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## **DEPARTMENT OF LABOR**

Office of the Secretary

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**COMPREHENSIVE  
MANPOWER PROGRAM  
AND GRANTS TO  
AREAS OF  
UNEMPLOYMENT**

## DEPARTMENT OF LABOR

Office of the Secretary

[ 29 CFR Parts 94, 95, 96, 98 ]

COMPREHENSIVE MANPOWER PROGRAM  
AND GRANTS TO AREAS OF HIGH UN-  
EMPLOYMENT

## Notice of Proposed Rulemaking

The Secretary of Labor proposes to revise Title I and Title II regulations of the Comprehensive Employment and Training Act of 1973, as amended, (hereinafter referred to as the Act), Public Law 93-203, 87 Stat. 839, and Pub. L. 93-567, 88 Stat. 1845, in order to provide for the implementation of programs funded for Fiscal Year 1976. This proposed document is essentially similar to the regulations published in the FEDERAL REGISTER (39 FR 19886) on June 4, 1974, however, programmatic changes have been made to reflect the experiences gained in the first year of implementation. In addition, appropriate changes have been made to reflect the amendments provided by Title I of the Emergency Jobs and Unemployment Assistance Act of 1974 (hereinafter referred to as the "Emergency Jobs Act"), Pub. L. 93-567, 88 Stat. 1845. Title I of the Emergency Jobs Act amends the Comprehensive Employment and Training Act by inserting a new Title VI and redesignating the existing Title VI, and all references thereto, as Title VII, and by redesignating sections 601 through 615 of the Act, and all references thereto, as sections 701 through 715, respectively.

These regulations are being published today as proposed Fiscal Year 1976 regulations. It is the policy of the Department of Labor to solicit and consider comments on its regulations. Accordingly, comments are requested on this proposed document until April 7, 1975, after which the comments received will be evaluated and, if warranted, the proposal will be appropriately amended. Therefore, it is contemplated that the regulations will be published in final form to become effective on July 1, 1975. Interested persons are invited to submit comments, data, or arguments to: Assistant Secretary for Manpower, United States Department of Labor, 6th and D Streets NW, Washington, D.C. 20213. Attention: Pierce A. Quinlan, Associate Manpower Administrator, Office of Manpower Development Programs.

A short explanatory statement is provided to describe the substantive amendments proposed for the Fiscal Year 1976 regulations. A description of these amendments follows:

In § 94.1, Scope and purpose of the Act, the list of Titles of the Act has been amended to be consistent with the provisions of the Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93-567, 88 Stat. 1845) which established a new Title VI and renumbered the previous Title VI to be a new Title VII. Appropriate changes have been made throughout the regulations to reflect the change of Title VI to Title VII.

In § 94.4, Definitions, the following additions and changes are made:

A definition of "allotment" has been added to mean the total amount of funds under a Title of CETA to be granted to the prime sponsor in any fiscal year.

A definition of the word "audit" has been added to clarify the specific activities that are meant by such a procedure;

A definition of the term "audit standards" has been added to mean specifically the standards found in The Standards for Audit of Government Organizations, Programs, Activities and Functions promulgated by the Comptroller General of the United States;

A definition of "disabled veterans" has been added to 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 percentum or more, or a person whose discharge was for a disability incurred or aggravated in the line of duty;

A definition for "family" has been added to provide uniform determination of the term economically disadvantaged;

A definition of "Federal Audits" has been added to mean those audits conducted by the U.S. Department of Labor and its agents;

A definition of "manpower allotment" has been added to mean sums received by a prime sponsor distributed under sections 103(a)(1), 103(a)(2), 103(a)(4), and 103(f) of the Act.

A definition of "multijurisdictional agreement" has been added to mean a combination between a State and a unit of local government within the State that has a population of 100,000 or greater for the purposes of operating a comprehensive manpower program under the Act;

A definition of "Non-Federal Audits" has been added to mean those audits conducted by State, county and city governments or their agents.

The definition of "placement" has been changed by deleting the concept of "self-placement";

The definition of "program agents" has been changed to include standards to be used in determining whether combinations of units of local government qualify as a program agent;

The definition of "public service" has been expanded to include child care as a type of work which can be performed and to specify that part-time work may be allowed for certain individuals;

The definition of "significant segments" has been changed to specify the general types of groups which may be defined by the prime sponsor to receive services under the Act.

The definition of "underemployed" has been changed to clarify the application of the poverty level income guideline to the individuals wages rather than the total family income;

The definition of "unemployed person" for the purposes of Title I has been changed to permit the immediate eligibility of a veteran.

The definition of "unemployed person" for the purposes of Title II has been changed to permit the immediate eligibility of a veteran.

In § 95.1, Scope and Purpose of Part 95, paragraph (d) has been corrected to reflect proper references to Title VII of the Act.

In § 95.11, Preapplication for Federal Assistance; Consortium Agreements, the title of this section has been changed from "Notification of intent to apply" to "Preapplication."

The language in paragraphs (a) and (b) has been combined into one paragraph (a) to require that the preapplication process set forth in Federal Management Circular 74-7 (FMC-74-7) issued by the General Services Administration (formerly OMB Circular No. A-102) shall be followed. The previous format was prescribed in § 95.11(b) with a statement that in subsequent fiscal years, OMB A-102 Preapplication for Federal Assistance Form, Part I would be used. The FMC-74-7 form will be used with an attachment of additional information specifically required for CETA. Paragraph (a)(1)(v) simplifies the signature process on the preapplication form for established consortia.

Paragraph (b) has been rewritten to describe the agreement process for consortia. It has been changed to reflect that an established consortium may attest in writing that the agreement is the same as in the prior year. The attestation must be signed by all parties to the consortium.

In § 95.13, Planning process; advisory councils. The language of paragraph (c) has been clarified to indicate that the Prime Sponsor Planning Council functions in relation to Title II funds as well as Title I.

A statement has been added to paragraphs (c) and (d) to emphasize the "representativeness" of representatives to be selected for the Prime Sponsor Planning Council and State Manpower Services Council (SMSC).

Paragraph (d) has been edited to consolidate all functions under (d)(4). The monitoring role of the SMSC has been distinguished from the Federal monitoring role and is required to be clearly defined by the SMSC and publicized to all affected agencies. The language of (d)(4)(v) has been edited to clarify conformance with that provision with the Act.

In § 95.14, Content and description of grant application, the language in paragraph (a) has been clarified to specify that the application will be for the total allotment even if it is to be obligated in increments. The language in the current regulations which referred to additional requirements for grant applications in Part 96 for Title II funds has been deleted. Provision for incorporating Title I and Title II funds into a single grant at the discretion of the ARDM has been added.

The language in paragraph (b) has been changed to reflect the incorporation of public service employment into the Title I narrative description of program. The Program Transition Schedule which was necessary in the first year of operation has been deleted. All employment and training activities have been included in the Program Summary Form.

All assurances applicable to Title I are summarized and every citation of the Act has been included.

In § 95.15, Comments and publication procedures relating to submission of grant application, "no later than the date of its submission of an application to the ARDM" has been deleted from paragraph (a) since subsequent to the first year of program operations publicizing the contents of the grant application will be done 30 days prior to its submission.

Paragraph (b) has been changed to require that a copy of the newspaper publication be sent to the ARDM. The information to be published has been clarified and a comparison of performance against prior year's plan has been added.

The language of paragraph (c) deletes interim FY 1975 clearinghouse procedures; ongoing procedures have been retained.

In § 95.17, Standards for reviewing grant application, two standards have been added to paragraph (b); training for skill shortage occupations, public service jobs satisfying the requirements of § 96.23.

In § 95.21, Modification of grant agreement, the language has been changed to clarify that a grant modification is required when the total allotment changes, not when the obligation changes.

In § 95.22, Modification of Comprehensive Manpower Plan, paragraph (b) has been changed to reflect the requirement for submission of changes to the Narrative Description of Program when necessitated by POP changes. Paragraph (d) has been moved to (e) and an additional condition under which the ARDM may require a modification has been added. A new paragraph providing for modification to the narrative has been added.

In § 95.32, Eligibility for participation in a Title I program, in paragraph (b), subparagraph (2) has been included to indicate that economically disadvantaged, unemployed, or underemployed persons may be eligible to participate in a Title I public service employment program. Previously, only unemployed and underemployed persons were eligible.

In paragraph (d) a statement on the general ineligibility of illegal aliens has been added.

A new paragraph (f) has been added. It provides that Title II participants may be transferred into a Title I funded program without an intervening period of unemployment or a Title II participant may be concurrently enrolled in a Title I component.

In § 95.33, Types of manpower program activity available, in paragraph (d)(3), a statement has been added which provides that public service employment includes subsidized employment opportunities with public employers as well as private non-profit employers.

In paragraph (d)(4)(i), a statement has been inserted that requires the prime sponsor to describe the design of a work experience program in the approved Comprehensive Manpower Plan. The

description includes the basic design, a statement on the characteristics of the work experience participants, the objectives of the activity, the duration and expected outcomes of work experience. A clarification statement has been added which states, "work experience is a subsidized employment activity, however, it may not be used as a substitute for public service employment."

In paragraph (d)(4)(vi), the means of compensation to work experience participants has been limited to wages. Previously, prime sponsors had the option of paying either allowances or wages.

In paragraph (d)(5), two new subparagraphs have been inserted. A new paragraph (iii) indicates that post placement services may be provided to terminated participants for a period of 30 days from termination. Also, a new paragraph (iv) provides that participants enrolled in services to participants, as a component of another activity, may be paid allowances. Participants may also receive allowances for time spent in services to participants if such activities are on a regularly scheduled basis.

In paragraph (d)(6), a new paragraph has been inserted which provides that allowances may be paid to participants enrolled in other manpower activities when they are provided as a component of another activity or as a separate activity on a regularly scheduled basis. These activities must be described in the Comprehensive Manpower Plan. The new paragraph is numbered (iii) Participants benefits.

A new subsection has been added as paragraph (e) Combined activities. This paragraph provides that when a participant is enrolled in a primary activity (more than 50 percent of the scheduled time) for which wages are paid, and simultaneously in an activity for which allowances are payable, the participant may be paid wages for all hours of participation.

In § 95.34, Training allowances, the subsections starting with paragraph (c) Eligibility for allowances through paragraph (k) Repayments have been completely revised. The highlights of the revisions include:

(a) The basis allowance payment system is a straight minimum wage rate of compensation for each scheduled hour of participation.

(b) Scheduled participation may include classroom training, counseling, job orientation, etc., and need not be limited to classroom sessions only.

(c) Dependents allowances are to be provided as an addition to the basic allowances and may not be adjusted or prorated for part-time participation or absences. Dependents allowances may only be waived when the entire basic allowance is waived.

(d) Incentive allowances of a maximum \$30 per week are in lieu of basic allowances to participants who receive public assistance; however, the incentive allowance may be reduced pro rata for absences without good cause or for part-time participation.

(e) The waiver provisions for the basic allowance have been clarified by requiring the prime sponsor to describe the circumstances under which allowances will be waived. In addition, specific conditions of when waiver can be provided have been included.

Sections 95.36, 95.37, 95.38, 95.39, and 95.41 have been deleted and inserted in Part 98 since these sections apply to both Title I and Title II funded programs. This transfer of sections will clarify the operational provisions of Titles I and II programs and provide greater consistency. The remaining §§ 95.40 and 95.42 have been renumbered as §§ 95.36 and 95.37, respectively.

In § 95.52, Grant application, a new sentence has been added at the end of paragraph (a), "A copy of all forms and instructions for the Application for Special Grants are contained in the Forms Preparation Handbook."

In paragraph (b) the language has changed from "OMB Circular A-102" to "FMC 74-7." In line eight and line nineteen, the word "State" was added to precede the word "Vocational."

In § 95.54, Modifications, limitations on use of funds, the language has been clarified that a grant modification is required when the total allotment changes, not when the obligation changes.

In § 95.55, Governor's distribution of vocational education funds, the word "State" added to precede the word "Vocational" in line four of paragraph (a).

In § 95.56, Program operation, the word "State" was added to precede the word "Vocational" in line thirteen of paragraph (a)(1).

Paragraph (a)(2) changes lines three through nine to read, "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 the 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."

In § 95.57, Funding grant administration, the word "State" was added to precede the word "Vocational" in the fourth line of paragraph (b)(2)(i) and (b)(2)(ii).

In § 95.58, Non-financial agreement between prime sponsor and State Vocational Education Board, the title has been changed to add the word "State" to precede the word "Vocational."

In § 96.1, Scope and purpose, a new paragraph (b) has been added stating that all provisions for Title II programs for Indian tribes on Federal and State reservations are found in Subpart D of Part 96.

The original paragraphs (b) and (c) have been relettered as (c) and (d).

In § 96.2, Allocation of funds, in paragraph (b)(2), the words "fiscal year"



have been inserted before the word "allocation" in the last sentence for clarification.

In § 96.3, Eligibility of funds, paragraph (e) (2) has been subdivided into two sections ((e) (2) (i) and (e) (2) (ii)). Paragraph (e) (2) (i) remains unchanged from the original paragraph (e) (2) in the June 4 regulations. Paragraph (e) (2) (ii) has been added to specify that no eligible applicant may make other arrangements for serving an area of substantial unemployment within the jurisdiction of a program agent except with the review and concurrence of the ARDM.

A new paragraph (f) (3) has been added specifying that an eligible applicant or program agent with less than a 6.5 percent unemployment rate must allocate its funds for those areas of substantial unemployment specified by the Secretary.

In §§ 96.10-96.19, dealing with the procedures for obtaining and modifying a grant, revisions have been made to make these procedures consistent with those contained in §§ 95.10-95.22 of Part 95 of the regulations.

Section 96.14(a), has been further revised to indicate that a single grant document may be provided by the Department for obtaining funds under Titles I and II.

In § 96.21(h), Basic responsibilities of eligible applicants, the language has been revised to indicate that eligible applicants must assure that employing agencies provide information regarding their job openings to the employment service for the benefit of special veterans, as specified in § 96.30(a).

In § 96.22, Basic responsibilities of program agents; relationship with eligible applicants, a new paragraph (d) has been added stating that, if a program agent fails to administer its program in accordance with the grant application, the eligible applicant may take corrective action, including the reallocation of funds (subject to the concurrence of the ARDM).

In § 96.23, Acceptable public employment positions, paragraph (b) (4) has been revised to add a sentence specifying that the eligible applicant has the ultimate responsibility for determining the equitable distribution of jobs to State and local agencies and for all other aspects of the jobs.

A new paragraph (b) (5) has been added clarifying that private non-profit agencies which provide public service employment may be allocated jobs.

A new paragraph (b) (6) has been added stating that participants may be outstationed in Federal agencies.

A new paragraph (b) (7) has been added specifying that jobs may be located outside an eligible applicant's jurisdiction, if the eligible applicant feels it is necessary for an effective program, provided that they employ residents of the eligible applicant's jurisdiction and are within reasonable commuting distance.

The original paragraphs (b) (5) through (b) (10) have been renumbered as (b) (8) through (b) (13).

In § 96.24, Maintenance of effort, a paragraph (c) has been added, similar to that included in Title VI, clarifying that no eligible applicant may lay-off, terminate or reduce the working hours of employees in anticipation of hiring them under Title II of CETA.

A paragraph (d) has been added specifying that the ARDM may request the submission of pertinent documentation relevant to the maintenance of effort requirements of § 96.24.

In § 96.25, Responsibility for selecting participants, paragraph (a) has been revised to specify that the ultimate responsibility for the selection of participants rests with the eligible applicant and that it may delegate the administration of this responsibility, subject to its direction.

In § 96.26, Place of residence for participants, the title has been changed from Special limitations on programs and participant selection because several of the original paragraphs have been deleted from this section and placed in Part 98 of these regulations. This has resulted in the renumbering of the original paragraphs and subsections which remain.

Paragraph (a) (2) has been expanded to cover the possibility of an eligible applicant receiving additional funds as a subgrantee of another eligible applicant for manpower program activities as well as for public service jobs. A sentence has been added specifying that jobs or programs must be within reasonable commuting distance of residents of the other eligible applicant's jurisdiction.

Paragraph (b) has been expanded to cover the possibility of both manpower activities and public service jobs being funded and to allow such activities or jobs to be located outside, as well as within, the boundaries of the consortium.

The original paragraphs (b), (c), and (d) have been deleted from Part 96 of these regulations and have been incorporated into Part 98.

In § 96.27, Eligibility for participation in a Title II program, a sentence has been added stating that an individual who obtains permanent, full-time employment after application may no longer be considered eligible.

A new paragraph (b) has been inserted after paragraph (a) stating an individual who has served on active duty in the U.S. Armed Forces 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, for participation in a Title II program without regard to the 30 day unemployment requirement which would otherwise pertain.

In paragraph (c), the phrase "at the time of the grant award under this Act" has been deleted, and the phrase "upon expiration of the EEA grant" has been added, thus making EEA participants enrolled after the award of the initial CETA grant eligible for CETA Title II programs upon expiration of their jurisdiction's EEA grant.

A new paragraph (d) has been added specifying that Title I enrollees may be transferred into a Title II program only if they met the Title II eligibility requirements at the time of their enrollment in a Title I program.

In paragraph (g) a sentence has been added specifying that no services shall be provided to illegal aliens.

The original paragraphs (d) through (g) have been relettered as paragraphs (e) through (h).

In § 96.28, Special consideration for most severely disadvantaged persons, language has been inserted to indicate that special consideration in enrolling applicants into all manpower activities and services funded with Title II monies shall be given to unemployed persons who are the most severely disadvantaged in terms of the length of time they have been unemployed. In the regulations printed on June 4, 1974, the special consideration was directed only to filling public service jobs under Title II.

In § 96.30, Groups to be provided special consideration, paragraphs (a), (b), and (c) have been revised to indicate that the groups to be provided special consideration may be enrolled in manpower activities as well as in public service jobs.

Paragraph (a) which refers to special consideration for veterans has been further revised to extend special consideration to disabled veterans and individuals who served in the Armed Forces and were discharged within four years before the date of their application.

In § 96.31, Training and supportive services, revisions have been made to indicate that training and supportive services for Title II participants may be provided with either Title I or Title II funds. A sentence encouraging due consideration to be given to existing services of Federal, State and local agencies has been added. The phrase, "provided that such contracts are not entered into with private-for-profit organizations for the employment of participants," has been deleted for editorial purposes.

In § 96.32, Linkages with other manpower programs, a sentence has been added encouraging the maintaining of linkages with agencies that can provide supportive services, such as the elimination of architectural barriers.

In § 96.33, Placement goals, new paragraphs (d), (e), and (f) have been added, similar to those used in the Title VI regulations, clarifying that placement goals established are not to be considered as placement requirements and that an eligible applicant may request a waiver of such goals.

In § 96.34, Compensation for participants, the original paragraph 96.35(b) from the June 4 regulations has been added as paragraph (b) (2). The remainder of the original § 96.35 has been deleted from Part 96 and has been incorporated into Part 98.

A new § 96.35, Administrative Staff, has been added.

The original § 96.36, Retirement Benefits for Participants, has been deleted from Part 96 and incorporated into Part 98.

The original § 96.38, Limitation of Funds, has been renumbered as § 96.36.

In § 96.37, Use of Title II funds for programs under Titles I and IIIA, language has been added in paragraph (a) to indicate that when Title II funds are used to fund programs other than public service employment under either Title I or Part A of Title III, the following sections are not applicable: §§ 96.20, 96.21(b) (c) (d) (e) (g) (h), 96.23, 96.24, 96.27 (e) and (h); §§ 96.31, 96.33, 96.34, and 96.36. In the regulations published on June 4, 1974, only § 96.38(a) was specified as not applicable when Title II monies are used to fund programs under other sections of the Act.

The original paragraph (b), dealing with use of Title II funds for a summer program, has been deleted and the words, "summer employment programs," have been deleted from the § 96.37 title.

In § 96.40, General, a paragraph has been added giving the Division of Indian Manpower Programs full responsibility for all matters pertaining to Title II funding of Indian tribes on Federal and State reservations. For the purposes of those persons working under Subpart D of the Title II regulations, it is noted that all references to the ARDM throughout Part 96 should be interpreted as Director, Division of Indian Manpower Programs.

In § 96.41 Distribution of funds, in paragraph (a), a reference has been added to the ratio for distribution of funds prescribed in Subpart A, section 96.2. Changes in the lettering and numbering of paragraphs subsequent to paragraph (a) are due to the addition of a new paragraph (b).

In paragraph (b) (2), the language in the former paragraph (a) (2) has been changed to read " \* \* \* best available estimates of unemployment \* \* \* ". The reference to population has been deleted.

In paragraph (c), the language in the former paragraph (b) has been changed to read "Funds shall only be granted for individual reservations which have a governing body and either have a population \* \* \* ". Reference to a governing body has been added. The words "section 302" have been added following the reference to Title III.

Paragraph (d) is the former paragraph (c).

In paragraph (e), the language in the former paragraph (d) has been changed to read "Within a single reservation, or within those small reservations which are members of a consortium, the eligible applicant \* \* \* ". This language clarifies the original sentence.

In § 96.42, Eligibility for funds, the entire section has been rewritten.

Section 96.43, Funding of prime sponsors, has been added and supersedes the previous § 96.43 which was entitled, Assistance by the Secretary.

Section 96.44, Planning process; advisory councils, has been added. It prescribes that eligible applicants should utilize their planning councils. This section replaces the former § 96.44 which was entitled, Nepotism. The Nepotism section is now § 96.48.

In § 96.45, Comment and publication procedures relating to submission of Indian grant applications, has been renumbered. This section was formerly numbered 96.47.

In paragraph (a), the reference to "the ARDM" has been changed to "the Director, Division of Indian Manpower Programs."

In paragraph (b), the words "of this section" and "available" have been deleted; the reference to "the ARDM" has been changed to "the Director, Division of Indian Manpower Programs."

In paragraph (c), the reference to "the ARDM" has been changed to "the Director, Division of Indian Manpower Programs."

Section 96.46, Assistance by the Director, Division of Indian Manpower Programs, has been renumbered. It was formerly numbered § 96.43. New language has been added providing for assistance from the Director, Division of Indian Manpower Programs rather than from the Secretary.

Section 96.47, Participant eligibility has been added. Section 96.47 was previously entitled Comment and publication procedures relating to submission of Indian grant procedures.

Section 96.48, Nepotism, has been renumbered. This section was formerly § 96.44.

Section 96.49, Non-discrimination, has been renumbered. This section was formerly § 96.45.

Section 96.50, Subgrants, this section was formerly § 96.46. The former language " \* \* \* requirements concerning subgrants, \* \* \* " has been changed to " \* \* \* requirements as set forth in § 95.41 concerning subgrants."

Section 96.51, Travel requirements. This section has been added.

In Part 98, Administrative Provisions, references have been corrected from Title VI to Title VII of the Act. All references to OMB Circular A-102 have been changed to FMC 74-7 and references to OMB Circular A-87 have been changed to 41 CFR Part 1-15.

In § 98.2, Payment, the language has been revised to clarify when the advance or reimbursement system of payments will be followed and to provide for working capital advances. Also, the procedure to be followed for direct funding of contracts under the Integrated Grant Administration Program has been added.

In § 98.3, Letter of credit, the language has been revised to clarify the conditions for use of a letter of credit.

In § 98.4, Payment by Treasury check, the language has been revised to clarify the conditions governing use of Treasury checks; to provide for working capital advances and to set forth conditions under which the maintenance of separate bank accounts may be required.

In § 98.5, Financial management systems, a new paragraph (c) has been added setting forth what financial documentation is required to fulfill the requirement that auditable records be maintained by the grantee.

In § 98.6, Audit, paragraph (b) has been revised to provide for coordination

of audit schedules with the grantee to the extent practical.

Paragraph (c) has been revised to provide for funding of departmental audits of grantees from other than grant funds.

Paragraph (d) has been revised adding the provision for selected reviews of economy and efficiency and program results.

Paragraph (e) has been added to require grantees to audit subgrant and contractor programs with the audits funded from the grant.

Paragraph (f) has been added to provide for preliminary audit surveys under specified conditions.

Paragraph (g) has been added setting forth the procedures which will be followed in issuing audit reports and resolving audit questions.

In § 98.8, Quarterly progress report, a new paragraph (i) has been added to require monthly reporting of participants on board at the end of the month and accrued expenditures. The old paragraph (i) has been redesignated (j).

In § 98.9, Quarterly Summary of Client Characteristics, the name of the Quarterly Summary of Client Characteristics has changed to the Quarterly Summary of Participant Characteristics.

In § 98.10(a), Report of Federal cash transactions, "an annual grant" has been changed to "annual grants" to require grantees receiving grants totalling \$1 million or more to submit the Report of Federal Cash Transactions monthly.

In § 98.12, Allowable Federal costs, paragraph (a) has been revised to provide for appropriate section of 41 CFR 1-15 to apply to cost determination depending on the type of grantee or contractor organization.

Paragraph (a)(ii) has been added providing procedures for approval of indirect cost rates.

Paragraph (b) has been revised to limit the restriction on use of materials, equipment, supplies and real property to administrative activities and to provide for purchase of training materials, work tools, uniforms or other equipment for the ownership of participants in public service employment activities.

A new paragraph (c) (2) has been added setting forth principles to be followed in classifying costs by cost category.

A new paragraph (f) sets forth examples of costs allowable under each of the cost categories.

In § 98.13, Allocation of allowable costs among program activities, a comma has been inserted in paragraph (a) between the words "training" and "allowances".

Paragraph (b) has been revised to indicate that wages and fringe benefits are an allowable cost with public and non-profit employers only.

Paragraph (d) has been revised deleting the word "allowances" since this type of cost will no longer be allowable under work experience activities.

In paragraph (e) (2), the words "including post placement services" after the words "supportive services" have been inserted.



In paragraph (f), misspelled words "categories" has been corrected to "categories" and "area" to "are".

In § 98.14, Basic personnel standards for grantees, paragraph (c) has been revised to clarify how personnel standards will be applied to consortiums.

Paragraph (d) has been relettered (e). A new paragraph (d) has been added to require units exempt from basic personnel principles under paragraph (c) to ensure equal employment opportunity based on objective standards.

In § 98.15, Adjustments in payments, the content of paragraph (a) and (b) have been combined in a new paragraph (a) and the provision for the Secretary to withhold funds has been added.

A new paragraph (b) establishes the grantees responsibility to maintain program levels irrespective of action by the Secretary under paragraph (a).

In § 98.16, Termination of grant, paragraph (b) has been relettered (c). A new paragraph (b) reflects the Secretary's discretion to suspend payments and withdraw granted funds in emergency situations pending a hearing on the matter.

In § 98.17, Grant closeout procedures, a new paragraph (b) has been added to provide cancellation/adjustments of letter of credit by the ARDM upon notification of the termination of the grant.

Paragraph (e) has been added to indicate that procedures for closeout of grants concerning subgrants and contracts which extend beyond the specified termination of the grant will be contained in the Forms Preparation Handbook.

In § 98.18, the title has been changed to read "Maintenance and Retention of Records".

Paragraph (5) (b) has been added to specify that a grantee may make PSE participant information available to the public to the same degree it makes information available regarding its own employees.

In § 98.19, Program income, paragraph (c) has revised "Attachment N of OMB Circular A-102" to read "the MA Property Handbook which implements Attachment N of FMC 74-7".

In § 98.20, Procurement standards, the waiver of approval requirements for OJT sole source contracts has been added.

In § 98.21, Nondiscrimination and equal employment opportunities, the EEO requirement previously contained in Part 96 has been incorporated into this section.

Paragraph (a) has been relettered (b) and "age" has been included as a prohibition against age discrimination.

Paragraph (b) (2) has been added to provide for an interpretation that the prohibition against age discrimination shall not be interpreted to prohibit establishment of training and employment programs designed to serve the legitimate needs of specific age groups or the establishment of bona fide qualifications for participation in any program under the Act.

In § 98.22, Nepotism, the nepotism requirement previously contained in Part

96 has been incorporated into this section.

In § 98.23, the title has been changed to read "Special limitations on participant activities."

Paragraph (a) (1) and (2) were revised deleting restrictions on participants activities which are no longer applicable as a result of amendment to Chapter 15 of Title 5, United States Code.

In § 98.24, a new section has been added to incorporate general benefit requirements previously contained in Part 96, and to provide that appropriate insurance coverage comparable to coverage provided by workmen's compensation shall be provided to participants in classroom training programs and services to clients and shall be chargeable to Administration as provided in § 98.12(e) (2).

In § 98.25, a new section has been added to incorporate the provisions concerning retirement benefits previously contained in Part 96.

In § 98.26, a new section has been added to incorporate eligible applicant and prime sponsor review requirements previously contained in Part 95 and redesignated "Procedures for resolving issues between grantees and complainants."

In § 98.27, a new section has been added to incorporate provision for grantee contracts and subgrants previously contained in Part 95.

In § 98.28, a new section has been added to incorporate non-Federal status of participants previously contained in Part 95.

Paragraph (b) has been added to set forth standards which govern the placement of participants on Federal work-sites for training and employment opportunities.

In § 98.41, a reference to § 98.46 has been inserted in paragraph (b) (4).

In §§ 98.44 and 98.48 misspelled words have been corrected.

#### **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.

**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 purposes of the Act are to be accomplished by the establishment of a flexible and decentralized system of Federal, State and local programs.

(b) The Act is comprised of seven 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 either migratory or 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. Title I of the Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. 93-567, 88 Stat. 1845 amended the Comprehensive Employment and Training Act of 1973, Pub. L. 93-203, 87 Stat. 839, by inserting the new Title VI described here and redesignating the existing Title VI as Title VII.

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

##### **§ 94.2 Format for the regulations promulgated under the Act.**

(a) The regulations promulgated to carry out Titles I and II of 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 of 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 this Part 94 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.

§ 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 to implement Titles I and II.
- 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; grant agreement.
- 95.19 Application disapproval.
- 95.20 Use of alternative prime sponsors; services by the Secretary.
- 95.21 Modification of grant agreement.
- 95.22 Modification of Comprehensive Manpower Plan.

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; minimum duration of training and reasonable expectation of employment.
- 95.36 Training for lower wage industries; relocation of industries.
- 95.37 Cooperative relationships between prime sponsor and other manpower agencies.

SUBPART D—SPECIAL GRANTS TO GOVERNORS

- 95.50 General.
- 95.51 Distribution of funds.
- 95.52 Grant application.
- 95.53 Application approval and disapproval; grant agreement.
- 95.54 Modifications; Limitations on use of funds.
- 95.55 Governor's distribution of vocational education funds.

- Sec.
- 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.

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.

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 of grant application.
- 96.16 Submission of grant application; Standards for reviewing grant application.
- 96.17 Application Approval; Application Disapproval; Grant Agreement.
- 96.18 Use of Alternative Eligible Applicant; Services by the Secretary.
- 96.19 Modification of Grant Agreement; Modification of Comprehensive Title II Plan.

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 Special consideration for most severely disadvantaged persons.
- 96.29 Serving significant segments of the population.
- 96.30 Groups to be provided special consideration.
- 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 Limitation on funds.
- 96.37 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.
- 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 Manpower Programs.
- 96.47 Participant eligibility.
- 96.48 Nepotism.
- 96.49 Nondiscrimination.

- Sec.
- 96.50 Subgrants.
- 96.51 Travel requirements.

AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, sec. 702(a), 87 Stat. 839; Pub. L. 93-567, 88 Stat. 184), sec. 702(a), unless otherwise noted.

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

SUBPART A—1974 SUMMER PROGRAM FOR ECONOMICALLY DISADVANTAGED YOUTH

- 97.1 Scope and purpose.
- 97.2 Definitions.
- 97.3 Allocations of funds.
- 97.4 Eligibility for funds.
- 97.5 Notification of intent.
- 97.6 Application for grants; standards for reviewing grant applications.
- 97.7 Application approval and disapproval.
- 97.8 Use of alternative sponsors and services by the Secretary.
- 97.9 Content and description of grant application.
- 97.10 Modification of the grant agreement; modification of the program plan.
- 97.11 Basic responsibilities of sponsors.
- 97.12 Eligibility for participation.
- 97.13 Types of manpower services available in the summer program for economically disadvantaged youth.
- 97.14 Participant benefits.
- 97.15 Sponsor review.
- 97.16 Non-Federal Status of participants.
- 97.17 Worksite standards; safety and health requirements for participants.
- 97.18 Training for lower wage industries and relocation of industries.
- 97.19 Sponsor contract and subgrants.
- 97.20 Cooperative relationships between sponsors and other manpower agencies.
- 97.21 Reporting requirements.
- 97.22 Terminal date for 1974 summer program.

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 Quarterly Progress Report.
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- 98.10 Report of Federal Cash Transactions.
- 98.11 Reallocations of funds.
- 98.12 Allowable Federal costs.
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- 98.14 Basic personnel standards for grantees.
- 98.15 Adjustments in payments.
- 98.16 Termination of grant.
- 98.17 Grant closeout procedures.
- 98.18 Maintenance and retention of records.
- 98.19 Program income.
- 98.20 Procurement 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 benefits for participants.
- 98.26 Procedures for resolving issues between grantees and complainants.

## PROPOSED RULES

- Sec.  
98.27 Grantee contracts and subgrants.  
98.28 Non-Federal status of participants.

## 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 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.

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.

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

## SUBPART A—GENERAL

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

## SUBPART B—GRANT APPLICATION

- 99.10 General.  
99.11 Program planning.  
99.12 Initial funding.  
99.13 Comments and publication procedures relating to submission of application for initial funding.  
99.14 Review and approval of application for initial funding.  
99.15 Full funding.  
99.16 Comments and publication procedures on modification for full funding.  
99.17 Standards for reviewing grant application.  
99.18 Application approval and disapproval.  
99.19 Use of alternative eligible applicants.  
99.20 Modification of grant agreements.  
99.21 Modification of an employment plan.

## SUBPART C—PROGRAM OPERATION REQUIREMENTS FOR ELIGIBLE APPLICANTS

- 99.30 General.  
99.31 Basic responsibilities of eligible applicants.  
99.32 Program performance requirements for eligible applicants.  
99.33 Basic responsibilities of program agents; relationship with applicants.  
99.34 Public service job activities that may be funded under Title VI.  
99.35 Maintenance of effort; responsibility for selecting participants; special limitation on programs and participant selection.  
99.36 Eligibility for participation in a Title VI program.  
99.37 Eligibility considerations for special groups.  
99.38 Serving significant segments of the population.

- Sec.  
99.39 Linkages with other manpower programs.  
99.40 Placement goals.  
99.41 Compensation and working conditions for participants.  
99.42 Worksite standards for public service jobs funded under Title VI.  
99.43 Retirement benefits for public service job participants.

## SUBPART D—SPECIAL PROVISIONS FOR AREAS OF EXCESSIVELY HIGH UNEMPLOYMENT

- 99.50 General.  
99.51 Basic responsibilities of eligible applicants.  
99.52 Public service job activities that may be funded in areas of excessively high unemployment.  
99.53 Eligibility for participation in a project or program in a Title VI area of excessively high unemployment.

## 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 Eligible applicant 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 grant 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 Hearing and judicial review.

## SUBPART F—SPECIAL CONDITIONS FOR GRANTS TO INDIAN TRIBES ON FEDERAL OR STATE RESERVATIONS

- 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 applications for funding.  
99.97 Planning process; advisory councils.  
99.98 Travel requirements.  
99.99 Nepotism.  
99.100 Non-discrimination.  
99.101 Subgrants.

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.

## § 94.4 Definitions.

The following definitions consistent with 701(a) of the Act, apply to Parts 94 through 99, inclusive;

(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) "Allotment" shall mean the total amount of funds to be granted to a prime

sponsor or eligible applicant for any fiscal year under Title I or Title II of the Act.

(d) "ARDM" shall mean the Department of Labor's Assistant Regional Director for Manpower, or his designee, having the responsibility for the area in which a prime sponsor or eligible applicant is located.

(e) (1) "Area of substantial unemployment" shall for Title II mean any area, other than in relation to an Indian tribe, which:

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

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

(iii) 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.

(2) "Area of substantial unemployment" shall mean, 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.

(f) "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.

(g) "Audit Standards" shall mean those standards set forth in The Standards for Audit of Government Organizations, Programs, Activities and Functions promulgated by the Comptroller General of the United States.

(h) "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.

(i) "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.

(j) "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.

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

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



(m) "Client 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 and economically disadvantaged.

(n) "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).

(o) "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.

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

(q) "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.

(r) "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.

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

(t) "Dependent" shall mean:

(1) Any relative who is a member of the immediate household of, and for whom the participant has or has assumed, a responsibility for support: Provided, that, the following relatives need not be members of the participant's household, if the participant is the head of family:

(i) Parents of the participant head of family;

(ii) Children of the participant head of family;

(iii) Relatives of the participant head of family who are unemployable because of physical or mental disability; or

(2) Any individual who:

(i) Is currently being supported by the participant head of family and is a member of the participant's immediate household; and

(ii) During the preceding twelve months, earned less than \$750.

(u) "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.

(v) "Economically disadvantaged" shall mean a person who is a member of a family:

(1) Which receives cash welfare payments; or

(2) Whose annual income in relation to family size does not exceed the poverty level determined in accordance with criteria established by the Office of Management and Budget (OMB).

(w) "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.

(x) "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.

(y) "Family" shall mean one or more persons living in a single household who are related to each other by blood, marriage, or adoption; except that an unmarried member of a household:

(1) Who is 18 or older, and

(2) Who receives less than 50 percent (50%) of his/her maintenance from the family, shall not be considered a member of the family.

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

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

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

(cc) "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 of the Act which receives a grant from the Department to establish or operate any program or activity under the Act.

(dd) "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.

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

(ff) "Low-income level" 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.

(gg) "Manpower Allotment" means sums received by a prime sponsor distributed under sections 103(a)(1); 103(a)(2); 103(a)(4); and 103(f) of the Act.

(hh) "Multijurisdictional Agreement" shall mean an agreement, consistent with the requirements of § 95.3 of this part, 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.

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

(jj) "Obligation" shall mean the amount of Federal funds which the Department has legally committed and authorized a prime sponsor, grantee, or eligible applicant to expend.

(kk) "Offender" shall mean any person who is confined in any type of correctional institution, including a community-based facility, or who is 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.

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

(mm) "Participant" shall mean an individual who qualifies and receives services or takes part in activities under provisions of the Act.

(nn) "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.

There are three levels of placement based on the expected duration of the job:

(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.

## PROPOSED RULES

(oo) "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.

(pp) "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 of this Part, which has entered into a grant with the Department to provide comprehensive manpower services under Title I of the Act.

(qq) "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.

(rr) "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. 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.

(ss) "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 and has demonstrated the capacity to meet contractual goals at reasonable costs.

(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) "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.

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

(ww) "SESA" shall mean the State employment security agencies affiliated with the United States Employment Service, established by the Wayner-Peyser Act of 1933, as amended. The term shall include the system of public employment service offices and Unemployment Insurance offices.

(xx) "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.

(yy) "Special veteran" shall mean an individual who served in the Armed Forces in Indochina or Korea, including the waters adjacent thereto, on or after August 5, 1964, who received other than a dishonorable discharge.

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

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

(bbb) "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.

(ccc) "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.

(ddd) "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.

(eee) "Underemployed" shall mean:

(1) a person who is working part-time but seeking full-time work, or

(2) a person who is working full-time but whose salary relative to his or her family size is below the poverty level.

(fff) "Unemployed persons" 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 para-

graph (fff)(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.

(iii) A person is not to be considered to be available for work if that individual is without a job because of participation in an on-going strike or lock-out at his usual place of employment.

(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 sufficient income to enable such a person and his family to be self-supporting without welfare.

(3) A person who has served on active duty in the U.S. Armed Forces for a period of more than 180 days or was discharged or released from active duty for a service-connected disability, shall immediately be eligible, upon discharge, for participation in a program under Title II of the Act without regard to the previous calendar week unemployment requirement which would otherwise pertain.

(ggg) "Unemployed persons" 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 (2) below, 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 purpose 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

(if) 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 10 hours or has earned no more than \$30 in any calendar week.

(4) A person is not to be considered available for work if he is without a job because of participation in an ongoing strike or lock-out at his usual place of employment.

(5) A person who has served on active duty in the U.S. Armed Forces for a period of more than 180 days or was discharged or released from active duty for a service-connected disability, shall be immediately eligible, upon discharge, for participation in a program under Title II of the Act, without regard to the 30 day unemployment requirement which would otherwise pertain.

(hhh) "Unemployment compensation" shall mean the compensation payable for weeks of unemployment in accordance with the provisions of a State or Federal law, including but not limited to the unemployment compensation laws of the several States, the Railroad Unemployment Insurance Act and 5 U.S.C. Ch. 85 (Federal employees and ex-servicemen's unemployment compensation). This term shall also extend to payments to unemployed individuals under the Disaster Relief Act and other Federal Acts providing assistance to unemployed individuals either as supplemental to State unemployment compensation or in lieu of such compensation.

(iii) "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.

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

(kkk) "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.).

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

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**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 avail-

able 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 a limited number of 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) of this section allocation formula.

(3) Not less than \$2,000,000 of the funds under paragraph (b) of this section 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 (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) of this section 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 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 paragraph (b)(4) of this section and (5) allocation formula, is allocated less than 90 percent of the manpower allotment that was obligated 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) of this section.

(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 Assistant Regional Director for Manpower (ARDM) 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 paragraph (b)(4) of this section 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) of this section.

(4) *Vocational education allocation.* The Secretary shall allocate to the Governors, according to paragraph (b)(4) of this section 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) of this section shall be first utilized by the Secretary to assure each prime sponsor, including a limited number of rural CEP prime sponsors, of funding at the 90 percent level, as set out in paragraph (b)(5)(ii) of this section. The Secretary shall utilize the remainder of the funds available under this paragraph at his discretion, taking into considera-

tion (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 paragraph (a)(3) of this section, which consists of units of local government in more than one State, may be approved by the ARDM 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) 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, (i) 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 (ii) 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 admin-

istrative and programmatic advantages over other methods of delivering services under the Act; and

(5) A limited number of CEP grantees, serving rural areas having existing at the time of the enactment of the Act, 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 multijurisdictional agreement with any unit 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 ARDM 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 ARDM 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 98 apply to such State multijurisdictional agreements unless otherwise stated.

(2) Incentive funds may be provided for an agreement under paragraph (b)(1) of this section 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 ARDM 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 agreements shall be a 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 or 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 comprehensive manpower plan, or has its plan 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) An applicant interested in receiving financial assistance shall submit a preapplication to the ARDM, the Governor and the appropriate State and areawide A-95 clearinghouses (See OMB Circular A-95). The preapplication will consist of the Preapplication for Federal Assistance form Part I, contained in Federal Management Circular (FMC) 74-7 (formerly OMB Circular A-102), with an attachment giving the following information:

(i) Geographical area(s) to be served;  
 (ii) Population of area(s) to be served;  
 (iii) Certification that applicant, except for CEP prime sponsors, has the required general government authority, as defined in § 94.4 of this chapter;

(iv) 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 plan.

(v) Certification that the development of the applicant's plan will be in accordance with the requirements of the Act and regulations (e.g., involvement of local elected officials of the areas to be served); and

(vi) The signature of the chief elected official(s) or chief executive officer(s), as appropriate, of each 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. In either case, submission shall be by a date set by the Secretary (section 102 (c)).

(b) In addition to the preapplication, each consortium of local governments shall, at a date established by the ARDM, submit to the ARDM for his 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. 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 that are members of a consortium; not those governmental units that are 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 within 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 (d) (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 Comprehensive Manpower Plan, and the procedure by which chief

selected 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 the 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, 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) of this section 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) of this section.

**§ 95.12 Prime sponsor designation.**

Upon receipt of a completed preapplication, the ARDM shall determine whether the applicant is eligible to be designated as a prime sponsor and shall notify the applicant of his determination. Exhibit M-2, Notice of Preapplica-



tion 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 Comprehensive Manpower Plan, 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.* The prime sponsor shall have a planning process for the development of its Comprehensive Manpower Plan. 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 organization and the population to be served.

(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 recommendations regarding program plans, and provide for continuing analyses of needs for employment, training, and related services in such areas. Planning Councils should monitor all manpower programs funded under Title I and Title II of the Act and provide for objective evaluations 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 client community (e.g., women, persons of limited English-speaking ability and other minority groups), community-based organizations, the Employment Service, education and training agencies and institutions, business, organized labor, and where appropriate, agriculture. Generally, staff of State or local government agencies would not provide appropriate representation of the client community their agency serves. Persons representative of other interested groups may also be appointed. The prime sponsor shall appoint a chairman 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.

(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 decision-making 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 Employment Service, and any State agency the Governor believes has an interest in manpower or manpower-related services within the State.

(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 client population). Generally, staff of State or local government agencies would not provide appropriate representation under this paragraph.

(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 plans, proposed modifications, and comments thereon;

(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 center on 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. This monitoring role is distinct from the Federal role in that the ARDM reviews the activities of an individual prime sponsor for the purpose of surfacing needs for technical assistance, evaluating performance against plan, and compliance with Federal regulations. The extent and procedures for monitoring prime sponsors and State agencies will be defined by the SMSC and publicized to all prime sponsors and State agencies affected prior to their being implemented, and

(v) Submitting an annual report to the Governor which will 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.

(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.* (1) This section describes the grant application which prime sponsor applicants will use to apply for their allotment of funds under Title I of the Act. A single grant document may be provided by the ARDM for obtaining funds under Titles I and II. Such a document shall contain all the requirements set out for such grants in these regulations. Procedures for special State grants under Title I are in Subpart D of this Part 95 (sec. 105).

(2) A copy of all forms and instructions are contained in the Forms Preparation Handbook.

(b) *Grant application forms.* (1) *Application for Federal Assistance.* The Application for Federal Assistance identifies the 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 form for Part I of the Application for Federal Assistance (Nonconstruction Programs) contained in FMC 74-7 is being used.

(2) *Title I Comprehensive Manpower Plan.* The Title I Comprehensive Manpower Plan is a statement of how the applicant intends to use its Title I funds and to coordinate its activities with other manpower programs and services operating within its jurisdiction. The Title I Comprehensive Manpower Plan consists of the Narrative Description of the Title I Program, the Project Operating Plan, and Occupational Summary, all described below. For consortia the approved consortium agreement shall be a part of the plan.

(i) *Narrative Description of Title I Program.* The Narrative Description of the Title I Program provides for a nar-



rative outline of the proposed program under the Act. It identifies and explains the manpower problems within the applicant's jurisdiction, describes proposed program activities and delivery systems to deal with those problems, and projects the results which may be expected from the program. The Narrative Description of the Title I Program requires a detailed statement on the program including the following items. The Forms Preparation Handbook gives detailed instructions for these items required in the Narrative Description of the Title I Program:

(A) *Objectives and needs for assistance.* (1) Policy statement on purpose of program;

(2) Description of economic conditions;

(3) Description of labor force characteristics;

(4) Explanation of skill shortage occupations;

(5) Definition of manpower needs;

(6) Statement of groups to be served including consideration given to priority groups and occupations;

(7) Statement of goals to be accomplished.

(B) *Results and benefits expected.* (1) Statement relating planned outputs to needs;

(2) Rationale for selection of program activities in the program design;

(3) Statement of how the program design will provide participants with economic self-sufficiency; and

(4) Explanation of how the program will enhance career development.

(C) *Approach.* (1) Description of the planning system and participation of community based organizations;

(2) Statement of strategy for accomplishing goals;

(3) Description of each program activity and service and the enrollee flow;

(4) Description of methods to be used to recruit, select, and determine eligibility of participants;

(5) Description of how persons of limited English-speaking ability will be served if they represent a significant portion of an applicant's program;

(6) Description of the applicant's administrative system including accounting for placements;

(7) Description of allowance payment system;

(8) Description of consideration given to programs of demonstrated effectiveness and explanation of reasons specific delivery agents were selected including reason existing public delivery agents, such as area skills centers and State employment services offices, were not utilized and justification of any duplication of services.

(9) Description of coordination with deliveries of manpower services not supported by the Act;

(10) Justification of administrative costs planned; and

(D) *Geographic location served.* Description of the geographical locations to be served.

(E) *Additional Items relating to State applicants.* (1) A description of arrangements for serving all geographic areas

under its jurisdiction (i.e., balance of State) except for areas served by other prime sponsors:

(2) Description of the functions of the State Manpower Services Council;

(3) Description of State Manpower Services to be undertaken.

(F) *Additional items relating to Public Service Employment Programs.*

(1) Description of unmet public service needs and priorities;

(2) Relationship of types of jobs to public service needs described above;

(3) Justification of funding and job allocation to government agencies;

(4) Description of strategy for serving and matching jobs to special veterans skills;

(5) Description of plan for providing services to significant segments of the population, and disabled veterans, special veterans, and those veterans discharged within four years of the date of application, welfare recipients; and former manpower trainees;

(6) Description of the methods of determining rates of compensation when they differ from what is normally paid by the employer and reasons for the difference;

(7) Description of actions to insure compliance with personnel procedures and collective bargaining agreements for jobs above entry level;

(8) Plans to improve and expand employment and advancement opportunities of the target population;

(9) Description of supervisory training, education and other services to participants;

(10) Explanation of linkages with other programs;

(11) Description of efforts to remove artificial barriers; and

(12) Maintenance of effort verification

(ii) *Project Operating Plan.* The Project Operating Plan requires a prime sponsor to provide a quantitative statement of planned expenditures, enrollment levels, and outcomes for program participants. It requires a prime sponsor to indicate planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services) and by program activity (classroom training, on-the-job training, public service employment, work experience, services to clients, and other activities). It requires also an identification of the number of individuals to be served within the significant segments of the population.

(iii) *Public Service Employment Occupational Summary.* The Occupational Summary requires a prime sponsor operating a public service employment program under the Act to provide a description of proposed job opportunities, occupations and wages, including a comparison of such wages with wages for similar nonsubsidized jobs in the employing agency.

(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:

(I) General Assurances:

(A) Compliance with the Act and regulations;

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

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

(D) Non-discrimination (sec. 703(1) and 612);

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

(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. 602(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 client (sec. 703(4));

(M) Provision of appropriate workman's compensation to all participants in on-the-job training, work experience or public service employment activities. Such workmen's compensation may be provided through insurance for all participants in classroom training, services to clients, or other activities (sec. 703(6));

(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 (sec. 703(11) and 703(7));

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

(P) Training only in occupations which require two or more weeks of pre-employment training, unless there are immediate employment opportunities (secs. 703(9), and 105(a)(6));

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

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

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

(T) Provision for the manpower needs of youth in the area served (sec. 603(15));

(U) Compliance with applicable labor standards pertaining to the work-site or training facility (sec. 111(b), 706);

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

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

(A) Provision of manpower services to those most in need of them, and continued funding of programs of demonstrated effectiveness (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));

(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) Special consideration to unemployed disabled veterans, special veterans and veterans discharged within four years of the date of application in filling public service jobs and special outreach and coordination efforts to serve such veterans (secs. 205(c)(5), 205(c)(26) and 104(b) of the Emergency Jobs and Unemployment Assistance Act of 1974 (P.L. 93-567)).

(C) 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));

(D) 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));

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

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

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

(H) Removal of artificial barriers to public employment by agencies and institutions receiving financial assistance and contributing to the maximum ex-

tent feasible, to the elimination of artificial barriers to employment and occupational advancement (secs. 205(c)(18) and 205(c)(21));

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

(J) Selection of all persons employed, other than necessary technical, supervisory, and administrative personnel, from among unemployed and underemployed persons (sec. 205(c)(20));

(K) 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));

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

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

(N) 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));

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

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

(a) As provided in paragraphs (b) and (c) of this section, each prime sponsor shall provide an opportunity for comment on the application (sections 105(c)(2) and 108).

(b) (1) Each prime sponsor shall publish a summary of the grant application package, including the proposed allocation of funds, in a newspaper or newspapers (including minority newspapers, where feasible) which will provide for a general circulation throughout the area to be served by the prime sponsor's plan. Such publication shall be for three consecutive issues. The publication shall be made 30 days prior to the submission of the application to the ARDM. A copy of the newspaper article shall be transmitted to the ARDM.

(2) The information published shall include the following:

(i) The numbers of individuals to be served and terminated, including the number to be placed in unsubsidized employment;

(ii) The significant segments of the population to be served, and number of planned participants in each segment;

(iii) The program activities and services to be provided by the program in each geographical area and the funds to be planned for each activity and service;

(iv) The total funds in the grant and the distribution of funds by cost categories.

(v) The location and hours when the complete grant application can be reviewed and the address and phone number where comments may be directed;

(vi) A comparison of performance against prior year's plan through the most recent quarter, including items such as:

(A) Comparison of planned and actual enrollments by program activities.

(B) Comparison of planned and actual placements and terminations;

(C) Comparison of planned and actual numbers of individuals in each significant segment;

(D) Comparison of planned and actual expenditures by program activity and cost categories.

(c) In addition to general newspaper circulation, each prime sponsor applicant shall provide a copy of its application for the purpose of commenting thereon, to the Governor and the appropriate State and sub-State A-95 clearinghouse(s) 30 days prior to its submission to the ARDM. It shall provide a summary to appropriate units of general local government with a population of at least 10,000 persons, to Indian prime sponsors, and to labor organizations representing employees engaged in similar work in the same area as that for which enrollees will receive subsidized employment or training.

(d) Comments pursuant to paragraphs (b) and (c) shall be made to the prime sponsor applicant and the ARDM within 30 days of publication. The prime sponsor shall provide copies of these comments to its Prime Sponsor Planning Council and the Governor.

(e) A prime sponsor applicant shall acknowledge any comment made pursuant to this section. It shall inform any party submitting a substantive comment of whether any plan revision will be made in response to the comment and the reasons for the prime sponsor's determination. All substantive comments and responses will be transmitted to the ARDM with the grant application, unless the comments are received after the application's submission, in which case they will be sent separately to the ARDM.

#### § 95.16 Submission of grant application.

(a) Each prime sponsor applicant shall submit its grant application to the ARDM on or before a date set by the Secretary.

(b) A grant application shall include all items set out in § 95.14 of this Part 95.

#### § 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 ARDM 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 (section 105(a)(3)(B)).
- (7) Maximum efforts have been made to meet the goals of the prior year's plan; such efforts shall include monitoring, evaluation, and remedial activities.
- (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 PSE 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 10 percent.
- (9) The prime sponsor has adequate internal administrative controls, accounting requirements, personnel standards, monitoring and evaluation procedures, availability for 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 comprehensive manpower plans have been afforded such an opportunity.
- (11) Any comment on a comprehensive manpower plan 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 (105(a)(6)).
- (13) The public service employment job opportunities satisfy the requirements set forth in § 96.23 of this chapter.

**§ 95.18 Application approval; grant agreement.**

- (a) An application for a grant shall be approved if it meets the requirements of the Act, the regulations promulgated under the Act, other applicable law, and if the ARDM determines that the prime sponsor has demonstrated maximum efforts to meet the goals of the prior year's plan.
- (b) An application for a grant from a consortium, or pursuant to a State multijurisdictional agreement, shall be approved if, in addition, an agreement among the parties has been submitted to and approved by the ARDM.
- (c) A prime sponsor applicant and the Governor shall be notified of action taken on the application. If an application is approved, the ARDM shall provide the prime sponsor with a grant agreement, consisting of the Grant Signature Sheet and the Assurances and Certification Form, and the Comprehensive Manpower Plan which is included by reference. The Comprehensive Manpower Plan shall be attached to the grant agreement.
- (d) The Grant Signature Sheet specifies the amount obligated by the Department, the term of the grant, and is signed by the ARDM and the prime sponsor.

**§ 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 (sec. 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 pro-

vision 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 Modification of grant agreement.**

- (a) A modification to the grant agreement is required when the ARDM requires a change in (1) the term of the grant, (2) the allotment, or (3) the assurances and certifications included in the grant agreement. The procedures for modification of the grant agreement shall be undertaken as described in paragraph (b) through (e) of this section.
- (b) When the term or is changed, the prime sponsor shall also submit revised portions of its Comprehensive Manpower Plan to specifically identify the changes.
- (c) When the term or Title I allotment is changed, the comments and publication procedures provided in § 95.15 shall be followed.
- (d) When the Title I allotment is obligated in increments, each subsequent obligation a new modified grant signature sheet to be signed by representatives of the prime sponsor and the Department of Labor. Such a new signature sheet is not accompanied by a revised Project Operating Plan, and does not require publication or comment procedures.
- (e) A denial of a prime sponsor's request for a grant modification shall be subject to the appeal procedures set out in Part 98.

**§ 95.22 Modification of Comprehensive Manpower Plan.**

- (a) *General.* Prime sponsors may make three types of modifications to Comprehensive Manpower Plans: major, minor, and narrative. An ARDM may require a modification as described in paragraph (e) of this section.
- (b) *Major plan modification.* (1) When a prime sponsor changes his plan or intends to change his plan beyond the levels indicated, a major modification is required. A major modification is not required solely because actual performance varies from plan in excess of such levels. When a plan modification falls into one of the following categories, it will be considered to be a major plan modification:
  - (i) For grants of \$100,000 or less:
    - (A) When the cumulative transfer of funds among program activities or cost categories exceeds \$5,000; or
    - (B) 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 client groups is to be increased or decreased by 15 percent or more.
  - (ii) For grants of over \$100,000:
    - (A) When the cumulative transfer of funds among program activities or cost



categories exceeds \$10,000 or 5 percent of the total grant budget whichever is greater.

(B) 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 client groups is to be increased or decreased by 15 percent or more.

(2) A prime sponsor desiring a major modification shall submit a revised Project Operating Plan and a narrative explanation of the proposed changes to the ARDM. If the proposed changes result in changes to the narrative, rewritten portions of the narrative shall also be submitted. This modification will be forwarded for comment to the Governor, to appropriate units of general local government with a population of at least 10,000 persons, to 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 a summary in a newspaper of general circulation (including minority newspapers, where feasible) in the prime sponsor's area in accordance with the procedures outlined in § 95.15(b). The ARDM shall notify the prime sponsor of final approval or of tentative disapproval within 10 days of receipt of the proposed modification. Final ARDM action on disapproval shall be taken within 30 days of the receipt of the proposed modification. Appeal of any such determination may be obtained through the procedures set out in Part 98 of the regulations.

(c) *Minor plan modification.* A prime sponsor may make any change in its Project Operating Plan which is not set out in paragraph (b) of this section without prior approval, but must show any such change in the first Quarterly Progress Report submitted to the Department after the change has been made. At the same time this report is submitted, an updated Project Operating Plan shall also be submitted to the ARDM. Only those lines and columns affected by the modification need be shown.

(d) *Modification of the Narrative Description of the Title I Program.*

Except as provided below when a prime sponsor changes a portion of its narrative description of the Title I program which does not reflect a change on the Project Operating Plan, it may submit such a change to the ARDM for approval and incorporation into its approved plan. A narrative modification shall be submitted prior to the following items of narrative being changed.

(1) Any change in the allowance payment system, including, but not limited to the condition for waiving allowances.

(2) Substantial change in the program design.

(e) *ARDM required modification.* After consultation with a prime sponsor, modifications may be required by the ARDM as necessary to assure compliance with the regulations or to reflect a change in the economic needs situation of the community. Procedures pertaining

to each kind of modification shall be followed when that modification is initiated under this paragraph.

#### 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 plans and assurances;

(b) Compliance with Part 98 of these regulations;

(c) Establishing priorities for receipt of assistance authorized under the Act taking into account the priorities identified by the Secretary and the significant segments represented among the economically disadvantaged, unemployed, and underemployed residing within its jurisdiction;

(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 (sec. 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 plan.

##### § 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 comprehensive manpower plan; and

(2) Are unemployed (as defined for Title I in section 94.4), or underemployed (as defined in section 94.4), or economically disadvantaged (as defined in section 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) Citizenship shall not be used as a criterion to prevent permanent residents, including permanent resident aliens, from participating in a program to the extent consistent with applicable State or local law. However, no services shall be provided to illegal aliens (those who do not have a bona fide Alien Registration Receipt form, or cannot present other documentation from the Immigration Service allowing them to seek employment).

(e) (1) Prime sponsors shall give special consideration to the needs of eligible disabled veterans, special veterans, and individuals who served in the Armed Forces and who received other than a dishonorable discharge within 4 years before the date of their application. Each prime sponsor in selecting participants for programs funded under Title I of the Act, shall take into consideration the extent that such veterans are available in the area. Specific effort should be made to develop appropriate full or part-time opportunities for such veterans. The prime sponsor should utilize the assistance of the State and local veterans employment service representative in formulating its program objectives.

(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 participants would have also qualified at time of enrollment for Title I, a Title II participant, for whom maximum efforts have been made to find unsubsidized employment, or for whom supplemental training is needed as a prerequisite to a job, may be transferred into or currently enrolled in a program offered by the prime sponsor under Title I of the Act without an intervening period of unemployment (secs. 205(c)(14) and (19) and 105(a)(2)).

##### § 95.33 Types of manpower program activity 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 indi-

viduals in unsubsidized employment, either directly at the outset of program participation as a result of intake assessment or indirectly through provision of training or services (sec. 101).

(b) (1) 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)).

(2) A prime sponsor in designing the types of manpower services that will be funded under the Act and determining the methods for providing these services, shall make an adequate review of the existing services and facilities in the community and give due consideration to the utilization of these facilities. The Comprehensive Manpower Plan shall provide a description of each service including evidence that due consideration has been given to existing facilities which are available from Federal, State, and local agencies, including community-based organizations. The discussion shall provide documentations on the costs, responsiveness, adequacy, and effectiveness of each agencies' services to assure that unnecessary duplication has been avoided.

(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 is in an institutional setting designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses in, for instance, remedial education, training in the pri-

mary 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 as provided in § 95.34 may be paid to participants receiving training or education, provided that such allowances are not paid for any course having a duration in excess of 104 weeks (sec. 111(a)).

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

(iii) *Labor organization consultation.* Appropriate labor organizations should be consulted in the design and conduct of on-the-job training programs where collective bargaining agreements exist with the employer.

(iv) *Participants' benefits.* Wages and other benefits provided to OJT participants shall be in accordance with conditions specified in § 95.35 of this subpart.

(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) of this Part 95. 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 Part 96 of these regulations (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.

(4) *Work experience.* (i) Work experience is a short-term work assignment with a public employer or private non-profit employing agency. It shall be designed to enhance the future employability of youth or to increase the potential of adults in attaining a planned occupational goal. Prime sponsors shall describe in the approved comprehensive employment plan the basic design of their work experience program, including the characteristics of participants who will participate in work experience activity, the objectives of the activity, the duration and expected outcomes of work experience.

(ii) 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 a job setting; short-term employment for recent graduates; and short-term or part-time employment for those youth who have no definite occupational goal and for whom no training or job opportunity immediately exists.

(iii) Work experience activities for adults include 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 have not been working in the competitive labor population for extended periods of time. In addition, it may include short-term employment while a definite occupational goal and a training or job opportunity are being developed.

(iv) 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 manpower training and (E) placement in subsidized or unsubsidized employment.

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

(vi) *Participant benefits.* Each participant in a work experience activity shall receive wages. Wages shall be commensurate with such factors as the types of work performed, the geographical region of the program, and the skill proficiency of the participant, provided that



a participant's hourly rate of pay shall be at least the highest of (A) the minimum wage prescribed by State or local law for similar employment or (B) the minimum hourly wage set out under sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Participants in work experience activities shall be provided workmen's compensation and other fringe benefits at the same level and to the same extent as other employees of the employer, and manpower services, as appropriate.

(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 post placement services described in paragraph (iii) of this paragraph (d)(5) 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) *Manpower Services:* (A) Outreach;
- (B) Intake and assessment;
- (C) Orientation;
- (D) Counseling;
- (E) Job development;
- (F) Job placement; and
- (G) Transportation.

(ii) *Supportive Services:* (A) Health care and medical services;

- (B) Child care;
- (C) Residential support;
- (D) Assistance in securing bonds;

(E) 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

(F) Legal services.

(iii) *Post-placement services.* Manpower and supportive services, as described in paragraphs (i) and (ii) of paragraph (d)(5) of this section may be provided as appropriate to terminated participants who have been placed in unsubsidized employment. These services shall be provided at the discretion of the prime sponsor and shall 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.

(iv) *Participant benefits.* Allowances as described in § 95.34 may be paid to a participant enrolled in services to participants 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 regularly scheduled as the only activity in which the participant is enrolled.

(6) *Other manpower activities.* (1) 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 compre-

hensive manpower plan 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) Revision or establishment of merit systems; and

(D) Development and implementation of affirmative action plans.

(ii) *Participant benefits.* Allowances as described in § 95.34 may be paid to a participant enrolled in other manpower activities as described in this paragraph (6) when such activities are a component of another activity described in § 95.33(d) or when such activities are regularly scheduled as the only activities in which the participant is enrolled and are described in the approved comprehensive manpower plan.

(7) *Combined activities.* (1) 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 paid, 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.

#### § 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)). In addition, the delivery system selected by the prime sponsor shall incorporate a procedure to obtain information concerning receipt of unemployment compensation by participants. The prime sponsor in selecting the delivery system for the payment of participant allowances should give consideration to the use of existing agencies which have experience in operating an allowance payment system. 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 unauthorized allowable payments under this section. This shall include arrangements with:

(i) The State employment security agency for verification of unemployment compensation benefits;

(ii) Local welfare agencies for verification of public assistance payments;

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

(iv) Other units of government for verification of training allowances under other Federal, State or local programs.

(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 it considers appropriate for its particular circumstances. The prime sponsor may want to give consideration to the Unemployment Insurance Service when selecting the delivery agent for allowance payments.

(c) *Eligibility for allowances.* Allowances may be paid to participants for time spent in classroom training, other activities as specified in § 95.33(d)(6), or manpower services such as: assessment, orientation, counseling, and transportation. However, allowances for participation in manpower services or other activities may be provided only if such participation is on a regularly scheduled basis as described in the approved comprehensive manpower plan. Furthermore, no allowances will be paid for any course having a duration in excess of 104 weeks (sec. 111(a)).

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

(e) *Basic allowances.* A basic allowance for one week shall equal, at least, the highest of:

(1) 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

(2) The minimum hourly wage set out under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, multiplied by the number of hours of participation, in which the trainee attends as required, or is absent for good cause; provided that for the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, the provisions of the Fair Labor Standards Act applicable to those areas shall pertain. To compute the number of hours of participation, the prime sponsor may count time spent in classroom training, services to participants, or other activities as specified in § 95.33(d)(6).

(f) *Dependents allowances.* Dependents allowances of \$5 per week for each dependent over two, up to a maximum of four additional dependents, for a total maximum of \$20 for six or more dependents shall be provided to participants in activities for which basic allowances are paid. Participants eligible for dependents allowances who also receive dependents allowances from other



sources shall not be precluded from receiving dependents allowances funded under the Act.

(g) *Incentive allowances for persons receiving public assistance or who are in institutions.* (1) Incentive allowances, at the rate of \$30 per week, are in lieu of basic allowances and 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 may be reduced pro rata for absences without good cause or for part-time participation.

(ii) Incentive allowances shall be disregarded in determining the amount of public assistance payments individuals are entitled to receive under all 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 allowances 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 allowance.* Additional reasonable allowances may be paid to participants to cover extraordinary costs associated with participation in an activity. The circumstances in which additional allowances will be paid shall be described in the approved comprehensive manpower plan.

(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.

(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) An individual's 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 plan.

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

(j) *Waivers of allowance payments.* (1) The payment of all or part of the basic allowance, except dependents allowances, and incentive allowances, described in this section, may, in accordance with paragraph (j) (2), be waived for all participants in a specific course or on a project basis under the conditions described in the approved comprehensive manpower plan or approved modifications to the plan.

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

(i) That the waiver will be applied to the total enrollment in a course or project 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 plan or approved modifications to the plan, 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 project operating plan 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.

(k) *Repayments.* Prime sponsors may require participants to repay the amount of any overpayment of allowances under this part. 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. Where the overpayment was made in the absence of fault on the part of the participant, repayment shall be waived where such recovery would be against equity and good conscience or would otherwise defeat the purposes of the program.

§ 95.35 *Wages; minimum duration of training and reasonable expectation of employment.*

(a) *Wages.* (1) Participants in public service employment programs shall be paid wages as required by Part 96 of these regulations.

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

(3) 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:

(i) The minimum wage rate specified in Section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended;

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

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

(iv) 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.

(4) 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.

(5) Wages in the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, shall be consistent with applicable provisions of the Fair Labor Standards Act of 1938, as amended.

(b) *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)).

(c) *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)).

§ 95.36 *Training for lower wage industries; relocation of industries.*

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, nor may any authority conferred by this Act 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)).

§ 95.37 *Cooperative relationship between prime sponsor and other manpower agencies.*

(a) 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 (sec. 105(a) (3) (D)).

(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.

#### 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. (Sec. 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 under Title I of the Act.

(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) 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 ARDM on a date set by the Secretary. The ARDM shall determine whether the application shall be approved and shall notify the Governor of his determination. A copy of all forms and instructions for the application for Special Grants are contained in the Forms Preparation Handbook.

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

(1) *Application for Federal Assistance.* The form provided in FMC 74-7 for Part I of a grant application for nonconstruction projects is being used for the application for the special grant.

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

(i) *Special Grant Project Operating Plan.* This form will be used for the Special Grant to Governors. The POP for Special Grants is a multiprogram form providing for financial and statistical entries for vocational education projects channeled through the Governor's office, State Manpower Services Council activities, and State Manpower Services program activities. All of the three categories will be funded by one grant.

(ii) *Special Grant Program Narrative.* The narrative for the special grant will be composed of three separate sections as follows:

(A) *Vocational Education Services Program Narrative.* The program narrative contains (1) an explanation of the method used to allocate funds to prime sponsor areas and the rationale for the method used, (2) a summary of all agreements required in § 95.56 between individual prime sponsors and the State Vocational Education Board and (3) a copy of each such agreement. The summary should follow the procedures established for the development of individual program narratives supporting each non-financial agreement. If all of the non-financial 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 ARDM.

(B) *State Manpower Services Council Program Narrative.* A description of the arrangements for the State Manpower Services Councils follows:

(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 making recommendations which will provide more effective overall coordination of manpower services in the State;

(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 and objectives to be accomplished.

(C) *State Manpower Services Program Narrative.* The narrative for this part will provide a specific description for each activity, the planned costs, and the planned results. The Program Narrative Description form contained in the Forms Preparation Handbook requires a detailed statement on the program including the following items:

(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 under 38 U.S.C. 2012(a) in requiring each Federal contractor, and subcontractor under the Act to list all suitable employment openings in State Employment Service local offices. Fulfillment of this responsibility shall be based upon information developed by the Secretary (sec. 106(b)(5));

(5) Description of any arrangements for planning areas to serve geographical regions within the State;

(6) 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:

(A) 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));

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

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

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

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

(iii) *Assurances and certifications.* The assurances and certifications form applicable to Title I and Title II grants will be included in the special grant application and agreement.

#### § 95.53 Application approval and disapproval; grant agreement.

(a) The ARDM 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; and

(2) It meets the conditions for approval of grant applications under Subpart B of this Part 95.

(b) A special grant agreement shall be signed when the grant application is approved by the ARDM. This agreement is composed of a Special Grant Signature Sheet and an Assurances and Certifications Form and the special Grant Plan which is included by reference. The special Grant Plan shall be attached to the grant agreement.



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

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**AUTHORITY:** Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, sec. 702(a), §7 Stat. 839; Pub. L. 93-567, 88 Stat. 184), 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 is found in the provisions of section 702 of the Act. Other relevant sections of the Act are generally noted at the end of each substantive provision of 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 applicants' 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)).

(c) An eligible applicant shall distribute to a program agent those funds that are allotted to the eligible applicant due to the level of unemployment 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 (sec. 204(b) and 102(a)(b)(2)).

(e) (1) Eligible applicants shall distribute funds to program agents, as provided in § 96.2(c) of this Part 96 (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 ARDM 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 concurrence and the review of the ARDM (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 ARDM. 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 these regulations.

##### § 96.12 Eligible applicant designation.

Upon receipt of a completed preapplication the ARDM shall determine whether the applicant is eligible to operate a program under Title II of the Act. The ARDM shall notify the applicant of the determination according to the procedures set forth in § 95.12 of these regulations.

##### § 96.13 Planning process; advisory councils.

To receive financial assistance under Title II of the Act, eligible applicants shall submit an approvable comprehensive Title II plan, as set out in § 96.14 of this Part 96. 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 these regulations.

##### § 96.14 Content and description of grant application.

(a) *General.* (1) This section describes the grant application which the applicant will use to apply for their allotment of funds under Title II of the Act. A single grant document may be provided by the ARDM for obtaining funds under Titles I and II. Such a document shall contain all the requirements set out for such grants in these regulations.

(2) A copy of all forms and instructions are contained in the Forms Preparation Handbook.

(b) *Grant application forms—(1) 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 form for Part I of the Application for Federal Assistance (Nonconstruction) contained in FMC 74-7 is being used.

(2) *The Comprehensive Title II Plan.* The Comprehensive Title II Plan is a

statement of how the eligible applicant intends to use Title II funds and to coordinate its activities with other manpower programs and services operating within its jurisdiction. The Comprehensive Title II Plan consists of the Narrative Description of the Title II Program, the Project Operating Plan (POP), the Supplement to the POP (monthly plan), the Public Service Employment Occupational Summary, and the Program Summary all described below. For consortia, the consortia agreement approved pursuant to § 95.11(b) will be a part of the plan.

(1) *Narrative Description of the Title II Program.* The Narrative Description of the Title II program provides for a narrative outline of the proposed program under Title II of the Act. It identifies and explains the manpower programs within the eligible applicant's jurisdiction, describes proposed program activities and delivery systems to deal with those problems, and projects the results which may be expected from the program. The Narrative Description of the Title II program requires a detailed statement on the program, including the following items:

(a) *Objectives and needs for assistance.* (1) Policy statement on purpose of program;

(2) Description of economic conditions;

(3) Description of labor force characteristics;

(4) Explanation of skill shortage occupations;

(5) Definition of manpower needs;

(6) Statement of groups to be served including consideration given to priority groups and occupations;

(7) Statement of goals to be accomplished;

(b) *Results and benefits expected.* (1) Statement relating planned outputs to needs;

(2) Rationale for selection of program activities;

(3) Statement of how the program design will provide participants with economic self-sufficiency; and

(4) Explanation of how the program will enhance career development.

(c) *Approach.* (1) *Public Service Employment Programs.* (a) Description of unmet public service needs and priorities;

(b) Relationship of types of jobs to public service needs described above;

(c) Justification of funding and job allocation to government agencies and by subarea;

(d) Description of strategy for serving and matching jobs to special veterans skills;

(e) Description of plan for providing services to significant segments, and disabled, special, and recently discharged veterans, welfare recipients, and former manpower trainees;

(f) Description of orientation procedures for participants in a public service employment program;

(g) Description of determination of rates of compensation when they differ from what is normally paid by the employer;

(h) Description of actions to insure compliance with personnel procedures and collective bargaining agreements for jobs above entry level;

(i) Plans to improve and expand employment and advancement opportunities of the target population;

(j) Description of supervisory training, education and other services to participants;

(k) Explanation of linkages with other programs;

(l) Description of efforts to remove artificial barriers; and

(m) Maintenance of effort verification;

(2) Other program activities. (a)

Rationale for selection of activities;

(b) Description of each activity;

(c) Description of enrollee flow and any relationship among activities;

(d) Description of methods to be used to recruit, select, and determine eligibility of participants;

(e) Description of how persons of limited English-speaking ability will be served if they represent a significant portion of an eligible applicant's program;

(f) Explanation of reasons specific delivery agents were selected including reason existing public delivery agents, such as area skill centers and State employment services offices, were not utilized;

(g) Description of coordination with deliveries of manpower services not supported by the Act;

(3) Description of administrative system including accounting for placements and allowance payment system.

(4) Justification of administrative costs planned.

(5) Description of the geographical locations to be served.

(ii) *Project Operating Plan.* The Project Operating Plan requires an eligible applicant to provide a quantitative statement of planned expenditures, enrollment levels, and outcomes for program participants. It requires an eligible applicant to indicate planned expenditures by cost category (administration, wages, allowances, fringe benefits, training and services) and by program activity (public service employment, classroom training, on-the-job training, work experience, services to clients, and other activities). It requires also an identification of the number of individuals to be served within the significant segments of the population.

(iii) *Supplement to the POP (Monthly Plan).* A monthly estimate of total individuals on board at the end of the month and total cumulative expenditures shall be provided. Such monthly plan will reflect the activity for each month during the grant period under Title II.

(iv) *Public Service Employment Occupational Summary.* The Occupational Summary requires an eligible applicant operating a public service employment program under Title II of the Act to provide a description of proposed job opportunities, occupations and wages, including a comparison of such wages with wages for similar nonsubsidized jobs in the employing agency.

(v) *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 areas to be served, the population and employing agencies of each area.

(3) *Assurances and Certifications.* The Assurances and Certifications form is a signature sheet on which the eligible applicant assures and certifies that it will comply with 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. Assurances for Titles I and II are submitted on the same form. The assurances are summarized in § 95.14(b) (3) of these regulations. An additional assurance is required for Title II which concerns selecting participants from areas of substantial unemployment qualifying for assistance.

§ 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 these regulations.

§ 96.16 Submission of grant application; standards for reviewing grant applications.

(a) Each eligible applicant shall submit its grant application to the ARDM 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 as provided in paragraph (a), the ARDM shall use the standards set forth in § 95.17(b) of these regulations.

§ 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 Modification of grant agreement; modification of comprehensive Title II Plan.

(a) The procedures set forth in § 95.21 of these regulations concerning the modification of grant agreements shall apply to grant agreements funded under Title II of the Act.

(b) The procedures set forth in § 95.22 of these regulations shall apply to the modification of the comprehensive Title II plan.

#### Subpart C—Program Operation

§ 96.20 General.

This Subpart C sets out the program operation requirements for eligible appli-

cants and subgrantees. The utilization of funds under Title II of the Act is conditioned upon adherence to the requirements of this subpart, as well as adherence to 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 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 plan including the establishment of hearing procedures, as set out in Part 98 of this title (sec. 205(c)(1));

(g) Assuring that the program will, to the extent feasible, contribute to the elimination of artificial barriers to employment and occupational advancement within its jurisdiction (sec. 205(c)(18)); and

(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).

§ 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 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) Irreconcilable differences between an eligible applicant and a program agent shall be submitted to the ARDM.

(d) If a program agent fails to comply with paragraph (b), it is the responsibility of the eligible applicant, consistent with the regulations, to initiate whatever action is necessary to force the program agent to comply. Such action may include the eligible applicant reallocating funds to an alternative program agent to serve the original area of 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 ARDM.

§ 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 jobs 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 and 205(b)(4));

(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. This distribution should be equitable, based on the ratio of jobs in the area at each governmental level, to the extent such an equitable distribution is feasible based on the foregoing considerations. 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 Title (sec. 205(c)(23)).

(5) Jobs may also be allocated to private non-profit agencies which provide public service employment such as educational, social services and health agencies, within an eligible applicant's jurisdiction where jobs in such agencies may best serve the unemployed population based on the considerations stated in § 96.23(b)(4).

(6) Title II participants may be outstationed at work-stations hosted by Federal agencies provided the employment is geared to the skills and abilities of the participant and is consistent with these regulations. Such employment is subject to the standards contained in Part 98 of these regulations.

(7) Jobs may be located only within the eligible applicant's jurisdiction unless the eligible applicant 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 jurisdiction and be within reasonable commuting distance of the residents of the eligible applicant's jurisdiction.



(8) Jobs will not be "deadend," 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 \$140 a week (\$125 in Puerto Rico, Virgin Islands, or American Samoa)). A less stringent test applies to individuals earning \$200 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 job category 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 (sec. 205(c)(24));

(12) No job will be filled in other than an entry level position in each job category until applicable personnel procedures and collective bargaining agreements have been complied with (sec. 205(c)(24)); and

(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)).

#### § 96.24 Maintenance of effort.

(a) Employment funded under Title II of the Act shall only be in addition to employment which would otherwise be financed by the eligible applicant without assistance under this title (sec. 205(c)(25)).

(b) To assure maintenance of effort, a public service employment program under Title II 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 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 and other subgrantees may not terminate, lay-off or reduce the normal working hours of an employee for the purpose of hiring an individual under a Title II program (secs. 205(c)(8) and 208(a)(1)(B)). However, the hiring of former employees who lost their jobs due to a bona fide lay-off is not prohibited if it does not constitute a violation of the maintenance of effort provisions of the Act and these regulations.

(d) Eligible applicants shall, at the direction of the ARDM, submit budgetary expenditure documentation, revenue statements, and other information relevant to determination under this section.

#### § 96.25 Responsibility for selecting participants.

(a) The ultimate responsibility for the selection of participants rests with the eligible applicant. 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 the information on which this documentation is based. The selecting agency shall also retain for a reasonable period of time 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 the application contains is true, to the best of the applicant's knowledge.

#### § 96.26 Place of residence for participants.

(a) *General.* (1) At the time of both application and selection, program participants shall reside in an area of substantial unemployment within the jurisdiction of the eligible applicant or program agent (sec. 205(c)(3)).

(2) An eligible applicant may receive additional funds as a subgrantee of another eligible applicant to enroll residents of the other eligible applicant's jurisdiction in any public service job or other manpower program under Title II. The eligible applicant receiving funds must offer jobs or programs which are within reasonable commuting distance of residents of the other eligible applicant'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 (sec. 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 under § 94.4(ggg)(2) or § 94.4(eee) of these regulations.

(b) An individual who has served on active duty in the U.S. Armed Forces 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, for participation in a program under Title II of the Act without regard to the 30-day unemployment requirement which would otherwise pertain (sec. 20013, Vietnam Era Veterans' Readjustment Assistance Act of 1972, Pub. L. 92-540).

(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, upon expiration of the EEA grant, into the Title II grant program covering that geographical area, provided that maximum efforts have been made to place such an individual in unsubsidized employment or training.

(d) Title I enrollees 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 a Title I program (sec. 105(a)(2)).

(e) A participant in an 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) Citizenship will not be used as a criterion to prevent permanent residents, including permanent resident aliens, from participating in a program under Title II to the extent consistent with applicable State law. However, no services shall be provided to illegal aliens (those who do not have a bona fide Alien Registration Receipt form or cannot present other documentation from the Immigration and Naturalization Service which shows they may seek employment).

(h) 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)).

**§ 96.28 Special consideration for most severely disadvantaged persons.**

Special consideration in enrolling applicants in public service employment and other manpower activities provided under Title II shall be given 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).

**§ 96.29 Serving significant segments of the population.**

(a) The significant segments of an eligible applicant's population shall be served on an equitable basis. For example, individuals from each significant segment could be placed in programs under Title II in a manner consistent with their incidence in the unemployed population of the eligible applicant's jurisdiction or other measures of equity could be utilized (secs. 205(c) (2) and 208(b)).

(b) Each eligible applicant shall monitor its program to assure that the significant segments of its population are being served in accordance with the requirements of this section.

**§ 96.30 Groups to be provided special consideration.**

(a) *Veterans.* (1) Special consideration shall be given to eligible disabled veterans, special veterans, and individuals who served in the Armed Forces and who received other than a dishonorable discharge within four years before the date of their application. Each eligible applicant in selecting participants for programs funded under Title II of the Act, shall take into consideration the extent that such veterans are available in the area. Specific effort should be made to develop appropriate full or part-time opportunities for such veterans. In order to insure special consideration for vet-

erans, all public service employment vacancies under Title II, except those to which former employees are being recalled, must be listed with the State employment service at least 48 hours before such vacancies are filled. During this period, the employment service will refer those veterans specified above. If sufficient numbers of veterans are not available, the employment service, upon request, may also refer members of other significant segments. All other applicants are to be referred after the 48-hour period (sec. 205(c) (5)). The eligible applicant should utilize the assistance of State and local veterans employment representatives in formulating its program objectives.

(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.* In designing an eligible applicant's plan and enrolling individuals in manpower programs funded under Title II of the Act, special consideration shall be given to welfare recipients.

(c) *Former manpower trainees.* Special consideration shall be given, in developing an eligible applicant's plan and enrolling individuals in the manpower programs funded under Title II of the Act, to persons who have participated in manpower training programs and for whom work opportunities are not otherwise immediately available (sec. 205(c) (9)).

**§ 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. Such training may be provided with funds made available under Title I (see § 95.32(f) of these regulations) or Title II (consistent with the limitation set forth in § 96.36). Such 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 (1) 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 (2) 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 worksite.

**§ 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 (sec. 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) To carry out the intent of paragraph (b), 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:

(1) Placing half of the cumulative participants in unsubsidized private or public sector employment;

(2) 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.

(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 ARDM when in the ARDM'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 ARDM, 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 wage which would be applicable to the employee under the Fair Labor Standards Act of 1938, if section 6(a) (1) of the Act applied to the participant and if he were not exempt under section 13 thereof;

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

(3) The prevailing rate of pay for persons employed in similar public occupations by the same employer (sec. 208(a)).

(b) *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 or general salary increase that would mean a salary in excess of \$10,000, the participant is entitled to it if other employees similarly employed would be promoted. The employer must pay the amount above \$10,000 from his own 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)(2)).

(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 of this Part 96. 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 Limitation on funds.

(a) Not less than 90 percent (90%) of the funds appropriated pursuant to Title II of 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)).

(b) The remaining 10 percent (10%) may be used for administration, training, or supportive services to participants in public service employment.

(c) An eligible applicant which does not itself administer the entire program may not retain the entire 10 percent (10%) mentioned in paragraph (b) for its own use unless this is agreed to by its subgrantees. At least 5 percent (5%) of a subgrantee's grant must be available to it for costs other than wages and fringe benefits.

#### § 96.37 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 96 for programs authorized under Title I and Part A of Title III of the Act. Where Title II funds are used for activities authorized under other Titles of the Act, all provisions under this Part 96, except § 96.20, § 96.21, § 96.23, § 96.24, § 96.27(e) and (h), § 96.31, § 96.33, § 96.34, and § 96.36, shall apply in addition to those provisions applicable for programs under Title I and 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 Manpower 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 ARDM in Part 96 shall be read as Director, Division of Indian Manpower 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) of this section 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 of this part (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 these regulations; and

(ii) A governing body. A governing body is defined as one having substantive powers, consists of duly elected representatives who have authority to provide services and to enter into contracts and grants on behalf of the people who elected them, 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 Alaska entities which do not meet the criteria to be an independent eligible applicant as outlined in paragraph (a)(1) of the section may participate in a consortium as set forth below:

(1) Consortium including an independently eligible applicant. An Indian or Alaskan entity may enter into a consortium with an eligible applicant under paragraph (a)(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 independent eligible applicant. A consortium may be formed by Indian or Alaskan entities, none of which is eligible to be an independent 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 the regulations).

(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 Councils, Title I prime sponsor and Tribal Chairmen's Associations.

(c) Where there are Indian or Alaskan entities which do not meet the eligibility criteria to be an independent 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 independent 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 Manpower Programs funded under section 302 of the Act. Applications shall be post-marked no later than March 1, in any given year.

(b) Each potentially eligible applicant will receive a tentative allocation against which it will prepare and submit its grant application.

(c) The grant application will consist of the Employment Plan and Grant Sheet. The Employment Plan shall consist of:

- (i) A full narrative description of the program;
- (ii) A Project Operating Plan;
- (iii) An occupational summary;
- (iv) A program summary; and
- (v) Assurances and certifications.

**§ 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 Manpower 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 Manpower 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 these 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 Manpower Programs.

**§ 96.46 Assistance by the Director, Division of Indian Manpower Programs.**

Applicants eligible under this Subpart D may request technical assistance from the Director of Indian Manpower Programs in the preparation, submission and/or implementation of a Title II program. Requests for assistance should be addressed to: Director, Division of Indian Manpower 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" means 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 has a population of less than 1,000 persons and cannot hire program participants without an immediate family member being included, the Director, Division of Indian Manpower Programs may waive the requirement of paragraph (a) of this section 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 § 96.27 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(D).

**§ 96.51 Travel requirements.**

Travel regulations for grantees under this subpart shall be consistent with the travel regulations that will be provided under Subtitle A, Part 97, Subpart B, Indian Manpower Programs, § 97.161(7) Travel Regulations.

**PART 98—ADMINISTRATIVE PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT**

**Subpart A—Grant Administration**

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- 98.30 General.
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- 98.47 Hearings.
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- 98.49 Judicial review.

**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—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 34 CFR Part 256 (Attachment J of FMC 74-7): (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 ARDM. 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 (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 an Integrated Grant Administration Program (IGA) he may authorize direct advances from the Department of Labor 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) of this section is not feasible, arrangements may be made to provide cash on a working capital advance basis, as described in § 98.4(c).

**§ 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;

(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 ARDM 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 ARDM will consider the grantee's ability to satisfy the criteria of § 98.2(a), particularly the accounting and recordkeeping 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.

(d) Prime sponsors other than State and local governments which are operating programs under Titles I and II may be required by the ARDM 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 ARDM 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 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; 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 and a Quarterly Progress 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; and

(3) traceable to source documentation of the unit transaction. 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 (section 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 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 these 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 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 re-

sults of programs under the Act. As a result of such audits a report including appropriate recommendations will be issued to the Manpower 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. (Section 713(1).)

(e) Each grantee shall arrange for an independent audit of each of its contractors and subgrantees at least once every two years. Audits may be conducted by the grantee, by State and local government audit staffs, or by certified public accountants and audit firms under contract to the grantee. All audits performed by the grantee shall be conducted in accordance with the provisions of paragraph (d) of this section and shall not be subject to prior approval by the ARDM. The cost of these audits shall be considered a part of the grantee's administrative cost and funded from its grant.

(f) (1) Upon making a new grant or a significant increase in the funding level of an on-going grant, the Assistant Secretary for Manpower may request the Assistant Secretary for Administration and Management, Department of Labor to 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, 98.3, 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 Assistant Regional Director of Audit.

(3) Grantee's shall respond in writing to the findings, conclusions and recommendations in the audit reports when requested to do so by the ARDM. Unless an extension of time is expressly granted, the response shall be submitted to the responsible Assistant Regional Director for Manpower with a copy to the responsible Assistant Regional Director of 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 ARDM will consider the grantee's response and any additional information provided by the prime sponsor when determining whether specific expenditures should be disallowed. The ap-

propriate ARDM will notify the prime sponsor in writing of determination to disallow expenditures.

#### § 98.7 Reporting requirements in general.

Each grantee will be required to submit three periodic reports which will be used by the Secretary to assess its performance in carrying out the objectives of the Act. These three reports are: (a) The Quarterly Progress Report, (b) The Quarterly Summary of Participant Characteristics Report, and (c) The Report of Federal Cash Transactions (Sections 313(b) and 713). Grantees operating Title II programs will also be required to submit the monthly report. Detailed descriptions of these forms are in the Forms Preparation Handbook.

#### § 98.8 Quarterly Progress Report.

(a) The Quarterly Progress Report will be used to measure accomplishments in achieving objectives stated in the Project Operating Plan. It also constitutes the grantee's statement of costs incurred and contains its certification of the correctness of the costs reported.

(b) A grantee shall include the following items in the report together with a comparison of the same items as they appear in the Project Operating Plan for the period of the report:

(1) The total number of individuals served with granted funds during the grant period;

(2) The total number of individuals (participants) placed on self-sustaining employment at termination from the project and the number entering school, other training or military service;

(3) The level of enrollment associated with the following program activities;

(4) The distribution of total accrued expenditures among cost categories; and

(5) The number of individuals within each significant segment of the population being served by the program.

(c) If performance goals are not being achieved, the ARDM may request additional information from grantees including reasons for the failure to achieve the goals.

(d) The Quarterly Progress Report will also permit grantees to report on 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.

(e) The Quarterly Progress Report will be prepared to coincide with the ending dates of Federal fiscal year quarters.

This report should be sent by the grantee to be received by the ARDM 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 report, covering the entire grant period will be required.

(f) The Quarterly Progress Report will be submitted by the grantee to the Governor of the State.



(g) Accountability must be maintained by the grantee for each of the activities authorized under the Act. Therefore, a separate report will be required for Title I and Title II and the special grant.

(h) The Secretary reserves the right to require the submittal of this report by grantees more frequently than quarterly in cases of major deviation from the Project Operating Plan.

(i) *Monthly report.* Grantees operating a Title II funded program will submit the monthly report on which they will record the cumulative participants served and terminated, the number of participants on board at the end of the month, the number of participants who had previously been employed by the grantee or agent, 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 ARDM no later than 10 working days after the end of the report period.

(j) 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 Summary of Participant Characteristics Report contains aggregate characteristics data on all participants in the program. The Summary is to be submitted to the ARDM with the Quarterly Progress Report.

(b) The Summary will include characteristics data aggregated for all participants, as set forth in the report form and will include all participants terminating or placed during the reporting period.

(c) The Summary will also aggregate wages before enrollment in the program and after placement and show the median wage for these two categories.

(d) A separate report will be required for Title I and Title II.

(e) Specific reporting procedures and appropriate definitions will be furnished to each grantee in the Forms Preparation Handbook.

#### § 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(1) and 702(b)).

(b) *Reallocation based on nonperformance.* (1) Pursuant to section 103(1)

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 § 98.47.

(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 plan for the area, in whole or in part;

(ii) make no further payments under this 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 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) of this section, the Secretary must determine that:

(i) the grantee's plan will be carried out without expending all the funds previously made available for that plan; and

(ii) the excess funds identified under paragraph (c) (2) (i) of this section 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) of this section, 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 ARDM 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 cost includes both direct and indirect costs. Costs are intended to be directed to increase the employability of participants.

(i) *Direct and indirect costs.* Direct and indirect costs. Included in administrative costs are both direct and indirect costs. Direct costs are those which can be specifically identified as relating to the project. Indirect costs are those computed by application of an indirect cost rate. In determining the reasonableness of indirect costs, reliance will be placed on procedures established pursuant to 41 CFR Part 1-15, including reliance on determinations 41 CFR Part 1-15.

(ii) *Policies and procedures.* Cost allocation plans and indirect cost proposals shall be developed and approved in accordance with applicable cost principles and procedures set forth in 41 CFR 1-3.7 and 41 CFR 1-15. For FY 1976, the Department shall must approve in advance all prime sponsors' indirect cost allocations used to determine charges to grants under the Act. Where the Department has the responsibility for establishing the indirect cost rate, the reasonableness of indirect costs claimed by State and local governments will be determined in accordance with procedures established pursuant to 41 CFR 1-15.7 (FMC 74-4), including reliance on determination made by other Federal agencies.

(b) *Restriction on use of funds.* (1) Federal funds used for public service employment programs under Title I and for any program under Title II of the Act shall not be used for the acquisition of or for the rental or leasing of administrative supplies, equipment, materials, or real property, whether these expenses are budgeted as a direct or indirect cost, provided however that training materials, work tools, uniforms, or other equipment ordinarily provided by the employer to his regular employees, and which are for the benefit and ownership



of the participants may be considered fringe benefit costs for public service employment participants. If such supplies are not ordinarily furnished to regular employees, the prime sponsor may not use grant funds designated for wages and fringe benefits to finance them (sec. 208(a)(7)).

(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.

(c) *Expenditures for repairs, maintenance and capital improvements and construction.* (1) Title I funds may not be expended for new construction (including additions to existing facilities) but may be expended for building repairs, maintenance, and capital improvements to existing facilities. These costs must be related to a facility or building which is used primarily for programs under the Act (sec. 702(b)).

(2) No funds for new construction (including additions to existing facilities) are allowable except as part of a training program in a construction occupation or for the payment of wages for public service employment participants. Training costs may include such items as, instructors salaries, training tools and books, and allowances or wages to participants (if appropriate) but may not include materials used in construction or land acquisitions. Construction costs for training programs shall be allowable only when such construction would not normally be performed by an outside contractor.

(d) *Allowable cost categories.* Allowable costs shall be reported against the following cost categories: Administration; wages; training; fringe benefits; allowances; and services (sec. 101). (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 costs categories.

(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; (Insurance with comparable coverage to workmens compensation for participants enrolled in classroom training and services to clients is considered to be administrative cost).

(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. 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) of this section, 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) of this section, Services.

(6) Allowable costs which do not fall into any of the above classifications will be charged to administration.

(7) When contractors bill the grantee with a single unit charge 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. If this cannot be done, an estimate of the breakdown of the single charge among cost categories will be obtained. 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 costs 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. 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, workmen's compensation insurance; retirement benefits provided such benefits are granted under an approved plan; and such training materials, work tools, uniforms, or other equipment which may be charged to the fringe benefits

category under Public Service Employment programs, in accordance with § 98.12(b)(1).

(3) *Allowances.* All allowances paid to program participants pursuant to § 95.34 of these regulations shall be charged to this cost category.

(4) *Training.* Training costs include, but are not limited to the following: Salaries and fringe benefits of personnel engaged in providing training; books and other teaching aids; equipment and materials used in providing training to participants; and that part of entrance and tuition fees which represent instructional costs having a direct and immediate impact on participants. The following are examples of costs not properly chargeable to Training: General and administrative costs of the training facility; supervision, clerical support, and training (skill maintenance and upgrading) of instructors; staff travel; rents, utilities, and other facilities costs; supplies and equipment not used directly in the course of participant training; 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 benefiting uses.

(5) *Services.* (i) Services include, but are not limited to supportive and manpower services, as set forth in § 95.33 (d)(5).

(ii) Supportive services include child care, health care and medical and dental services, residential support, assistance in securing bonding, and family planning.

(iii) Manpower services include outreach, intake and assessment, orientation, counseling, job development, and job placement.

(iv) Allowable services costs include, but are not limited to salaries and fringe benefits 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 participants. Transportation of participants is properly chargeable to Services only where it cannot reasonably be considered to be merely incidental to providing employment, training, and services which themselves directly benefit participants. For example, if rural participants have to be transported over long distances in order to reach work or training sites, particularly where no public transportation service is available, the cost of chartering or purchasing a bus may be charged to Services.

(v) The following are examples of cost not properly chargeable to Services: General and administrative costs of the services provided; supervision, clerical support, staff training, staff travel, rent

and other facilities costs, and costs of supplies, materials, and equipment not used directly in providing services to participants.

(6) *Administrative costs.* Administrative costs shall be limited to those necessary to effectively operate the program. They should 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)(1) sets forth an explanation of how such additional 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 § 96.36 (sec. 108(d)(2)).

(ii) Supportive costs are comprised of general and administrative costs, overhead, and similar costs 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, transportation, maintenance, and similar functions, related materials, supplies, equipment, and office space costs, and staff training and morale.

(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 management and support functions of an organization nor directly and immediately affect participants. Included are direct program salaries and fringe benefits of supervisory and clerical personnel, program analysts, labor market analysts, and project directors. In addition, all costs of materials, supplies and equipment which are not solely identifiable with the provision of training and services to participants are included here as are all costs of space and staff travel identifiable with direct program effort. Some examples of administrative costs included here are the salary of a clerical assistant to an instructor, that part of an instructor's salary representing the time he spends supervising other instructors, desk-top supplies used in participant training and in general office administration, a job developer's travel costs, rent, depreciation, or maintenance of classroom training facility, consultants services under contract not involving direct training or services to participants, cost incurred in the establishment and maintenance of State Manpower Services Councils or Prime Sponsor Planning Councils or in publishing a Comprehensive Manpower Plan, and costs of providing technical assistance to contractor and subgrantee staff.

(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. When this is done, costs shall be charged to the subsidized employment program

activities, either transitional or for work experience.

#### § 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(d). The extent to which these cost categories are chargeable to specific program activities is set forth below (sec. 101).

(a) *Classroom training.* Cost categories chargeable are: administration, training, allowances, and services.

(b) *On-the-job training.* Cost categories chargeable are: administration; training; services; and wages and fringe benefits (attributable to public or private nonprofit employers only).

(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) Each prime sponsor and eligible applicant shall assure that it will maintain personnel policies and practices for its employees in accord with State and local laws and regulations that adequately reflect the merit principles declared in the Intergovernmental Personnel Act of 1970 (Pub. L. 91-648). Prime sponsors may meet this requirement by certifying compliance with uniform Federal Standards for a Merit System of Personnel Administration (45 CFR Part 70) including any amendments thereto (sec. 704(14)).

(b) Except as provided in paragraph (c) of this section, any prime sponsor or eligible applicant's personnel system that has not been certified previously as meeting these standards for other Federal grant programs shall certify that it will

take necessary action to provide for merit based personnel system coverage within a reasonable period.

(c) Any nongovernmental prime sponsor, or administrative unit for a consortium which is not a unit of government, is not subject to the requirements of paragraphs (a) and (b) of this section. 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 exempt under paragraph (c) of this section shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluation, and employee management relations.

(e) Prime sponsors and eligible applicants are encouraged to include on their staffs individuals who are representative of the population to be served by the program.

#### § 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 (sec. 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 activities or allowances for any participant or to expend less during the effective period of the contract or grant than those sums called for in the comprehensive manpower plan. Any such reduction in expenditures may be deemed sufficient cause for termination (sec. 108(b)(2) and 108(d)).

#### § 98.16 Termination of grant.

(a) If a grantee violates or permits a subgrantee 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 grant, the Secretary may terminate the grant in whole or in part unless the grantee causes such violation to be corrected within a period of 30 days after receipt of notice specifying the violation or the determination of the Secretary, pursuant to a hearing under Part 98, if a hearing has been held.

(b) In emergency situations where it is necessary to protect the integrity of any program established under the Act, the Secretary may without regard to the hearing process under this Part 98 suspend payment and withdraw unexpended funds as he deems appropriate under the



grant and made alternate temporary arrangements to carry out the grant program. In such situations, the Secretary shall notify the grantee of his action and set a date for a prompt hearing on the matter.

(c) Termination shall be affected 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)).

§ 98.17 Grant closeout procedures.

(a) The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor. The following procedures will be complied with during this process of determination.

(b) The ARDM shall notify each grantee that its grant will expire on a specified date. If the grant is funded by letter of credit the ARDM shall notify the grantee that the letter of credit is being cancelled/adjusted and that reimbursement for the balance of allowable or allowable costs under the grant will be made by Treasury checks upon submission and approval of invoices.

(c) The ARDM shall notify each grantee steps to be taken in the closeout process which includes the following: (1) An immediate refund to the ARDM of any unencumbered balance of cash drawn down from the letter of credit or advanced by Treasury checks. Items to be included in the refund checks are detailed in the Forms Preparation Handbook.

(2) The following financial and inventory reports, as described in the Forms Preparation Handbook will be submitted to the ARDM:

- (i) A final report of Federal Cash Transactions;
- (ii) Grantee's Assignment of Refunds, Rebates and Credits;
- (iii) Bank Statement-Special Bank/Financial Account;
- (iv) Cancellation/Adjustment Fidelity Bond;
- (v) List of possible claimants for unclaimed checks cancelled or payment stopped;

- (vi) Grant Closeout Tax Certification;
- (vii) Government Property Inventory;
- (viii) Inventory Certificate.

(3) The Grantee's Release form, as described in the Forms Preparation Handbook, will be submitted to the ARDM.

(4) A final Quarterly Progress Report as described in the Forms Preparation Handbook will be prepared and sent to the ARDM for each grant and Title under which programs were conducted under the Act.

(5) A final Summary of Participant Characteristics Report, as described in the Forms Preparation Handbook, shall be prepared and sent to the ARDM.

(d) Upon closeout, the ARDM will insure that: (1) Prompt payment is made to the prime sponsor or eligible applicant for reimbursement of costs under the grant being closed out.

(2) After the final reports are received, a settlement is made for any upward or downward adjustments which are made to the Federal share of the costs.

(3) Final program and fiscal audits are performed as soon as possible after the completion of termination date of the grant.

(e) Procedures for closeout of grants contained in the Forms Preparation Handbook will contain instructions concerning subgrants or contracts which extend beyond the specified termination date of the grant under § 98.27.

§ 98.18 Maintenance and retention of records.

(a) Grantees are required to maintain records on each program participant. The following types of information shall be recorded:

- (1) Personal identifying information.
- (2) Residence.
- (3) Work history of the participant.
- (4) Program activities in which the individual participated.
- (5) Supportive services received by the participant.
- (6) 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. No Federal requirements for records retention which exceed those established by State or local governments shall be otherwise imposed, with the following qualifications:

- (i) Records shall be retained beyond the 3-year period if audit findings have not been resolved.
- (ii) Records for nonexpendable property acquired with Federal grant funds shall be retained for 3 years after its disposition.
- (iii) When grant program records are transferred to or maintained by the Sec-

retary, the 3-year retention requirement will not be applicable to the grantee which had administered that grant program.

(2) The retention period shall start from the date of submission of the annual or final expenditure report, whichever applies to the particular grant.

(3) The substitution of microfilm copies in lieu of original records may be authorized by the ARDM 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 needs such records for joint use.

(5) (a) The grantee agrees to maintain the confidentiality of any information regarding applicants, project participants or their immediate families that identifies or may be used to identify them, and which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the permission of the applicant or participant, such information 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.

(b) A grantee may make information available to the public related to participants in a public service employment program to the same degree it makes information available about its own employees in the governmental unit.

§ 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).

(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 implement 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 Federal grantor agency (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 program objectives (FMC 74-7).

(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 standards.

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) and all subgrants are 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 ARDM 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.

#### § 98.21 Nondiscrimination and equal employment opportunities.

(a) *Nondiscrimination generally.* Every grant made pursuant to this part 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 paragraph (b) (2) of this section, 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 that a grantee has failed to comply with the requirements of paragraph (a) of 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 functions provided by Title VI of the Civil Rights Act of 1964 (42, USC 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 Secretary of Labor 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 (a) 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. The grantee may, as one possible 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 comprehensive manpower plan 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.

The provisions of this section are applicable as stated, except that the requirements found in § 96.44 shall not be superceded.

(1) *Restriction.* No grantee, subgrantee or employing agency may hire a person in an administrative capacity or public service employment position funded under the Act if a member of his or her immediate family is employed in an administrative capacity for the same grantee, subgrantee or employing agency. *Provided, however,* That nothing in this paragraph shall be construed to prohibit an otherwise eligible individual from par-

ticipating in any program under the Act. 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. In regard to contracts; no person may be hired into an administrative position funded under the act if a member of his or her immediate family is employed in an administrative capacity for the same contractor.

(b) *Definitions.* (1) For purposes of this section, 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 "administrative capacity" includes: those persons who have overall administrative responsibility for a program, including persons who have selection, hiring, placement or supervisory responsibilities for public service employment participants.

#### § 98.23 Special limitations on participant activities.

(a) (1) *Political activities.* (i) No program under this part may involve political activities. (ii) Neither the program nor the funds provided thereof, nor the personnel employed in the administration of the program, shall be in any way or to any extent be engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code (sec. 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 (sec. 208(g) and 710).

(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) *Sectarian activities.* No participant in any program under this part 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)).

#### § 98.24 General benefits and working conditions for program participants.

(a) Each participant in an on-the-job training, work experience or public service employment program under the Act shall be assured of appropriate work-

men's compensation, health insurance, unemployment insurance and other benefits at the same levels and to the same extent as other employees in the employment situation, 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)). Each participant in a classroom training program and participants enrolled in services to clients and other activities shall be assured appropriate insurance coverage comparable to the coverage provided by workmens compensation. The cost of this insurance shall be charged to administration as provided in § 98.12(e)(2).

(b) 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)).

(c) 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 Public Law 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 benefits for participants.

(a) While the mass payment of retirement benefits is not encouraged, the Act does not prohibit payment into the retirement fund on behalf of participants in on-the-job training in public or private non-profit and public service employment where such payments are warranted, as specified in paragraph (c) of this section.

(b) Expenditures may be made from program funds for payments under the Social Security Act.

(c) Expenditures for retirement fund payments for participants may be made under any of the following conditions:

(1) Payments are for retirement benefits that are part of a consolidated package, including such benefits as health insurance and workmen's compensation, if separation of the benefits is not allowed;

(2) Payments are for participants who are immediately hired into positions normally covered by the employing agency's retirement system.

(3) Payments are for participants whom the employing agency or another employer intends to hire into permanent jobs at some future date, provided that:

(i) Payments on behalf of such participants are made into and retained in a reserve account, and not paid into the retirement fund until the participant has acquired regular employee status; and

(ii) If regular employment occurs with other than the employing agency, retirement fund payments may be allowed only if the participant is employed within the

State, and the retirement benefits are portable; or

(4) Payments are for retirement benefits required by Federal, State, or local law, or for retirement plans set up by State or local law which will not permit the exclusion of participants from coverage.

#### § 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 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 proposes to take an adverse action against a participant, such procedures shall also include a notice setting forth the grounds for any adverse action proposed to be taken by the prime sponsor or eligible applicant and giving the participant an opportunity to respond.

(b) 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 other aggrieved party.

(c) 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 Part 98.

No individual subject to the issue resolution requirements of this section may initiate the hearing procedures of Part 98 until all remedies under this section have been exhausted.

#### § 98.27 Grantee contracts and subgrants.

(a) Contracts may be entered into between the grantee and any party, public or private, for purposes set forth in an approved Comprehensive Manpower Plan except as indicated in paragraph (c) of this section. The procurement of these contracts shall be in conformance with the standards 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. The grantee is responsible for development, approval and operation of all contracts and subgrants and shall require that its con-

tractors and subgrantees adhere to the requirements of the Act, regulations promulgated under the Act, and other applicable law. It shall require contractors and subgrantees to maintain effective control and accountability over all funds, property and other assets covered by the contract or subgrant (sec. 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 cancel the contract or subgrant. 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, 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 grant. 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 grant under the Act. The grantee is authorized to enter into contracts or subgrants which extend past the termination date of the grant 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.

Participants in a program under Title I 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.

#### Subpart B—Assessment and Evaluation

##### § 98.30 General.

This Subpart B sets forth the assessment and evaluation responsibilities of the grantees (§ 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 plan and measuring the effectiveness and impact of its program in resolving manpower problems identified in that plan (sections 105(a)(1)(B) and 703(14)).

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 (sections 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 (sections 313 (b) and 703(12)). The grantee shall implement and maintain the necessary recordkeeping 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 (section 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 plans 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 (sections 105 (a) and (b), 108(d), and 703).

(d) The grantee shall cooperate with the Secretary's evaluation and assessments by providing special report 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 plans 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 plan in carrying out the purposes and provisions of the Act, and has demonstrated maximum efforts to implement the provisions in its prior year's plan.

(1) The Secretary shall assess the grantee's program and activities in order to determine compliance with assurances and certifications of its plan, compliance with the purposes and provisions of the Act, and performance in the achievement of goals and objectives specified in the approved plan (sections 105, 108(d), and 703).

(2) Such assessment shall be conducted through the review of required periodic 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, the investigation of allegations or complaints, or other examination as deemed necessary and appropriate by the Secretary (sections 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) (section 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 (section 313(b)).

(e) Evaluations carried out in accordance with paragraph (d) of this section may be conducted directly by Department of Labor staff or through contract, grant or other arrangement, as the Secretary deems necessary or appropriate (section 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 (section 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.

**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 (Section 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, 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 of 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 underdeveloped 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 ARDM. 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 ARDM upon notice to the last known address of the complainant.

**§ 98.43 Form.**

(a) 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, Comprehensive Manpower Plan, 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 ARDM 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 ARDM 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 Comprehensive Manpower Plan.

(1) If an investigation pursuant to paragraph (a) of this section indicates to the ARDM a failure to comply with the Act, the regulations, or the Comprehensive Manpower Plan, the ARDM 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 subparagraph (a)(1) of this section, the ARDM 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 Comprehensive Manpower Plan, 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 ARDM receives a formal allegation from an affected unit of general local government that a grantee has changed its Comprehensive Manpower Plan so that it no longer complies with section 105 of the Act, or that in the administration of the plan there is a failure to comply substantially with any provision of the plan or with the requirements of section 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, of § 98.46, and the issue has not been resolved informally, the Secretary or ARDM 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 ARDM 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.

(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 laws, 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 its 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 noncompliance, 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.

**PROPOSED RULES**

10867

Signed in Washington, D.C. this 4th  
day of March 1975.

**PETER J. BRENNAN,**  
*Secretary of Labor.*

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