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PART V:

## **DEPARTMENT OF LABOR**

Office of the Secretary



### **WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT**

Nomenclature Changes and Editorial  
Amendments

## Title 29—Labor

## SUBTITLE A—OFFICE OF THE SECRETARY

## PART 56—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

## Nomenclature Changes and Editorial Amendments

Notice is hereby given that the Department of Labor, and the Department of Health, Education, and Welfare are amending 29 CFR Part 56, Work Incentive Programs for AFDC Recipients Under Title IV of the Social Security Act.

The vast majority of amendments are corrections of spelling, typographical and punctuation errors made when Part 56 was being readied for publication on September 18, 1975. Many amendments are made to editorially conform 29 CFR Part 56 with its duplicate at 45 CFR Part 224. Other amendments in titles and nomenclature result from Secretary's Order 14-75 (40 FR 54485) which changed the name of the Manpower Administration to the Employment and Training Administration. In addition, the following editorial amendments are being made:

2. In § 56.1 *Definitions.*, definitions are added for the terms *Complaints*, *Component*, *Grievance*, and *RA*, and the definition of *ARDM* is deleted. In addition, the definition of *Registration* has been simplified and other definitions have been editorially corrected.

3. In § 56.17 *Reports, records, financial statements and audits.*, the retention period for records has been clarified and corrected.

4. In § 56.36 *Nondiscrimination*, paragraph (b), the DOL and DHEW regulations, referred to in the paragraph, have been specifically cited.

5. Editorial and corrective changes have also been made in the table of contents for Part 56 and in the following sections: Sections 56.0; 56.1; 56.10, paragraphs (a), (e), (f) and (h); 56.13; 56.14; 56.15, in the title and in paragraphs (a) and (b); 56.18, paragraph (b); the title of Subpart C; 56.20, paragraph (b)(7); 56.21, paragraphs (a), (a)(5), (a)(6) and (c); 56.30, paragraph (a)(4); 56.34; 56.35; 56.36; 56.42, paragraph (b); 56.44; 56.50, paragraph (b); 56.60, paragraph (a); 56.61; 56.62; 56.65, paragraph (b); 56.70, paragraph (b)(6); 56.71, paragraph (b); 56.72, paragraphs (c)(1) and (d); 56.73, paragraph (c); 56.75, paragraphs (c)(3) and (d); and 56.77, paragraph (a).

The Departments are also combining the present §§ 56.11 and 56.12 and reserving 56.12.

Finally, the Departments are adding to § 56.11 *Annual State WIN plans.* the procedures required by the Office of Management and Budget (OMB) Circular A-95. OMB Circular A-95, was published as proposed rulemaking at 40 FR 47960 on October 10, 1975. The proposed rulemaking proposed to cover the WIN program for the first time. Comments on the proposal were invited until November 3, 1975. On January 13, 1976, at 41 FR 2052, OMB published a final version

of OMB Circular A-95, effective February 27, 1976. The circular, as revised, now covers the WIN program. Consequently, the Departments are now required by law to add to A-95 procedures to the WIN regulations. This is being done by this document.

Since the changes in this document consist of corrections, editorial and nomenclature changes, and changes required by law (OMB Circular A-95), proposed rulemaking is not required. Accordingly, 29 CFR Part 56 is amended effective immediately on October 29, 1976, to read as follows:

## PART 56—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

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AUTHORITY: Secs. 402(a)(7), 402(a)(19), 430-444, and 1102 of the Social Security Act, as amended, 49 Stat. 647 (42 U.S.C. 602(a), 630-644, 1302) unless otherwise noted.

SOURCE: 40 FR 43170, Sept. 18, 1975, unless otherwise noted.

## Subpart A—Purpose and Scope and Definitions

## § 56.0 Purpose and scope.

(a) The purpose of this Part 56 is to provide for a Work Incentive Program (WIN) under Title IV of the Social Security Act (Act).

(b) This part contains the policies, rules, and regulations pertaining to the WIN program.

## § 56.1 Definitions.

*Act* means the Social Security Act.

*AFDC* (Aid to Families with Dependent Children) means the program authorized by Title IV-A of the Act to provide financial assistance and social services to needy families with dependent children.

*AFDC Applicant* means a person who applies to the State or local welfare agency for AFDC.

*Appraisal* means the interview of a WIN registrant by WIN sponsor staff and Separate Administrative Unit (SAU) staff to determine employability potential, to determine the need for supportive services, and to develop an employability plan.

*Certification* means a written notice from the SAU that necessary supportive services have been arranged or are available to enable a WIN registrant to accept employment, training, or manpower services, or that no supportive services are needed and that the individual is at that time ready for employment or training.

*Complaints* (See grievances)

*Component* means a structured regularly scheduled program activity for certified registrants.

*Deregistration* means the removal of an individual from the WIN program.

*DHEW* means the U.S. Department of Health, Education and Welfare.

*DOL* means the U.S. Department of Labor.

*Employability Plan* means a written plan for a WIN registrant that sets forth that individual's occupational goal and the manpower and supportive services necessary for him to reach that goal.

*Exempt* refers to an AFDC applicant or recipient who is not required by the Act to register for employment or training under the WIN program as a condition of eligibility for AFDC.

**Grievance** means an adjudicable issue initiated by a WIN registrant which does not involve the threat of sanctions. Grievances may include, but are not limited to disputes over assignments where the registrant is not refusing the assignment, alleged discrimination, and complaints about eligibility for, or amounts of, WIN allowances.

**Hearing Officer** means the hearing officer designated in the State WIN plan to hear and decide or make recommendations on issues involving WIN.

**Income Maintenance Unit (IMU)** means the unit of the State or local welfare agency which determines individuals' eligibility for AFDC.

**Institutional Training** means vocational or other classroom training conducted by an instructor in a nonworksite setting.

**Intensive Manpower Services Component** means a structured work experience component providing manpower and employment services to certified WIN registrants to assist them in obtaining unsubsidized employment.

**Local WIN Plan** means the plan developed annually by local WIN sponsor and SAU staffs which describes the operation of the WIN program for a specific local area.

**Mandatory or Nonexempt Registrant** means an AFDC applicant or recipient who is required by the Act to register for manpower services, training or employment as a condition of eligibility for AFDC.

**Manpower Services** means employment related and training services provided by the WIN sponsor, designed to improve the work skills of an individual and aid him to find employment.

**NCC** means the National Coordination Committee, a committee established to administer the WIN program, consisting of the Assistant Secretary for Employment and Training (DOL) and the Administrator of the Social and Rehabilitation Service (DHEW).

**NRP** means the National Review Panel, the final level of administrative review which is comprised of the DOL Chief Administrative Law Judge and other Administrative Law Judges appointed pursuant to the Administrative Procedure Act's requirements and designated by the Chief Judge to serve as members of that panel.

**OJT** means on-the-job training, an employment opportunity component in which a certified registrant is hired by a private or public employer and is provided skill training under contract with the employer.

**PSE** means public service employment, a WIN sponsored component which provides subsidized employment with public or nonprofit private agencies for individuals who cannot be placed in regular unsubsidized employment.

**Recipient** means an individual who has been determined to be eligible to receive AFDC.

**RA** means the Regional Administrator, Employment and Training Administration (DOL).

**RC** means the Regional Commissioner of the Social and Rehabilitation Service (DHEW).

**RCC** means the Regional Coordination Committee established in each region consisting of the RA and the RC.

**Registrant** means an AFDC applicant or recipient who has registered with the WIN sponsor for manpower services, training, and employment.

**Registration** means the process whereby an AFDC applicant or recipient completes all necessary registration requirements.

**"SAU"** means the Separate Administrative Unit, that unit of the single State welfare agency established pursuant to section 402(a) (19) (G) of the Act, to administer the WIN program for that agency.

**State Welfare Agency** means the welfare agency designated pursuant to 45 CFR 205.100 with authority to administer or supervise the administration of the State plan approved under title IV, A of the Act.

**State** means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

**State Plan** means the State plan for AFDC approved under title IV, A of the Act.

**State WIN Plan** means the Statewide operational plan for WIN, covering AFDC applicants and recipients who register for employment, manpower services and training under WIN, developed by the WIN sponsor and SAU in each state and approved and supervised by the RCC under title IV, of the Act.

**Supportive Services** means those social services provided or arranged by the SAU, necessary to enable an individual to engage in employment, or training.

**Training Related Expenses** means those expenses, reimbursable from WIN funds, that are incurred by individuals participating in WIN program components and activities.

**Volunteer** means an AFDC applicant or recipient who, though exempt from WIN registration, volunteers for WIN and registers for employment, manpower services and training.

**Welfare Hearing Officer** means the hearing officer designated by the welfare agency to hear and decide or make recommendations on issues relating to exemption or nonexemption for WIN registration.

**WIN Incentive Payment** means a cash payment of up to \$30 per month, paid to an individual who is participating in an institutional or work experience component, including the intensive manpower services component.

**WIN Sponsor** means the State agency (such as the State employment service) or other public or non-profit private agency which, through agreement with the RA, administers the WIN manpower program under Part C of title IV of the Act at the State or local level.

**Work Experience Training** means a clearly defined, well-supervised assignment with a public or nonprofit private

employer; the term is also used to refer to the intensive manpower services component.

**Subpart B—Administration**

**§ 56.10 General administration provisions.**

(a) The WIN program is administered jointly by the Secretary of Labor and the Secretary of Health, Education, and Welfare. To carry out Department of Labor responsibilities under these regulations, the Secretary of Labor has designated the Assistant Secretary for Employment and Training (Assistant Secretary). To carry out Department of Health, Education, and Welfare responsibilities under these regulations, the Secretary of Health, Education, and Welfare has designated the Administrator of the Social and Rehabilitation Service (Administrator).

(b) The Assistant Secretary and the Administrator together form the WIN National Coordination Committee (NCC) which is responsible for the effective national administration of WIN.

(c) The NCC shall issue a WIN Handbook, establish uniform reporting procedures, establish and clarify policy under these regulations, and establish other requirements for effective administration. NCC issuances shall be binding on all regional, State, and local WIN operations.

(d) The NCC shall designate a national Executive Director to administer the program.

(e) The Assistant Secretary has designated the Assistant Regional Administrator, Employment and Training Administration in each region (RA) to carry out the WIN program in each region. The Administrator has designated the Regional Commissioner (RC) of the Social and Rehabilitation Service to carry out his responsibilities under these regulations in each region.

(f) Within each region the RA and the RC shall form the WIN Regional Coordination Committee (RCC). The RCC shall review and approve all State WIN plans and modifications of such plans covering the States in its region. Consistent with directives of the NCC it shall also establish and clarify policy under these regulations and shall establish other requirements for effective administration.

(g) The RCC shall enter into an agreement with the State WIN sponsor and the State welfare agency under which they shall be responsible for the overall administration of the State WIN plan.

(h) Within each State the welfare agency's Separate Administrative Unit (SAU) shall be responsible for the provision and arrangement of supportive services. The Income Maintenance Unit (IMU) of each State welfare agency is responsible for determining all questions relating to eligibility for AFDC benefits, including whether an individual is required to register for WIN.



### § 56.11 Annual State WIN plans.

(a) State WIN plans on an annual basis shall be jointly developed and approved by the State WIN sponsor and State welfare agency. The NCC shall issue instructions setting guidelines to the State WIN sponsor and State welfare agency for the development of State WIN plans. The plan shall indicate those areas in which the State WIN sponsor and welfare agency, after considering such factors as size of the welfare case load and budgetary constraints, propose to operate WIN projects. Each State WIN plan shall describe the operation to be carried out by the State WIN sponsor and the State welfare agency as well as a summary of the data in the local WIN plans, as required by paragraph (b) of this section. The State WIN plan shall also provide for the establishment of Labor Market Advisory Councils in accord with section 432(f) of the Act.

(b) Each local WIN sponsor and each local SAU shall jointly develop an annual local WIN plan after consulting with other agencies as appropriate. Such plan shall describe the local project's operation. The NCC will issue instructions setting guidelines for the development of such plans.

(c) Local WIN plans shall be forwarded to the State WIN sponsor and State SAU for consideration in the development of the State WIN plan.

(d) (1) The State WIN sponsor and State welfare agency shall:

(i) Submit the State WIN plan (with local WIN plans attached) to the appropriate RCC for action;

(ii) At the same time, forward copies of the plan to the Governor or his delegated agency (as required by OMB Circular A-95) and to the Governor's State Manpower Services Council established under the Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203), or its equivalent, for review and comment;

(iii) Urge the Governor to involve appropriate area-wide clearinghouses in the review; and

(iv) Request the Governor and the Council to send any comments directly to the RCC, (with copies to the State WIN sponsor and the State welfare agency), within 45 days from the date that copies of the State WIN plan were mailed to them.

(2) RCC shall consider any such comments in reviewing the plan, and shall not take final action on the plan until the Governor's and Council's comments have been received, or until the 45 days referred to in paragraph (d) (1) (iv) of this section have elapsed, whichever is earlier.

### § 56.12 [Reserved]

### § 56.13 State and local agreements for WIN activities and programs.

A WIN sponsor may, through agreements with public or private agencies or organizations, including Indian tribes with respect to Indians on a reservation, carry out such activities and programs as

are approved or developed by the Secretary of Labor, including but not limited to public service employment programs, intensive manpower services programs, institutional programs, on-the-job training programs, and work experience programs. Work experience programs and Public Service Employment agreements may be entered into only with public agencies and nonprofit private employers organized for a public purpose.

### § 56.14 Allocation of federal funds.

(a) The Secretary of Labor shall allocate not less than 50 percent of the sums appropriated under Part C of title IV of the Act to carry out the WIN program among the States in accordance with a formula under which each State receives (from the total available for such allotment) an amount which bears the same ratio to the total amount available as the average number of individuals in each State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 402(a) (19) (A) of the Act, bears to the average number of individuals in all States who, during that month, are so registered.

(b) The Secretary of Labor shall allocate the balance of the sums not allocated under paragraph (a) of this section in such manner as he determines will best serve the objectives of the program.

(c) Of the sums expended on WIN by the Department of Labor, not less than 33½ percent thereof shall be expended for carrying out the programs of on-the-job training and public service employment which meet criteria specified in the WIN Handbook issued under § 56.10.

(d) The Secretary of Health, Education, and Welfare shall prescribe methods for the allocation of funds pursuant to section 403(d) of the Act for the 50 States and the District of Columbia. For Puerto Rico, Guam, and the Virgin Islands, the Secretary of Health, Education, and Welfare shall allocate funds pursuant to section 1108 of the Act.

### § 56.15 Use of federal funds; political activities.

(a) Federal funds under Part C of title IV of the Act allocated by the Secretary of Labor to the State WIN sponsor, may be used to meet not more than 90 percent of the cost of carrying out the regulations promulgated under this part.

(b) WIN funds under Part C of title IV of the Act may be used for training, supervision, materials, administration, incentive payments, transportation, fees for medical examinations required for the determination of exempt status under § 56.20 or incapacity for work assignment under § 56.34(a) (2), and other items as authorized by the Secretary of Labor, but may not, except in cases of WIN/PSE under the Act, be used for any reimbursement to the employer for time spent by individuals in work.

(c) WIN funds under section 403(d) of the Act may be used to meet 90 percent of the cost of supportive services, including child care, provided by or ar-

ranged for by the SAU, for AFDC recipients who are certified to WIN, and SAU administrative costs for all registrants.

(d) Federal funds shall be expended only for costs:

(1) Permitted under the provisions of Subpart 1-15.7 of Title 41 of the Code of Federal Regulations, entitled "Principles for Determining Costs Applicable to Grants and Contracts"; and

(2) Not barred under the provisions of this part.

(e) Pursuant to section 403(c) of the Act, notwithstanding any other provision of this chapter, the Federal share of assistance payments under Title IV-A of the Act for any fiscal year shall be reduced by 1 percentage point for each percentage point by which the number of individuals certified to the WIN sponsor as ready for employment or training under the WIN program falls below 15 percent of the average number of individuals in the State who are required to be registered during such fiscal year.

(f) No funds allocated under the Act shall be used for any partisan or non-partisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to the Act with:

(1) Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, or lobbying for any matter at public issue;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election;

(3) Any voter registration activity.

### § 56.16 Non-federal contribution.

(a) A State plan under title IV-A of the Act must provide that the State welfare agency will assure a non-federal contribution to the Work Incentive programs established under Part C of the Act by appropriate agencies of the State or private organizations of 10 percent of the total cost of such programs, in cash or in-kind fairly evaluated. For this purpose, the State welfare agency will plan jointly with the State WIN sponsor for the development and use of in-kind resources. The State welfare agency must make the arrangements for, but need not itself make, the contribution. An in-kind contribution may be made in the form of the provision of services, staff, space, equipment, or any other goods or services of value essential to the operation of the WIN program. Where such contribution is in-kind, the amount thereof will be determined on the basis of its reasonable value as established by suitable documentation.

(b) The State welfare agency shall assure a non-Federal cash contribution of 10 percent of the cost of supportive

services and related administrative expenses incurred by the SAU under Title IV-A of the Act.

(c) The WIN sponsor costs of operation of the WIN program which may be met by the non-federal contribution may include the costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the WIN sponsor.

(d) Funds from other Federal sources, whether in cash or in-kind, may not be used for the non-federal share, except when specifically permitted by law. State funds or resources that have been used to match other federal funds also may not be used for this purpose.

(e) If the State welfare agency fails to make arrangements for the non-Federal contribution of 10 percent of the total Statewide program costs of operation, pursuant to paragraph (a) of this section, the Secretary of Health, Education, and Welfare may withhold, under the conditions specified in the law, the equivalent of amounts to be paid from the grants to the State agency for the public assistance titles.

(f) The provisions of Federal Management Circular (FMC) 74-7 must be met.

**§ 56.17 Reports, records, financial statements and audits.**

(a) State and local WIN sponsors and welfare agencies shall submit periodic reports as required by DOL and DHEW to assure proper accounting for all program funds, including the non-Federal share. Such records and accounts shall be made available for audit purposes to DOL and DHEW, the Comptroller General of the United States or any authorized representative of these agencies, and shall be retained for 3 years from the date of submission of the final expenditure report or from the date of submission of the annual expenditure report for payments under a grant or contract, whichever is earlier. The records shall be retained beyond the 3-year period if audit findings have not been resolved. State and local WIN sponsors and welfare agencies, shall also submit periodic reports as required by DOL and DHEW covering nonfinancial program activities.

(b) Program funds and activities shall be audited in conformity with the Standards for Audit of Government Organizations, Program Activities and Functions issued by the Comptroller General of the United States.

**§ 56.18 Adjustments in payments to WIN sponsors.**

(a) If any funds are expended by a WIN sponsor or by a public service employer in violation of the Act, the regulations, grant conditions or contract provisions, the Secretary of Labor may make necessary adjustments in payments to the sponsor or the employing agency on account of such unauthorized 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 amounts expended for unauthorized purposes in the current or immediately preceding fiscal year.

(b) No action taken by the Secretary of Labor under paragraph (a) of this section shall entitle the WIN sponsor to reduce program activities or allowances for any registrant or to expend less during the effective period of the contract or grant than those sums called for in the State WIN plan. Any such reduction in expenditures may be deemed sufficient cause for termination.

**§ 56.19 Termination of contracts or grants.**

(a) If a WIN sponsor or IMU violates any provision of the Act or the regulations in this Part, or contract provisions or grant conditions which the Secretary of Labor has issued or shall subsequently issue during the period of the contract or grant, the Secretary of Labor may terminate the contract or grant in whole or in part unless the agency which caused the violation corrects it within a period of 30 days after receipt of notice specifying the violation; or

(b) In his discretion, the Secretary of Labor may terminate the contract or grant in whole or in part;

(c) 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 a notice of termination the agency shall:

(1) Discontinue further commitments of contract or grant funds to the extent that they relate to the terminated portion of the contracts or grants;

(2) Promptly cancel all contracts or subcontracts utilizing funds under the contract or grant to the extent that they relate to the terminated portion of the contract or grant;

(3) Settle, with the approval of the Secretary of Labor, all outstanding claims arising from such termination;

(4) Submit, within 6 months 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 contract or grant but in the case of terminations under paragraph (a) of this section will not include the cost of preparing a settlement proposal. Allowable cost shall be determined in accordance with the provisions of Part 1-15.7 of Title 41 of the Code of Federal Regulations and Federal Management Circular (FMC) 74-4.

**Subpart C—Requirements and Procedures for Registration, for Appraisal and Certification**

**§ 56.20 Registration requirements for AFDC applicants and recipients; State plan requirements.**

A State plan under Title IV-A of the Social Security Act must provide that:

(a) All applicants and recipients who are required to register by section 402(a)(19)(A) of the Act shall register for manpower services, training, and employment as a condition of eligibility for AFDC, ex-

cept as otherwise provided under paragraph (b) of this section;

(b) The Income Maintenance Unit (IMU) of the State or local welfare agency shall determine which AFDC applicants and recipients are exempt from registration and which are required to register as a condition of eligibility for AFDC benefits, based on the following criteria: Each AFDC applicant and recipient shall register unless he is:

(1) Under age 16;

(2) Regularly attending school and age 16 but not yet 21 years of age (or 18 years of age if the State AFDC plan limits benefits to children who are under age 18). There must be verification according to State welfare regulations that the person is enrolled or has been accepted for enrollment for the next school term as a full-time student as defined in 45 CFR 233.90;

(3) Ill, when determined by the IMU on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(4) Incapacitated, when verified by the IMU that a physical or mental impairment, determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment or training under WIN;

(5) 65 years of age or older;

(6) Residing outside of a WIN project area specified in the State WIN plan or residing within a WIN project area at a location which is so remote from a WIN office or service unit that effective participation in the program is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required less normal round trip commuting time in the area is more than 2 hours, in which case the round trip commuting time shall not exceed the generally accepted community standards;

(7) A person in the home, and the IMU has verified that a physical or mental impairment, as determined by a physician or licensed or certified psychologist, of another member of the household requires the individual's presence in the home on a substantially continuous basis, and that no other appropriate member of the household is available;

(8) A mother or other caretaker relative of a child under age 6; or

(9) A mother or other female caretaker of a child, when the nonexempt father or other nonexempt adult male relative in the home is registered and has not refused to participate in the program or to accept employment without good cause.

(c) The IMU shall inform each applicant and recipient in writing that:

(1) The needs of any nonexempt applicant or recipient who fails to register as required will not be taken into account in determining the need and the amount of the AFDC assistance payment;

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(2) Exempt applicants and recipients must report to the IMU any changes which affect their exempt status;

(3) Any applicant or recipient has a right to a hearing before the State welfare agency to contest a determination of nonexempt status or to contest a denial of AFDC benefits when such benefits have been denied because of his refusal to register for WIN;

(4) Exempt applicants and recipients in WIN project areas may choose to register voluntarily for manpower services, training, and employment, and may withdraw such registration at any time without loss of AFDC benefits, provided their status has not changed in a way which would require registration; and

(5) Nonexempt applicants and recipients, along with exempt individuals who volunteer for WIN, shall report to a specified place of registration at the office of the WIN sponsor or its approved agent.

(d) The IMU shall immediately refer all applicants and recipients, whom it has determined to be nonexempt, and all volunteers, to the WIN sponsor or its approved agent for registration.

(e) The IMU shall refer individuals who have been determined to be exempt from registration on the basis of incapacity to the appropriate State vocational rehabilitation agency.

(f) The IMU of the welfare agency shall include a redetermination of exemption as a part of the AFDC eligibility redetermination process, except where an individual has been determined to be 65 years of age or older, or permanently incapacitated.

(g) The IMU shall notify the WIN sponsor within 3 working days of any welfare determination which may affect an individual's WIN status.

#### § 56.21 Registration procedures.

(a) The WIN sponsor shall promptly register all individuals found by the IMU to be nonexempt, and all individuals who volunteer for WIN, when they appear at the WIN office so that eligibility determinations are not delayed. Where special conditions warrant (such as a paucity of WIN sponsor offices in an area), the WIN sponsor may, with the concurrence of the RCC, contract with other public or private nonprofit agencies in specified areas to carry out registration activities. Under this requirement, the WIN sponsor (or its approved agency) shall:

(1) Obtain a complete work history on each applicant and recipient;

(2) Notify each registrant about the nature of the WIN program and about his rights and responsibilities therein;

(3) Provide each registrant with written proof of registration;

(4) If the IMU has determined an individual to be nonexempt and the WIN sponsor disagrees, register the individual and request the IMU to reconsider its determination. The IMU's response will be accepted by the WIN sponsor. If the IMU reverses its decision, the WIN sponsor shall deregister the individual as exempt unless the individual volunteers for WIN. If the IMU does not respond with-

in 30 days of the request, the WIN sponsor shall deregister the individual as exempt;

(5) Notify the IMU of any employment or other change of status which may affect an individual's AFDC eligibility or the amount of the AFDC payment;

(6) Notify the IMU, within 3 working days of the registration, that registration has been completed so that the IMU's completion of the welfare eligibility determination shall not be delayed; and

(7) Provide all registrants, at the time of registration, job market information and referral to available employment. All appropriate job market information available to the WIN Sponsor, including Job Bank, shall be used to provide this information and facilitate such referrals.

(b) The needs of any individual who fails to register as required under paragraph (a) of this section shall not be taken into account in determining the need of the family and the amount of assistance, and assistance will be furnished to the eligible members of the family;

(c) Where the WIN sponsor is the State public employment service, the registration required of unemployed fathers under section 407(b)(2)(c)(1) of the Act may be completed at the WIN office. This will fulfill the WIN registration requirement under section 402(a)(19)(A) of the Act.

#### § 56.22 Appraisal and certification.

(a) The appraisal interview shall be conducted jointly to the extent possible, or sequentially as appropriate, by the WIN sponsor and the SAU. Whenever possible, appraisal shall occur at the time of registration. An employability plan shall be initiated by the WIN sponsor and the SAU at the appraisal interview for each registrant who is found suitable for participation in the WIN program. The decision to refer an individual to employment or to a work or training component rests with the WIN sponsor.

(b) All unemployed fathers shall be appraised within 2 weeks of the determination of eligibility for AFDC benefits, and appraisal shall occur prior to certification. Certification shall be completed no later than 30 days from the receipt of AFDC benefits.

(c) Other individuals will be appraised according to the following priorities, taking into account the individual's employment potential:

(1) Mothers, whether or not required to register, who volunteer;

(2) Other mothers, and pregnant women under 19 years of age, who are required to register;

(3) Dependent children and relatives who have attained age 18 and who are not in school full-time or engaged in work or manpower training; and

(4) Others.

(d) The employability plan shall contain a manpower services plan and a supportive services plan, and shall be designed to lead to employment and ultimately to self-support. It shall contain a

definite employment goal, attainable in the shortest time period consistent with the supportive services needs, project resources, and job market opportunities. Final approval of the employability plan rests with the WIN sponsor.

(e) The WIN sponsor shall request the SAU to certify in writing that the necessary immediate and on-going supportive services have been provided or arranged, or that no such services are required for those individuals who have been selected for participation in a WIN component. When certified, the individual shall be placed in employment if appropriate work that the individual can perform is available. If the individual cannot be immediately placed in employment, he shall be placed in intensive manpower services, on-the-job training, public service employment, institutional training, or in any other manpower program or activity.

(f) Registrants who find employment or are placed by the WIN sponsor may be certified and necessary supportive services may be provided.

(g) AFDC grants and social services for individuals under the State AFDC plan shall not be denied by reason of the individual's referral to a job, to a WIN program, or solely by reason of an individual's participation therein.

#### Subpart D—Supportive and Manpower Services and Protective Provisions

##### § 56.30 Supportive services; State plan requirements.

A State plan under Part A of title IV of the Act must provide that:

(a) Within the State agency there will be separate administrative units which will, to the maximum extent possible, perform functions only in connection with the WIN program;

(b) The SAU shall be responsible for:

(1) Developing, jointly with the State WIN sponsor, and approving, a State WIN plan in accordance with section 433(b) of the Act;

(2) Developing and supplying social services necessary to enable a registrant who is an AFDC recipient to accept employment and training for employment. Necessary services shall continue for a period of 30 days after the start of unsubsidized employment and may continue for a maximum of 90 days at the discretion of the SAU. Such services may be provided even after the AFDC grant has been discontinued due to employment. In an emergency such services may also be provided for a period of up to 30 days to enable a registrant to continue existing employment;

(3) Participating with the WIN sponsor in appraisal and certification and in the development of employability plans pursuant to § 56.22;

(4) Certifying in writing to the WIN sponsor that the individual is ready for WIN manpower services when the WIN sponsor requests such certification and the supportive services, if any were necessary, have been provided or arranged for; and



(5) Providing counseling and other services, for a period of up to 60 days, to certified individuals determined by the Secretary of Labor to have refused training or employment under the WIN program without good cause, for the purpose of persuading them to accept appropriate training or employment (see §§ 56.51 and 56.76). Under this requirement, once a period of counseling and other services has been provided to an individual, and he has again been found by the Secretary of Labor to have refused training or employment under WIN without good cause, the agency shall not provide another period of counseling and other services.

(c) Supportive services under the WIN program shall include:

(1) Child care which meets the standards specified in 45 CFR 228.42. When more than one kind of child care is available, the mother of other caretaker relative may choose the type, but may not refuse to accept child care services if they are available. Such services must be responsive to breakdowns in prior arrangements in order to ease or avoid disruption of employment or participation in manpower services;

(2) Family planning services;

(3) Counseling services;

(4) Employment related medical, remedial, and health-related care services not included under the State's Title XIX plan or otherwise available;

(5) Selected vocational rehabilitation services, as defined by the Rehabilitation Act of 1973, which cannot otherwise be funded by the vocational rehabilitation agency;

(d) Other supportive services included in the State WIN plan may be provided if they are necessary to enable registrants to accept employment or receive manpower training.

(e) Supportive services may be provided for up to two weeks to a registrant between participation in WIN components or between participation in a component and the start of employment in order to avoid interruption of the em-

§ 56.31 [Reserved]

§ 56.32 Pay and allowances for WIN registrants.

(a) An individual assigned to a WIN institutional or work experience training component, including the intensive manpower services component, in which no salary is paid, shall receive an allowance for necessary training related expenses. He shall also receive incentive payments at a rate not to exceed \$30 a month provided he meets the requirements of the component relative to hours of participation.

(b) Individuals placed in employment, OJT, or PSE shall be authorized training related expenses for not in excess of two WIN pay periods; or until they receive their first full paycheck or the cash from a grant adjustment reflecting new work related expenses, whichever occurs first.

(c) Reasonable subsistence allowance, in addition to a training-related expense payment, shall be paid to individuals for separate maintenance when in training

facilities beyond daily commuting distance from their homes for each calendar day within the training payment period during which they are participating in such training and are residing away from home.

(d) An individual shall be paid transportation allowance to a training facility located beyond commuting distance for the cost of his initial trip to the training facility and for his final trip home at the completion or other termination of such training.

(e) Individuals may be paid allowances for nonrecurring expenses as authorized by the Secretary of Labor.

(f) WIN sponsor offices may establish petty cash funds or another acceptable method to meet needs for cash for allowable expenditures for all registrants.

(g) Registered recipients referred to employment may receive an allowance for necessary expenses.

§ 56.33 Relocation assistance.

The Secretary of Labor may assist certified individuals to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employed and self-supporting. Such assistance shall be given only to individuals who concur in the relocation and who have received a bona fide job offer at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for such individuals, their dependents, and their household belongings, plus such relocation allowance as the Secretary of Labor determines to be reasonable.

§ 56.34 Appropriate work and training criteria.

(a) Certified registrants shall accept assignment to employment or WIN training as determined appropriate by the WIN sponsor or face deregistration action. The following standards must be met before any such individuals can be required to accept a work or training assignment including PSE and OJT:

(1) All assignments for those in WIN training shall be within the scope of an individual's employability plan. This plan may be modified to reflect changed employment conditions;

(2) The job or training assignment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health shall be based on an adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health;

(3) The total daily commuting time to and from home to the work or training site to which the individual is assigned shall not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance and time is generally accepted in the community, in which case the round trip commuting

time shall not exceed the generally accepted community standards;

(4) When child care is required, it must meet the standards specified in 45 CFR 228.42 and must be available during the hours the individual is engaged in a WIN component or manpower activity plus any additional necessary commuting time;

(5) The work or training site to which the individual is assigned must not be in violation of applicable federal, State and local health and safety standards;

(6) Assignments shall not be made which are discriminatory in terms of age, handicap, sex, race, creed, color, or national origin; and

(7) The individual shall not be referred to work or training unless supportive and manpower services necessary for participation are available, even in cases where the State WIN plan does not specifically provide for the needed services. The cessation or withdrawal of such necessary services while the individual is in a WIN component shall constitute good cause for refusal to participate.

(b) The determination of "appropriate work" shall be made at the local project level. The following criteria shall be applied in addition to the above, in determining "appropriate work":

(1) Appropriate work may be temporary, permanent, full-time, part-time or seasonal work, if such work meets the other work standards of this section;

(2) When an income disregard is available, the wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market but in no event shall it be less than three-fourths of the minimum wage rate set forth in section 6(a) (1) of the Fair Labor Standards Act;

(3) When, as a result of becoming employed, no income disregard is available to the individual, the wage, less mandatory payroll deductions and a reasonable allowance for necessary employment related expenses, shall provide an income equal to or exceeding the family's AFDC cash benefit. The wage shall in no case, be less than that required by any applicable minimum wage law;

(4) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation; and

(5) No individual shall be required to accept employment if—

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute;

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he has membership may be deemed appropriate;

(iii) The job offered would interrupt a program in progress under an approved employability plan leading to self-support or to the resumption of his reg-

ular job within a short period of time. This does not, however, preclude temporary employment during the interval prior to his re-employment in his regular job.

(c) In addition to meeting the criteria in paragraph (a) of this section, for training to be appropriate, the quality of the training must meet local employers' requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

#### § 56.35 Period of participation.

(a) The duration of institutional training established pursuant to section 432(b)(2) of the Act shall average no more than six months with a maximum duration of one year for any individual.

(b) Participation in the work experience component shall not exceed 13 weeks for any individual.

(c) The RCC may, for good cause, allow an exception to the limitations in paragraph (a) of this section.

#### § 56.36 Nondiscrimination.

(a) No person in the United States shall, on the grounds of age, race, creed, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance under these regulations.

(b) Grievances involving discrimination under paragraph (a) of this section shall be processed according to equal opportunity provisions established by DOL and DHEW and, to the extent applicable, in compliance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the regulations issued thereunder at 29 CFR Part 31 (DOL) and 45 CFR Part 80 (DHEW).

#### Subpart E—The WIN Components and Activities

##### § 56.40 Public service employment (PSE).

(a) PSE consists of WIN subsidized jobs in the public and private non-profit sectors. All PSE jobs must meet the criteria for appropriate work, established by § 56.34, and must be jobs which would not otherwise be performed by regular employees. The PSE component provides transitional employment intended to move individuals from AFDC into unsubsidized jobs.

(b) All certified registrants for whom appropriate unsubsidized employment cannot be found are eligible for placement in PSE.

(c) An eligible employer may be:

- (1) Any unit of State or local government;
  - (2) Any public agency or institution which is a State or local government subdivision;
  - (3) An Indian tribe or combination of tribes on a Federal or State reservation; or
  - (4) Any private non-profit organization established to serve a public purpose.
- (d) For the purpose of AFDC benefits,

PSE participants are considered to be employed. However, PSE participants shall not be deregistered from WIN until they complete the scheduled PSE contract period and enter unsubsidized employment. PSE participants are not eligible to receive either a WIN incentive payment or the \$30 plus  $\frac{1}{2}$  disregard provided by section 402(a)(8) of the Act.

(e) Individuals shall not be assigned to a PSE job if this will result in the displacement of already employed full-time workers.

##### § 56.41 Intensive manpower services component.

(a) A State may establish as one work experience component an intensive manpower services component to assist certified individuals to obtain employment. The State WIN sponsor shall develop standards of participation in the intensive manpower services component, taking into account local conditions, including, but not limited to geographic factors, availability of public transportation, and local labor market characteristics. If the State selects this component, such standards of participation shall be included in the State WIN plan submitted to the RCC.

(b) The intensive manpower services component shall provide manpower and employment services, which may include orientation, and must include job development, exposure to labor market information, job placement, and job-seeking skills development to assist individuals in obtaining unsubsidized employment.

##### § 56.42 On-the-job-training (OJT).

(a) OJT is an employment opportunity which includes training. Under this component, a certified registrant is hired by a private or public employer and provided training which is subsidized under contract between the employer and the WIN sponsor. Employers are encouraged to provide increased supervision and training through contracts with the WIN sponsor, pursuant to which the WIN sponsor will reimburse the employer for the extraordinary costs of such training and supervision.

(b) For the purpose of AFDC benefits, OJT participants are considered to be employed. However, OJT participants shall not be deregistered from WIN until they complete the scheduled OJT contract period as they are still an active participant in the WIN program during such period.

##### § 56.43 Institutional and other work experience training.

(a) Institutional training is a component involving vocational or other classroom training conducted by an instructor in a non-worksite setting.

(b) A work experience component is to provide a clearly defined, well-supervised, assignment with a public or private nonprofit employer in which an individual has the opportunity to develop basic work habits, to practice skills learned in classroom training, and to

demonstrate skills to a prospective employer.

##### § 56.44 WIN individuals suspended to other employment or training programs.

Certified individuals referred to other eligible Federal or State funded employment or training programs, and meeting all the eligibility requirements under those programs, shall be temporarily suspended from the WIN program. Such individuals shall normally be compensated in accordance with and through the provisions of those programs. However, when such compensation is not available or would be disadvantageous to the individual, he may accept regular WIN benefits instead. Notwithstanding such suspension, necessary supportive and manpower services which are not provided under the other program, but which are necessary to permit the individual to continue in the program, will be provided or arranged for by the SAU and the WIN sponsor in accordance with the time limits set forth in this Part.

##### § 56.45 Non-federal employee status.

An individual in a WIN component shall not be deemed an employee of the Federal Government, and shall not be subject to the provisions of laws relating to Federal employees, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

#### Subpart F—Deregistration and Sanctions

##### § 56.50 Deregistration.

(a) All deregistrations shall be performed by the WIN sponsor.

(b) A deregistration is necessary when an individual is held to have refused to participate without good cause; an incorrect non-exemption determination has been made; or an individual becomes exempt. Deregistration is also necessary when an individual becomes ineligible for AFDC except in the case where he is participating in a component or is employed and receiving WIN-funded supportive services.

(c) The welfare agency shall notify the WIN sponsor of any change which will affect an AFDC recipient's welfare or exemption status in such a way as to warrant deregistration.

(d) Except in those cases where the WIN sponsor has been notified that an AFDC grant has been discontinued for reasons involving other than WIN program issues the WIN sponsor shall notify the IMU of all deregistrations.

(e) Any WIN registrant, except a volunteer, who is determined to have failed or refused without good cause to appear for appraisal; or any certified WIN registrant, except a volunteer, who after counseling has been offered, continued to refuse to participate in the WIN program without good cause shall be deregistered from WIN and removed from the AFDC grant for failure to participate.



(f) Volunteers who withdraw from the WIN program shall be deregistered.

(g) Volunteers who are found to refuse to participate after notice and an adverse hearing decision, if a hearing is requested, shall be deregistered.

**§ 56.51 Sanctions.**

A State plan under title IV-A of the Act shall provide that:

(a) When a registered recipient has been found to have failed or refused without good cause to participate in the WIN program, the following sanctions shall apply:

(1) If such individual is a caretaker relative receiving AFDC, his needs will not be taken into account in determining the family's need for assistance, and assistance in the form of protective or vendor payments or of foster care will be provided to the remaining members of the assistance unit. Under such circumstances, the caretaker relative may not be the protective payee;

(2) If such individual is the only dependent child in the family, assistance for the family will be denied;

(3) If such individual is one of several dependent children in the family, assistance for such child will be denied and his needs will not be taken into account in determining the family's need for assistance;

(b) The sanctions under paragraph (a) of this section shall not be applied during a period of up to 60 days after such adverse decision, provided the registrant has been certified and accepts counseling and other necessary services aimed at persuading him to participate in the WIN program. Meanwhile, where the individual is a caretaker relative, assistance to his family in the form of protective or vendor payments and counseling and other necessary services shall be provided by the State welfare agency.

(c) If an individual registered on a voluntary basis, pursuant to § 56.20, discontinues participation in the work incentive program he and his family are not subject to the sanctions under this section.

(d) In the event a registrant is referred back to the IMU as having good cause for not continuing on a training plan or a job, the IMU shall promptly restore the assistance payment to the individual or make other necessary payment adjustments.

**Subpart G—The WIN Adjudication System**

**§ 56.60 Disputes regarding WIN registrations.**

(a) The welfare agency shall provide an opportunity for a hearing in the case of a disputed registration determination in which the AFDC applicant or recipient claims that he is exempt from WIN by the statutory criteria. Such an individual shall be considered as exempt until his status is finally determined.

(b) A welfare hearing officer shall conduct welfare hearings under this section, pursuant to the procedures prescribed in 45 CFR 205.10. Where the local WIN sponsor becomes involved in the determination of a disputed registration, a

representative of the local WIN sponsor shall appear as a party at the hearing.

**§ 56.61 Rules and procedures.**

(a) The State WIN plan shall include rules and procedures applicable to both certified and uncertified registrants, governing participation, attendance, conduct, disputes, notice and opportunity for a fair hearing and any State appellate review.

(b) The plan shall specify that the hearing officer shall be an individual who was not involved in the original determination. The plan shall also designate the parties to the hearing.

**§ 56.62 Complaints and grievances.**

(a) Initially, written complaints and grievances shall be handled informally outside of the WIN adjudication system. They shall be processed at the local project level within the time frame provided under § 56.63(a). At that time, an individual who is not satisfied with the disposition of his complaint may initiate a formal protest at the local project level which then will be processed through the formal WIN adjudication system.

(b) Written records of all disputes arising within the WIN program shall be maintained by the WIN sponsor. The date appearing on such records shall be controlling in determining the timeliness of subsequent steps in the WIN adjudication system.

**§ 56.63 Requirement of conciliation and notice.**

(a) All efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant must be exhausted prior to the issuance of a Notice of Intended Deregistration. This conciliation effort may continue for a period not to exceed 30 days but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner. When the conciliation period has terminated, or the dispute remains unresolved after 30 days, the WIN sponsor shall mail to the registrant a notice of Intended Deregistration.

(b) The notice shall include:

(1) A detailed explanation of the reason for the action and the consequence of refusal or failure to cooperate in a WIN prescribed program without good cause;

(2) Notification of the registrant's right to a hearing if the registrant believes the proposed action is incorrect, provided a written request for a hearing is filed as prescribed in § 56.63;

(3) Notice that the proposed action will be implemented if a hearing request is not received within the prescribed time;

(4) Instructions and required forms for requesting a hearing;

(5) An offer to assist with preparation of the hearing request;

(6) Notice that he may be represented at the hearing by counsel or other authorized representative appointed by him and that he and his representative will have the opportunity to confront and cross-examine opposing witnesses;

(7) Notice that he will be permitted to present material evidence and testimony at the hearing that is not already in the record.

(c) When written notification is mailed to the individual, the WIN sponsor shall also inform him of the intended action personally or by telephone, if possible.

(d) The requirements of this section do not apply to an individual who:

(1) Has successfully entered employment and is regularly employed;

(2) Is deregistered as exempt; or

(3) Is deregistered as a result of becoming ineligible for welfare.

**§ 56.64 Request for hearing.**

(a) An individual who believes the intended action is incorrect may request a hearing before a hearing officer within 10 days after mailing of Notice of Intended Deregistration. The request for a hearing may be made either orally or in writing by the individual or his authorized representative to the WIN sponsor. Where the request is oral, the WIN sponsor shall prepare the required forms on behalf of the individual and obtain the individual's signature on the forms.

(b) Hearing procedures shall be made available to individuals requesting hearings in advance of such hearings.

**§ 56.65 Issues subject to hearing.**

(a) Under the WIN adjudication system a hearing officer will hear and decide WIN program issues arising subsequent to registration by certified and uncertified registrants. WIN program issues include failure or refusal to appear for appraisal, assignment to a WIN component, unresolved WIN grievances, or failure or refusal without good cause to accept employment or otherwise participate in the WIN program.

(b) After reasonable attempts have been made at the local level to resolve disputes arising from work, or training assignment under WIN, the designated activity may be accepted without prejudicing the individual's right to protest such assignment. Such protest shall be handled through the WIN adjudication system in the same manner as if the registrant had, in fact, refused to participate in the WIN program. In such an instance, a registrant who fails to accept an adverse decision pursuant to § 56.68

(a) (5) shall have no further recourse to a hearing on the issue before a hearing officer but may appeal the decision pursuant to § 56.69.

**§ 56.66 Hearing procedures.**

(a) Upon receipt of a written request for a hearing, a Notice of Scheduled Hearing shall be mailed to the individual and other parties within 10 days. Such notice shall indicate the date, time, and place of the hearing, the issues to be considered, and the hearing procedures that will be followed. Hearings shall be scheduled no earlier than 10 days, or later than 30 days, following the mailing of the hearing notice.

(b) The hearing officer may reschedule a hearing upon request of the individual, his representative, or other party.

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(c) An individual or his representative may withdraw the request for a hearing in writing before the hearing.

(d) The WIN staff or its legal representative shall have primary responsibility for presenting the case before the hearing officer.

**§ 56.67 Conduct of WIN hearings.**

(a) The hearing officer shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas authorized by State law;

(3) Assure that all relevant issues are considered, including the timeliness of the hearing request;

(4) Rule on the introduction of new and relevant evidence and testimony;

(5) Take any other action consistent with due process, necessary to insure an orderly hearing.

(b) The testimony at the hearing shall be recorded. It shall be transcribed only when necessary for review by an appellate body.

(c) The registrant or his representative, and the designated WIN sponsor and SAU shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(d) The hearing officer may elicit testimony from witnesses, but shall not act as advocate for any party.

(e) The hearing officer shall receive, and make part of the record documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available to other interested parties upon request.

(f) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(g) The hearing officer shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.

**§ 56.68 Decisions of the hearing officer.**

(a) The hearing officer may rule:

(1) That the individual has failed to appear for appraisal without good cause or has failed or refused to participate without good cause, and that appropriate deregistration shall be initiated;

(2) That good cause has been shown for failure or refusal to participate and the individual should be retained in the program;

(3) That the request for a hearing is dismissed because:

(i) It was filed untimely without good cause;

(ii) It has been withdrawn in writing;

(iii) The individual failed to appear at the hearing without good cause; or

(iv) Reasonable cause exists to believe that the request has been abandoned or that repeated requests for rescheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing, in which case the welfare agency may

initiate necessary action to impose appropriate sanctions;

(4) That the individual was appropriately or inappropriately assigned; or

(5) Render such other rulings as are appropriate to the issues in question. However, a hearing officer shall not consider the validity or constitutionality of the regulations in this part or of the Act.

(b) Based on the entire record including any evidence and oral testimony provided at the hearing the hearing officer shall prepare a written decision. Within 10 working days following the hearing, a copy of such decision stating his findings and conclusions of law and the reasons therefore, shall be mailed to the individual and his authorized representative, if any, the WIN sponsor, the SAU, and the RCC. Instructions for appealing an adverse decision or recommendation to the appropriate appellate body shall be attached to the copy sent to the individual and his representative.

(c) In cases involving novel questions of law or policy the hearing officer may, within 5 days after issuing his written decision, certify the case for review and decision to the State WIN appellate body or to the National Review Panel (NRP) where the State does not provide for a State WIN appellate procedure.

**§ 56.69 Appeals from hearing officer's decision.**

(a) Any party who disagrees with the hearing officer's decision on the WIN issue may request a review of such decision by the appropriate State appellate body within 10 days following the date on which the hearing officer's decision is mailed. A request for appellate review of the hearing officer's decision shall not stay implementation of the decision.

(b) A State WIN appellate body shall consider and decide appeals filed within the time period prescribed by paragraph

(a) of this section. Within 30 days after receipt of the request for review it shall prepare a written decision either affirming or reversing the hearing officer's decision or it may remand the case to a hearing officer for further evidence. The decision shall be based on its review of the entire hearing record and any additional written evidence submitted or obtained in connection with its consideration of the appeal. However, in no case shall new evidence be admitted if it brings into question the validity or constitutionality of the regulations in this Part or of the Act. The decision shall state the findings of fact and conclusions of law and the reasons therefore. Copies of the decision shall be mailed to the individual, his authorized representative, if any, the WIN sponsor, the SAU, the RCC, and the NRP. Instructions for appealing a decision to the NRP and the rules under which the NRP considers appeals shall be attached to the individual's copy of the decision.

(c) While reviewing a case, a State WIN appellate body may consider novel questions of law or policy or certify the case within 5 days after rendering its decision to the NRP for review and decision.

(d) If a hearing officer's adverse decision is reversed on appellate review, the individual shall be paid such retroactive WIN and welfare benefits as may be applicable and, where appropriate, shall be reinstated in the program.

**§ 56.70 National Review Panel (NRP).**

(a) The NRP shall be composed of the DOL Chief Administrative Law Judge and other Administrative Law Judges appointed pursuant to the Administrative Procedure Act requirements and designated by the Chief Administrative Law Judge to serve as members of the panel. The panel shall be located in Washington, D.C., and shall, unless equity requires otherwise, hold its reviews in Washington.

(b) The NRP has jurisdiction to—

(1) Consider appeals where a State does not provide for a WIN appellate procedure in all cases in which a compelling reason exists, including, but not limited to, cases raising novel and or substantial issues of law or policy.

(2) Consider and decide cases wherein, in the exercise of its discretion, it has accepted certification of the cases to it by the State WIN appellate body, or in the absence of a State WIN appellate body, by the hearing officer because they involve novel questions of law or policy;

(3) Consider and decide cases which, on its own motion, it has requested from a State WIN appellate body or, in the absence of a State WIN appellate body, from the hearing officer.

(4) At its discretion, consider and decide appeals filed by individuals, the WIN sponsor or welfare agencies from State WIN appellate body decisions.

(5) Monitor the consistency, legal sufficiency, and quality of cases handled by the hearing officer and State WIN appellate body.

(6) However, the NRP shall not have jurisdiction to examine the issue of either the validity or constitutionality of the regulations in this Part or of the Act.

**§ 56.71 Appeals to the NRP.**

(a) Appeals to the NRP may be filed by any party. Such appeals shall be mailed within 10 days of the date of the written decision from which the appeal is taken.

(b) The appeal shall be in writing, shall identify reasons in support of the appeal, and be addressed to the NRP. Notice of the appeal and, where possible, copies of the appeal shall be sent by the NRP to all parties.

(c) Any party to the proceeding may respond to the appeal or comment in support of or in opposition to the appeal. The submitting party shall mail its response to the NRP within 10 days after the date of mailing of the notification that an appeal has been filed.

**§ 56.72 Request for NRP to accept certification.**

(a) The State WIN appellate body, or, in the absence of a State WIN appellate body, the hearing officer may file a request that the NRP accept certification of a case.

(b) The request must contain the following:

(1) A concise statement of the novel question of law or policy which is the basis for the request to accept certification;

(2) A brief summary of the relevant facts and evidence;

(3) Pertinent rulings, conclusions, and decisions by the hearing officer or the WIN appellate body, as the case may be; and

(4) All reasons and arguments in support of the request, including citation of applicable laws and case decisions. A copy of any written decisions by the hearing officer or WIN appellate body must be attached to the request.

(c) A request for the NRP to accept certification shall be filed as follows:

(1) By the State WIN appellate body within 5 days following issuance of its written decision.

(2) In the absence of a State WIN appellate body, by the hearing officer within 5 days after issuance of his written decision;

(d) The party filing a request to the NRP to accept certification of a case shall file the request with the NRP, U.S. Department of Labor, Washington, D.C. 20036 and simultaneously mail copies to every other party, including the State agency administering hearings.

(e) Any party who wishes to respond to the request or to comment thereon may file a response with the NRP in support of or in opposition to the request within 10 days following the date of mailing of a request that the NRP accept certification. A copy of the response shall be mailed to all parties to the proceeding, including the State agency administering hearings.

**§ 56.73 Requests by NRP for certification.**

(a) Requests by NRP for certification of a case to it shall be made in writing no later than 30 days after receipt by the NRP of a written decision by the State WIN appellate body or the hearing officer. Copies of the request shall be mailed to all parties.

(b) In all cases, any party may file briefs in support of its position. The NRP may request briefs from the parties.

(c) Briefs shall be filed within 30 days from the date of mailing of the request that a case be certified. In cases where the NRP requests briefs, a different time limit may be set.

**§ 56.74 Certification of the record.**

Upon receipt of written notice from the NRP that an appeal has been filed, that it has accepted certification of a case, or that it has requested certification of a case, the State WIN appellate body or the hearing officer, whichever is applicable, within 30 days of mailing of the notification, shall certify and file with the NRP the record of the hearing including the transcript of the hearing; a copy of the hearing officer's decision; where appropriate, a copy of the decision of the State appellate body; and, any other papers and documents relevant to the proceedings. The State WIN appel-

late body or hearing officer, whichever is appropriate, shall prepare and include an index of the documents transmitted and shall mail a copy of such index to every party.

**§ 56.75 Consideration by and decisions of the NRP.**

(a) In considering appeals before it, the NRP may sit in panels of three members. The DOL Chief Administrative Law Judge may designate any Administrative Law Judge employed by DOL to submit his findings and recommendation to the NRP or any duly designated review or hear a particular case and to panel thereof.

(b) In considering appeals before it, the NRP, a duly designated panel thereof, or the designated Administrative Law Judge may request the parties to submit additional written statements of position, hear oral arguments or hold additional hearings where necessary.

(c) (1) Any party may make application in writing for a hearing or oral presentation. Such application shall set forth the reasons in support thereof and be made within 10 days after:

(i) Mailing of notification of the filing of an appeal from the decision of a hearing officer where the State does not provide for an appellate body; or

(ii) Mailing of notification that the NRP at its discretion has accepted an appeal from the decision of a State WIN appellate body; or

(iii) Mailing of notification that the NRP has accepted certification of a case whether at its request or upon the application of a State WIN appellate body or hearing officer.

(2) If a hearing or oral argument is directed, the notice shall state the date, time, place, nature, and purpose of the hearing or oral argument. Such notice shall be mailed to all parties.

(3) At any hearing or oral argument so ordered, the NRP, or the designated Administrative Law Judge, may require or direct any party or person to appear to testify or produce evidence. If such hearing or argument is deemed necessary, it shall be held at the location of the original hearing.

(4) Any party to the proceeding may appear personally or be represented by an attorney or agent.

(5) If a hearing is directed before an Administrative Law Judge, the findings and recommendations of the Administrative Law Judge to the panel shall be mailed to all parties. Any party may file with the NRP written exceptions and briefs in support thereof within 10 days of the mailing of the Administrative Law Judge's findings and recommendations and shall at the same time mail copies of such exceptions and briefs to all other parties. Any exceptions filed shall refer to specific findings and recommendations of the Administrative Law Judge.

(d) In all cases which are accepted for adjudication by the National Review Panel, the NRP shall send a copy of all relevant materials to the NCC, Solicitor of Labor and Office of General Counsel,

DHEW, to afford a 30-day period for the submittal of any response deemed appropriate or requests for oral argument.

(e) The NRP shall prepare a written decision setting forth its findings, the reasons for its conclusions, and an appropriate order. The decision shall be based on the record and any additional evidence submitted to or obtained by the NRP. The decision may consist of affirmation, reversal, remand for further development of the evidence or other appropriate action. Copies of the NRP decisions including notification that the NRP has denied a request that it review a decision of a State WIN appellate body and notification that NRP has accepted certification of a case, shall be mailed to all parties and such other persons as may be appropriate.

**§ 56.76 Sixty-day counseling period and reinstatement of certified individuals.**

(a) WIN benefits under Part C of title IV of the Act (not AFDC benefits) shall cease and the 60-day counseling period by the SAU shall commence to run on the fifth business day following:

(1) The expiration of the prescribed time period for filing a request for a hearing on a proposed deregistration from WIN, or the date on which the request for such hearing is dismissed; or

(2) The date of the hearing officer's decision that the disputant has refused or failed to accept employment or otherwise participate in the WIN program without good cause; or

(3) A decision rendered by the State appellate body or the NRP which reverses a decision favorable to a WIN registrant.

(b) The IMU will be notified immediately by the WIN sponsor of all of the foregoing actions.

(c) Counseling shall be provided by the SAU for a period of up to 60 days, to those certified registrants who have been determined by the Secretary of Labor to have refused to participate in the WIN program without good cause for the purpose of persuading them to participate in WIN. Such counseling may be terminated at any time during this period at the discretion of the SAU when it becomes apparent that the counseling efforts are proving unsuccessful. Once a period of counseling and other services has been provided to an individual, and he has again been found by the Secretary of Labor to have refused training or employment under WIN without good cause, the SAU shall not provide another period of counseling and other services.

(d) The 60-day counseling period shall not be provided to uncertified registrants.

(e) A certified registrant who fails without good cause to appear for two or more scheduled counseling meetings shall be considered to have terminated the counseling.

(f) Certified registrants who complete the 60-day counseling may be reaccepted into WIN only with the concurrence of the SAU.



## RULES AND REGULATIONS

**§ 56.77 Subsequent WIN registration by deregistered individuals.**

(a) An individual who was deregistered on the basis of a "without good cause" determination may, upon application, again register for WIN, provided 90 days have elapsed since deregistration and the individual has given evidence to the WIN project staff of willingness to participate. If such a person is subsequently deregistered following a "without good cause finding", the person shall not be registered or reaccepted in the WIN program unless satisfactory evidence is given of willingness to participate and 6 months have elapsed since the effective date of the latest deregistration.

(b) An individual who has been reaccepted into the WIN program after such deregistration shall have the same rights

as an individual who registers for the first time.

(c) Reacceptance into the WIN program may be denied where the termination action was the result of the individual's disruptive behavior or of criminal or other activities which presented a hazard to the staff or others.

(Catalog of Federal Domestic Assistance Nos. 17.326, Work Incentives Program and Incentives and 13.748, Work Incentive Program—Child Care—Employment Related Supportive Services.)

Dated: September 8, 1976.

W. J. USERY, Jr.,  
*Secretary of Labor.*  
DAVID MATHEWS,  
*Secretary of Health,  
Education, and Welfare.*

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