacon wage rates to projects under the Act.
98.29	Job Corps training opportunities for CETA grantees.
98.29a	
Subpart B—Assessment and Evaluation	
98.30	General.
98.31	Responsibilities of the prime sponsor or eligible applicant.
98.32	Responsibilities of the Secretary.
98.33	Limitation.
98.34	Consultation with the Secretary of Health, Education, and Welfare.
Subpart C—Hearings and Judicial Review	
98.40	Purpose and policy.
98.41	Review of plans and applications; violations.
98.42	Complaints; filing of formal allegations; dismissal.
98.43	Form.
98.44	Contents of formal allegation; amendment.
98.45	Investigations.
98.46	Opportunity for hearings; when required.
98.47	Hearings.
98.48	Initial certification, decisions and notices.
98.49	Judicial review.

AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203), 87 Stat. 639; Pub. L. 93-567, 89 Stat. 1845), sec. 702(a), unless otherwise noted.

Subpart A—Grant Administration

§ 98.1 General.

(a) This Subpart A describes Federal requirements relating to the administration of grants by grantees (secs. 703(14) and 713). Administrative requirements found in this subpart apply to all programs under the Act unless stated to the contrary for any specific program.

(b) The Secretary will provide each grantee with the specific procedures to be followed to comply with the requirements of this Subpart A (Sections 703(14) and 713).

(c) Statutory authority for the regulations contained in this Part 98 may be found in section 702(a) of the Act, as well as other substantive provisions of the Act. Applicable statutory provisions, other than section 702(a), are noted generally in these regulations.

§ 98.2 Payment.

(a) Advance payments will be made to all grantees able to satisfy the following criteria established consistent with Treasury Department regulations (31 CFR Part 205), and Attachment J of FMC 74-7 (34 CFR Part 256): (1) demonstrated willingness and ability to establish procedures for minimizing the time elapsing between the transfer of cash and its disbursement by the grantee; (2) establishment of substantially identical procedures for advances to subgrantees and other secondary recipients; (3) a financial management system able to satisfy the requirements of § 98.5; and (4) performance of all other obligations incident to the receipt of funds under the Act to the satisfaction of the RA. Advance payments may be made by means of a letter of credit or a request for advance.

(b) When the grantee is unable or unwilling to satisfy the criteria in paragraph (a) of this section, the preferred method for making payments shall be reimbursement of disbursements made using the grantee's own cash.

(c) When the grantee contracts under a Joint Funding Simplification Program he may authorize direct advances from the Department of Labor. These advances may be by letter of credit or U.S. Treasury check under that contract.

(d) In the event that a grantee cannot meet the criteria for advance payments described in paragraph (a) of this section and reimbursement as described in paragraph (b) is not feasible, arrangements may be made to provide cash on a working capital advance basis, as described in § 98.4(c).

(e) Grantees should use minority banks and encourage subgrantees and contractors to do the same. (Attachment A of FMC 74-7).

§ 98.3 Letter of credit.

(a) When a grantee is able to satisfy the criteria described in § 98.2(a), grants will be financed by means of a letter of credit when the following conditions are met:

- (1) The grant is for \$250,000 or more;
- (2) A continuing relationship exists for at least 12 months;

(3) The grantee can assure that the timing and amount of drawdowns will be as close as possible to disbursement needs as provided in the Department of the Treasury Regulations found at 31 CFR Part 205; and

(4) The grantee's accounting system will meet the recordkeeping and reporting requirements of this subpart.

§ 98.4 Payment by Treasury check.

(a) A grantee which does not meet the requirements for the letter of credit must submit a request for advance or reimbursement in order to obtain its cash requirements as provided in Attachment H of FMC 74-7. The RA will determine whether such Treasury check payments will be made on an advance, working capital advance, or reimbursement basis. In making such a determination, the RA will consider the grantee's ability to satisfy the criteria of § 98.2(a), particularly the accounting and record-keeping capabilities of its financial management system.

(b) Grantees are authorized to submit the request for advance or reimbursement at least monthly.

(c) Grantees ineligible for advance financing under either the letter of credit or request methods may be provided cash on a working capital advance basis when they lack sufficient working capital to be placed on the reimbursement basis. Under this procedure, a cash advance is made to the grantee to cover its expected disbursements for an initial period generally geared to the grantee's disbursing cycle. The grantee is thereafter reimbursed for its actual cash disbursements reported on the Request for Advance or Reimbursement form OMB No. 29-RO223.

(d) Prime sponsors other than State and local governments which are operating programs under Titles I and II may be required by the RA to maintain special bank accounts, as provided in 41 CFR 1-30, 413-414. Where special accounts are required, all receipts of grant funds must be deposited in the special account and all grant disbursements must be made from the account. The RA may also require the use of special bank accounts by secondary recipients if the prime sponsor is required to maintain a special account unless the secondary recipient is a State or local government unit.

(e) Advance by Treasury check will provide for advance payments through use of predetermined payment schedules or upon the request of the grantee. When the request method is used, payments will be made to a grantee based upon a schedule contained on the Request for Advance or Reimbursement.

§ 98.5 Financial management systems.

(a) Each grantee and subgrantee shall maintain a financial management system which complies with the standards in Attachment G of FMC 74-7. In general this means the system will provide accurate, current, and complete disclosure of the financial results of each program activity by title of the Act, including Title II program activities by each area

of substantial unemployment; provide the ability to evaluate the effectiveness of program activities; include an audit program which provides for the audit of subgrantees and contractors to determine the fiscal integrity of financial transactions, as defined in § 98.6(e); and meet the reporting requirements of this subpart.

(b) Each grantee and subgrantee shall maintain its fiscal accounts in a manner sufficient to permit the reports required by the Secretary to be prepared therefrom.

(c) To be acceptable for audit under the Act a Report of Federal Cash Transactions, Monthly Progress Report, and Financial Status Report shall be:

- (1) current as of the cut-off date of the audit;
- (2) taken directly from or linked by worksheet to the sponsor's books of original entry;
- (3) traceable to source documentation of the unit transaction; and
- (4) on an accrual basis as provided for in FMC 74-7 Attachment H (with the exception of the Report of Federal Cash Transactions). In cases where these financial records do not meet these requirements, the auditor shall submit a letter to the contracting officer within ten days of such a determination delineating the reason for such a determination and recommendations as to the action required to place the records in condition for audit.

§ 98.6 Audit.

(a) The Secretary of Labor, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local government and their subgrantees and contractors which are pertinent to a specific grant program under the Act for the purpose of making surveys, audits, examinations, excerpts, and transcripts (sec. 713(2)).

(b) The Secretary shall be responsible for scheduling surveys, audits or examinations of grantees and their subgrantees and contractors. These schedules will be coordinated with the grantee, to the extent practical.

(c) The Secretary shall, with reasonable frequency, survey, audit or examine, or arrange for the survey, audit or examination of grantees and their subgrantees and contractors using city or state auditors; or certified or licensed public accountants. Such surveys, audits, or examinations shall normally be conducted annually but not less than once every two years. The cost of the Secretary's audits shall be funded by the Department of Labor and shall not be a part of the grantees administrative cost under the grant.

(d) Surveys, audits and examinations will conform to *The Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, issued by the Comptroller General of the United States and guides issued by the Secretary. Surveys, audits or examinations contracted by the Secretary will conform, at a minimum to the first element of the

RULES AND REGULATIONS

Comptroller General's Standards: An audit to determine (1) whether financial operations are properly conducted, (2) whether the financial reports are fairly presented, and (3) whether the available information indicates that the entity has complied with applicable laws, regulations, and administrative requirements. (In addition, selected Federal audits will include reviews of the economy and efficiency and/or program results of programs under the Act. As a result of such audits a report including appropriate recommendations will be issued to the Employment and Training Administration). Existing audit systems, where acceptable under the Comptroller General's Standards, such as State audits of city and county activities will be used to the maximum possible extent (sec. 713(1)).

(e) (1) Each grantee shall establish and maintain an audit program for its contractors and subgrantees to the extent necessary to insure adequate financial management and conformance with Federal requirements. The Governor shall also establish and maintain such an audit program for vocational education services and activities funded pursuant to § 95.2(c) (4).

(2) Each grantee shall conduct at least once every two years an independent audit of each contractor or subgrantee providing activities and services amounting to a cost of \$100,000 or more during one grant year. Audits of those subgrantees or contractors providing activities and services under \$100,000 may be conducted on a sample basis as coordinated with and approved by the Regional Administrator for Audit. Of the awards of less than \$100,000, the sample selected shall include at least 25% of the total number of awards or 25 percent of the total dollars awarded during a two-year period. The auditing of contractors and subgrantees on a sample basis in no way lessens the prime sponsor's responsibility to insure that program activities and related costs incurred by contractors and subgrantees are in compliance with Federal requirements as stated in § 98.5(a). Fixed price contracts for non-program, administrative type procurements such as typewriter maintenance, administrative supplies, etc., do not require independent audits. The two-year audit period shall begin with Fiscal Year 1976.

(3) Audits may be conducted by certified or licensed public accountants under contract to the grantee, by the grantee, or by State and local government audits staff. The audits required in paragraph (e) (2) of this section, shall be conducted in accordance with the provision of paragraph (d) of this section. Copies of reports of audits conducted to comply with paragraph (e) (2) of this section shall be sent to the Regional Administrator for Audit.

(4) The cost of these audits are allowable and shall be charged to the Administration cost category.

(f) (1) Upon making a new Annual Plan or a significant increase in the funding level of an on-going grant, the

Secretary may conduct a preliminary audit survey to evaluate the adequacy of the grantee's accounting system and internal controls as established by these regulations including but not limited to §§ 95.14, 98.8, 98.18, 98.24, 98.25, 98.26, 98.27, and 98.31.

(2) On the basis of the findings, conclusions and recommendations of the survey, the grantee will be advised in writing what action, if any, is needed to satisfy Department of Labor requirements.

(g) (1) Audit reports shall be written in the format prescribed by the Department of Labor Audit Program. Previous audit reports considered relevant and the full text of any sponsor's comments will be included as an appendix to the report.

(2) Department of Labor audit reports will be distributed by the appropriate Department Regional Administrator for Audit.

(3) Grantees shall respond in writing to the findings, conclusions and recommendations in the audit reports when requested to do so by the RA. Unless an extension of time is expressly granted, the response shall be submitted to the responsible Regional Administrator with a copy to the responsible Regional Administrator for Audit within thirty calendar days from the date of Department of Labor notification of the findings and recommendations.

(4) The grantee may take exception to particular findings and recommendations. The rationale for such exceptions should be included in the response. The response should point out corrections already made and state what action is proposed and the estimated completion date of such action.

(5) The RA will consider the grantee's response and any additional information provided by the prime sponsor when determining whether specific expenditures should be disallowed. The appropriate RA will notify the prime sponsor in writing of the determination to disallow expenditures.

§ 98.7 Reporting requirements in general.

(a) Each grantee will be required to submit four periodic reports which will be used by the Secretary to assess its performance in carrying out the objectives of the Act. These four reports are: The Program Status Summary, The Financial Status Report, The Quarterly Summary of Participant Characteristics and The Report of Federal Cash Transactions. In addition, grantees may from time to time be required to prepare and submit reports requested by other Federal agencies for the performance of the legal responsibilities of these agencies. Detailed descriptions of the four reports are in the *Forms Preparation Handbook*.

(b) In order to avoid duplication of payments by unemployment insurance and CETA programs, prime sponsors shall, upon request, provide SESAs a current list of all CETA participants enrolled in their programs receiving wages.

§ 98.8 Program Status Summary, Financial Status Report and Monthly Report.

The Program Status Summary (PSS) and the Financial Status Report (FSR) will be used to measure accomplishments in achieving objectives stated in the Program Planning Summary and the Budget Information Summary, respectively.

(a) Program Status Summary. Each grantee will include the following items in this report together with a comparison of the same items as they appear in the Program Planning Summary:

(1) The total number of enrollments with granted funds during the grant period;

(2) The total number of individuals (participants) placed in unsubsidized employment at termination from the project and the number entering school, other training or military service;

(3) The level of enrollment associated with each program activity;

(4) The number of individuals within each significant segment of the population being served by the program; and

(5) The objectives and accomplishments other than those established by the Secretary. If a prime sponsor or eligible applicant elects to include these other activities in its report, they will be used by the Secretary in his evaluation of the performance of the prime sponsor or eligible applicant's program.

(b) Financial Status Report. Each grantee will submit a Financial Status Report (FSR) which includes the following items:

(1) The distribution of total accrued expenditures among program activities and percent of Annual Plan accomplished;

(2) Indirect costs for the grant period to date;

(3) The distribution of total accrued expenditures to date by cost category; and

(4) A certification of the correctness of the costs reported.

(c) If performance goals are not being achieved, the RA may request additional information from grantees including reasons for the failure to achieve the goals.

(d) The reports required by paragraphs (a) and (b) of this section shall be prepared to coincide with the ending dates of Federal fiscal year quarters. These reports shall be sent by the grantee to be received by the RA no later than 30 days after the end of the reporting period. If a grantee's grant period ends at a date other than the Federal fiscal year quarter, a fifth set of reports, covering the entire grant period will be required. These reports shall also be submitted by the grantee to the Governor of the State.

(e) Accountability must be maintained by the grantee for each of the activities authorized under the Act. Therefore, separate reports will be required for the Title I Grant, the Title II Grant and the special grant.

(f) The Secretary reserves the right to require the submittal of these reports by grantees more frequently than quarterly in cases of major deviation from

the Program Planning Summary and Budget Information Summary.

(g) *Monthly Progress Report.* Grantees operating a Title II or VI funded program shall be required to submit the Monthly Progress Report (MPR) on which they will record the cumulative participants served and terminated, the number of participants on board at the end of the month, and the actual versus planned accrued expenditures cumulative for the program year to the end of the month. The monthly report period is the calendar month. This report will be submitted to the appropriate RA no later than 20 working days after the end of the report period. The monthly report will be phased out when economic conditions and programmatic consideration no longer warrant its submission.

(h) Specific procedures for meeting these reporting requirements will be furnished to each grantee in the *Forms Preparation Handbook*.

§ 98.9 Quarterly Summary of Participant Characteristics.

(a) The Quarterly Summary of Participant Characteristics (QSPC) contains aggregate characteristics data on all participants in the program. The Summary is to be submitted to the RA with the Program Status Summary and Financial Status Report.

(b) The Summary will include characteristics data aggregated for all participants, as set forth in the report form and will include data on all participants terminated from the program including those entering unsubsidized employment during the reporting period.

(c) For those participants who entered employment during the report period, the Summary will also aggregate the average wage before enrollment and at termination.

(d) A separate report will be required for Title I, Title II and special grants.

(e) Specific reporting procedures and appropriate definitions will be furnished to each grantee in the *Forms Preparation Handbook*.

(f) This report will be submitted by the grantee to the Governor of the State.

§ 98.10 Report of Federal Cash Transactions.

(a) Each grantee shall submit periodically a report of Federal cash transactions. The report will be used to monitor cash advances and to obtain disbursement information. This report will be submitted monthly by each grantee receiving annual grants totalling \$1 million or more, and quarterly by other grantees (sec. 713(3)).

(b) Specific reporting procedures will be furnished to each grantee in the *Forms Preparation Handbook*.

§ 98.11 Reallocation of funds.

(a) *General.* The Secretary may reallocate funds from a grantee under the circumstances and in accordance with the procedures described in this section (secs. 103(i) and 702(b)).

(b) *Reallocation based on nonperformance.* (1) Pursuant to section 702(b) of the Act, when the Secretary considers

through review of the grantee's reports, monitoring or auditing of the program that its performance may be inadequate or that it may have failed to comply with the Act or regulations, he shall give due notice and opportunity for a public hearing as provided in subpart C.

(2) If the Secretary then decides to reallocate funds based on a ground set forth in paragraph (b)(1) of this section, he shall:

(i) revoke the grantee's grant for the area, in whole or in part;

(ii) make no further payments under the Act to the grantee, to the extent which he deems necessary; and

(iii) notify the grantee of the amount of funds which shall be returned from unexpended funds paid to the grantee during that fiscal year.

(3) The Secretary shall make provision for the reallocation of funds to be used by the State or other alternative prime sponsor to service the area which was served by the prime sponsor before the reallocation, or the Secretary may serve such an area directly. (See § 95.20).

(c) *Reallocation based on need.* (1) In a limited number of circumstances, the Secretary may determine that the unobligated portion of a grantee's Title I grant should be reallocated to another area because the funds are not needed where they were originally allocated. Such reallocations may be made only after the ninth month of the fiscal year for which the grant was made.

(2) Before reallocating funds as set forth in paragraph (c)(1), the Secretary must determine that:

(i) The grantee's plan will be carried out without expending all the funds previously made available for that grant; and

(ii) The excess funds identified under paragraph (c)(2)(i) cannot reasonably be expected to be needed in the following grant period.

(d) *Reallocation.* When the Secretary determines that funds should be reallocated based on the criteria in paragraph (c), he will take the following actions:

(1) *Notice of intent to reallocate funds.* When the Secretary determines that a reallocation is appropriate, he will notify the grantee and the appropriate Governor of the proposed action to remove funds from the grant. The notice shall include the basis for the proposed reallocation.

(2) *Comments by prime sponsor or eligible applicant and the Governor.* The grantee and the Governor will be invited to submit comments on a proposed reallocation of funds out of their area. These comments shall be submitted to the appropriate RA within 30 days of receipt of the notice. The Secretary shall consider these comments before making a final determination to reallocate.

(3) *Notification of final determination.* After reviewing any comments submitted by the grantee or Governor, the Secretary will notify them of his decision. A final decision to reallocate funds of a grantee will be published in the **FEDERAL REGISTER** and a modification will be made to the grant.

(4) *Reallocation procedures.* In reallocating such funds to supplement other grantee grants, the Secretary shall first consider the need for additional funds by other grantees within the same State. A decision to increase a grantee's grant with reallocated funds will not be made without prior consultation with the grantee as to how the funds will be expended, and prior notification to the Governor. Such a decision will be published in the **FEDERAL REGISTER** with an announcement of the grantee(s) receiving additional allocations and the amounts.

§ 98.12 Allowable Federal costs.

(a) *General.* Except as modified in these regulations, Federal funds granted under the Act may be expended only for purposes permitted under the provisions of Part 1-15 of Title 41 of the Code of Federal Regulations; 41 CFR 1-15.2 which applies to commercial and non-profit organizations; 41 CFR 1-15.3 which applies to educational institutions; and 41 CFR 1-15.7 which applies to State and local governments. Allowable costs include both direct and indirect costs. Costs are intended to be directed to increase the employability of participants.

(1) *Direct and Indirect Costs.* Direct costs are those which can be identified specifically with a particular cost objective such as an organizational unit, function or object, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities. Indirect costs are those costs of a grantee organization which are not readily identifiable with a particular function or project but nevertheless are necessary to the general operation of the grantee organization and the conduct of the activities it performs. Indirect costs are usually grouped into a common pool and distributed to those activities which benefit from them through the expedient of an indirect cost rate.

(2) *Policies and Procedures.* Cost allocation plans including indirect cost rate proposals shall be developed and approved in accordance with the applicable cost principles and procedures set forth in 41 CFR 1-3.7 and 1-15. Whenever costs jointly serve one or more CETA titles and CETA is the only source of funding, a cost allocation plan must be developed to allocate those costs among the titles if these are shared services. These plans are to be used and retained for future audits. Where there are multiple sources of funding, such as other Federal programs or State or local funded programs simultaneously operated by the grantee organization, a cost allocation plan is necessary if there are shared services. This cost allocation plan must equitably allocate costs between the programs (and within the CETA program, among the various titles).

(i) Cost allocation plans of State prime sponsors must be approved in advance by the Department.

(ii) Cost allocation plans of other prime sponsors shall be submitted to the Department for negotiation and approval only when specifically requested to

RULES AND REGULATIONS

do so. Otherwise, the plans are to be retained for future audits.

(b) *Restriction on use of funds.*—(1) *Public service employment programs.* (i) Not less than 85 percent of the funds appropriated pursuant to the Act which are used by an eligible applicant for public service employment programs shall be expended for wages and fringe benefits to persons employed in public service jobs (sec. 203(b)).

(ii) The remaining 15 percent may be used for administration, training, supportive services to public service employment participants; for the acquisition, rental, or leasing of necessary supplies, equipment, and materials, except as limited by paragraph (c) of this section; and for the rental or leasing of real property. An eligible applicant which does not itself administer the entire program may not retain the entire 15 percent for its own use unless this is agreed to by its subgrantees. Unless otherwise agreed to, at least 50 percent of the amount used for the administration of the program shall be available to subgrantees for administrative costs.

(2) No funds granted under the Act may be used, directly or indirectly, as a contribution for the purpose of obtaining Federal funds under any other law of the United States which requires a contribution from the grantee in order to receive such funds, except, if authorized under that law. However, the use of funds granted under the Act as a matching contribution in order to obtain additional funds under the Act is not prohibited.

(3) Unless otherwise provided in Parts 94-99, funds provided under one grant under the Act may not be used to support costs of another grant under the Act.

(c) *Expenditures for repairs, maintenance, and capital improvements and for construction; home repair; winterization/weatherization.* (1) Funds for construction, as defined in § 94.4(o), and for repairs, maintenance and capital improvements to existing facilities are allowable only under the following conditions:

(i) To pay wages and fringe benefits for public service employment participants;

(ii) To purchase equipment, materials, and supplies for use by public service employment participants while on the job and for use in the training of public service employment participants, excluding materials which become part of the construction;

(iii) To cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, and books, and allowance and wages; but not including materials which become part of the construction, and only when such construction would not normally be performed by an outside contractor.

(2) Consistent with maintenance of effort requirements of this subtitle, the cost of participant salaries and fringe benefits shall be allowable costs when such participants are used in home repair and winterization/weatherization

activities where work performed will not inure primarily to the benefit of a profit-making organization. Home repair and winterization/weatherization activities shall be limited to dwellings of individuals who are at or below 125 percent of the poverty level (as defined in § 94.4) which are privately owned and owner-occupied, privately owned by a nonprofit organization, units of public housing, or privately owned rental housing projects funded and approved by the Federal Energy Administration or the Community Services Administration. (704(f)).

(3) Costs associated with building repairs, maintenance, and capital improvements of existing facilities used primarily for programs under the Act are allowable.

(d) *Allowable cost categories.* Allowable costs shall be reported against the following cost categories: Administration; wages; training; fringe benefits; allowances and services (secs. 208(e), 313(b), 703(12)).

(1) Costs are allocable to a particular cost category to the extent of benefits received by such category.

(2) All grantees are required to plan, control, and report expenditures against the aforementioned cost categories.

(3) All grantees are responsible for assuring that subgrantees and contractors plan, control, and report expenditures against the aforementioned cost categories.

(4) When required by § 98.24 or State Unemployment Insurance Laws to pay unemployment insurance costs, prime sponsors shall plan for those obligations to be incurred during the grant year. This responsibility includes unemployment insurance charges which will be incurred by subgrantees and contractors because of unemployment insurance liabilities incurred under programs under the Act. Unemployment insurance benefit costs are allowable for administrative staff hired in accordance with the administrative provisions of these regulations, and for participants in other than public service employment. Unemployment insurance benefit costs for public service employment participants, including such participants who are also administrative staff, who become eligible for unemployment insurance by reason of their participation in the program shall be paid not from funds under the Act, but from funds appropriated pursuant to Part B, Section 220(a) of Pub. L. 94-444. However, administrative costs associated with the recordkeeping requirements necessary to implement Part B, Section 220(a) of Pub. L. 94-444, shall be allowable as an administrative cost under the Act. Each grantee, subgrantee, or contractor shall cooperate with the SESA's in providing data necessary to implement the provisions of Part B of Pub. L. 94-444.

(e) *Classification of costs by category.* The following principles shall be followed in classifying costs by cost category:

(1) Participants' wages shall be charged to wages.

(2) Participants' fringe benefits shall be charged to fringe benefits (premiums

for medical and accident insurance for participants enrolled in classroom training and services to participants is considered to be a training or service cost as appropriate).

(3) Allowances paid to program participants shall be charged to allowances.

(4) Training costs consisting of goods and services which directly and immediately affect program participants shall be charged to training. Such costs should be those incurred for instruction of participants in either a work environment or classroom. Goods and services which have direct and immediate impact on participants are limited to those actually involved in the participant training process itself as opposed to those which are supportive of that process. For examples of training-related costs which may and may not be charged to training see paragraph (f) (4), Training.

(5) Supportive and manpower services costs which consist of goods and services which directly and immediately affect program participants shall be charged to Services. Goods and services considered to have direct and immediate impact on participants are limited to those actually involved in the process of providing participants with supportive and manpower services as opposed to those which are ancillary to that process. For examples of services-related costs which may and may not be charged to Services see paragraph (f) (5), Services.

(6) Administration costs shall consist of all indirect and direct costs associated with the management of the grant. Such costs are those which do not directly and immediately benefit participants but are necessary for effective delivery of direct participant benefits. These costs are generally identified with supervision, and management, fiscal and recordkeeping systems. These costs shall also include the administration costs both direct and indirect of subgrantees and contractors. For examples of administration costs see paragraph (f) (6), Administration.

(7) When contractors bill the grantee with a single unit charged containing costs which are chargeable to more than one cost category the grantee will endeavor to obtain the detail necessary to charge these costs to the proper cost categories. For unit charges such as tuition fees for which the necessary detail cannot be provided, an estimate of the breakdown of the single unit charge among cost categories will be obtained; except when such unit charges are normally billed as a single charge and the cumulate amount of the common charges such as tuition fees and doctors' bills do not exceed \$25,000. These exempted charges do not need to be prorated among the benefiting categories but can be charged to the category receiving the most benefit. Any profit (or loss) should be prorated among all the affected cost categories.

(8) Classification of equipment costs present special problems since many items of equipment can be used for various purposes. In the case of multiuse equipment there must be a proration of cost or, if there is a predominant usage

relating to one cost category, a charge shall be made to that category.

(9) Any single cost such as staff salaries and/or fringe benefits, which is properly chargeable to more than one cost category shall be prorated among the affected categories.

(f) *Following are examples of cost properly chargeable to each of the cost categories—*(1) *Wages.* All wages paid to participants receiving on-the-job training in public or private nonprofit organizations, and all wages paid to participants in transitional subsidized employment and in work experience will be allowed. Cost of living increases are considered wages. Wages paid to participants while receiving on-the-job training from a private employer organized for profit cannot be supported by funds under the Act (sec. 101(5)).

(2) *Fringe Benefits.* Allowable fringe benefit costs for participants include, but are not limited to the following: annual, sick, court and military leave pursuant to an approved leave system; employer's contribution for social security, employees' life and health insurance plans, unemployment insurance where applicable, workers' compensation insurance and retirement benefits, provided such benefits are granted under an approved plan, and, under public service employment programs, training materials, work tools, uniforms, or other equipment ordinarily provided by the employer to its regular employees, provided these are for the benefit and ownership of the participants. Cost of living increases may not be charged to fringe benefits.

(3) *Allowances.* All allowances paid to program participants pursuant to § 95.34 of this title shall be charged to this cost category.

(4) *Training.* Training costs include, but are not limited to the following: Salaries, fringe benefits, equipment, and supplies of personnel engaged in providing training; books and other teaching aides; equipment and materials used in providing training to participants; classroom space and utilities costs; and that part of tuition and entrance fees which represent instructional costs having a direct and immediate impact on participants (see § 98.12(e) (7) for exceptions). The following are examples of costs not properly chargeable to training: General and administrative costs of the training facility, supervision, clerical support for non-instructors, and training (skill maintenance and upgrading) of instructors, staff travel except when such travel is an integral part of the instruction, costs of non-classroom space and utilities, transportation of participants to training sites, and costs of processing allowance payments. The compensation of individuals who both instruct and supervise other instructors must be prorated among the Training and Administration cost categories on the basis of time records or other equitable means. Similarly, tuition fees and the costs of supplies used in the course of both participant instruction and other activities should be prorated among the benefitting uses.

(5) *Services.* Services include, but are not limited to services to applicants, supportive and manpower services, as set forth in § 95.33(d) (5).

(i) Services to applicants include outreach and intake.

(ii) Supportive services include child care, health care, medical and dental services, residential support, assistance in securing bonding, transportation, family planning and legal services.

(iii) Manpower services include orientation, counseling, job development, job placement, and employability assessment.

(iv) Allowable services costs include, but are not limited to salaries and fringe benefits, space, utility, equipment and travel costs when an integral part of the job, of personnel engaged in providing services to participants; and that part of single unit charges for child care, health care, and other services which represent only the costs of services directly beneficial to participant (see § 98.12(e) (7) for exceptions). Transportation of participants is properly chargeable to services.

(v) The following are examples of costs not properly chargeable to Services: General and administrative costs of the services provided; supervision, clerical support not directly involved in providing services, staff training, travel of supervisory staff, rent and other facilities costs (except as provided for in (iv)), and costs of supplies, materials, and equipment not used directly in providing services to participants.

(6) *Administrative costs.* (i) Administrative costs shall be limited to those necessary to effectively operate the program. They shall not exceed 20 percent of the total planned costs for all program activities other than public service employment unless the Program Narrative Description under § 95.14(b) (2)

(i) sets forth an explanation of how all Administration costs have been determined and a detailed documentation to support that amount. The restriction on the use of funds for administration in public service employment programs is set forth in § 98.12(b) (1) (sec. 108(d) (2)).

(ii) Supportive costs are comprised of general and administrative costs, overhead, and similar cost groupings representing the general management and support functions of an organization as well as secondary management and support functions at the bureau or division level. Included are salaries and fringe benefits of personnel engaged in executive, fiscal, personnel, legal, audit, procurement, data processing, communications, maintenance, and similar functions, related materials, supplies, equipment, office space costs, and staff training.

(iii) Direct program costs which are not an integral part of training and services provided participants are comprised of goods and services which neither contribute to the general management and support functions of an organization nor directly and immediately affect participants. Included are direct program sal-

aries and fringe benefits of such administrative positions as supervisors, program analysts, labor market analysts, and project directors. Additionally, all costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel which are identifiable with these direct program administration positions shall be charged to administration. Some examples of administrative costs are the salary of a clerical assistant to a supervisor, that part of an instructor's salary representing time spent supervising other instructors, desk-top supplies used by supervisors, and in general office administration, rent, depreciation or maintenance of non-classroom space, staff training, consultants services under contract not involving direct training or services to participants, costs incurred in the establishment and maintenance of State Manpower Services Councils, or prime sponsor's Planning Councils or in publishing a grant application, and costs of monitoring and providing technical assistance to contractors and sub-grantees.

(iv) Services normally chargeable to Administration when performed by staff personnel shall be charged to Wages or Fringe Benefits, as appropriate, when performed by program participants.

(g) *Travel costs.* (1) The cost of participant travel and staff travel necessary for the operation or administration of programs under the Act is allowable as provided herein.

(2) Travel costs of the Governor of a State or the chief executive of a political subdivision, (and their immediate staff but that do not have continuing programmatic responsibilities), are allowable only if the travel specifically relates to programs under the Act and is approved in advance by the RA. These costs shall be charged to administration.

(3) Travel costs of other governmental officials charged with overall governmental responsibilities are allowable if costs specifically relate to programs under the Act. Prior approval by the RA is not required. These costs shall be charged to administration.

(4) Travel costs for administrative staff, including participants in administrative positions, are allowable when the travel is specifically related to the operation of programs under the Act.

(5) Travel costs, based on mileage, for participants using their personal automobiles in the performance of their jobs are allowable if the employing agency normally reimburses its other employees in this way. These costs shall be charged to fringe benefits.

(6) Travel costs to enable participants to obtain employment or to participate in programs under the Act are allowable as supportive services. Such travel shall be restricted to the grantee's jurisdiction or within daily commuting distance, except:

(i) As provided under § 98.29a(f) ;

(ii) To pay for transportation costs at the beginning and end of a training course which is more than daily commuting distance but within the State in which the prime sponsor is located;

RULES AND REGULATIONS

(iii) As permitted for good cause by the RA, on a case by case basis, within the United States.

§ 98.13 Allocation of allowable costs among program activities.

The program activities against which program costs shall be planned, controlled and reported upon are: Classroom training; on-the-job training; public service employment; work experience; services to participants and other activities. The cost categories under each of these activities are defined in § 98.12(e). The extent to which these cost categories are chargeable to specific program activities is set forth below (sec. 101), except when the option provided under § 95.33(d)(7) is exercised by the grantee. When the option in § 95.33(d)(7) is exercised, wages and fringe benefits may be charged to classroom training and allowances may be charged to on-the-job training, public service employment, or work experience, as appropriate.

(a) *Classroom training.* Cost categories chargeable are: Administration, training, allowances, and services.

(b) *On-the-job training.* Cost categories chargeable are: Wages and fringe benefits (attributable to public or private nonprofit employers only); administration; training; and services.

(c) *Public service employment.* Cost categories chargeable are: administration, wages, fringe benefits, services and training.

(d) *Work experience.* Cost categories chargeable are: Administration, training, services, wages and fringe benefits.

(e) *Services to participants.* Cost categories chargeable are:

(1) *Allowances.* This includes all allowances paid for short periods of time to participants who are registered for training, but are waiting for startup of a component.

(2) *Services.* This includes all manpower and supportive services including post-placement services which are not part of another program activity and which are provided to participants by a prime sponsor, eligible applicant, contractor or subgrantee.

(3) *Administration.* This includes all allowable administrative costs directly associated with this activity and a pro rata share of each prime sponsor or eligible applicant's administrative costs under the Act not directly associated with any program activity.

(f) *Other activities.* Cost categories chargeable are: administration, training, allowances, and services.

§ 98.14 Basic Personnel Standards for Grantees.

(a) Methods of personnel administration will be established and maintained by each prime sponsor and eligible applicant in the public agencies administering the program for employees including participants engaged in the administration of the Act. Such methods shall be in conformity with the Inter-governmental Personnel Act (IPA) Merit Principles, Pub. L. 91-648, Section 2, administered by the U.S. Civil Service Com-

mission. Prime sponsors whose personnel systems have been accepted by the U.S. Civil Service Commission as being in conformity with the Standards for a Merit System of Personnel Administration (45 CFR Part 70), including any amendments thereto, shall be deemed to be in compliance with this section (Sec. 703.14).

(b) Except as provided in paragraph (c) of this section, any prime sponsor or eligible applicant whose personnel system has not been accepted as meeting the requirements of this section shall provide to the RA for approval a plan and steps to be taken for attaining an acceptable system and a reasonable date for completing the plan; and also shall provide a list of those steps it has already taken to provide for merit based personnel system coverage. This plan and description of steps taken shall be submitted to the RA as part of the grant application.

(c) (1) The following are not subject to the requirements of paragraphs (a) and (b) of this section;

(i) Any non-governmental prime sponsor;

(ii) A consortium administrative unit which is not a unit of government;

(iii) Staff of contractors, subgrantees, title II program agents and employing agencies and titles I, II, and VI program participants; and

(iv) Employees of the prime sponsor's jurisdiction not engaged in the administration of CETA.

(2) A consortium administered by one of the member governments or a unit thereof or a unit of government not a member shall be subject to paragraphs (a) and (b) of this section.

(d) Units whose staff are exempt under paragraph (c) of this section shall insure equal employment opportunity based on objective procedures of recruitment, selection, promotion, classification, compensation, performance evaluation, and employee management relations and are encouraged to develop procedures reflective of the principles contained in the IPA.

(e) Prime sponsors and eligible applicants should include individuals on their CETA administrative staffs which at all levels are reflective of the composition of the population to be served by the program within its jurisdiction.

§ 98.15 Adjustments in payments.

(a) If any funds are expended by a grantee, subgrantee, or employing agency in violation of the Act, the regulations or grant conditions, the Secretary may make necessary adjustments in payments on account of such expenditures. He may draw back unexpended funds which have been made available in order to assure that they will be used in accordance with the purposes of the Act, or to prevent further unauthorized expenditures, and he may withhold funds otherwise payable under the Act in order to recover any amount expended for unauthorized purposes in the current or immediately preceding fiscal year (secs. 108(b)(2) and 702(b)).

(b) No action taken by the Secretary of Labor under paragraph (a) of this section shall entitle the grantee to reduce program operations, or allowances for any participant or to expend less during the effective period of the contract or Annual Plan than those sums called for in the grant. Any such reduction in expenditures may be deemed sufficient cause for termination (secs. 108(b)(2) and 108(d)).

§ 98.16 Termination of grant; suspension of grant in emergency situations.

(a) If a grantee violates or permits a subgrantee, contractor or an employing agency to violate the regulations, or grant terms or conditions which the Secretary has issued or shall subsequently issue during the period of the Annual Plan, the Secretary may terminate the grant in whole or in part: *Provided, however,* That the grantee may request a hearing under § 98.47 within a 30 day period and that such request will stay the determination pending the outcome of the hearing.

(b) Termination shall be effected by a notice of termination which shall specify the extent of termination and the date upon which such termination becomes effective. Upon receipt of notice of termination, the grantee shall: (1) discontinue further commitments of grant funds to the extent that they relate to the terminated portion of the grant; (2) promptly cancel all subgrants, agreements, and contracts utilizing funds under this grant to the extent that they relate to the terminated portion of the grant; (3) settle, with the approval of the Secretary, all outstanding claims arising from such termination; (4) submit, within a reasonable period of time after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the grant, but in case of terminations under paragraph (a) of this section will not include the cost of preparing a settlement proposal (secs. 108(b)(2), 110(b), and 702(b)).

(c) In emergency situations where the Secretary believes that there has been illegal use of program funds under the Act, and that immediate action is necessary to protect the integrity of the grant program, the Secretary may immediately suspend payments and withdraw unexpended funds as he deems appropriate under the grant and make alternative temporary arrangements to carry out the grant program. In such a situation the Secretary shall notify the grantee of the reasons for his action and set a date for a prompt hearing on the matter, after which the Secretary shall make an appropriate determination.

§ 98.17 Annual Plan settlement procedures.

(a) The settlement of an Annual Plan is the process by which the Department of Labor determines that all applicable administrative actions and all required work of the Annual Plan have been com-

pleted by the grantee and the grantor. The following procedures will be completed with during the process of determination:

(b) By a date specified by the RA, each grantee shall submit a TWX containing the following information on each expiring annual plan:

- (1) Total fund availability;
- (2) Estimated accrued expenditures;
- (3) Estimated carryout.

(c) The RA shall issue a notice of fund availability to transfer carryout from the previous Annual Plan. A second notice of fund availability shall be issued by the RA to transfer the carryout from the previous Annual Plan into a new Annual Plan.

(d) By a date specified by the RA, each prime sponsor shall submit:

- (1) A final FSR for the previous year's annual plans;
- (2) A final Report of Federal Cash Transactions for the previous year's annual plans; and
- (3) If applicable, a list of unliquidated liabilities for the previous year's annual plans.

(e) If the final reports are acceptable, the RA shall effect settlement by transferring remaining funds into the current year's annual plans. Final settlement of expired Annual Plans shall not be complete until a final audit has been performed, audit findings have been resolved and final reports have been submitted.

(f) *End of Prime Sponsor Agreement.* The Prime Sponsor Agreement has no end or termination date. However, under the following conditions the Prime Sponsor Agreement shall no longer be in effect:

- (1) When all activity under all Annual Plans has been completed and final settlement under those Annual Plans including an inventory settlement under the PSA has been reached.
- (2) When the PSA is a multiparty agreement and one or more signatory parties has legally withdrawn from the agreement and an inventory settlement under the PSA has been reached.
- (3) When all annual plans have been terminated, as provided in § 98.16, and final settlement under those annual plans, including an inventory settlement under the PSA has been reached.

§ 98.18 Maintenance and retention of records.

(a) Grantees shall maintain records on each applicant. The following types of information shall be recorded:

- (1) For each applicant:
 - Personal identifying and eligibility information;
- (2) For each eligible applicant:
 - Other socio-economic characteristics and work history; and
- (3) For each participant:
 - (i) Program activities in which the individual participated;
 - (ii) Supportive services received; and
 - (iii) Status of participant at termination from program.

Specific items, instructions, and definitions are contained in the *Forms Preparation Handbook*.

(b) Pursuant to the provisions set forth in Attachment C of FMC-74-7 the following shall apply with regard to the retention of records pertaining to any grant program under this Act (secs. 703 (12) and 713).

(1) Financial records, supporting documents, statistical records and all other pertinent records shall be retained for a period of 3 years. Such financial records related to PSE programs shall be public information. No Federal requirements for records retention which exceed those established by State or local governments shall be otherwise imposed, except that: (sec. 704(d)).

(2) The retention period shall start from the date of submission of the annual or final expenditure report, which ever applies to the particular grant.

(3) The substitution of microfilm copies in lieu of original records may be authorized by the RA upon request of the grantee.

(4) The Secretary will request State and local prime sponsors to transfer grant records to the Department's custody when it is determined that such records have long-term retention value. However, suitable arrangements to avoid duplicate recordkeeping shall be made where the Department and any grantee need such records for joint use.

(5) (i) The names of all participants supported under the Act are considered public information unless otherwise noted in this subtitle. The names, addresses, positions and salaries of all persons employed in public service employment positions under the Act are public information (sec. 704(d)).

(ii) Other information regarding applicants, project participants, or their immediate families, which may be obtained through application forms, interviews, tests, reports from public agencies or counselors or any other source, shall be made available to the public by the grantee to the same degree it makes such information available about its own employees in the governmental jurisdiction. Without the permission of the applicant or participant, such information which is not normally made available to the public on the grantee's own employees in the governmental jurisdiction shall be divulged only as necessary for purposes related to the performance or evaluation of the grant under the Act to persons having responsibilities under the grant, including those furnishing services to the project under subgrant or contract, and to governmental authorities to the extent necessary for the proper administration of law.

(iii) The names of all individuals employed in staff positions under the Act are considered public information. A grantee shall make other information available to the public pertaining to individuals employed in staff positions under the Act in the same manner and to the same extent as such information

is made available on its regular employees. A grantee shall make other information available to the public on individuals employed in staff positions by the administrative unit of a consortium, who are not also employed by a member jurisdiction, in accordance with the policy of the member jurisdiction which has the least restrictive policy.

(iv) Irrespective of any other provision in these regulations, this subparagraph (5) is applicable to participants and staff for programs in Fiscal Year 1975, as well as thereafter.

§ 98.19 Program income.

(a) The State and any agency or instrumentality of a State which is a grantee shall not be held accountable for interest earned on grant-in-aid funds pending their disbursement for program purposes under the Act (FMC 74-7).

(b) Units of local government shall be required to return to the Federal Government interest earned on advances of grant-in-aid funds in accordance with a decision of the Comptroller General of the United States (42 Comp. Gen. 289). Interest income shall be returned to the RA within 30 days after the end of each grant quarter.

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the MA Property Handbook which implements Attachment N of FMC 74-7.

(d) Royalties received from copyrights and patents during the grant period shall be retained by the grantee and be added to the funds already committed to the program. After termination or completion of the grant, the Federal share of royalties in excess of \$200 received annually shall be returned to the Secretary (FMC 74-7).

(e) All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be added to funds committed to the project and be used to further eligible program objectives (FMC 74-7). Expenditures of program income shall be subject to the provisions of this part. Further, program income shall be expended according to the provisions of the Title of the Act under which the income was generated.

(f) The prime sponsor shall record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions.

§ 98.20 Procurement and property management standards.

(a) *Procurement standards.* (1) Subgrant means an agreement between the grantee and units of State or local government, public agencies or private nonprofit organizations whereby the grantee provides funds or aid in-kind to carry out specific programs, services, or activities authorized under the Act and the prime sponsor's grant. (See § 98.27 (b).)

RULES AND REGULATIONS

(2) Contract means a legally binding agreement between the grantee and any party, public or private for the provision of specific services authorized under the prime sponsor's grant and the Act wherein the grantee agrees to pay therefor. (See § 98.27(a).)

(3) The standards to be used for the procurement of supplies, equipment, and other materials and services with Federal grant funds are those described in Attachment O of FMC 74-7 with the following exceptions. On-the-job training contracts are not subject to the sole source approval requirement under paragraph 6(b) of Attachment O and selection of subgrantees is exempt from the requirements of Attachment O. When on-the-job training contracts are made under this exception a record of the name of the contractor, the amount and the services to be provided must be made available to the RA upon request. These standards are furnished to assure that such materials and services are obtained in compliance with the provisions of applicable Federal laws and Executive Orders.

(4) Where applicable, State and local laws which are more restrictive than the provisions of this paragraph shall apply.

(b) *Property management standards.*

(1) All prime sponsors shall comply with the provisions of FMC 74-7 Attachment N as implemented by the MA Property Handbook.

(2) Prime sponsors shall obtain prior approval from the RA for all purchases of nonexpendable personal property having an acquisition cost of \$1,000 or more and a life of more than one year. Approval may be requested by itemizing such purchases in the grant application.

§ 98.21 Nondiscrimination and Equal Employment Opportunities.

(a) Nondiscrimination generally. Every grant made under the Act shall contain an assurance concerning the provision of equal employment opportunity under the grant.

(b) (1) No person shall on the ground of race, creed, color, handicap (as defined in paragraph (h)) of this section, national origin, sex, age, as provided in subparagraph (2) of this paragraph, political affiliation, or beliefs be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Act (Sections 703(1), 712, and Vocational Rehabilitation Act, Section 504).

(2) The prohibition against age discrimination shall not be interpreted to prohibit establishment of training and employment programs under the Act designed to serve the legitimate needs of specific age groups. The prohibition against age discrimination shall not be interpreted to prohibit establishment of bona fide qualifications for participation in any program under the Act.

(c) When the Secretary determines the requirements of paragraph (b) of that a grantee has failed to comply with this section, he shall notify the grantee

of the noncompliance and request the grantee to secure compliance. If within a reasonable time, not to exceed 60 days, the grantee fails or refuses to secure compliance, the Secretary may, subject to the hearing requirements of this Part 98, terminate financial assistance under the Act and:

(1) May refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) May exercise the powers and function provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 (d)); and

(3) May take other actions as may be provided by law.

(d) When a matter under this section is referred to the Attorney General, or when the Attorney General believes that a pattern or practice of discrimination exists, the Attorney General may bring a civil action in any appropriate United States District Court, including injunctive relief.

(e) The Secretary shall enforce the provisions of paragraph (b) of this section with regard to discrimination on the basis of sex in accordance with Section 602 of the Civil Rights Act of 1964. Section 603 of such Act shall apply with respect to any action taken by the Secretary to enforce these provisions.

(f) This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity receiving assistance under the Act.

(g) The grantee shall be responsible for assuring that no discrimination prohibited by this section occurs in any program for which it has responsibility, and shall establish an effective mechanism for this purpose which is described in its plan. The grantee may, as one recommended means of establishing this mechanism, assign the responsibility for administering the Equal Employment Opportunity (EEO) program to one individual and require subgrantees and contractors to prepare affirmative action plans. In such cases, the grantee may include in its grant application a description of its EEO program and the related affirmative action plans of its subgrantees and contractors, including the procedures established for monitoring these activities.

(h) The term "handicapped individual" means any individual who (1) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment, and (2) can reasonably be expected to benefit in terms of employability from an activity under the Act.

§ 98.22 Nepotism.

(a) *Restriction.* No grantee, subgrantee, contractor, or employing agency may hire a person in an administrative capacity, staff position or public service employment position funded under the Act if a member of his or her immediate

family is engaged in an administrative capacity for the same grantee or its subgrantees, contractors, or employing agencies. Where a State or local statute regarding nepotism exists which is more restrictive than this policy, the eligible applicant should follow the State or local statute in lieu of this policy.

(b) *Definitions.* For purposes of this section: (1) The term "member of the immediate family" includes: wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild.

(2) The term "staff position" includes all CETA staff positions funded under the Act, such as instructors, counselors, and other staff involved in administrative, training or services activities.

(3) The term "person in an administrative capacity" includes: those persons who have overall administrative responsibility for a program, including all elected and appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under the Act, such as members of the prime sponsor planning council, as well as other officials who have an influence or control over the administration of the program, such as the project director, deputy director and unit chiefs; and persons who have selection, hiring, placement or supervisory responsibilities for public service employment participants.

§ 98.23 Special limitations on participant activities.

(a) *Political activities.* (1) (i) No program under the Act may involve political activities. (ii) Neither the program nor the funds provided therefor, nor the personnel employed in the administration of the program, shall be in any way or to any extent, engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code (secs. 208(g) and 710).

(2) Participants employed by State and local government in the administration of the program and participants whose principal employment is in connection with an activity financed by other Federal grants or loans are covered by the Hatch Act (secs. 208(g) and 710).

(3) Participants may not be employed or outstationed in the offices of a Member of Congress or a State or local legislator.

(4) Participants may not be employed or outstationed in positions involving political activities in the offices of other elected officials such as mayors, county executives or governors. However, since under the responsibility of such elected officials are non-political activities, placement of participants in such positions is permissible.

(b) *Political patronage.* No program will be funded if the eligible applicant discriminates with respect to political affiliation. Specifically, no eligible applicant, subgrantee or employing agency may select, reject, or promote a participant based on that individual's political

affiliation or beliefs. The selection or advancement of employees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature, is discrimination based on political belief or affiliation, and is prohibited (sec. 208(f)).

(c) *Lobbying activities.* No funds made available under this Act may be used for lobbying activities as prohibited in 18 USCA 1913.

(d) *Sectarian activities.* No participant in any program under the Act may be employed in the construction, operation, or maintenance of such part of any facility as is used or will be used for sectarian instruction or as a place of religious worship (sec. 208(h)).

(e) *Labor disputes.* No participant may be placed into or remain working in any position which is affected by a labor dispute. If a labor dispute occurs during the grant period, participants in affected positions must either be relocated to positions not affected by the dispute, or be suspended through administrative leave or other means. However, participants belonging to labor unions involved in the dispute shall be treated in the same manner as any other person who is a member of the union. Every effort should be made to relocate participants who wish to remain working, and who are non-union members, into suitable public service positions unaffected by the labor dispute. (sec. 208(a)(1), 103(7)).

§ 98.24 General benefits and working conditions for program participants.

(a) (1) Each participant in an on-the-job training, work experience or public service employment program under the Act shall be assured of workers' compensation at the same level and to the same extent as other employees of the employer who are covered by a State or industry workers' compensation statute. Whether provided through the State's compensation agency or a private insurance carrier, this coverage includes medical and accident insurance as well as income maintenance insurance.

(2) Where a participant is employed or engaged in any CETA program activity, i.e., work experience, public service employment, on-the-job training, classroom training, services to participants and other activities where others similarly employed or engaged are not covered by an applicable workers' compensation statute, the participant shall be provided with medical and accident insurance coverage. Whether provided through the State's workers' compensation agency or a private insurance carrier, the prime sponsor shall provide such participants with medical and accident insurance coverage comparable to the medical and accident insurance provided under the applicable State workers' compensation statute. However, prime sponsors shall not be required to provide these participants with the income maintenance insurance coverage in the statute.

(b) Each participant in an on-the-job training, work experience, or public service employment program shall also be

assured of health insurance, unemployment insurance (to the extent such benefits are allowable), coverage under collective bargaining agreements and other benefits at the same levels and to the same extent as other employees similarly employed, and to working conditions and promotional opportunities neither more nor less favorable than such other employees similarly employed (secs. 208(a)(4), 703(5) and 703(6)). Nothing in this section shall be interpreted to require coverage for health insurance, unemployment insurance and similar benefits for participants, such as work experience participants, where there is no employee of the employer performing the same or similar work in the employment situation. In determining whether the work is the same or similar to that of a person regularly employed, the prime sponsor will take into consideration, but shall not be limited to, employment status, type of work performed, job classification and method of appointment to the position.

(c) Every participant must be advised prior to entering upon employment of the name of his employer, and of his rights and benefits in connection with his employment (sec. 208(a)(8)).

(d) No participant will be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety. In the case of participants employed or trained for jobs inherently dangerous, e.g., fire or police jobs, participants will be assigned to work in accordance with reasonable safety practices. The provisions of section 2(a)(3) of Pub. L. 89-286 (relating to health and safety conditions) shall apply to such programs or activity (secs. 208(a)(5) and 703(5)).

§ 98.25 Retirement programs.

(a) The Act provides for temporary training and employment. Therefore, the inclusion of CETA participants in a retirement system is not encouraged. Funds under the Act, however, may be paid into a retirement system on behalf of participants in on-the-job training, work experience and public service employment in public or private non-profit agencies who:

(1) Obtain unsubsidized employment with the employer, provided the time spent as a CETA participant is accredited service under the employer's retirement plan;

(2) Obtain unsubsidized employment with another employer provided benefits are portable; or

(3) Obtain vesting.

(b) Examples of methods of administering such retirement system accounts are as follows:

(1) Payments are made first into a reserve account and are not paid into the retirement fund until the participant obtains a status described in paragraphs (a) (1) through (3) of this section. The amount held in the reserve account is then adjusted quarterly to reflect the turnover of participants and the pro-

jected funds needed to cover current participants; or

(2) Payments are made first into a reserve account for the actuarially determined number of participants who can be expected to obtain a status described in paragraphs (a) (1) through (3) of this section, and the payments are not paid into the retirement fund until the participants obtain that status. If this method is used, the amount held in the reserve account and the actuarial rate shall be adjusted or determined at least annually; or

(3) Payments are made directly into the retirement fund for the actuarially determined number of participants who can be expected to obtain a status described in paragraphs (a) (1) through (3) of this section. The amount held in the fund shall be adjusted or redetermined at least quarterly to reflect the actual number of participants who have acquired a status described in paragraph (a) (1) through (3) of this section. If this method is used, the amount of accumulated principal and interest earned on contributions made on behalf of participants not described in paragraphs (a) (1) through (3) of this section who terminate their program participation or who, for whatever reason, are no longer considered members in the retirement program must be retrievable.

(c) (1) If other than an actuarial method of benefit determination is used, there shall be at least a quarterly reprogramming back into the CETA program of any contributions (principal and interest) made on behalf of participants not described in paragraphs (a) (1) through (3) of this section who terminate their program participation, or who, for whatever reason, are no longer considered members in the retirement program.

(2) If an actuarial method is used in determining the number of participants who will benefit, a redetermination of the actuarial rate shall be made at least annually.

(3) Funds set aside in a reserve account may earn interest. Any interest earned shall be retained in the reserve account and shall be taken into consideration during reprogramming. Any interest earned on what may reasonably be determined to be a participant's portion of the reserve fund account may also be paid into the retirement fund when the participant obtains a status described in paragraphs (a) (1) through (3) of this section.

(d) Effective October 1, 1977, costs for retirement programs will be allowed only under an approved plan that meets the requirements of paragraph (a) of this section.

(e) Expenditures may be made from program funds for taxes under the Federal Insurance Contributions Act (FICA), 26 U.S.C. 3101 et seq.

§ 98.26 Procedures for resolving issues between grantees and complainants.

(a) Each prime sponsor or eligible applicant shall establish a procedure for resolving any issue arising between it

RULES AND REGULATIONS

including any subgrantee or subcontractor of the prime sponsor) and a participant under any Title of the Act. Such procedures shall include an opportunity for an informal hearing, and a prompt determination of any issue which has not been resolved. When the prime sponsor or eligible applicant takes an adverse action against a participant, such procedures shall also include a written notice setting forth the grounds for the adverse action and give the participant an opportunity to respond.

(b) Each prime sponsor or eligible applicant shall establish informal review procedures including an opportunity for an informal hearing to deal with issues arising between it and any of its subgrantees or contractors.

(c) Each prime sponsor or eligible applicant should establish informal review procedures such as informal hearings or some other process, to deal with issues arising between it and any aggrieved party.

(d) Final determinations made as a result of the review process shall be provided to the complainant in writing. Such notice shall include the procedures by which the complainant may appeal the final determination, set forth in Subpart C of this part. No individual or organization subject to the issue resolution requirements of this section may initiate the hearing procedures of subpart C of this Part until all remedies under this section have been exhausted.

§ 98.27 Grantee contracts and subgrants.

(a) Contracts may be entered into between a grantee and any party, public or private, for purposes set forth in a grant agreement except as indicated in paragraph (c) of this section. Procurement standards shall be those set forth in § 98.20.

(b) Subgrants may be entered into only between the grantee and units of State and local general government, public agencies and nonprofit organizations.

(c) Contracts or subgrants which propose to expend Federal funds for a public service employment program may be entered into only with other public agencies or with private nonprofit agencies, except for the provision of administrative services (e.g., auditing, payroll, staff training), which may be entered into with private profit-making organizations. These services shall not include direct public service employment program services such as the employment of participants.

(d) Grantee responsibility for development, approval and operation of contracts and subgrants. (1) The grantee is responsible for development, approval and operation of all contracts and subgrants and shall require that its contractors and subgrantees adhere to the requirements of the Act, regulations promulgated under the Act, and other applicable law.

(2) It shall require contractors and subgrantees to maintain effective control and accountability over all funds, prop-

erty and other assets covered by the contract or subgrant.

(3) The grantee shall assure that contractors and subgrantees shall maintain and make available for review by the grantee and the Department of Labor all records pertaining to the operations of programs under such contracts and subgrants, consistent with the maintenance and retention of records requirements of § 98.18 (secs. 105(a)(1)(B) and 208(d)).

(e) *Cancellation.* If a contractor or subgrantee does not comply with any requirement of the Act, the regulations promulgated under the Act, and other applicable law, the grantee shall, as appropriate, cancel the contract or subgrant in whole or in part. The grantee may cancel for noncompliance with additional conditions established by the grantee for the contract or subgrant.

(f) *Continuity of service when contract or subgrant is cancelled.* If a contract or subgrant is cancelled, in whole or in part, the grantee shall develop procedures for assuring continuity of service to participants and provide adequate notice to affected staff of the change (secs. 105(a)(1)(B) and 208(d)).

(g) *Contracts and subgrants extending beyond the term of the Annual Plan.* The nature of certain training programs may make it necessary for contracts or subgrants to be entered into by the grantee which will extend beyond the term of the Annual Plan under the Act. The grantee is authorized to enter into contracts or subgrants which extend past the termination date of the Annual Plan but such extension shall not exceed one year and shall be subject to the provisions of § 98.15 and § 98.16. In such cases, the grantee shall continue to be responsible for the administration of such contracts and subgrants.

§ 98.28 Non-Federal status of participants.

Except where specifically provided to the contrary, participants in a program under the Act shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employment benefits.

§ 98.29 Applicability of Davis-Bacon Wage Rates to projects under the Act.

(a) All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating of projects, buildings, and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5) in accordance with the following:

(1) Such rates shall be paid such laborers and mechanics who are employed by contractors or subcontractors, and who are not participants or regular employees of the grantee and who are em-

ployed in connection with covered employment related to a facility or building which is used primarily for programs under the Act.

(2) Such rates shall be paid all such laborers and mechanics including participants who are employed by contractors or subcontractors on such construction projects which are assisted in whole or in part with funds under the Davis-Bacon Act and other statutes, other than CETA, which provide for the payment of Davis-Bacon Act determined wages to laborers and mechanics engaged in such employment.

(3) Such rates shall be paid all such laborers and mechanics including participants who are employed on projects in areas of excessively high unemployment wherein the eligible applicant has certified that the application of the provisions of Section 604 of the Act is necessary and wherein the projects are assisted in whole or in part with Title VI funds. (604(b)(3), 706).

(b) The application of the provisions of this section shall be in accordance with the provisions and procedures of 29 CFR Parts 1 and 5.

§ 98.29a Job Corps training opportunities for CETA grantees.

(a) Grantees under Titles I, II, III, and VI of the Act, including contractors under § 303 of the Act, may purchase services and training authorized under their titles of the Act from a Job Corps center; such a transaction shall be called a buy-in.

(b) In participating in the buy-in program, grantees shall make expenditures in accordance with the regulations under their appropriate titles of the Act except as otherwise permitted by paragraph (f) of this section. In participating in the buy-in program, Job Corps shall make expenditures in accordance with the provisions of Part 97a of this subtitle.

(c) A buy-in plan shall be established by a negotiated agreement between a grantee and a center operator. Prior to execution of the agreement by the Job Corps center operator, the center operator must obtain the written approval of the appropriate ETA office.

(d) Two types of buy-in plans may be negotiated:

(1) *Job Corps Enrollees (Residential and Nonresidential).* Participants who meet the eligibility criteria for Job Corps under Title IV of the Act, as well as the eligibility criteria of the grantee's title of the Act, may be fully enrolled in Job Corps as residents or nonresidents. Such enrollees shall be treated as and receive the same services, protections, allowances, etc., as regular corpsmembers except as otherwise provided in paragraph (f) of this section.

(2) *Trainees (Nonresidential).* Participants ("trainees") who are not eligible for, or who do not want or require residential services must meet the eligibility criteria of the grantee's title of the Act only, and may receive training from the Job Corps center operator under the following options:

(i) *Vocational Trainees.* These will be trained in the requisite entry-level skills for the vocation designated in the buy-in agreement.

(ii) *Basic Education and GED Trainees.* These will be individually assessed for reading, arithmetic, job-seeking skills and general education development and trained to meet entry-level requirements for specified job clusters and/or a GED certificate, as appropriate.

(iii) *Combined Basic Education-Vocational Trainees.* These will receive both specified vocation and education training.

(iv) Other options include:

(A) Grantee use of center facilities, including nights or weekends.

(B) Grantee use of centers for training youths during the summer with charges to the grantee based on the pro rata hourly costs.

(e) Allocation of Funds. Slots available for purchase by grantees shall be over and above the current budgeted center capacity. Funds received by the Job Corps center contract or program operating plan.

(f) *Prime Sponsor Responsibility.* In addition to paying for training at Job Corps centers, grantees shall be responsible for spending funds received under their own titles of the Act to recruit enrollees and trainees, provide them with support services prior to their arrival at centers and following the completion of training, provide their transportation to and from the center, and provide job placement assistance. Grantees shall also supply associated administrative services in accordance with the regulations under this Part as agreed upon with the center. In addition, grantees are authorized to pay any transportation costs for buy-in enrollees and trainees in excess of that allowed by § 98.12(g) (6).

(g) The terms of a buy-in agreement involving trainees shall state the amount and system of payment, and shall include provisions that:

(1) Pay and allowances for trainees shall be borne by the grantee and paid in accordance with regulations under the grantee's title of the Act;

(2) The center will assure that its liability insurance covers the trainees;

(3) Trainees shall be covered by the workers' compensation required by the regulations under the grantee's title of the Act;

(4) As appropriate, the center shall provide trainees with first aid, emergency health care, and initial outpatient visits. First aid and emergency health care shall mean care provided by professionals or lay persons to prevent death or aggravation of serious illnesses or injury, including ambulance service. Initial outpatient visits shall mean single visits to the dispensary or sick call for the purpose of the initial evaluation of an acute health condition. Treatment will be limited to that which can be given by the center staff at the time of the visit. Any additional evaluation, diagnosis or treatment must be obtained

through other arrangements by the prime sponsor or the trainee; and

(5) Every trainee under the age of majority shall furnish a statement from a parent or legal guardian agreeing to permit Job Corps to provide the health care set forth in the agreement. Trainees who are over the age of majority shall themselves sign a similar statement.

(h) *Accounting.* For buy-ins involving trainees, the center shall maintain separate accounts for funds received under each title of the Act. Contract centers shall report all buy-in funds received on the Job Corps Form MA 2-411, Center Financial Status Report, and on Form MA 2-223A, Center Financial Report under "Other Income (Identify separately by source)." CCC's shall report funds on Form MA 2-223B, Center Financial Report. Grantees shall account for funds expended in support of a Job Corps buy-in accordance with current CETA procedures and cost categories.

(i) *Reporting Credits.* Grantees participating in the buy-in plan will receive credit for the recruiting, training, placement, and support services provided trainees and enrollees and will report activity under the buy-in agreement in accordance with current CETA procedures on reporting and accountability provided in this part. The Job Corps centers will provide the data required by the grantee data system to allow the reports for credit to be completed. The Job Corps center will report on total center population as currently required and will, thus, receive credit for serving enrollees and trainees.

Subpart B—Assessment and Evaluation
§ 98.30 General.

(a) This Subpart B sets forth the assessment and evaluation responsibilities of the grantee (§ 98.31) and the Secretary of Labor (§ 98.32). The grantee shall, as part of its general responsibility to carry out the purposes and provisions of the Act, establish adequate program management for the purposes of examining, in a systematic fashion, the performance of its program in meeting the goals and objectives contained in the Annual Plan and measuring the effectiveness and impact of its program in resolving manpower problems identified in that Annual Plan (secs. 105(a) (1) (B) and 703(14)).

(b) The Secretary shall assess grantees to determine whether they are carrying out the purposes and provisions of the Act in accordance with their approved plans. The Secretary shall also evaluate the overall programs and activities conducted under the Act to aid in the overall administration of the Act (secs. 311(c) (d) and 313(b)).

§ 98.31 Responsibilities of the prime sponsor or eligible applicant.

(a) As prescribed under Subpart A of this Part 98, the grantee shall submit periodic reports on the performance of its program in relation to its plan as required by the Secretary (secs. 313(b)

and 703(12)). The grantee shall implement and maintain the necessary record-keeping required to complete these periodic reports. While such recordkeeping will support reports to the Secretary, it is principally for the use of the grantee to provide basic internal management information.

(b) The grantee is required to establish internal program management procedures (sec. 703 (14)). Such procedures shall be used by the grantee in the monitoring of day-to-day operations, to periodically review the performance of the program in relation to program goals and objectives, and to measure the effectiveness and impact of program results in terms of participants, program activities, and the community. The objective of such procedures shall be the improvement of overall program management and effectiveness.

(c) The grantee shall monitor all activities for which it has been provided funds under the Act to determine whether the assurances and certifications made in its grant application and the purposes and provisions of the Act are being met, and to identify problems which may require the grantee to take corrective action in order to assure such compliance. The grantee shall fulfill this monitoring function through the use of internal evaluative procedures, the examination of program data, or through such special analysis or checking as it deems necessary and appropriate (secs. 105 (a) and (b), 108(d), and 703).

(d) The grantee shall cooperate with the Secretary's evaluation and assessments by providing special reports on program activities and operations as requested; the findings of evaluations of effectiveness and impact; and access to its records and program operations.

(e) When the grantee finds that operations do not equal planned performance, it shall develop and implement appropriate corrective action.

§ 98.32 Responsibilities of the Secretary.

(a) As used in this section, the term "assessment" refers to the Federal review of grant applications and performance of individual grantees, and the term "evaluation" refers to the Federal study of the overall effectiveness and impact of programs and activities under the Act.

(b) The Secretary has the responsibility to determine that the grantee is operating in general accordance with its approved grant application in carrying out the purposes and provisions of the Act, and has demonstrated maximum efforts to implement the provisions in its prior year's Annual Plan.

(1) The Secretary shall assess the grantee's program and activities in order to determine compliance with assurances and certifications of its grant, compliance with the purposes and provisions of the Act, compliance with the regulations promulgated under the Act and performance in the achievement of goals and objectives specified in the approved Annual Plan (secs. 105, 108(d), and 703).

(2) Such assessment shall be conducted through the review of required peri-

odic reports and shall be supplemented by special reports from the grantee, the examination of records maintained by the prime sponsor or eligible applicant, selective on-site reviews including in certain instances, reviews of contractors and subgrantees after prior consultation with the grantee, the investigation of allegations or complaints, or other examination as deemed necessary and appropriate by the Secretary (secs. 311(c)(d), 313(a)(b), 703(12), and 108).

(3) Assessment may also be conducted for purposes of the offering of technical assistance and/or recommendations for corrective actions to grantees as considered necessary. Such assessments will be made in consultation with grantees.

(c) The Secretary has the responsibility to provide for the continuing evaluation of all programs and activities conducted pursuant to the Act. Such studies shall include examination of:

- (1) Cost in relation to effectiveness;
- (2) Impact on communities and participants;
- (3) Implication for related programs;
- (4) Extent to which needs of various age groups are met;
- (5) Adequacy of mechanisms for the delivery of services;
- (6) Comparative effectiveness of grantee programs with similar programs conducted by the Secretary under Section 110 or Title III;
- (7) Opinions of participants about the strengths and weaknesses of the programs;
- (8) Relative and comparative effectiveness of programs under this Act and Part C of Title IV of the Social Security Act (Work Incentive Program for Welfare recipients) (sec. 313 (a) and (b));
- (9) The effectiveness of programs in meeting the employment needs of disadvantaged, unemployed, and underemployed persons; and
- (10) The extent to which artificial barriers restricting employment and advancement opportunities in agencies receiving funds under the Act have been removed.

(d) The Secretary shall compile, on a State, regional and national basis, information obtained from periodic reports or special reports, surveys, or samples required from grantees, including information on:

- (1) Enrollee characteristics, including age, sex, race, health, education level, and previous work and employment experience;
- (2) Duration in training and employment situations, including information on the duration of program participation, for at least a year following the termination of participation in federally-assisted programs and comparable information on other employees or trainees or participating employers; and
- (3) Total dollar cost per trainee, including breakdown between salary or allowance, training and supportive services, and administrative costs (sec. 313 (b)).

(e) Evaluations carried out in accordance with paragraph (d) of this section may be conducted directly by Depart-

ment of Labor staff or thorough contract, grant or other arrangement, as the Secretary deems necessary or appropriate (sec. 311(c)).

§ 98.33 Limitation.

No prime sponsor or eligible applicant nor the Secretary shall, in arranging for evaluation of any program under the Act, utilize for such evaluation any non-governmental individual, institution, or organization which is associated with that program as a consultant, technical advisor or in any similar capacity (sec. 704(c)).

§ 98.34 Consultation with the Secretary of Health, Education, and Welfare.

The Secretary shall consult with the Secretary of Health, Education, and Welfare with respect to arrangements for services of a health, education, or welfare character in plans under this Act. This consultation shall focus on the relationship of such services to be delivered under this Act with those being delivered under other applicable laws for which the Secretary of Health, Education, and Welfare is responsible. The RA will provide copies of Title I and II grant applications to the Regional Director of Health, Education, and Welfare for review and comment on proposed activities of a health, education, and welfare character as provided for in the Memorandum of Agreement signed June 3, 1974, and July 25, 1974, by the Secretary of Labor and the Secretary of Health, Education, and Welfare, respectively.

Subpart C—Hearings and Judicial Review

§ 98.40 Purpose and policy.

(a) The regulations set forth in this Subpart C contain the procedures established by the Secretary for carrying out his responsibilities under the Act for the review of comprehensive manpower plans and applications for financial assistance, and for the receipt, investigation, hearing and determination of questions of noncompliance with the requirements of the Act and the regulations promulgated under the authority of the Act (sec. 108).

(b) It is the policy of the Secretary to receive information concerning alleged violations of any title of the Act and the regulations promulgated pursuant thereto from any person, or any unit of Federal, State or local government. Assistance in the filing of a formal allegation may be secured from the appropriate Regional Solicitor, by any person who desires and needs such assistance.

(c) A participant in a program under the Act must exhaust the administrative remedies established by the prime sponsor or eligible applicant for resolving matters in dispute prior to utilizing the procedures under this Subpart C. The filing of such a complaint shall not, however, automatically act as a stay of the decision rendered by the prime sponsor or eligible applicant. A participant may initiate an action under this subpart within 30 days of any final decision by a grantee.

§ 98.41 Review of plans and applications, violations.

(a) The Secretary shall not finally disapprove any Comprehensive Manpower Plan or Application for financial assistance submitted under any title of the Act (except where other procedures are set forth e.g., § 97.292), or any modifications, or amendments thereof without first affording the grantee submitting the plan or application reasonable notice and opportunity for a hearing as provided in § 98.47 et seq.

(b) When information available to the Secretary indicates that a grantee may be:

(1) Maintaining a pattern or practice of discrimination in violation of Section 703(1) or Section 712(a) of the Act or otherwise failing to serve equitably the economically disadvantaged unemployed, or underemployed persons in the area it serves;

(2) Incurring unreasonable administrative costs in the conduct of activities and program, as determined pursuant to regulation;

(3) Failing to give due consideration to continued funding of programs of locally demonstrated effectiveness including those previously conducted under provisions of law repealed by Section 714 of the Act; or

(4) Otherwise materially failing to carry out the purposes and provisions of the Act or regulations issued pursuant to the Act; he shall, before taking final action on such grounds, notify the grantee of his proposed action and provide the grantee a reasonable time within which to respond. All further proceedings shall be conducted as provided in § 98.46 and § 98.47 et seq.

(c) Every other person claiming legal injury because of any action under the Act may be heard only by initiating a complaint under § 98.42.

§ 98.42 Complaints; filing of formal allegations; dismissal.

(a) Every complaint by any complainant, whether in writing or not, shall be filed as a formal allegation before the commencement of any investigation or corrective action is required under this part.

(b) All formal allegations shall be filed with the appropriate RA. A formal allegation so filed may be withdrawn only with the consent of the Secretary.

(c) A formal allegation pending more than 6 months after filing because the complainant has failed to cooperate or make himself available during investigation of the matter may be dismissed by the RA upon notice to the last known address of the complainant.

§ 98.43 Form.

Every formal allegation shall be in writing and signed by the complainant, and shall be sworn to before a Notary Public, or other duly authorized person. A formal allegation need not be in any particular form, but should be neat, legible and suitable for flat filing.

§ 98.44 Contents of formal allegations; amendment.

- (a) The formal allegation should contain the following:
- (1) The full name and address of the person making the charge.
 - (2) The full name and address of the party against whom the formal allegation is made (hereinafter referred to as the respondent(s)).
 - (3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful practice.
 - (4) Where known, the provisions of the Act, regulations, grant, and application of the grantee believed to have been violated.
 - (5) A statement disclosing whether proceedings involving the Act complained of have been commenced before a State or local authority, and, if so, the date of such commencement and the name of the authority.
 - (6) A statement that the administrative procedures established by the grantee have been, if applicable, followed to completion by the complainant.

(b) Notwithstanding the provisions of paragraph (a) of this section, a formal allegation will be considered to have been filed when the RA receives from the complainant a written statement sufficiently precise to both identify those against whom the allegations are made, and to fairly afford the respondent an opportunity to prepare a defense. A formal allegation may be amended to cure technical defects or omissions, including failure to swear to the allegation, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date. An amendment alleging additional acts not directly related to or growing out of the subject matter of the original formal allegation will be permitted only where at the date of the amendment the allegation could not have been timely filed as a separate formal allegation and the rights of any respondent will not be prejudiced.

§ 98.45 Investigations.

(a) The RA will make a prompt investigation of each formal allegation filed as provided in this part. The investigation may include, where appropriate, a review of pertinent practices and policies of any grantee, the circumstances under which the possible non-compliance with the Act or regulations issued thereunder occurred, and other factors relevant to a determination as to whether the respondent has failed to comply with requirements of the Act, the regulations, and the grant.

(1) If an investigation pursuant to paragraph (a) of this section indicates to the RA a failure to comply with the Act, the regulations, or the grant, the RA will so inform the respondent and the complainant and the matter, will if possible, be resolved by informal means. If informal resolution does not occur within a reasonable period of time, action will be taken as provided in this part or as otherwise provided by law.

(2) If an investigation does not warrant action pursuant to paragraph (a) (1) of this section, the RA will so inform the respondent and the complainant in writing.

(b) No grantee, participant, respondent or other persons shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Act, the regulations, the grant, or the application of an eligible applicant because he has made a complaint, formal allegation, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 98.46 Opportunity for hearings; when required.

An opportunity for a public hearing shall be extended in each of the following instances:

(a) When the RA receives a formal allegation from an affected unit of general local government that a grantee has changed its grant application so that it no longer complies with Section 105 of the Act, or that in the administration of the grant there is a failure to comply substantially with any provision of the grant or with the requirements of Sections 703 and 704 of the Act and the matter has not been resolved informally within a reasonable period of time; or

(b) After the completion of an investigation, pursuant to § 98.45, or any formal allegation which indicates there is substantial evidence of facts supporting a conclusion of probable cause that a violation of the Act, or regulations issued pursuant thereto, has occurred or is occurring, or is about to occur, and the matter has not been resolved by informal means; or

(c) When the Secretary has reasonable cause to believe that a violation set forth in § 98.41(b) has occurred, or when the Secretary determines that fairness and the effective operation of programs under the Act would be furthered by an opportunity for a public hearing, including a finding under § 98.41 that a hearing should be provided.

§ 98.47 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by the Act, or § 98.46, and the issue has not been resolved informally, the Secretary or RA shall give reasonable notice by registered or certified mail, return receipt requested, to the affected respondent and complainant, if any. This notice shall advise the respondent of the allegations to be heard, the proposed remedial actions which may be taken, and the matters of act or law asserted as the basis for the action. The notice shall (1) fix a date not less than 20 days after the date of such notice within which the respondent may request the Secretary or RA that the matter be scheduled for

hearing, or (2) advise the respondent and the complainant that the matter in question has been set by a Hearings Officer for hearing at a stated place and time. The time and place shall be fixed by a Hearings Officer in accordance with paragraph (b) of this section and shall be subject to change for cause. A respondent may waive a hearing and submit written information and argument for the record. The failure of a respondent to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under the Act and this part, and shall be respondent's consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearings.* Hearings shall be held in Washington, D.C., at a time fixed by a Hearings Officer. At the request of the respondent or Department, and upon a determination by the Hearings Officer that the relative conveniences of the respondent and Department so warrant, and no issue presented involved a determination which has been made at the Department's national office can only be made at the Department's national office, the Hearings Officer may select a place for hearing in the city of the regional office of the Department or any other appropriate city.

(c) *Right to counsel.* In all proceedings under this section, the respondent and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with Section 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the respondent shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearings Officer conducting the hearings at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, shall be applied where reasonably necessary by the Hearings Officer conducting the hearing. The Hearings Officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall

be based upon the hearing record and written findings shall be made.

(3) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable in any hearing conducted under this part to the extent that the Hearing Officer concludes that their use would promote the efficient advancement of the hearing.

(4) When a public officer is a respondent in a hearing in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 98.48.

(f) *Hearing Officers.* Hearings shall be held before an Administrative Law Judge of the Department or by such other person as may be designated by the Secretary.

§ 98.48 Initial certification, decisions, and notices.

(a) *Authority of hearing officer to render decision.* The Administrative Law Judge or other designated hearing officer is authorized to make an initial decision unless the Secretary otherwise limits this authority in a particular case.

(b) *Decisions and certifications by hearing officers.* The Administrative Law Judge, or other persons designated to hear the matter, shall make an initial decision, if so authorized (see § 98.47(f)) or certify the entire record including his recommended findings of fact, conclusions of law, and proposed decision to the Secretary for a final decision, and a copy of such initial decision of certification shall be mailed to the respondent and the complainant. When an initial decision is made the respondent may, within 30 days of mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may

on his own motion within 45 days after the initial decision serve on the respondent a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. The decision of the Secretary shall be mailed promptly to the respondent and the complainant, if any. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the Secretary.

(c) *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews an initial decision pursuant to paragraph (a) of this section, the respondent shall be given reasonable opportunity to file with him briefs or other written statements of its contentions. A copy of the final decision of the Secretary shall be given in writing to the respondent and to the complainant, if any.

(d) *Decisions on record where a hearing is waived.* Whenever a hearing is waived under this part, a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the respondent, and to the complainant, if any.

(e) *Rulings required.* Each decision of an Administrative Law Judge or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to the Act or regulations issued thereunder with which it is found that the respondent has failed to comply.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved in accordance with the Act, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and regulations issued thereunder, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the respondent determined by such decision to be in default in its performance of an assurance given by it pursuant to the Act or regulations issued thereunder, or to have otherwise failed to comply with the Act or regulations issued thereunder, unless and until it corrects its non-compliance, and satisfies the Secretary that it will fully comply with the Act and regulations issued thereunder.

§ 98.49 Judicial review.

Action taken pursuant to Section 108 of the Act is subject to judicial review as provided in Section 109 of the Act. All other action initiated under the Act and regulations issued thereunder shall be final upon a determination by the Secretary.

PART 99—PROGRAMS UNDER TITLE VI OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Subpart A—General

- Sec.
99.1 Scope and purpose of this Part 99.
99.2 Allocation of funds.
99.3 Eligibility for funds.

Subpart B—Grant Application

- 99.10 General.
99.11 Planning process; advisory councils.
99.12 Content and description of grant application.
99.13 Application for Federal assistance.
99.14 Comprehensive Title VI plan.
99.15 Assurances and certifications.
99.16 Grant signature sheet.
99.17 Comment and publication procedures relating to submission of grant application.
99.18 Submission of grant application; standards for reviewing grant applications.
99.19 Application approval; application disapproval; grant agreement.
99.20 Use of alternative eligible applicant; services by the Secretary.
99.21 Modifications.

Subpart C—Program Operation Requirements for Prime Sponsors

- 99.30 General.
99.31 Basic responsibilities of prime sponsors; basic responsibilities of program agents.
99.32 Program performance requirements for prime sponsors.
99.33 Public service job activities in the Title VI level of sustainment.
99.34 Maintenance of effort.
99.35 Linkages with other employment and training programs; training and supportive services.
99.36 Placement goals.
99.37 Compensation and working conditions for participants.
99.38 Place of residence for participants.

Subpart D—Program Operation Requirements Under the Emergency Jobs Programs Extension Act of 1976

- 99.40 Apportionment of the prime sponsor's allocation.
99.41 Project approval.
99.42 Eligibility for participation in Title VI programs.
99.43 Verification of participant eligibility.
99.44 Special considerations on selection.
99.45 Administrative staff selection and compensation.

Subpart E—Administrative Provisions

- 99.70 General.
99.71 Payments, financial management systems and audit.
99.72 Reporting requirements.
99.73 Reallocation of funds.
99.74 Allowable Federal costs.
99.75 Grantee contracts and subgrants.
99.76 Allocations of allowable costs among program activities.
99.77 Basic personnel standards for eligible applicants.
99.78 Adjustments in payments.
99.79 Termination of grant and closeout procedures.
99.80 Retention of records.
99.81 Program income and procurement standards.
99.82 Nondiscrimination, equal employment opportunities, nepotism and restriction on political activities.
99.83 Assessment and evaluation.
99.84 Hearings and judicial review.

Subpart F—Special Conditions for Grants to Indian Tribes and Alaskan Native Villages

- Sec.
- 99.90 General.
- 99.91 Grant responsibility.
- 99.92 Distribution of funds.
- 99.93 Eligibility for funds.
- 99.94 Funding of prime sponsors.
- 99.95 Participant eligibility.
- 99.96 Comments and publication procedures relating to submission of application for funding.
- 99.97 Planning process; advisory councils.
- 99.98 Travel requirements.
- 99.99 Nepotism and conflict of interest.
- 99.100 Nondiscrimination; political activities.
- 99.101 Subgrants.

Subpart A—General

§ 99.1 Scope and purpose of this Part 99.

(a) This part contains the Department of Labor's regulations governing the establishment and operation of a public service and employment and training program under Title VI of the Act, as amended by the Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. 93-567, 88 Stat. 1845, and the Emergency Jobs Programs Extension Act of 1976, Pub. L. 94-444.

(b) This program is intended to sustain enrollment under Titles II and VI of the Act throughout Fiscal Year 1977, and to create project opportunities with funds in excess of those needed for sustaining enrollment.

(c) Provision is also made for a shift in emphasis toward serving persons who are long-term unemployed or AFDC recipients and whose family incomes are 70 percent or less of the lower living standard income level. All persons enrolled in projects must meet the above criteria. In addition, at least 50 percent of the vacancies which occur or which already exist in the Title VI level of sustainment must be filled with long-term unemployed persons and AFDC recipients. Persons filling the remaining vacancies may meet the original Title VI eligibility criteria. A prime sponsor, however, may fill all vacancies with long-term unemployed persons and AFDC recipients.

(d) Definitions for terms and abbreviations used in this part which are not found in this Part may be found at § 94.4 of this title.

(e) Prime sponsors are encouraged to develop to the maximum extent feasible ways of assuring participation of veterans in the newly created public service employment positions.

(f) Pursuant to § 98.21 of this title, prime sponsors shall assure equal employment opportunity in the selection of eligible participants for projects. In the establishment of eligibility pools for participants, prime sponsors shall have ample lead time to assure that those in the pool adequately reflect the characteristics of their unemployed populations (i.e., minorities, women).

(g) Statutory authority for the regulations contained in this part is found in section 702(a) of the Act. Other relevant sections of the Act are generally

noted at the end of the substantive regulations in this part.

(h) Pub. L. 94-444 was signed into law on October 1, 1976. Therefore, as of October 1, 1976, certain provisions of Pub. L. 94-444 became immediately applicable, including sections 3(a)(1), 3(a)(2), and 11.

§ 99.2 Allocation of funds.

(a) The Secretary shall allocate not less than 2 percent of the funds available for Title VI of the Act to those eligible applicants defined in § 99.3 which are Indian tribes, bands, and groups qualified under section 302(c)(1) of the Act (sec. 602(e) and sec. 603(a)(1)).

(b) Not less than 90 percent of the funds remaining after the application of paragraph (a) of this section shall be allocated among eligible applicants defined in § 99.3 which are prime sponsors under Title I of the Act according to the following basic formula (sec. 603(a)(1)):

(1) Fifty percent of the funds shall be allocated among eligible applicants in proportion to the relative number of unemployed persons who reside in areas within the jurisdiction of such applicants compared to the number of unemployed persons who reside in all eligible applicants' areas in all the States (sec. 603(a)(2)(A)).

(2) Twenty-five percent of the funds shall be allocated among eligible applicants on the basis of the ratio of the excess number of unemployed persons, as defined below, who reside within the jurisdiction of the eligible applicant, to the total excess number of unemployed persons who reside within the jurisdictions of all eligible applicants. In allocating funds to an eligible applicant which is not a State, the term "excess number" shall mean the number of unemployed persons in excess of 4.5 percent of the labor force who reside in the jurisdiction of the eligible applicant. For allocating funds to an eligible applicant which is a State, the term "excess number" shall mean either the number of unemployed persons in excess of 4.5 percent of the labor force who reside in the jurisdiction of the eligible applicant, or the number of unemployed persons in excess of 4.5 percent of the labor force in areas eligible for assistance under Title II of the Act in the geographical area served by such State prime sponsor (under Title I or Title II), whichever is greater (sec. 603(a)(2)(C)).

(3) Twenty-five percent of the funds shall be allocated for use on behalf of residents of areas of substantial unemployment. An area of substantial unemployment, other than in relation to Indian tribes, bands, and groups, is any area within a prime sponsor's jurisdiction which has a population of at least 10,000 persons, qualifies for a minimum allocation of \$25,000 under Title II of the Act, and has a rate of unemployment of at least 6.5 percent for a period of three consecutive months as determined by the Secretary of Labor at least once each fiscal year. These funds shall be allocated in accordance with the number

of unemployed persons residing in areas of substantial unemployment within the jurisdiction of the eligible applicant as compared to the total number of unemployed persons residing in all areas of substantial unemployment (sec. 603(a)(2)(b)).

(c) (1) The remaining funds, not to exceed 10 percent of the funds remaining after application of paragraph (a) of this section, may be distributed to prime sponsors under Title VI by the Secretary as the Secretary deems appropriate to carry out the purpose of Title VI, taking into account both changes in rates of unemployment, and the need for additional funds to continue the same level of public service employment activities previously supported under the Act within the jurisdiction of the eligible applicant (sec. 603(b)).

(2) When any portion of these funds is to be allocated using a formula, the Secretary shall not later than 30 days prior to such allocation publish in the FEDERAL REGISTER the specific formula for such distribution, the rationale behind the selection of the formula and the proposed amount for distribution to each eligible applicant. After consideration of comments received within 30 days of the FEDERAL REGISTER notice, the Secretary shall publish final allocations (sec. 603(d)).

(d) For purposes of paragraphs (b) and (c) of this section, the term "jurisdiction" means the jurisdiction of each unit of general local government as described in § 95.3(a)(2) of this subtitle, whether or not such unit has entered into a consortium of units of general local government for the purposes of § 95.3(a)(3) of this subtitle (sec. 603(c)).

(e) (1) An eligible applicant shall distribute to a program agent, as defined in paragraph (e)(3) of this section, funds to be utilized to serve residents of the program agent's area unless the program agent declines to operate a program. In which case, the eligible applicant shall make other arrangements to serve the residents of the program agent's jurisdiction (sec. 204(d)(1)).

(2) If the Secretary does not specify an amount to be distributed to a program agent, the eligible applicant shall distribute funds to the program agent using the same rationale used by the Secretary in distributing funds to eligible applicants.

(3) The term "program agent" under this part shall mean any unit of general local government (or combination of such units) located within an eligible applicant's jurisdiction which has a population of 50,000 or more (sec. 204(d)(1)).

(4) Notwithstanding paragraph (e)(1) of this section, a program agent which is a member of a consortium may make agreements agreed to by the consortium for the administration of funds for the benefit of the residents of the eligible program agent's area:

§ 99.3 Eligibility for funds.

(a) Funds shall be allocated by the Secretary only to eligible applicants. The

RULES AND REGULATIONS

term "eligible applicant" shall mean prime sponsors qualified for Fiscal Year 1977 under Title I of the Act and Indian tribes, bands, and groups qualified for Fiscal Year 1977 under section 302(c) (1) of the Act (sec. 602(e)).

(b) A State shall not qualify as an eligible applicant for any geographical area within the jurisdiction of any other eligible applicant which is a unit of local government, within the State unless the non-State eligible applicant has not submitted an approvable application for Title VI funds, or has stated to the Regional Administrator, in writing, its desire to be served by the State (sec. 204(a)).

(c) A unit of general local government shall not qualify as an eligible applicant with respect to any area within the jurisdiction of another eligible unit of general local government unless the other unit has not submitted an approvable application for such areas, or has stated its desire to the RA, in writing, to be served by such larger unit (sec. 204(a)).

(d) (1) An eligible applicant shall distribute funds to program agents as provided in § 99.2(e) (sec. 204(d) (2)).

(2) No program agent shall receive or continue to receive funds for any area within the jurisdiction of another program agent unless the RA determines that the other program agent has not carried out its administrative responsibility consistent with the application for financial assistance developed by the eligible applicant for developing, funding, overseeing, and monitoring programs within its area (sec. 204(d) (3)).

(e) Funds for areas of substantial unemployment.

(1) An eligible applicant or program agent which contains an area or areas of substantial unemployment shall make available for services to residents of each such area those funds allocated to the eligible applicant under § 99.2(b) (3) (sec. 603(a) (2) (b)).

(2) An eligible applicant other than a State, or a program agent, whose entire jurisdiction qualifies as an area of substantial unemployment, shall, to the extent feasible, allocate funds allocated under § 99.2(b) (3) according to § 96.3(f) (1) of this subtitle.

(3) If the eligible applicant is a State whose entire jurisdiction qualifies as an area of substantial unemployment, the eligible applicant shall, to the extent feasible, allocate the funds allocated to it under § 99.2(b) (3) according to § 96.3(f) (2) of this subtitle.

(4) If an eligible applicant believes that there is an area of substantial unemployment within its jurisdiction that has not been designated as such by the Secretary it may recommend that such area be considered by the Secretary. In making any such recommendation, the eligible applicant must include a precise geographical definition of the area to be served and population data. Such recommendation shall be submitted to the RA. The Secretary shall, within a reasonable time, make a determination on the recommendation and inform the eligible applicant of the decision and the reasons therefor.

Subpart B—Grant Application

§ 99.10 General.

(a) This subpart contains the procedures for obtaining grants to operate programs under Title VI of the Act (sec. 602(a)).

(b) The Secretary reserves the right to temporarily waive any of the grant procedures in this subpart and provide immediate funding authority when, and if, strict adherence to a procedure would result in a funding delay which would necessitate the lay-off of currently employed participants.

§ 99.11 Planning process; advisory councils.

To receive financial assistance under Title VI of the Act, eligible applicants shall submit an appropriate comprehensive Title VI plan, pursuant to § 99.12. In developing and modifying such a plan, an eligible applicant shall utilize the planning process and the advisory councils pursuant to § 95.13 (b), (c), (d), and (e) of this subtitle.

§ 99.12 Content and description of grant application.

(a) To apply for a grant, each eligible applicant shall complete and submit a grant application.

(b) Copies of all grant application forms and instructions are contained in the Forms Preparation Handbook (ET Handbook No. 311).

(c) Each grant application shall consist of an Application for Federal Assistance, a Comprehensive Title VI Plan, Assurances and Certifications, and a Grant Signature Sheet. Sections 99.13-16 describe the contents of the grant application.

§ 99.13 Application for Federal Assistance.

The Application for Federal Assistance identifies the eligible applicant and the amount of funds requested. It provides information concerning the area to be served and the number of people expected to benefit from the program. The Standard Form 424 contained in Federal Management Circular (FMC) 74-7 is being used as the Application for Federal Assistance.

§ 99.14 Comprehensive Title VI Plan.

(a) The Comprehensive Title VI Plan is a statement of how the eligible applicant intends to use Title VI funds and to coordinate its activities with other employment and training programs and services operating within its jurisdiction. The Comprehensive Title VI Plan consists of the Narrative Description of the Title VI Program, the Program Planning Summary, the Budget Information Summary, the Monthly Schedule, the Public Service Employment Occupational Summary, the Project Data Summary, and the Program Summary which are described below in paragraphs (b) through (h) of this section.

(b) The Narrative Description of the Title VI program identifies and explains the employment and training problems within the eligible applicant's jurisdic-

tion; describes proposed program activities and delivery systems to deal with those problems, and states the results expected from the program. The Narrative Description requirements in this paragraph (b) are an abbreviated version of the Narrative Description requirements for Title II (§ 96.14(b) (2) (1) of this title.) If the information required has already been provided in the current Title II Narrative Description, a copy of the Title II Narrative Description may be attached in order to comply with the requirements in this paragraph. The Narrative Description of the Title VI program must include the following items:

(1) *Objectives and needs for the assistance.* (i) Program purpose; and

(ii) Analysis of need—A brief description of the labor market of the area including labor force and a description of the population groups most in need of services at this time.

(2) *Results and benefits expected.* This item should explain how the quantified results in Section I of the PPS impact on the needs of the labor force and the community services to be provided.

(3) *Approach.* (i) What provisions have been made to sustain the June 30, 1976, level of enrollment in both Titles II and VI, or to retain the October 31, 1976 level, if higher?

(A) Identify the June 30, 1976, level of enrollment in Titles II and VI. Identify the October 31, 1976, level, if different.

(B) Identify the level of enrollment at the time of grant execution, if higher than either of the preceding. If the level of enrollment is higher, describe how these excess participants will be accommodated (e.g., transfer to projects, terminate, place in jobs).

(C) Estimate the amount of funds it will take to sustain the June 30, 1976, level of enrollment or to retain the October 31, 1976, level of enrollment, whichever level of enrollment is higher.

(D) Identify the number of participants that will be sustained under Title II.

(E) Identify the number of participants that will be in the Title VI level of sustainment.

(F) If any former participants are to be reinstated in the program under the provisions of § 99.40(c), state the number of individuals involved. Submit adequate documentation to allow the RA to determine that such individuals qualify for reinstatement, including the name, position, date of termination and reason for termination of each participant and any additional information required by the RA.

(i) Describe the methods which will be used to provide any training and supportive services to long-term unemployed persons.

(ii) Provide the estimated average annual wage rate for PSE occupations and the method of obtaining this wage rate, keeping in mind the aim of obtaining a nationwide rate of \$7,800.

(iv) Describe unmet public service needs.

(v) Describe the method of recruiting low-income AFDC recipients and long-

term unemployed persons, and the method which will be used to verify such persons' eligibility for the program. Describe the procedures that will be used to track and monitor the flow of participants in order to comply with the different eligibility requirements of § 99.42 (a) and (b).

(vi) Explain the basis for distributing funds within the eligible applicant's area.

(vii) Describe what steps will be taken to provide services to disabled, special and recently discharged veterans and to welfare recipients.

(viii) For newly eligible applicants, eligible applicants operating independently for the first time and eligible applicants serving geographical area(s) in addition to that served in the previous program year, describe the continuity of service to be provided.

(ix) Describe the process for selecting delivery agents and project operators including:

(A) The methods and criteria to be used in the selection of delivery agents and project operators;

(B) The methods and criteria to be used for soliciting and approving project applicants.

(x) Describe the linkages established with other employment and training and related agencies.

(xi) Identify the percentage of Title VI positions planned to be filled with veterans.

(4) *Management and administrative plan.* (i) Provide an organizational chart.

(ii) Describe internal administrative controls, including personnel or merit system and grievance procedures.

(5) *Maintenance of effort data.* Estimate the number of jobs that will be filled by rehiring former employees who have been terminated or laid off. (Under § 99.34, the RA may request additional documentation on this item.)

(c) *Program planning summary.* The program planning summary requires an eligible applicant to provide a quantitative statement of planned enrollment levels, the participants to be served by each program activity (classroom training, on-the-job training, public service employment, work experience, and other activities), and planned outcomes for program participants. It also requires an identification of the significant segments of the population and the number of individuals in each to be served.

(d) *Budget information summary.* The budget information summary requires an eligible applicant to:

(1) Provide a quantitative statement of planned expenditures and obligations;

(2) Indicate yearly planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services); and

(3) State planned quarterly obligations and planned expenditures by program activity.

(e) *Monthly schedule.* The monthly schedule contains an estimate of total number of participants who will be en-

rolled in Title VI programs at the end of each month and of the total cumulative expenditures expected to have been incurred by the end of each month.

(f) *Public service employment occupational summary.* The public service employment occupational summary provides a description of proposed job opportunities, occupations and wages for similar nonsubsidized jobs in the employing agency at the sustaining level. The above information should not be provided for projects.

(g) *Project data summary.* The project data summary provides a description of each proposed project.

(h) *Program summary.* The program summary presents a distribution of jobs, training slots, and funds to be provided to eligible applicants and subgrantees. It designates the area to be served, the population and employing agencies of each area. The above information should not be provided for projects.

§ 99.15 Assurances and certifications.

(a) The assurances and certifications form is a signature sheet on which the eligible applicant assures and certifies that it will comply with the Act, the regulations of the Department, other applicable laws, and applicable Federal Management Circulars and Office of Management and Budget (OMB) circulars. The assurances and certifications form will be provided in the grant application package.

(b) When prime sponsors are planning to fund job opportunities authorized under Section 304(a) of the Act, paragraphs (3), (4), (5), and (6), they must submit a certification to the RA in the grant application that such activities are necessary to provide sufficient job opportunities in the area served by the prime sponsor (sec. 604(a)).

§ 99.16 Grant Signature Sheet.

The Grant Signature Sheet records the acceptance by the grantee and grantor of the terms and conditions of the grant and any changes to the grant. It records the time period for which the grant is effective, the grant allotment, the amount of funds obligated by the RA to the grantee, the Title of the Act under which funding is authorized and the name, title and signature of the approving official on both sides.

§ 99.17 Comment and publication procedures relating to submission of grant application.

(a) Each eligible applicant shall provide an opportunity for comment on the application as set out in § 95.15 of this subtitle, except that newspaper publication and provision of the application to Governors, appropriate units of government, appropriate Indian prime sponsors, and appropriate labor organizations may be simultaneous with submission of the grant application to the RA.

(b) Each eligible applicant shall submit a copy of its grant application to appropriate State and sub-state clearinghouse(s) at the same time that it submits its application to the RA.

§ 99.18 Submission of grant application; standards for reviewing grant applications.

(a) Each eligible applicant shall submit its grants application to the RA on or before a date set by the Secretary.

(b) A grant application shall include all items set out in § 99.12.

(c) A grant application will be reviewed to determine if it meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law. In reviewing a grant application, the RA shall use the standards set forth in § 95.17(b) of this subtitle.

§ 99.19 Application approval; application disapproval; grant agreement.

The procedures set forth in §§ 95.18 and 95.19 of this subtitle shall apply for Title VI applications and grant agreements.

§ 99.20 Use of alternative eligible applicant; services by the Secretary.

The provisions detailed in § 95.20 of this subtitle shall apply to applications and grants made pursuant to Title VI of the Act.

§ 99.21 Modifications.

The modification procedures set forth in § 95.21 of this subtitle shall apply to Title VI grants.

Subpart C—Program Operation Requirements for Prime Sponsors

§ 99.30 General.

(a) This subpart contains the program operation requirements governing prime sponsors with respect to the creating and expanding of public service job opportunities for unemployed and underemployed persons (secs. 205, 602(a)).

(b) This subpart also contains special provisions governing prime sponsors of areas of excessively high unemployment, which include:

(1) Prime sponsors of areas having an average unemployment rate in excess of 7 percent for the most recent three consecutive months based upon the best available information and subject to review by the RA, and which certify to the RA in the grant application or a request for modification that the application of the special provisions for areas of excessively high unemployment are necessary in order to provide sufficient job opportunities in the area;

(2) Prime sponsors which are "exceptional circumstance" prime sponsors under section 102(a)(4) of the Act and which certify to the RA in the grant application or a request for modification that application of the special provisions for areas of excessively high unemployment are necessary in order to provide sufficient job opportunities in the area;

(3) Prime sponsors which are "concentrated employment program" prime sponsors under section 102(a)(5) of the Act and which certify to the RA in the grant application or a request for modification that the application of the special provisions for areas of excessively high unemployment are necessary in

order to provide sufficient job opportunities in the area; and

(4) Prime sponsors which are State prime sponsors serving areas which are eligible for assistance under Title II of the Act and which certify to the RA in the grant application or a request for modification that the application of the special provisions for areas of excessively high unemployment are necessary in order to provide sufficient job opportunities in the Title II area.

§ 99.31 Basic responsibilities of prime sponsors; basic responsibilities of program agents.

(a) (1) A prime sponsor shall administer its programs under Title VI of the Act pursuant to the provisions of § 96.21 of this subtitle.

(2) A prime sponsor of an area of excessively high unemployment shall administer its programs under Title VI of the Act pursuant to the provisions of § 96.21 of this subtitle, except that the provisions of § 96.21 (c), (d) and (e) of this subtitle shall not apply.

(b) The responsibilities of program agents, as defined in § 99.2(e) (3), shall be those provided in § 96.22 of this subtitle.

§ 99.32 Program performance requirements for prime sponsors.

(a) A prime sponsor shall use funds under Title VI of the Act in accordance with the expenditure levels and enrollment levels described in the approved Comprehensive Title VI Plan and within the monthly schedule.

(b) (1) The RA shall review the program performance of each prime sponsor on a monthly basis and determine the adequacy of the prime sponsor's performance with respect to the expenditure and enrollment levels provided for in the Program Planning Summary, Budget Information Summary, and the monthly schedule.

(2) If a prime sponsor operates at a level in variance from the monthly schedule, the RA may prescribe corrective action and/or technical assistance.

(c) The RA, on a monthly basis, shall make a general review of the prime sponsor's performance and goals to determine the responsiveness of the prime sponsor's program to the unemployment rates of its area and the employment needs of the persons within its jurisdiction.

§ 99.33 Public service job activities in the Title VI level of sustinment.

(a) A prime sponsor may use funds reserved for sustaining enrollment under Title VI to provide:

(1) Public service jobs which provide maximum employment opportunities for eligible persons (sec. 602(a));

(2) Public service employment programs which meet the requirements of § 96.23 of this subtitle (sec. 602.(a));

(3) Basic manpower activities and services described in § 95.33(d) (1), (2), (4), (5), and (6) of this title (sec. 201);

(4) Job opportunities with public employers, as described in paragraphs (3),

(4), (5), and (6) of section 304(a) of the Act, if the prime sponsor certifies to the RA in the grant application or a modification that such activities are necessary to provide sufficient job opportunities in the area served by the prime sponsor (sec. 640(a));

(5) Where funds are utilized pursuant to paragraphs (a) (3) and (a) (4) of this section, all provisions under this part shall apply, except for references in such provisions to §§ 96.20, 96.21 (b), (c), (d), (e), (g), and (h), 96.23, 96.31, 96.32, 96.33, and 96.34 of this subtitle. In addition, those provisions applicable for program under Title I, or Part A of Title III shall apply. However, when the Title VI funds are used to fund public service employment, all of the provisions of this part shall apply.

(b) Funds allocated to prime sponsors of areas of excessively high unemployment may also be used for public service employment programs which meet the requirements of § 96.23 of this subtitle, except that § 96.23(b) (2), (3), and (8) shall not apply.

§ 99.34 Maintenance of effort.

(a) Public service jobs funded under Title VI of the Act shall only be in addition to employment which would otherwise be financed by the prime sponsor without assistance under the Act (sec. 602(c), 205(c)(25)).

(b) To assure maintenance of effort, the prime sponsor shall see that all programs under Title VI of the Act:

(1) Shall result in an increase in employment opportunities over those which would otherwise be available;

(2) Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of nonovertime work, wages, or employment benefits;

(3) Shall not impair existing contracts for services or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and

(4) Shall not substitute public service jobs for existing federally assisted jobs under federally supported programs other than those under the Act (secs. 602(c), 208(a)(1)).

(c) Prime sponsors, program agents and subgrantees may not terminate, lay-off, or reduce the working hours of, an employee in anticipation of hiring an individual with funds available under Title VI. In addition, no participant shall be used to fill positions or provide services normally provided by temporary, part-time, or seasonal workers or contracted out, or to fill full-time vacancies, unless documentation is maintained, as provided in paragraph (h) of this section, that such action does not constitute a substitution of Federal funds for purposes that would otherwise have been supported by other resources.

(d) No prime sponsor shall hire or allow the hiring of any person into any job funded under this part when any other person is on lay-off from the same or any substantially equivalent job (secs. 602(c), 205(c)(7)(8)). If layoffs of

regular employees occur during the grant period, participants may not remain working in the same or substantially equivalent job within the employing agency that is affected by the lay-off. Such participants shall be transferred to positions not affected or be laid off or terminated. Prime sponsors shall try to transfer them to Title I, if appropriate, or shall attempt to place them into unsubsidized employment before laying them off or terminating them (secs. 602(c), 205(c)(7)(8)).

(e) Former employees who lost their jobs due to a bona fide lay-off may be hired into positions supported under this Part provided that such hiring does not constitute a violation of the maintenance of effort provisions of the Act and these regulations.

(f) No participant may be placed or remain working in any position substantially equivalent to a position which is vacant due to a hiring freeze unless the prime sponsor can demonstrate that:

(1) The freeze resulted from a lack of funds to sustain former staff levels and was not established because of the availability of funds under this part; and

(2) The promotional opportunities of regular employers will not be infringed upon.

(g) Prime sponsors shall notify the RA in writing of any layoff or hiring freeze in a department or agency where participants are employed in positions substantially equivalent to those affected by the layoff or hiring freeze.

(h) Prime sponsors, program agents, or subgrantees which utilize funds under this part to hire persons to fill positions previously supported by funds other than funds available under the Act or to provide services which are normally provided by temporary, part-time or seasonal workers or which are normally contracted out, shall maintain documentation that such use of funds does not constitute a violation of paragraph (c) of this section nor of any other requirements of this section. Such documentation shall be prepared and maintained in a form which clearly demonstrates that all requirements of this section are complied with and shall be readily available for the inspection of the RA for a period of not less than one year subsequent to the filling of any position to which these provisions are applicable. Prime sponsors shall, at the direction of the RA, submit such documentation or any budgetary expenditure records, revenue statements, and other information relevant to determinations under this section. RA's shall not approve any plan unless prime sponsors have submitted, when directed by the RA, conclusive evidence that the proposed use of funds fully meets the requirements of this section.

(i) Funds shall not be used to provide public services, through a private or non-profit organization or institution, which are customarily provided by a State, a political subdivision, or a local educational agency in the area if such funding will result in a reduction of the customary level of such service by the State,

political subdivision, or local educational agency.

(j) RAs and prime sponsors shall carefully review all programs to insure compliance with all maintenance of effort requirements.

§ 99.35 Linkages with other employment and training programs: training and supportive services.

(a) Each prime sponsor, where appropriate, shall maintain linkages with other employment and training programs as provided under the provisions of § 96.32 of this subtitle.

(b) As appropriate, each prime sponsor shall provide training and supportive services for participants as specified by § 96.31 of this subtitle.

§ 99.36 Placement goals.

Public service employment programs, to the extent feasible, shall meet placement goals as described in § 96.33 of this subtitle (secs. 602(c), 211(b)). The provisions of § 96.33 (c)-(f), however, shall not be applicable to participants in projects as described in § 99.40(a)(2).

§ 99.37 Compensation and working conditions for participants.

(a) Participants in public service employment programs and projects shall be compensated pursuant to § 96.34 of this subtitle.

(b) A prime sponsor may establish, on an area basis, jobs and wage structures for participants, taking into account the average wages in the area served and the cost of living in such areas, with the aim of effecting a nationwide, federally supported annual average wage rate equivalent of \$7,800 per full-time position within the overall \$10,000 federally supported salary limitation provided to public service jobholders. However, this provision in no way is intended to relieve a prime sponsor from compensating participants in accordance with paragraphs (a), (c), (d), (e), and (f) of this section. The RA is authorized to make recommendations, on an area basis, to prime sponsors pertaining to the provisions set forth in this paragraph.

(c) Participants in classroom training programs shall be compensated pursuant to § 95.34 of this subtitle.

(d) Participants in on-the-job training programs and projects shall be compensated pursuant to § 95.35 of this subtitle.

(e) Participants in work experience programs shall be compensated in accordance with § 95.33(d)(4)(viii) of this subtitle. When participants enrolled in work experience are working in projects, wages shall equal the highest of either of the rates specified in § 95.33(d)(4)(viii) of this subtitle or the prevailing rates of pay for persons employed in similar occupations by the same employer. When a participant in a work experience activity is performing the tasks of a regular public service employment type job, wages must be comparable

to those paid for the regular public service job, as specified in § 96.34 of this subtitle.

(f) The salary limitations specified in § 96.34(c) of this subtitle shall apply to compensation provided participants under Title VI.

(g) Participants in public service employment may only be placed in above entry level positions or in supervisory positions in projects to the extent consistent with the provisions of § 96.23(b)(11) and (12) of this subtitle.

§ 99.38 Place of residence for participants.

(a) *General.* (1)(i) At time of both application and selection, program participants shall reside within the geographic area for which funds have been designated. A program agent, therefore, may not hire persons outside of its jurisdiction nor may a prime sponsor hire a person from the jurisdiction of another prime sponsor or of a program agent within its own jurisdiction.

(ii) Because of changes in program agent designations each program year, this policy does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(2) A prime sponsor or program agent may receive additional funds as a subgrantee of another prime sponsor or program agent to enroll residents of the other prime sponsor's or program agent's jurisdiction in any public service job or other manpower program under Title VI. The prime sponsor or program agent receiving funds must offer jobs or programs which are within reasonable commuting distance of residents of the other prime sponsor's or program agent's jurisdiction.

(3) *Consortia of eligible applicants.* If two or more jurisdictions eligible to be prime sponsors have found a consortium to operate programs under Titles I, II, and VI, residents of any designated area within the boundaries of the consortium may be employed in public service jobs or enrolled in any other manpower activity either within the geographical boundaries of the consortium or outside such boundaries in which case the provisions of § 96.23(b)(7) of this subtitle shall apply: *Provided*, That the total amount of funds spent for residents of each participating prime sponsor equals the amount of funds that the area would have received if the consortium had not been formed.

(b) Funds provided under § 99.2(b)(3) shall be used only on behalf of residents of geographic areas eligible for assistance under Title II of the Act.

(c) *Consortia of units of general local government formed in order to qualify as program agents; multijurisdictional prime sponsors.* The provisions of paragraphs (a) and (b) of this section shall apply to consortia of units of general local government formed in order to qualify as program agents and shall apply to multijurisdictional prime sponsors.

Subpart D—Program Operation Requirements Under the Emergency Jobs Programs Extension Act of 1976

§ 99.40 Apportionment of the prime sponsor's allocation.

(a) *General.* (1)(i) Each prime sponsor shall reserve from the funds available during Fiscal Year 1977 for its use under Title VI, an amount which, when added to the funds available during Fiscal Year 1977 for its use under Title II, shall be sufficient to sustain throughout FY 1977 the number of Titles II and VI participants who were in the program on June 30, 1976.

(ii) However, if the number of participants enrolled in Titles II and VI of October 31, 1976, plus any rehires who were terminated from Titles II and VI and who are approved for reinstatement in accordance with paragraph (c) of this section, is higher than the June 30, 1976, level of participants, the prime sponsor may reserve funds to carry the higher level into the new grant period. The prime sponsor should be aware, however, that its allocation, which shall be keyed to the June 30, 1976 level, may not be sufficient to operate at the higher level throughout FY 1977.

(iii) (A) Funds reserved in accordance with paragraph (a)(1)(i) of this section shall not be used to support a level of opportunities in excess of the June 30, 1976, level or the level of opportunities on the date of grant execution.

(B) Funds reserved in accordance with paragraph (a)(1)(ii) of this section shall not be used to support a level of opportunities in excess of the October 31, 1976, level plus any rehires who have been approved for reinstatement under paragraph (c) of this section or the level of opportunities on the date of grant execution.

(iv) Where the enrollment level at the time of grant execution is higher than the Title VI level of sustainment, prime sponsors may transfer these excess participants into projects or into their programs under Titles I or II, to the extent that the participants being transferred met the appropriate eligibility criteria at the time of enrollment in CETA.

(2) Funds remaining after the application of paragraph (a)(1) of this section shall be used for new projects as defined in § 94.4(000) of this title, not to exceed 12 months and subject to the approval procedures in § 99.41 (sec. 607(b)).

(b) *Enrollment of Title VI participants.* (1) At least fifty percent of the participants enrolled in vacancies or openings in the Title VI level of sustainment shall meet the eligibility criteria in § 99.42(a).

(2) Those vacancies not filled by individuals meeting the new eligibility criteria shall be filled by individuals meeting the eligibility criteria in § 99.42(b).

(3) All participants enrolled in projects as specified in § 99.40(a)(2) and § 99.41 shall meet the eligibility criteria in § 99.42(a) of this Part.

RULES AND REGULATIONS

(4) Individuals enrolled in Title VI may be rehires as defined in § 94.4(qqq), of this title, provided that the maintenance of effort provisions of § 99.34 are not violated. In addition, prime sponsors may give preference to unemployed, qualified former health and safety personnel for public health and safety positions, when selecting individuals pursuant to paragraph (b) (2) of this section (sec. 607(c) (2)).

(5) The cumulative and current number of participants meeting the eligibility criteria in § 99.42(a) who are enrolled in vacancies or openings in the Title VI level of sustaiment shall at all times approximate 50 percent or greater of all participants enrolled in vacancies or openings in the Title VI level of sustaiment.

(6) In paragraphs (b) (1), (2), and (3) of this section, persons enrolled after grant execution shall not include Title II participants who are moved into Title VI during the initial separation of Titles II and VI participants.

(c) Any rehires who, after June 30, 1976, and before October 1, 1976, was laid off from a job supported under Titles II and VI because of the provisions of § 96.24 (e) and (f) of this subtitle may be reinstated by the prime sponsor into a Title VI position supported pursuant to paragraph (a) (1) of this section without regard to requirements of paragraphs (b) (1) and (2) of this section. However, reinstatement shall be subject to RA determination that they were laid off because of § 96.24 (e) and (f), after review of information provided in § 99.14 (b) (3) (i) (F). The reinstatement provision of this section shall not relieve a prime sponsor from compliance with § 99.34(d) (sec. 609(c)).

§ 99.41 Project approval.

(a) Funds remaining after funds are reserved for supporting the level of opportunities determined in § 99.40(a) (1) shall be utilized for public service jobs in new projects, as defined in § 94.4(ooo), not to exceed one year in duration. (As part of these new projects, prime sponsors may utilize those funds for manpower program activities as described in § 95.33(d) (1), (2), (4), (5), (6), and (7) of this title (sec. 607(b)).

(b) Such projects shall be funded as follows:

(1) Each prime sponsor shall establish procedures for its own use and the use of its program agents for notifying potentially eligible project applicants (as defined in § 94.4(ppp) of the application process and cut-off date for acceptance of applications.

(2) Each prime sponsor is responsible for establishing procedures for its own use and the use of its program agents, whereby, upon receipt, a copy of each project application shall be submitted to the prime sponsor's planning council to allow the council to submit comments and recommendations with respect to the application (sec. 609(a)).

(i) No member of a prime sponsor's planning council shall cast a vote on any

matter in connection with a proposed project in which that member (or any organization with which that member is associated) has a direct interest (sec. 609(a)).

(3) Prime sponsors and program agents should give consideration to providing a substantial portion of the project funds to project applicants which are nonprofit agencies.

(4) In reviewing project applications, prime sponsors and program agents should carefully consider any proposed expenditures for materials, supplies, equipment, and space in relation to the duration of the proposed projects.

(5) Prime sponsors and program agents shall not disapprove a project application without first considering any comments and recommendations submitted by the planning council and providing the project applicant and the council with a written statement of the reasons for the disapproval (sec. 609(b)).

(6) In program agent areas, decisions on approving or disapproving project applications shall be made in accordance with § 96.22 of this subtitle.

(7) Appropriate labor organizations should be consulted in the design of projects where collective bargaining agreements exist with the employing agency.

§ 99.42 Eligibility for participation in Title VI programs.

(a) The following criteria shall be used by prime sponsors in determining participant eligibility pursuant to § 99.40(a) (2) and (b) (1) and in selecting participants for these positions (sec. 608(a)).

(1) An eligible person must either be economically disadvantaged as defined in § 94.4(s) of this subtitle or be a member of a family which has a current total family income, determined pursuant to paragraph (a) (2) of this section, at or below 70 per centum of the lower living standard income level, as defined in § 94.4(nnn), and must meet the residency requirements of § 99.38, and must be a person.

(i) Who, during 15 of the 20 weeks immediately prior to application, has been unemployed as defined in § 94.4(uuu) of this subtitle or has been receiving unemployment compensation: *Provided*, That during the 20 week period, the eligible person shall not have obtained permanent, unsubsidized, full-time employment; or

(ii) Who, during 15 of the 20 weeks immediately prior to application, has had a combination of weeks of unemployment and weeks of receiving unemployment compensation as described in paragraph (a) (1) (i) of this section: *Provided*, That during the 20 week period, the eligible person shall not have obtained permanent, unsubsidized, full-time employment; or

(iii) Who is unemployed as defined in § 94.4(uuu) of this subtitle at the time of application and is an exhaustee as defined in § 94.4(rrr) of this subtitle; or

(iv) Whose family is receiving Aid to Families with Dependent Children (AFDC) including AFDC-Unemployed

Fathers, under Title IV of the Social Security Act.

(2) (i) In determining current family income, the prime sponsor shall annualize, based on the three months preceding application, total family income, utilizing the same exclusions (e.g., unemployment compensation) used to determine family income for the Participant Record.

(ii) In instances where, due to seasonal employment, summer employment for youth, or other circumstances, the three months period is unrepresentative, the prime sponsor shall compute family income by totaling all family income received during the twelve months prior to application, except for those exclusions indicated in paragraph (a) (2) (i) of this section (sec. 608(a) (2)).

(3) The prime sponsor shall take reasonable steps to insure that funds used pursuant to § 99.40 (a) (2) and (b) (1) are equitably allocated among the categories of eligible persons described in subdivisions (i), (ii), (iii), and (iv) of paragraph (a) (1) of this section. Such equitable allocation shall be made in light of the composition of the population of unemployed eligible persons served by the primary sponsor, to the extent that such data are available. No one group shall be served exclusively, and no group shall be excluded from service (sec. 608(c)).

(4) Participants under Title I, Title IV, section 302 and section 303 of the Act, participants under Sections 5 and 6 of the Emergency Employment Act, and participants under Title X of the Public Works and Economic Development Act who are enrolled in Title II or VI activities funded through the Department, may be transferred pursuant to § 99.40 (a) (2) or (b) (1) if they met the requirements of paragraph (a) (1) of this section and § 99.38 at the time of their entry into the program from which they are being transferred, and if maximum efforts have been made to place such individuals in unsubsidized employment or training (sec. 105(a) (2)).

(5) A veteran who has served on active duty for a period of more than 180 days or who was discharged or released from active duty for a service connected disability, shall be immediately eligible, upon release or discharge, for participation in a project under § 99.40 (a) (2) and (b) (1) without regard to paragraphs (a) (1) (i), (ii), (iii), and (iv) of this section which would otherwise pertain (38 U.S.C. 2013): *Provided*, The veteran has not obtained permanent full-time unsubsidized employment between the time of release and the time of application for participation in Title VI.

(b) In order to be eligible pursuant to § 99.40(b) (2), an individual shall be:

(1) (i) A person who has been unemployed for at least 30 days, as defined in § 94.4(hhh), prior to application, or who is underemployed, as defined in § 94.4(fff), and who meets the residence requirements of § 99.38, is eligible pursuant to § 99.40(b) (2). The term residence is defined in § 96.27(f) of this subtitle; or

(ii) A person who has been unemployed for at least 15 days, as defined in § 94.4(hhh), except for the provision of § 94.4(hhh)(3), prior to application, or who is underemployed, as defined in § 94.4(fff) and who meets the residence requirements of § 99.38, is eligible for a job funded under § 99.40(b)(2) in areas of excessively high unemployment.

(2) A veteran who has served on active duty for a period of more than 180 days or who was discharged or released from active duty for a service connected disability, shall be immediately eligible, upon release, for participation in an activity under § 99.40(a)(1) and (b)(2) without regard to the 15- or 30-day unemployment requirement which would otherwise pertain (38 U.S.C. 2013): *Provided*, The veteran has not obtained permanent, full-time unsubsidized employment between the time of release and the time of application for participation in Title VI.

(3) A person participating in a public employment program under a Section 5, or Section 6 grant funded by the Emergency Employment Act (EEA) may be transferred into an activity under § 99.40(b)(2), in order to provide for the orderly phaseout of the EEA grant, if he/she met the requirements of § 99.38 at the time his/her entry into EEA, and provided that maximum efforts have been made to place such an individual in unsubsidized employment or training.

(4) Title I, Title II, Title IV, section 302, and section 303 participants under the Act, and participants under Title X of the Public Works and Economic Development Act, who are enrolled in Titles II or VI activities funded through the Department may be transferred pursuant to § 99.40(b)(2) only if they met the requirements of paragraph (b)(1) of this section at the time of their entry into the program from which they are being transferred, and if maximum efforts have been made to place such individuals in unsubsidized employment or training (sec. 105(a)(2)).

(5) A person participating in a WIN public service employment program under Part C, Title IV, of the Social Security Act, who leaves or is removed from a public service employment position, shall be treated in the same manner as any other such applicant with respect to eligibility pursuant to § 99.40(b)(2):

(i) If such an individual is still receiving cash welfare payments, that individual meets the definition of unemployed for this title, and is immediately eligible if the individual also meets the requirements of § 99.38.

(ii) If the individual is no longer receiving welfare payments, that individual must meet the standard eligibility criteria for paragraph (b)(1) of this section.

(c) The following requirements are applicable in the selection process of participants for all jobs and activities filed under Title VI:

(1) The selection of participants shall be made in accordance with the provisions of § 96.25 of this subtitle.

(2) A person who obtains permanent full-time unsubsidized employment after application shall no longer be considered eligible for Title VI, unless even with such full-time employment, an applicant pursuant to § 99.40(b)(2) still meets the requirement of paragraph (b)(1) of this section.

(3) Citizenship may not be used as a criterion to prevent persons from participating in a program under Title VI. However, program participation shall be limited to nationals of the United States and aliens who have been accorded the privilege of residing in the United States as lawful permanent residents or refugees, including refugees who are parolees.

(4) While the selection of eligible full-time students for participation in programs funded under Title VI is not prohibited, prime sponsors should exercise caution in providing for such participation and should provide for such participation only in accordance with these regulations. Prior to providing for such participation, prime sponsors should give special consideration to those persons most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance under Title VI.

(5) A participant in a Title VI program may change jobs within a particular prime sponsor's or program agent's jurisdiction without reestablishing eligibility pursuant to paragraphs (a) or (b) of this section, but may not be employed in a job or activity for any other prime sponsor or program agent without again establishing eligibility pursuant to paragraphs (a) or (b) of this section.

(6) The provisions of §§ 96.28 and 96.30, special consideration for most severely disadvantaged persons and groups to be provided special consideration, shall apply to programs funded under Title VI.

(7) The significant segments of a prime sponsor's population shall be served on an equitable basis, as provided in § 96.29 of this subtitle. In selecting individuals eligible pursuant to paragraph (a) of this section, the requirements of paragraph (a)(3) of this section are in addition to serving significant segments equitably.

§ 99.43 Verification of participant eligibility.

(a) A prime sponsor is responsible for assuring the eligibility of all participants under Title VI. The eligibility requirements of subdivisions (i), (ii), (iii), and (iv) of § 99.42(a)(1) are verifiable. Prime sponsors shall be liable for any payments made to participants determined ineligible during program audits or reviews or otherwise. Decisions on whether to verify eligibility and on the method of verification rest with the prime sponsor except as provided in paragraphs (b) and (c)(3) of this section.

(b) To facilitate the rapid implementation of this program, the prime sponsor may enroll without prior verification,

applicants who attest to their eligibility. Within 60 days of these participants' enrollment, the prime sponsor shall obtain written verification of their eligibility from the State employment security agencies (SESAs) and/or welfare agencies. Participants who are found to be ineligible shall be terminated immediately and the prime sponsor shall not be liable for wages and benefits paid to these participants prior to the receipt of the written verification.

(c) In order to protect their liability, prime sponsors are encouraged to develop arrangements and procedures for the verification of participants as follows:

(1) Arrangements, including cooperative agreements, with SESAs for the verification of individuals whose applications indicate that they qualify pursuant to subdivisions (i), (ii), and (iii) of § 99.42(a)(1); and

(2) Arrangements with public welfare agencies for the verification of individuals whose applications indicate that they qualify as an AFDC recipient (§ 99.42(a)(1)(iv)).

(3) To the extent that there are arrangements pursuant to paragraphs (c)(1) and (2) of this section and these arrangements are described in an approved grant, the prime sponsor shall not be responsible for verifying those eligibility requirements covered in those arrangements, nor shall it be liable for any costs resulting from its reliance on such arrangements.

(d) As unemployment compensation recipients approach their 15th week or their exhaustion status, SESAs will be informing them of their possible eligibility for Title VI programs. Prime sponsors shall work with the SESAs in the development of arrangements for informing these individuals of their possible eligibility for available opportunities.

§ 99.44 Special considerations on selection.

(a) In filling teaching positions in elementary and secondary schools, each prime sponsor shall give special consideration to eligible unemployed persons with previous teaching experience who are certified by the State in which that prime sponsor is located (sec. 602(f)).

(b) In providing public service jobs and determining hours of work for individuals eligible pursuant to §§ 99.40(a)(2) and 99.40(b)(1), each prime sponsor shall take into consideration the household support obligations of the individuals and shall give special consideration to such alternative working arrangements as flexible hours of work, shared time and part-time jobs, for participants with particular needs, e.g., parents of young children, older persons, and handicapped individuals (sec. 608(d)).

§ 99.45 Administrative staff selection and compensation.

(a) The Title VI administrative staff shall be selected and compensated in accordance with the provisions of § 96.35 of this subtitle.

RULES AND REGULATIONS

(b) When administrative funds are utilized to pay the wages of supervisory personnel for projects, the promotional rights of existing employees to fill the supervisory positions shall be protected.

Subpart E—Administrative Provisions**§ 99.70 General.**

This subpart contains regulations on the administration of grants under Title VI of the Act. The regulations in this subpart reference the sections of Part 98 of this subtitle which apply to Title VI grants.

§ 99.71 Payments, financial management systems and audit.

Sections 98.2 through 98.6 of this subtitle relating to payments, financial management systems and audits apply to grants under Title VI of the Act (secs. 702(b), 713).

§ 99.72 Reporting requirements.

(a) Section 98.7 of this subtitle shall apply to Title VI programs (secs. 702(12), 713).

(b) Section 98.8 of this subtitle requiring submission of the Program Status Report and Monthly Report shall apply to programs under Title VI. To assure the effective implementation of the program and the least disruption during its phase-down, the Secretary may require the prime sponsor to submit information on a more frequent basis.

(c) Section 98.9 of this subtitle requiring submission of a Quarterly Summary of Participant Characteristics shall apply to programs under Title VI.

(d) Section 98.10 of this subtitle requiring submission of a Report of Federal Cash Transactions shall apply to programs under Title VI.

§ 99.73 Reallocation of funds.

(a) Irrespective of requirements under § 98.11 of this subtitle, the RA may make such reallocation, as he deems appropriate, of any amount of any allocation under Title VI of the Act to the extent that he determines that an eligible applicant will not be able to use such amount within a reasonable period of time.

(b) When the RA determines that a reallocation is appropriate, he shall give the grantee and the appropriate Governor 30-day notice of the proposed action to remove funds from the grant. Such notice shall include the specific reasons for the action being taken.

(c) The grantee and the Governor will be invited to submit comments on a proposed reallocation of funds. These comments shall be submitted to the RA within 30 days from the date of the notice. The RA shall notify the Governor and affected prime sponsors on any decision to reallocate funds and shall have any such decision published in the FEDERAL REGISTER.

(d) The procedures set out in this section are in lieu of any other procedure which might otherwise be applicable under § 98.40, et seq. of this subtitle.

(e) Any reallocation of funds shall be to an alternate eligible applicant to serve the same area or to eligible applicants to

serve other areas. In reallocating such funds to serve other areas, priority shall be given first to eligible applicants within the same State and then to eligible applicants within other States, taking into consideration the number of eligible unemployed individuals in those areas (sec. 606).

§ 99.74 Allowable Federal costs.

(a) Section 98.12 of this subtitle concerning allowable Federal costs shall apply to Title VI grants. In addition, the 15 percent administrative funds may be used to purchase construction supplies and materials to be used in projects.

§ 99.75 Grantee contracts and subgrants.

Section 98.27 of this title shall apply to Title VI grants, except that contracts and subgrants may not extend more than 6 months beyond the term of the grant.

§ 99.76 Allocations of allowable costs among program activities.

Section 98.13 of this subtitle shall apply to Title VI grants.

§ 99.77 Basic personnel standards for eligible applicants.

(a) Section 98.14 of this title shall apply to Title VI grants (sec. 703(14)).

(b) The basic personnel standards, as set forth in § 98.14 of this subtitle, shall apply only to an eligible applicant's staff and not to program participants. However, in filing public service jobs funded under Title VI of the Act, eligible applicants shall insure that applicable personnel procedures and collective bargaining agreements have been met.

§ 99.78 Adjustments in payments.

Section 98.15 of this subtitle shall apply to Title VI grants (sec. 702(b)).

§ 99.79 Termination of grant and close-out procedures.

Sections 98.16 and 98.17 of this subtitle shall apply to Title VI grants (sec. 702(b)).

§ 99.80 Retention of records.

Section 98.18 of this subtitle shall apply to Title VI grants (sec. 703(a)(12)).

§ 99.81 Program income and procurement standards.

Sections 98.19 and 98.20 of this subtitle shall apply to Title VI grants.

§ 99.82 Nondiscrimination, equal employment opportunities, nepotism and restriction on political activities.

(a) Sections 98.21, 98.22 and 98.23 of this subtitle apply to Title VI programs (secs. 703(1), 710 and 712);

(b) Sections 98.24, 98.25, 98.26, 98.28, and 98.29 of this subtitle relating to general benefits and working conditions, retirement programs, procedures for resolving issues, nonfederal status of participants, and Davis-Bacon Act provisions, shall apply to Title VI programs.

§ 99.83 Assessment and evaluation.

Sections 98.30 through 98.34 shall apply to Title VI grants (sec. 703(14)).

§ 99.84 Hearings and judicial review.

Sections 98.40 through 98.49 of this subtitle shall apply to Title VI grants (except as otherwise provided in this part).

Subpart F—Special Conditions for Grants to Indian Tribes and Alaskan Native Villages**§ 99.90 General.**

This subpart contains special conditions for grants under Title VI of the Act to Indian tribes on Federal and State reservations, recognized tribes in the State of Oklahoma, and Alaskan Native Villages in the State of Alaska. To the extent that any provisions of this subpart differ from any other provision of this part, the provisions of this subpart shall govern. Otherwise, the requirements of this Part 99 apply to programs under this subpart.

§ 99.91 Grant responsibility.

The Division of Indian and Native American Programs in the Office of National Programs shall have full responsibility for all matters pertaining to funds allocated to eligible applicants as defined under § 99.90 above. For purposes of this subpart, all references to RA in this Part 99 shall be read as Director, Division of Indian and Native American Programs.

§ 99.92 Distribution of funds.

Funds for use under this subpart shall be not less than 2 percent of all funds appropriated for Title VI programs. Such funds shall be allocated among the designated prime sponsors on the basis of the prime sponsor's Indian and Alaskan Native rate of unemployment compared to the rate of unemployment in all eligible areas. In making such allocations, the Secretary shall use the best data available. Within prime sponsors which are consortia, the Secretary shall allocate funds among the member reservations on the basis of identifiable areas of high unemployment. To the extent feasible, a nonconsortium prime sponsor shall allocate funds within its area on the basis of identifiable areas of high unemployment.

§ 99.93 Eligibility for funds.

Indian tribes on Federal or State reservations, recognized tribes in Oklahoma and Alaskan Native villages shall be eligible for Title VI funds provided they meet the requirements of § 96.42 of this subtitle, except that recognized tribes in Oklahoma and Alaskan Native villages are exempt from the Federal or State reservation requirement.

§ 99.94 Funding of prime sponsors.

(a) A prime sponsor, if necessary, shall update its Preapplication for Federal Assistance (SF-424) to include a request for funding pursuant to Title VI of the Act. An eligible applicant which has not previously submitted a Preapplication shall comply with § 97.111 of this subtitle.

(b) A consortium, if necessary, shall amend its consortium agreement to insure that it covers activities funded under Title VI of the Act.

(c) Funds made available pursuant to Title VI shall be included in existing Fiscal Year 1977 grants via a modification if appropriate. If new grants are executed, they shall be for a period not to exceed 12 months.

(d) The Title VI modification of the new grant shall consist of the Employment Plan and the Grant Sheet. New grants shall also include appropriate Assurances and Certifications. The Employment Plan shall consist of:

- (1) A full narrative description of the program;
- (2) A program planning summary;
- (3) A budget information summary;
- (4) An occupational summary;
- (5) A program summary; and
- (6) A monthly plan.

§ 99.95 Participant eligibility.

Indian and Alaskan Natives who meet the eligibility and residency requirements of this part shall be eligible to participate in programs funded under Title VI.

§ 99.96 Comments and publication procedures relating to submission of application for funding.

Each eligible applicant shall provide an opportunity for comment on its Title VI plan as set out in § 97.115 of this subtitle.

§ 99.97 Planning process; advisory councils.

Eligible applicants shall utilize in their planning process the services of their planning councils authorized under § 97.113 of this subtitle. In addition,

the provision of § 99.41 shall apply to the project application approval process.

§ 99.98 Travel requirements.

Travel regulations for grantees under this subpart shall be those at § 97.161(f)(7) of this subtitle.

§ 99.99 Nepotism and conflict of interest.

(a) No prime sponsor, subgrantee or contractor shall hire, or permit the hiring of, any person in a staff position, nor shall they accept any person as a participant, if a member of the person's immediate family is employed in an administrative capacity by the prime sponsor, subgrantee or contractor. For the purposes of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister. The term "staff position" includes all positions such as instructors, counselors, administrators, and suppliers of training and services. The term "employed in an administrative capacity" includes those persons who have overall administrative responsibility for a program, including: All elected and appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under this subpart as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director and units chiefs; and persons who have selection, hiring, placement, or supervisory responsibilities for public service employment participants. The Secretary

may waive this requirement if adequate justification is received that no other persons within the subgrantee's jurisdiction are eligible and available for participation or employment by the prime sponsor.

(b) Where a tribal policy regarding nepotism exists which is more restrictive than this policy, the prime sponsor shall follow the tribal rule.

(c) Each prime sponsor shall establish safeguards to prohibit employees under the grant, board members, or tribal council members from using their positions for private gain for themselves or others with whom they have family, business or other ties.

§ 99.100 Non-discrimination; political activities.

Sections 98.21 and 98.23 shall be applicable to programs under this subpart except to the extent that those provisions conflict with 42 U.S.C. 2000e(b).

§ 99.101 Subgrants.

In addition to the requirements concerning subgrants, Indian tribes may require that subgrantees agree, to the maximum extent feasible, to hire as staff qualified Indians in accordance with 42 U.S.C. 2000e-2(i).

Signed in Washington, D.C., this 7th day of October 1977.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training Administration.
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