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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

[Docket No. ETA-2017-0005]

RIN 1205-AB79

Senior Community Service Employment Program; Performance Accountability

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Interim Final Rule (IFR) revising performance accountability measures for the Senior Community Service Employment Program (SCSEP). Revised measures are necessary because the Older Americans Act Reauthorization Act of 2016 (OAA) amended the measures of performance for the SCSEP program in large part to align them with the performance measures mandated for programs under the Workforce Innovation and Opportunity Act (WIOA). This IFR revises the Performance Accountability subpart of the SCSEP regulations to reflect changes necessitated by the passage of the 2016 OAA. In addition, this rule makes minor, non-substantive amendments to other subparts of the SCSEP regulations to reflect the OAA amendments that aligned the SCSEP program statutory language with WIOA, such as updating outdated terminology and outdated references to the Workforce

Investment Act of 1998 (WIA), which WIOA superseded. This IFR solicits public comment on this IFR, which the Department will consider when it issues a Final Rule.

DATES: *Effective date:* This IFR is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Compliance date: Performance information under the measures implemented in this IFR are required to be reported beginning July 1, 2018.

Comment date: To ensure consideration, comments must be in writing and must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by docket number ETA–2017–0005 or the Regulatory Information Number (RIN) 1205–AB79, by any one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the website instructions for submitting comments.
- *Mail:* Please address all written comments (including disk and CD–ROM submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210.
- *Hand Delivery/Courier:* Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210.

Instructions: Label all submissions with “RIN 1205-AB79.” Please submit your comments by only one method.

Please be advised that the Department will post all comments received to this IFR on <http://www.regulations.gov> without making any change to the comments, including any personal information provided. The <http://www.regulations.gov> website is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters not include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information may become easily available to the public via the <http://www.regulations.gov> website. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, D.C. may be delayed. Therefore, the Department encourages the public to submit comments on <http://www.regulations.gov>.

Docket: All comments on this IFR will be available on the <http://www.regulations.gov> website and can be found using RIN 1205–AB79. The Department will make all the comments it receives available for public inspection during normal business hours at the Office of Policy Development and Research (OPDR) at the above address. If you need assistance to review the comments, the Department will provide appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the rule in an alternative format, contact OPDR at (202) 693-3700 (VOICE). Please note this is not a

toll-free number. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

FOR FURTHER INFORMATION CONTACT: Amanda Ahlstrand, Administrator, Office of Workforce Investment, 202-693-3980. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

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I. Background

The SCSEP, authorized by title V of the Older Americans Act (OAA), is the only Federally sponsored employment and training program targeted specifically to low-income older individuals who want to enter or re-enter the workforce. Participants must be 55 years of age or older, with incomes no more than 125 percent of the Federal poverty level. The program offers participants training at community service employment assignments in public and non-profit organizations and agencies so that they can gain on-the-job experience. The dual goals of the program are to promote useful opportunities in community service activities and also to move SCSEP participants into unsubsidized employment, where appropriate, so that they can achieve economic self-sufficiency.

The OAA, Pub. L. 114-144 (Apr. 19, 2016), amended the statutory provisions authorizing SCSEP and requires the Department to implement the amendments to the

SCSEP performance measures by December 31, 2017. *See* OAA sec. 513(d)(4) (42 U.S.C. 3056k(d)(4), as amended by 2016 OAA sec. 6(d)(4)¹). The purpose of this IFR is to fulfill that statutory requirement.

The OAA requires the Secretary to “implement the core measures of performance not later than December 31, 2017.” OAA sec. 513(d)(4), 42 U.S.C. 3056k(d)(4).

Accordingly, this IFR includes both the definitions of the measures (as required by OAA sec. 513(b)(2)) and the processes used to implement these measures in the conduct of the SCSEP grants. These processes include how the Department and grantees initially determine and then adjust expected levels of performance for the grants, and how the Department determines whether a grantee fails, meets, or exceeds the levels of performance. This IFR updates the current processes so that they reflect the changes required by the OAA.

The Administrative Procedure Act (APA) authorizes agencies to issue a rule without notice and comment upon a showing of good cause. 5 U.S.C. 553(b)(B). The APA’s good cause exception to public participation applies upon a finding that those procedures are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). According to the legislative history of the APA, “unnecessary” means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved.” Senate Report No. 752 at p. 200, 79th Cong. 1st Sess. (1945). As explained by the U.S.

¹ Section 6 of the Older Americans Act Reauthorization Act of 2016 (2016 OAA), Pub. L. 114-144, amended secs. 502-518 of title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*). For ease of reference, this preamble will refer to the changes to title V made by the 2016 OAA by referring to the amended sections of the Older Americans Act, and will not continue to provide the citations to sec. 6 of the 2016 OAA.

Court of Appeals for the D.C. Circuit, “when regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary.” *Gray Panthers Advocacy Cmm. v. Sullivan*, 936 F.2d 1284, 1291 (D.C. Cir. 1991). The Department has determined that there is good cause to find that a pre-publication comment period is unnecessary. The revisions set forth herein to the existing regulations at 20 CFR part 641 codify statutory changes requiring little to no agency discretion or are technical amendments updating terminology or outdated references to WIA, which WIOA superseded. For this reason, the Department’s implementation of this rule as an IFR, with provision for post-promulgation public comment, is in accordance with sec. 553(b) of the APA.

Grantees may submit comments on the IFR until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], and the Department will consider them prior to issuing the rule finalizing this IFR. The Department plans to make any additional changes to the SCSEP regulations not related to the performance measures through a notice-and-comment rulemaking process.

The OAA requires the Department to establish and implement the new SCSEP performance measures after consultation with stakeholders. OAA sec. 513(b)(2). The Department satisfied these statutory requirements when it solicited public input on the definitions and implementation of the statutory performance measures in April and May of 2017. On May 8, 2017, the Department sent an email to 4,529 stakeholders, inviting them to register for the consultation. The invitees included 2,491 American Job Center managers, 523 SCSEP grantee and sub-grantee managers, 55 governors, 300 State

workforce administrators, and 1,220 State Development Board chairs and directors.

Those who registered received a reminder email on May 15, 2017.

Stakeholders were also informed that they could submit written comments after the consultation.

In response to this outreach effort, 394 individuals registered for the consultation from these stakeholder groups: workforce development boards and American Job Centers; local, State, and Federal government; nonprofit organizations; direct providers of employment services; labor organizations; educational organizations; economic development organizations; and others. Of the 394 registered participants, 273 attended the consultation on May 16, 2017. At the start of the consultation, participants identified these affiliations: SCSEP grantees or sub-grantees (70 percent); WIOA partner, One-Stop operator, or American Job Center affiliate (18 percent); national or local aging agency (4 percent); SCSEP host agency (1 percent); Administration for Community Living (1 percent); and other (6 percent).

During the consultation, 100 written comments were received via the chat function. Some attendees submitted multiple comments. After the consultation, three grantees each submitted multiple comments in writing. Thirty of the comments are not relevant to the subject of the consultation or this IFR. Most of these comments were directed at the mechanics of the online webinar through which the consultation was conducted, announced participants' arrivals or departures from the webinar, or were in other ways non-substantive. A few substantive comments are not relevant to this IFR in that they do not relate to the performance measures or other changes required by the

OAA amendments. The program office will review these substantive comments to inform its continued operation of the program and its future technical assistance.

Fifteen comments addressed SCSEP's overall relationship with WIOA. As set forth above, increased coordination with WIOA is one of the main purposes of the OAA amendments. However, except for the adoption of some of the WIOA core measures, the programmatic coordination with WIOA is not the subject of this IFR.

Three questions asked specifically about the relationship between the SCSEP performance measures and WIOA: whether WIOA will adopt measures of community service similar to the SCSEP measures, whether the SCSEP measures will be incorporated into the Participant Individual Record Layout (PIRL, the WIOA performance reporting system), and whether SCSEP performance will be factored into the statewide WIOA performance. The changes in this IFR to the SCSEP performance measurement system reflect in large part an alignment of the SCSEP performance measures with the three employment outcome indicators mandated for WIOA core programs under WIOA sec. 116(b)(2)(A)(i)(I)-(III). In addition to these three WIOA employment outcome indicators of performance, SCSEP has three measures related to participation in the program: service level, hours of community service, and service to the most-in-need. These three measures are unique to SCSEP and are retained unchanged by the current OAA amendments. Although WIOA has several similar measures, these SCSEP measures are not directly applicable to WIOA. In addition, the WIOA primary indicators of performance include effectiveness in serving employers; the corresponding measure for SCSEP under the OAA, as discussed below at § 641.720, is not directly parallel because it includes participants and host agencies, as well as employers. All the

SCSEP measures will be incorporated into the PIRL, along with other aspects of SCSEP performance. However, although the 2016 OAA amendments require SCSEP to adopt several of WIOA's primary indicators of performance, SCSEP is independent of WIOA, and SCSEP performance is not included in the WIOA State program or indicator scores.

Two other general comments were received during the consultation:

- One comment asked whether the Department will still require all grantees to use the SCSEP Performance and Results Quarterly Performance System (SPARQ).

The Department is exploring a new case management system that may replace SPARQ in whole or in part. Grantees must continue using SPARQ until the Department informs them that a new system is available.

- One grantee questioned whether the new performance measures apply to both State and national grantees. Like the current measures, the new measures apply to all grantees.

Finally, another comment from a stakeholder requested that the Department provide grantees as much notice of the new measures as possible so grantees have time to program their internal computer systems. The Department is sensitive to the importance of providing ample notice to the grantees and of minimizing the burden of implementing the new regulations. With the publication of this IFR and the first required reporting of the new measures starting on July 1, 2018, grantees will have ample time to make the minimal changes required by the new measures. The Department will provide technical assistance and guidance as soon as possible in order to provide additional support to grantees in their implementation efforts.

The Department carefully considered all comments received as we developed this IFR. In the following section of the preamble entitled “Section-by-Section Discussion of Interim Final Rule,” the Department summarizes and discusses the input received from stakeholders.

The 2016 OAA changes to the SCSEP performance measurement system reflect in large part an alignment of the SCSEP performance measures with those mandated for WIOA core programs under WIOA sec. 116(b)(2)(A)(i). The WIOA performance measures were implemented in a joint final rule issued by the Departments of Labor and Education on August 19, 2016 (81 FR 55792) (Joint WIOA Final Rule), after notice and comment rulemaking, and are codified in 20 CFR part 677. This IFR revises 20 CFR part 641, subpart G (Performance Accountability) to codify the revised SCSEP performance measures in the 2016 OAA sec. 513, which in large part aligns the SCSEP performance measures with the WIOA performance measures. In addition, this rule makes technical amendments to other subparts of part 641 to reflect 2016 OAA amendments that aligned the SCSEP program statutory language with WIOA, such as updating outdated terminology and outdated references to WIA, which WIOA superseded.

Coordination between the SCSEP and the WIOA programs continues to be an important objective of the OAA. SCSEP is a required partner in the workforce development system (per WIOA sec. 121(b)(1)(B)(v)), and SCSEP is required to coordinate with the WIOA One-Stop delivery system (OAA sec. 511, 42 U.S.C. 3056i), such as by accepting each other’s assessments and Individual Employment Plans (OAA sec. 502(b)(3), 42 U.S.C. 3056(b)(3)). The underlying notion of the One-Stop delivery system is the coordination of programs, services, and governance structures, so that the

customer has access to a seamless system of workforce development services. Although there are many similarities to the system established under WIA, there are also significant changes under WIOA that are intended to make substantial improvements to the public workforce delivery system. The Joint WIOA Final Rule requires partners to collaborate to support a seamless customer-focused service delivery network; requiring that programs and providers co-locate, coordinate, and integrate activities and information, so that the system as a whole is cohesive and accessible for individuals and employers alike.

The Department remains committed to a system-wide continuous improvement approach grounded upon proven quality principles and practices. Although many of the SCSEP regulations remain unchanged from the 2010 SCSEP Final Rule (75 FR 53786), this IFR codifies the 2016 OAA revisions to the program that align senior employment services with the workforce development system under WIOA. In particular, this rule aligns the SCSEP performance measures related to employment and earnings with the performance measures established by WIOA to enhance consistency and coordination between the programs and ensure effective services for older Americans. The changes implemented by the rule are discussed in more detail in Section II.

II. Section-by-Section Discussion of Interim Final Rule

In this section, we discuss the changes made to the regulations as required by the 2016 OAA.

Non-substantive Technical Amendments

In addition to the changes made to part 641, subpart G (Performance Accountability) codifying the 2016 OAA statutory revisions as described more fully below, this IFR makes non-substantive technical amendments throughout all of part 641

to reflect the 2016 OAA amendments and to align the SCSEP program language with WIOA, such as updating outdated terminology and outdated references to WIA, which WIOA superseded. The IFR revises § 641.140 by removing definitions that are no longer operational as a result of the 2016 OAA amendments and WIOA, revising definitions consistent with updates to governing law, and adding definitions to address new terminology as a result of statutory amendments.

In particular, the IFR removes the definition of “additional measures” because the 2016 OAA removed them from the SCSEP performance requirements. The IFR also removes the definition of “volunteer work” because the 2016 OAA removed the term from the SCSEP performance measures. Also, as part of aligning SCSEP with WIOA, the IFR removes the definition for “Local Workforce Investment Area” and adds “Local Workforce Development Area.”

The IFR updates the definition of “core measures” (which the 2016 OAA changed from “core indicators”) to refer to the new measures of performance laid out in amended OAA sec. 513(b)(1) and implemented by this rule. To align with WIOA, the IFR changes the terms “core services” and “intensive services” to “career services,” and updates the definitions of “Workforce Innovation and Opportunity Act (WIOA)” and “Workforce Innovation and Opportunity Act regulations” (changed from “Workforce Investment Act (WIA)” and “Workforce Investment Act regulations,” respectively). This update clearly establishes that the term “Workforce Innovation and Opportunity Act regulations” includes all WIOA and Wagner-Peyser Act regulations, including the regulations implementing WIOA sec. 188. Similarly, to align the text of the SCSEP definitions with the terms used in WIOA, the IFR revises the definitions of “Local

Board,” “One-Stop Center,” “One-Stop delivery system,” and “State Board” to reflect the definitions as they have been updated under WIOA. Additionally, the IFR updates the WIA citations to use WIOA citations in the definitions of “Co-enrollment,” “Most-in-need,” “One-Stop partner,” and “Training Services.” Additionally, the IFR updates the OAA citations in the definitions “Pacific Island and Asian Americans,” “Supportive services,” and “Unemployed” to be consistent with the OAA as amended by the 2016 OAA.

The IFR adds a definition of “community service employment” because that term is used in sec. 513 of the 2016 OAA. To avoid confusion, the definition of “community service employment” is the same as “community service assignment,” so those two terms can be used interchangeably.

This IFR also adds a new § 641.370 to state that for a State that obtains approval of a WIOA Combined State Plan under 20 CFR 676.143, the requirements of WIOA sec. 103 and 20 CFR part 676 will apply in lieu of OAA sec. 503(a) and part 641, subpart C. This implements a provision added by the 2016 OAA to sec. 503 of the OAA, which aligns the requirements of the States submitting SCSEP State Plans with the WIOA State Plan requirements.

Finally, the IFR updates the references to the regulations that implement sec. 188 of WIOA, the nondiscrimination and equal opportunity provisions of WIOA. Those regulations take the place of the WIA sec. 188 regulations. They were finalized in January 2017 and codified in 29 CFR part 38.

Only the substantive subpart G revisions are described in detail in the remainder of this section-by-section discussion.

Subpart G – Performance Accountability

Throughout this subpart, the Department has revised the term “core indicator(s)” to “core measure(s)” to align the regulation with the 2016 OAA, specifically sec. 513(a), 42 U.S.C. 3056k(a). The amended statute also refers to “indicators.” However, because the statute uses the terms interchangeably, for consistency and to reduce the possibility of confusion, the Department uses only the term “measures” throughout this subpart. Other changes made to the sections of subpart G are described below.

Section 641.700 What performance measures apply to Senior Community Service Employment Program grantees?

The Department has made several revisions to paragraph (a) to align with the 2016 OAA and the WIOA performance measures. In addition to revising references to “indicators” to “measures” as described above, the Department has removed all reference to “additional indicators” throughout this section. The 2016 OAA removed the additional measures of performance that were not subject to goal-setting and corrective actions, as they were previously established in sec. 513(b)(2) of the 2006 OAA. In order to align with the 2016 OAA, the Department has replaced the first sentence in paragraph (a) that stated “There are currently eight performance measures, of which six are core indicators and two are additional indicators,” with the sentence “There are seven core performance measures.” In addition, the Department has deleted the last sentence that stated “Additional indicators (defined in § 641.710) are not subject to goal-setting and are, therefore, also not subject to corrective action.” Other revisions the Department has

made to remove reference to “additional indicators” in other sections are discussed below.

The Department also revised the second sentence of paragraph (a) to remove reference to the requirement that performance level goals for each core measure must be agreed upon by the grantee and the Department “before the start of each program year.” As described in the discussion of revisions in § 641.720 below, grantees and the Department no longer are required to reach agreement on levels of performance prior to each year. Rather, per 2016 OAA sec. 513(a)(2)(C), agreement on levels of performance is now required to be reached every 2 years, prior to each 2-year period of the SCSEP grants (that is, prior to the first program year and the third program year of the grant. The Department replaced the phrase “before the start of each program year” with a reference to § 641.720.

The Department made several changes to paragraph (b), which now reads “Core measures,” to align with the 2016 OAA’s amendments to the measures. Many of these changes align SCSEP’s performance measures to the performance measures established by WIOA for the title I core programs, as implemented in 20 CFR 677.155. First, the Department made a technical change to paragraph (b) to replace the outdated reference to the 2006 OAA with a reference to the OAA as amended. The Department has not revised the core measure for hours of community service employment implemented in paragraph (b)(1) because the 2016 OAA did not amend this measure.

In paragraph (b)(2), the Department replaced the second core measure “Entry into unsubsidized employment” with the core measure “The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the

project.” This core measure is required by OAA sec. 513(b)(1)(B) and aligns with the measure as described in sec. 116(b)(2)(A)(i)(I) of WIOA and implemented in 20 CFR 677.155(a)(1)(i), except that the WIOA statute uses the term “program participants,” rather than “project participants.” The revised performance measure is different from the former SCSEP measure in that the 2016 OAA now clarifies that entry into unsubsidized employment is to be measured during the second quarter after exit. Previously, the 2006 OAA statute did not state when the rate was measured, and the 2006 regulations required it to be measured at the first quarter after exit, which was consistent with the WIA performance measures at that time.

Next, in paragraph (b)(3), the Department replaced the third core measure “Retention in unsubsidized employment for six months” with the core measure “The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project.” This core measure is required by OAA sec. 513(b)(1)(C) and aligns with the measure as described in sec. 116(b)(2)(A)(i)(II) of WIOA and implemented in 20 CFR 677.155(a)(1)(ii). This is a separate and distinct employment measure for the fourth quarter after exit, which measures the employment rate in that quarter. A participant will be counted as a positive outcome for this measure if he or she is employed in the fourth quarter after exit regardless of whether he or she was also employed in the second quarter after exit.

In paragraph (b)(4), the Department replaced the fourth core measure “Earnings,” with the core measure “The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project.” This core measure is required by OAA sec. 513(b)(1)(D) and aligns with the measure as

described in sec. 116(b)(2)(A)(i)(III) of WIOA and implemented in 20 CFR 677.155(a)(1)(iii). This performance measure gauges median earnings at the same time frame as the above measure gauges the employment rate of participants. The use of a median is a shift from the use of an average under WIA and is consistent with the requirements of WIOA.

The Department added a fifth performance measure in paragraph (b)(5) for “indicators of effectiveness in serving employers, host agencies, and project participants.” This core measure is required by OAA sec. 513(b)(1)(E) and partially aligns with the WIOA measure, “effectiveness in serving employers,” as described in sec. 116(b)(2)(A)(i)(VI) of WIOA and implemented in 20 CFR 677.155(a)(1)(vi). A similar measure for “satisfaction of the participants, employers, and their host agencies with their experiences and the services provided” was included as an additional measure in the 2006 OAA sec. 513(b)(2), which was not subject to goal-setting and corrective actions. (This same measure was also a core measure under the 2000 OAA amendments.) However, the 2016 OAA establishes this as a core measure of performance. This is further discussed below in the preamble text that corresponds to § 641.710(e).

To accommodate the newly added fifth core performance measure, the Department renumbered former paragraphs (b)(5) and (6) as paragraphs (b)(6) and (7), respectively, to contain the sixth and seventh core measures, which remain the same as they were under the 2006 OAA.

As discussed above, the 2016 OAA removed the additional measures of performance that were previously found at sec. 513(b)(2) of the 2006 OAA. Therefore, the Department has deleted former paragraphs (c)(1) through (4), “Additional indicators,”

and has renumbered paragraphs (d) and (e) as (c) and (d), respectively. In addition, the Department has replaced the words “indicators of performance and additional indicators of performance” from the renumbered paragraph (c) with the word “measures”, and has replaced the words “indicators of performance and to report information on the additional indicators of performance” from the renumbered paragraph (d) with the word “measures,” to be consistent with the 2016 OAA amendments to these terms as described above.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity.

Section 641.710 How are the performance measures defined?

The Department revised the core indicator (now “core measure”) definitions contained in this section to align with the revised core measures set forth in § 641.700 of this IFR. As discussed below, the Department deleted the entirety of former paragraph (b) to remove the definitions for the former “additional indicators,” which the 2016 OAA removed. Thus, as an initial change, the Department renumbered paragraphs (a)(1) through (6) to (a) through (g) (to include the definition for an added core measure, as discussed below).

The Department did not revise paragraph (a), renumbered from former paragraph (a)(1), which contains the definition for the first core measure for hours of community service employment as currently implemented.

In paragraph (b), renumbered from former paragraph (a)(2), the Department included a definition for the second performance measure, “percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project.” This performance measure is defined by the following formula: the number of participants who exited during the reporting period who are employed in unsubsidized employment during the second quarter after the exit quarter, divided by the number of participants who exited during the reporting period. This figure will be multiplied by 100 and reported as a percentage. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in Training and Employment Guidance Letter (TEGL) 10-16, *Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III and Title IV Core Programs*, published December 19, 2016.

In paragraph (c), renumbered from former paragraph (a)(3), the Department included a definition for the third performance measure, “percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project.” This performance measure is defined by the following formula: the number of participants who exited during the reporting period who are employed in unsubsidized employment during the fourth quarter after the exit quarter divided by the number of participants who exited during the reporting period, multiplied by 100 so as to be reported as a percentage. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in TEGL 10-16.

In paragraph (d), renumbered from former paragraph (a)(4), the Department included a definition for the fourth performance measure, “median earnings of project

participants who are in unsubsidized employment during the second quarter after exit from the project.” This performance measure is defined by the following formula: for all participants who exited and are in unsubsidized employment during the second quarter after the exit quarter: the wage that is at the midpoint (of all the wages) between the highest and lowest wage earned in the second quarter after the exit quarter. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in TEGL 10-16.

Several comments received during the stakeholder consultation described at the beginning of this preamble questioned the adoption of the median as opposed to the mean for the new measure of earnings. One comment suggested that the first year under the new measures be designated as a baseline year since the Department does not have the ability to determine what the impact the change in calculation will have on performance. The use of the median is required by the 2016 OAA and the Department has no discretion in this matter. The Department understands, however, that all three of the new outcome measures use different calculations from the measures currently in effect and that it will take some time to establish a reliable baseline to use in setting goals for these measures. To help determine how performance under the current measures relates to performance under the new measures as set forth in this IFR, the Department will reanalyze prior grantee performance data reported under the existing measures using the calculations required for the new measures as established by this IFR and to create a cross-walk between the two sets of measures. If that proves to be an inadequate basis for setting the Program Year (PY) 2018 grantee goals, the Department will take that into consideration

in the goal setting process and will take appropriate action. *See* discussion of § 641.730 below.

During the consultative process, one stakeholder raised the concern that the new employment outcome measures set forth in this IFR at paragraphs (b), (c), and (d) will be harder for grantees to achieve than the measures that have been in effect and will make the program overall seem less effective than it actually is. The Department addressed this comment in discussion of § 641.740 below.

The Department has added a definition in paragraph (e) for the fifth performance measure, “effectiveness in serving employers, host agencies, and project participants.” While this definition is similar to the definition used for this indicator under the 2006 OAA, when it was an additional indicator, the 2016 OAA revised the definition so that it focuses more specifically on effectiveness rather than satisfaction in general. The Department may revise the definition in paragraph (e) in the future once the Department finalizes the definition of the corresponding WIOA performance measure “effectiveness in serving employers”. For the WIOA core programs, the Department is initially implementing the effectiveness measure in the form of a pilot program. The pilot would allow several approaches (including wage records, the repeated use rate for employers’ use of the core programs, and employers served) with the intent of assessing each approach, ultimately to develop a standardized measure.

The Department received fifteen comments during the consultative process addressing this new core measure. Most comments assumed that the use of the current customer satisfaction surveys would continue for all or some of the three SCSEP

customer groups, and several comments questioned how the Department would define “effectiveness.”

- Six comments recommended that the administration of the employer survey be changed to include host agencies that hire SCSEP participants into unsubsidized jobs within their organizations. Under the survey administration procedures used for the existing measure, a host agency receives only a host agency survey (rather than an employer survey) even if the agency subsequently hires a participant assigned to it and thus becomes that individual’s employer.
- One comment stated that effectiveness is different from satisfaction and suggested that the survey questions would need to change to encompass customers’ assessment of effectiveness. Another comment recommended that field staff review and comment on any revised or new survey questions.
- One comment recommended that the surveys be distributed electronically and be available for distribution in hard copy as needed.
- Three comments recommended that SCSEP use the WIOA approach to piloting new measures of effectiveness in serving employers. One of these comments further suggested the extension of the WIOA pilot approach to host agencies, allowing SCSEP grantees to vote on which measures SCSEP as a whole would pilot, and the retention of the current participant customer satisfaction survey. This comment also recommended training sessions for the grantees on various approaches for determining pilot measures. Another of the three commenters who recommended piloting measures of effectiveness in serving employers

recommended that the Department provide grantees with customer relationship management (CRM) software.

The Department appreciates the suggestions about ways to measure effectiveness in serving SCSEP's customers that build and improve on the current method of surveying those customers. Although the new SCSEP measure of effectiveness parallels the language of the WIOA measure, it differs because it also measures the effectiveness in serving participants and host agencies, as well as employers. As the comments appear to acknowledge, the WIOA approach to the measure, which is being piloted until 2019, does not have obvious application to SCSEP's other two customer groups. As a result, for the SCSEP measure, the Department has decided to continue surveying all three customer groups to assess the effectiveness of the services received as an interim measure at least until the WIOA pilot is complete and a WIOA measure is defined in final form. By using the same definition as that of the current customer satisfaction measure during this interim period, the Department will not require SCSEP customers to change their current practices or take on any additional burden. The Department welcomes comments on this measure.

During this interim period, the Department will explore with grantees, and with its three customer groups, options for best measuring the effectiveness of SCSEP's services, including the suggestions made by the commenters. The Department will also explore ways to improve the efficiency of the current customer surveys (including the use of online surveys and changes to the administration of the employer survey) and will examine what, if any, new or revised questions would support an index of effectiveness as an alternative to the current index of satisfaction.

To conform to the changes outlined above, the Department has renumbered former paragraph (a)(5) to (f). The Department also has renumbered former paragraph (a)(6)(i) through (xiii) to (g)(1) through (13). Renumbered paragraphs (f) and (g) correspond to the sixth and seventh SCSEP performance measures, the definitions of which are unchanged.

Several comments regarding paragraph (g), the most-in-need measure, recommended adding ex-offender to the list of barriers to employment included in the statute for determining participants who are most in need of SCSEP services. The Department agrees that ex-offenders have serious and unique barriers to employment, but for purposes of this IFR, the Department will use the list provided in the statute. The Department also notes that ex-offender status is already incorporated into the most-in-need measure because it is a factor that would result in a participant having low employment prospects, one of the factors included in the most-in-need measure. However, as part of its review of the statistical model for the adjustment of grantee goals, the Department will consider whether ex-offender should be considered with the other participant characteristics currently used in the SCSEP model. See discussion of the statistical model in preamble text discussing § 641.720.

Another comment regarding the most-in-need measure stated that the current definition of frail, which is one of the barriers to employment that the statute includes in the most-in-need measure, is incorrect because it could require a grantee to enroll someone who is in a nursing home. This theoretical objection to the definition of frail misunderstands its use in the SCSEP performance system. Frail is not part of the eligibility determination and is not one of the priorities of service required by the OAA.

Rather, it is an additional barrier to employment that a participant may develop during enrollment and that potentially entitles a participant to have an extended period of enrollment.

Nineteen comments received during the consultation and additional comments received from three grantees after the consultation were addressed to how the Department would compute or define the performance measures (other than the measure, “Indicators of effectiveness in serving employers, host agencies, and project participants,” which is addressed below). Several comments related to how the exit cohorts would be defined and what the timing rules would be. These questions have been addressed by the definitions provided in this IFR and the discussion in other parts of this preamble. As set forth below, separate guidance will be provided on the technical aspects of the timing and reporting requirements.

The 2016 OAA removed the additional indicators of performance that were previously established in sec. 513(b)(2) of the 2006 OAA. Therefore, the Department has deleted former paragraphs (b)(1) through (3) that contained definitions for the additional indicators.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made to the regulations for purposes of correcting typographical errors and improving clarity.

Section 641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?

The Department has made substantial revisions to this section to align with the 2016 OAA, which in large part mirrors the process for establishing the expected performance levels required by WIOA for the title I core programs, as implemented in 20 CFR 677.170.

The revised paragraph (a), which requires agreement between the grantee and the Department for expected levels of performance for the first 2 program years of the grant, mirrors the statutory language in 2016 OAA sec. 513(a)(2)(B) and (C)(i) and aligns with WIOA sec. 116(b)(3)(A)(iv)(I). Specifically, paragraph (a) states that each grantee must reach agreement with the Department on levels of performance for each measure listed in § 641.700 for each of the first 2 program years covered by the grant agreement. In reaching the agreement, the grantee and the Department must take into account the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section. This paragraph also states that the levels agreed to will be considered to be the expected levels of performance for the grantee for such program years, and funds may not be awarded under the grant until such agreement is reached. Lastly, this paragraph states that, at the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

The Department considers PY 2016 and PY 2017 to be the first 2 program years under the current SCSEP grants. For national grantees, these were the first 2 program

years following the last grant competition. For State grantees, these were the first 2 program years of the current SCSEP State Plans.

The revised paragraph (b), which requires agreement for expected levels of performance for the third and fourth program years of the grant mirrors the statutory language provided in 2016 OAA sec. 513(a)(2)(B) and (C)(ii) and in alignment with WIOA sec. 116(b)(3)(A)(iv)(II). As explained above, the Department considers PY 2018 and PY 2019 to be the third and fourth program years of the current SCSEP grant agreements. Specifically, paragraph (b) states that each grantee must reach agreement with the Department, prior to the third program year covered by the grant agreement, on levels of performance for each measure listed in § 641.700, for each of the third and fourth program years of the grant. This paragraph states that, in reaching the agreement, the grantee and the Department must take into account the expected levels proposed by the grantee and the factors described in paragraph (c) of this section. This paragraph also states that the levels agreed to will be considered to be the expected levels of performance for the grantee for those program years. Lastly, like the requirement in paragraph (a), this paragraph states that, at the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

The Department has added a new paragraph (c), "Factors," to require that the negotiated levels of performance must be based on the three factors listed in paragraphs (c)(1) through (3), as required by 2016 OAA sec. 513(a)(2)(D) and in alignment with

WIOA sec. 116(b)(3)(A)(v). Paragraph (c)(1) states that the negotiated levels must take into account how a grantee's levels of performance compare with the expected levels of performance established for other grantees. *See* OAA sec. 513(a)(2)(D)(i) and WIOA sec. 116(b)(3)(A)(v)(I). Paragraph (c)(2) states that the negotiated levels must be adjusted using an objective statistical model based on the model established by the Department of Labor with the Department of Education in accordance with WIOA sec. 116(b)(3)(A)(viii) and implemented in § 677.170(c). *See* 29 U.S.C. 3141(b)(3)(A)(viii), OAA sec. 513(a)(2)(D)(ii), and WIOA sec. 116(b)(3)(A)(v)(II). The objective statistical adjustment model will account for actual economic conditions and characteristics of participants, including the factors required by WIOA sec. 116(b)(3)(A)(v)(II). Paragraph (c)(3) states that the negotiated levels must take into account the extent to which the levels involved promote continuous improvement in performance accountability on the core measures and ensure optimal return on the investment of Federal funds. *See* OAA sec. 513(a)(2)(D)(iii) and WIOA sec. 116(b)(3)(A)(v)(III).

In paragraph (d), the Department revises the adjustment requirements contained in former paragraph (b). The Department has replaced the adjustment factors specified in former (b)(1) through (3) with the requirement that the Department will, in accordance with the objective statistical model developed pursuant to paragraph (c)(2), adjust the expected levels of performance for a program year for grantees to reflect the actual economic conditions and characteristics of participants in the corresponding projects during such program year. These revisions align with OAA sec. 513(a)(2)(E).

For consistency with the 2016 OAA, the IFR removes the language in paragraphs (a)(1) through (3) of § 641.720 that describes the negotiation process in detail. However,

the negotiation process that the Department intends to use under these new performance measures is similar to the current process, and includes similar opportunities for input from the grantees:

- In the spring of 2018, the Department will analyze grantees' baseline performance and issue proposed goals for the next 2 program years, PY 2018 and PY 2019, based on the new adjustment factors.
- If a grantee disagrees with those goals, it may propose its own goals and may request to negotiate.
- Prior to the negotiation, the grantee must provide the Department with the data on which the grantee's proposed goals are based.
- The grantee and Department must reach agreement before funds for the coming 2 program years can be approved; the agreed upon goals will be the expected levels of performance upon which the annual evaluation of grantee performance will be based. If the grantee and the Department fail to reach agreement, no funds may be released.
- At the conclusion of the negotiation, the grantee may submit comments regarding the grantee's satisfaction with the negotiated levels of performance, which the Department will publish, along with the expected levels of performance.
- At the time of the annual evaluation of grantee performance, the expected levels of performance will be adjusted a second time using the latest available adjustment data. The evaluation will be based on the newly adjusted levels of performance. See preamble discussion of § 641.740.

- The same process will be followed for subsequent 2-year periods.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity.

Eight comments addressed the negotiation process. Several comments raised questions about the use of a statistical model based on WIOA to adjust grantee goals, and one, noting that SCSEP already uses such a model, questioned what changes the Department anticipates. This comment is correct that SCSEP has long used a statistical model to adjust grantee goals. The model considers environmental factors like rates of unemployment and poverty and takes account of participant characteristics that may make some participants harder to serve than others. This model is similar to the model employed by WIA and the model recently adopted by WIOA. The Department will re-examine this model to determine if additional aspects of the WIOA model should be incorporated into the SCSEP model or if other changes are appropriate. (One comment suggested accounting for the percentage of participants who reside in rural areas.) The Department will provide the model to grantees prior to the first negotiations under the new performance measures, as requested by one of the comments.

One comment suggested that all grantees operating within a State should have the same goals because conditions within the State are essentially the same for all grantees. The statute requires that in negotiating goals, the parties consider both the expected levels of performance for other grantees and the promotion of continuous improvement. Both factors require consideration of the circumstances of each grantee. Furthermore, the only grantees operating within a State, in addition to the State grantee, are national grantees.

National grantees only have goals at the overall grantee level, not at the State level. In addition, the adjustments that are made to grantee goals are based, to the greatest extent practicable, on factors that prevail in the specific service area of each grantee. Because very few grantees serve an entire State uniformly, SCSEP uses data at a county level to customize the adjustments for all grantees, both State and national.

Nine comments received during the consultation and additional comments received from three grantees after the consultation addressed the implementation of the new measures. Most of these questioned when the new measures would be effective and what the effect would be of collecting data for the new employment outcome measures and the old outcome measures since they will overlap for the first 4 quarters that the new measures are effective. The new measures being implemented by this IFR by promulgation on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] will become effective 30 days after publication. By effective, the Department means that they will be used during the second half of PY 2017, to negotiate the goals for PYs 2018 and 2019. Performance under the PY 2018 goals will begin to be reported starting July 1, 2018. The SCSEP Quarterly Progress Report (QPR) for PY 2017, will be based on the current measures, and the QPRs for PY 2018, will be based on the measures established in this IFR.

SCSEP participants who exit during PY 2017, when goals based on the current measures are still in effect, will have their performance reported under the old measures for PY 2017. For this same cohort of exiters, reporting for the core employment outcome measures would also take place throughout PY 2018, under the new measures set forth in this IFR and would be reflected in the grantees' PY 2018 QPRs. For example, a

participant who exits in Quarter 3 of PY 2017, will be included in the previous entered employment measure for Quarter 4 of PY 2017; this participant will also be reported in the IFR's new measure of employment in the second quarter after exit in Quarter 1 of PY 2018. Since the underlying data required for the new measures that will be reported in PY 2018 are the same data required for the existing measures, grantees will have to follow different timing rules for the collection of data in PY 2018, but they will not be required to collect any new or additional data beyond the data they would have reported under the old measures. The Department will provide technical assistance and guidance on the new timing and reporting requirements.

A related comment asked is when reporting on the current SCSEP additional measures would cease. As with the existing core measures, the grantees will collect data for the additional measures not carried forward in this IFR throughout PY 2017, and the final QPR for PY 2017 will be the last report of the additional measures.

Many comments urged the Department to obtain the access to unemployment insurance (UI) wage records for SCSEP in order to ease the burden of case management follow-up for purposes of collecting performance data. One comment recommended that the Department allow those grantees that were able to access wage records locally do so even if other grantees could not have access and had to continue using case management follow-up. Another comment recommended that if the Department is unable to secure access to wage records, the Department should adopt less stringent standards for case management follow-up.

The Department understands that case management follow-up is a costly and not always effective means of obtaining performance data. The Department is investigating

access to UI wage records for all SCSEP grantees, but until such access occurs, all grantees must continue using case management follow-up. Using different methods of data collection would compromise the consistency of the performance measures and would potentially provide an unfair advantage to those grantees with access to wage records. In the meantime, the Department will review the standards for case management follow-up as set forth in various guidance materials, will confer with grantees about the changes in procedures desired, and will issue revised guidance if appropriate.

Many comments questioned whether the current exclusions from exit for purposes of the employment outcome measures will be continued, and several recommended that they be continued. As part of its adoption of the WIA common measures in PY 2007, SCSEP has been following the WIA exclusions. With the 2016 OAA's adoption of the measures consistent with the WIOA primary indicators of performance, SCSEP will examine the revised WIOA exclusions and will issue revised guidance as appropriate.

Section 641.730 How will the Department assist grantees in the transition to the new core performance measures?

The Department has made several changes in this section to update the Department's transition assistance plans to correspond with the 2016 OAA. First, as a non-substantive change, the Department has deleted the designation of paragraph (a) and its title "General transition provision" because the Department has deleted paragraph (b), as discussed below. This section now includes only two sentences.

The first sentence as revised by this IFR now states that, as soon as practicable after the IFR becomes effective, the Department will determine whether a SCSEP

grantee's performance under the measures in effect prior to the effective date of this IFR would have met the expected levels of performance for PY 2018. The second sentence as revised by this IFR now states that if the Department determines that a grantee would have failed to meet those expected levels of performance, then the Department will provide technical assistance to help the grantee to eventually meet the expected levels of performance under the measures in § 641.700, as those measures are revised by this IFR.

The Department will only make the above determination for the three new employment outcome measures, defined in § 641.710(b) through (d) of this IFR, since no transition is required for the remaining four core measures (three are unchanged, and for the fourth, the "indicators of effectiveness in serving employers, host agencies, and participants," the Department will use the same customer satisfaction measure that was used before the IFR). In making the determination, the Department intends to examine all relevant data, as feasible, in order to provide a cross-walk between the existing measures and the measures implemented in this IFR and to develop a new baseline from which to begin the development of goals for PY 2018 and PY 2019. The Department will provide the analysis to all grantees as soon as it is complete.

As noted above, this IFR removes paragraph (b) from § 641.730, which provided that PY 2007 would be treated as a baseline year for the most-in-need indicator so that grantees and the Department may collect sufficient data to set a meaningful goal for the measure for PY 2008. Since this provision included dates that have already passed, and the Department has documented information on this measure, this provision is no longer required and has been deleted from this section.

Section 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?

With the exception of the technical changes noted below, the Department has not made any changes to this section.

In paragraph (a), the Department has deleted the reference to national grantees because the evaluation process applies identically to both national grantees and State grantees. The Department has also added a reference to § 641.720(d) when referring to the adjustments to the grantee goals.

In paragraph (b)(1)(iii) regarding recompetition for national grantees, the Department has deleted the parenthetical “(beginning with Program Year 2007),” after “any national grantee that has failed to meet the expected levels of performance for 4 consecutive years” to align with the 2016 OAA, which removed this phrase from OAA sec. 513(d)(2)(B)(iii). Due to this deletion, the “4 consecutive years” may include years under the measures in effect prior to this IFR with years under the new measures implemented by this IFR.

In paragraph (b)(2)(iii) regarding competition for State grantees, the Department has deleted the parenthetical “(beginning with Program Year 2007),” after “if the Department determines that the State fails to meet the expected levels of performance for 3 consecutive Program Years” to align with the 2016 OAA, which removed this phrase from OAA sec. 513(d)(3)(B)(iii). Similar to the deletion in paragraph (b)(1)(iii), due to this deletion, the “3 consecutive years” may include years under the measures in effect prior to this IFR with years under the new measures implemented by this IFR.

In paragraph (c) regarding evaluation, the Department has revised this paragraph to state that, for purposes of evaluation, the core measures of performance will be compared to the expected levels of performance established under § 641.720 (including any adjustments to such levels made in accordance with § 641.720(d)). The Department has deleted the former provision that the core measures also would be compared to “the actual performance of each grantee with respect to the levels achieved for each of the additional indicators of performance.” As discussed above, the Department has removed all references to “additional indicators” throughout part 641 to align with the 2016 OAA, which removed reference to additional indicators of performance not subject to goal-setting and corrective actions that were previously established in sec. 513(b)(2) of the 2006 OAA. This paragraph now states, “The Department will annually evaluate, publish and make available for public review, information on the actual performance of each grantee with respect to the levels achieved for each of the core measures of performance, compared to the expected levels of performance established under § 641.720 (including any adjustments to such levels made in accordance with § 641.720(d)).”

One commenter questioned the impact of the new requirement to negotiate performance goals 2 years at a time on the assessment of grantee performance. Although the Department and the grantees will now negotiate performance goals for 2 years at a time, the Department will continue to assess whether grantees have met their expected level of performance at the end of each program year based on whether grantees have met their goals for that completed program year.

Two comments noted that SCSEP goals are already hard to meet because older workers are harder to place than other job seekers. SCSEP has been using the WIA

common employment outcome measures since July 1, 2007; the replacement of those measures with the WIOA core employment measures is not intended to change the basic approach of the negotiation process or to negate the focus on serving low-income seniors. In general, SCSEP has consistently met or exceeded its performance goals under the current measures, and the Department does not envision that the new measures will change that level of performance.

Section 641.750 Will there be performance-related incentives?

The Department has updated the reference to the OAA to reflect the 2016 OAA reauthorization amendments.

III. Rulemaking Analyses and Notices

Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, requires the Department to evaluate the economic impact of this rule with regard to small entities. The RFA defines small entities to include small businesses, small organizations including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the rule imposes a significant economic impact on a substantial number of such small entities.

There are 75 SCSEP grantees; 50 of these are States and are not small entities as defined by the RFA. Six grantees are governmental jurisdictions other than States (four

grantees are territories such as Guam, one grantee is Washington, DC, and another grantee is Puerto Rico). Governmental jurisdictions must have a population of less than 50,000 to qualify as a small entity for RFA purposes and the population of these 6 SCSEP grantees each exceeds 50,000. The remaining 19 grantees are non-profit organizations, which includes some large national non-profit organizations.

The Department has determined that this Interim Final Rule will impose no additional burden on small entities affected. Since the alignment with WIOA involved only definitions, the grantees are not required to collect any additional information that may cause a burden increase. In addition, all costs are covered by the SCSEP program funds provided to grantees.

The Departments certifies that this Interim Final Rule does not impose a significant economic impact on a substantial number of small entities.

Executive Order 12866

Under Executive Order 12866, the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. 58 FR 51735. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that: (1) has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with

an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. *Id.* OMB has determined that this interim final rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866.

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

OMB declined review of this IFR because it is not a significant regulatory action. As previously noted, the alignment with WIOA involved only definitions, and grantees are not required to collect any additional information that may cause a burden increase.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

As part of its effort to streamline program performance reporting, the Department revised the Workforce Innovation and Opportunity Act (WIOA) Performance Accountability, Information and Reporting System (OMB Control Number 1205-0521)

information collection by adding the performance information collection requirements for SCSEP. The Department notes that the SCSEP information collection will retain its current approval (under OMB Control Number 1205-0040) for data elements not contained in the revised WIOA Performance Accountability, Information and Reporting System.

The Department provided opportunities for the public to comment on the information collection through notices in the *Federal Register* that provided comment periods on the associated forms and instructions. This comment period provided at least 60 days for comments to be submitted to the agency. The ICRs was then submitted for OMB approval, and the Department published notices in the *Federal Register* that invited comments to be sent to OMB for a period lasting at least 30 days. The Department will publish a Federal Register Notice shortly to incorporate the information collection provisions of this Interim Final Rule.

The information collection is summarized as follows.

Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System

Agency: DOL-ETA.

Title of Collection: ETA Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System.

Type of Review: Revision.

OMB Control Number: 1205-0521.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 17,532,542

Estimated Total Annual Responses: 35,064,970

Estimated Total Annual Burden Hours: 8,938,029

Regulations sections: § 684.420, § 684.610, § 684.700, § 684.800, § 685.210, § 685.400, § 688.420, § 688.610. 641.700, §641.710, §641.720, §641.730, §641.740, §641.750

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million.

Executive Order 13132

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have “federalism implications.” The rule does not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This Interim Final Rule defines and implements performance measures for the SCSEP and while States are

SCSEP grantees, this rule merely makes changes to data collection processes that are ongoing. Requiring State grantees to implement these changes does not constitute a “substantial direct effect” on the States, nor will it alter the relationship or responsibilities between the Federal and State governments.

Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This rule defines and details the performance measures used by the SCSEP, a program for older Americans, and has no impact on safety or health risks to children.

Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have “tribal implications.” Required actions include consulting with Tribal Governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having “tribal implications” when they have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has reviewed this Interim Final Rule and concludes that it does not have tribal implications. While some tribes may be recipients of national SCSEP grantees, this rule will not have a substantial direct effect on those tribes because, as

outlined in the Regulatory Flexibility Act section of the preamble above, there are only small cost increases associated with implementing this regulation. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal Government and Tribal Governments. Accordingly, we conclude that this rule does not have tribal implications for the purposes of Executive Order 13175.

Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department's NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment and, thus, the Department has not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681), requires the Department to assess the impact of this rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this rule and determines that it will not have a negative effect on families. Indeed, we believe the SCSEP strengthens families by

providing job training and support services to low-income older Americans so that they can obtain fruitful employment and enjoy increased economic self-sufficiency.

Privacy Act

The Privacy Act of 1974, 5 U.S.C. 552a, provides safeguards to individuals concerning their personal information that the Government collects. The Act requires certain actions by an agency that collects information on individuals when that information contains personally identifiable information such as SSNs or names. Because SCSEP participant records are maintained by SSN, the Act applies here.

A key concern is for the protection of participant SSNs. Grantees must collect the SSN in order to properly pay participants for their community service work in host agencies. When participant files are sent to the Department for aggregation, the transmittal is protected by secure encryption. When participant files are retrieved within the internet-based SCSEP data management system of SPARQ, only the last four digits of the SSN are displayed. Any information that is shared or made public is aggregated by grantee and does not reveal personal information on specific individuals.

The Department works diligently to ensure the highest level of security whenever personally identifiable information is stored or transmitted. All contractors that have access to individually identifying information are required to provide assurances that they will respect and protect the confidentiality of the data. ETA's Office of Performance and Technology has been an active participant in the development and approval of data security measures – especially as they apply to SPARQ.

In addition to the above, a Privacy Act Statement is provided to grantees for distribution to all participants. The grantees were advised of the requirement in ETA's Older Worker Bulletin OWB-04-06. Participants receive this information when they meet with a case worker or intake counselor. When the programs are monitored, implementation of this term is included in the review.

Executive Order 12630

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988

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

Executive Order 13211

This rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Plain Language

The Department drafted this Interim Final Rule in plain language.

List of Subjects in 20 CFR Part 641

Aged, Employment, Government contracts, Grant programs-labor, Privacy, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Department of Labor amends 20 CFR part 641 as follows:

PART 641 – PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

1. Revise the authority citation for part 641 to read as follows:

Authority: 42 U.S.C. 3056 *et seq.*; Pub. L. 114-144, 130 Stat. 334 (Apr. 19, 2016).

2. Amend § 641.100 by revising the introductory text and paragraph (b) to read as follows:

Subpart A—Purpose and Definitions

§ 641.100 What does this part cover?

Part 641 contains the Department of Labor's regulations for the Senior Community Service Employment Program (SCSEP), authorized under title V of the Older Americans Act (OAA), 42 U.S.C. 3056 *et seq.*, as amended by the Older Americans Act Reauthorization Act of 2016, Pub. L. 114-144 (Apr. 19, 2016). This part and other pertinent regulations set forth the regulations applicable to the SCSEP.

* * * * *

(b) Subpart B of this part describes the required relationship between the OAA and the Workforce Innovation and Opportunity Act (WIOA), Pub. L. 113-128 (July 22, 2014). These provisions discuss the coordinated efforts to provide services through the integration of the SCSEP within the One-Stop delivery system.

* * * * *

3. Amend § 641.140 as follows:

- a. Remove the definition of “Additional indicators”.
- b. Add the definition of “Career services,” in alphabetical order.
- c. Revise the definition of “Co-enrollment”.
- d. Add the definition of “Community Service Employment” in alphabetical order.
- e. Remove the definition of “Core indicators”.
- f. Add the definition of “Core measures” in alphabetical order.
- g. Remove the definitions of “Core services” and “Intensive services”.
- h. Revise the definition of “Local Board”.
- i. Add the definition of “Local Workforce Development Area” in alphabetical order.
- j. Remove the definition of “Local Workforce Investment Area or local area”.
- k. Revise the definitions of “Most-in-need,” “One-Stop Center,” “One-Stop delivery system,” “One-Stop partner,” “Pacific Island and Asian Americans,” “State Board,” “Supportive services,” “Training services,” and “Unemployed”.
- l. Remove the definition of “Volunteer work”.

m. Add the definitions of “Workforce Innovation and Opportunity Act (WIOA),” and “Workforce Innovation and Opportunity Act (WIOA) regulations” in alphabetical order.

n. Remove the definitions of “Workforce Investment Act (WIA),” and “Workforce Investment Act (WIA) regulations”.

The additions and revisions read as follows:

§ 641.140 What definitions apply to this part?

* * * * *

Career services means those services described in sec. 134(c)(2) of WIOA.

Co-enrollment applies to any individual who meets the qualifications for SCSEP participation and is also enrolled as a participant in WIOA or another employment and training program, as provided in the Individual Employment Plan (IEP).

* * * * *

Community Service Employment means part-time, temporary employment paid with grant funds in projects at host agencies through which eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment. (OAA sec. 518(a)(2).) The term community service assignment is used interchangeably with community service employment.

* * * * *

Core measures means hours (in the aggregate) of community service employment; the percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project; the percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project; the

median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project; indicators of effectiveness in serving employers, host agencies, and project participants; the number of eligible individuals served; and most-in-need (the number of individuals described in sec. 518(a)(3)(B)(ii) or (b)(2) of the OAA). (OAA sec. 513(b)(1).)

* * * * *

Local Board means a Local Workforce Development Board established under sec. 107 of the Workforce Innovation and Opportunity Act.

Local Workforce Development Area or *local area* means an area designated by the Governor of a State under sec. 106 of the Workforce Innovation and Opportunity Act.

* * * * *

Most-in-need means participants with one or more of the following characteristics: Have a severe disability; are frail; are age 75 or older; are age-eligible but not receiving benefits under title II of the Social Security Act; reside in an area with persistent unemployment and have severely limited employment prospects; have limited English proficiency; have low literacy skills; have a disability; reside in a rural area; are veterans; have low employment prospects; have failed to find employment after using services provided under title I of the Workforce Innovation and Opportunity Act; or are homeless or at risk for homelessness. (OAA sec. 513(b)(1)(F).)

* * * * *

One-Stop Center means the One-Stop Center system in a WIOA local area, which must include a comprehensive One-Stop Center through which One-Stop partners

provide applicable career services and which provides access to other programs and services carried out by the One-Stop partners. (See WIOA sec. 121(e)(2).)

One-Stop delivery system means a system under which employment and training programs, services, and activities are available through a network of eligible One-Stop partners, which assures that information about and access to career services are available regardless of where the individuals initially enter the workforce development system. (See WIOA sec. 121(e)(2).)

One-Stop partner means an entity described in sec. 121(b)(1) of the Workforce Innovation and Opportunity Act, *i.e.*, required partners, or an entity described in sec. 121(b)(2) of the Workforce Innovation and Opportunity Act, *i.e.*, additional partners.

* * * * *

Pacific Island and Asian Americans means Americans having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. (OAA sec. 518(a)(6).)

* * * * *

State Board means a State Workforce Development Board established under WIOA sec. 101.

* * * * *

Supportive services means services, such as transportation, health and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eye-glasses, and tools), child and adult care, housing, including temporary shelter, follow-up services, and needs-related payments, which are necessary

to enable an individual to participate in activities authorized under the SCSEP. (OAA secs. 502(c)(6)(A)(iv) and 518(a)(8).)

* * * * *

Training services means those services authorized by WIOA sec. 134(c)(3).

* * * * *

Unemployed means an individual who is without a job and who wants and is available for work, including an individual who may have occasional employment that does not result in a constant source of income. (OAA sec. 518(a)(9).)

* * * * *

Workforce Innovation and Opportunity Act (WIOA) means the Workforce Innovation and Opportunity Act, Pub. L. 113-128 (July 22, 2014), as amended.

Workforce Innovation and Opportunity Act (WIOA) regulations means the regulations in parts 675 through 688 of this chapter, the Wagner-Peyser Act regulations in parts 651 through 654 and part 658 of this chapter, and the regulations implementing WIOA sec. 188 in 29 CFR part 38.

4. Revise subpart B to read as follows:

Subpart B—Coordination With the Workforce Innovation and Opportunity Act

Sec.

- 641.200 What is the relationship between the SCSEP and the Workforce Innovation and Opportunity Act?
- 641.210 What services, in addition to the applicable career services, must SCSEP grantees and sub-recipients provide through the One-Stop delivery system?
- 641.220 Does title I of WIOA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?
- 641.230 Must the individual assessment conducted by the SCSEP grantee or sub-recipient and the assessment performed by the One-Stop delivery system

be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title I, subtitle B of WIOA?

641.240 Are SCSEP participants eligible for career and training services under title I of WIOA?

Subpart B—Coordination With the Workforce Innovation and Opportunity Act

§ 641.200 What is the relationship between the SCSEP and the Workforce Innovation and Opportunity Act?

The SCSEP is a required partner under the Workforce Innovation and Opportunity Act. As such, it is a part of the One-Stop delivery system. When acting in their capacity as WIOA partners, SCSEP grantees and sub-recipients are required to follow all applicable rules under WIOA and its regulations. *See* WIOA sec.

121(b)(1)(B)(v) and 20 CFR 678.400 through 678.440.

§ 641.210 What services, in addition to the applicable career services, must SCSEP grantees and sub-recipients provide through the One-Stop delivery system?

In addition to providing career services, as defined at 20 CFR 678.430, SCSEP grantees and sub-recipients must make arrangements through the One-Stop delivery system to provide eligible and ineligible individuals with referrals to WIOA career and training services and access to other activities and programs carried out by other One-Stop partners.

§ 641.220 Does title I of WIOA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?

No, SCSEP requirements continue to apply. OAA title V resources may not be used to serve individuals who are not SCSEP-eligible. The Workforce Innovation and

Opportunity Act creates a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop delivery system. Although the overall effect is to provide universal access to career services, SCSEP resources may only be used to provide services that are authorized and provided under the SCSEP to eligible individuals. Note, however, that one allowable SCSEP cost is a SCSEP project's proportionate share of One-Stop costs. *See* § 641.850(d). Title V funds can be used to pay wages to SCSEP participants receiving career and training services under title I of WIOA provided that the SCSEP participants have each received a community service assignment. All other individuals who are in need of the services provided under the SCSEP, but who do not meet the eligibility criteria to enroll in the SCSEP, should be referred to or enrolled in WIOA or other appropriate partner programs. WIOA sec. 121(b)(1). These arrangements should be negotiated in the Memorandum of Understanding (MOU), which is an agreement developed and executed between the Local Workforce Development Board, with the agreement of the chief local elected official, and the One-Stop partners relating to the operation of the One-Stop delivery system in the local area. The MOU is further described in the WIOA regulations at 20 CFR 678.500 through 678.510.

§ 641.230 Must the individual assessment conducted by the SCSEP grantee or sub-recipient and the assessment performed by the One-Stop delivery system be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title I, subtitle B of WIOA?

Yes, sec. 502(b)(3) of the OAA provides that an assessment or IEP completed by the SCSEP satisfies any condition for an assessment, service strategy, or IEP completed

at the One-Stop and vice-versa. (OAA sec. 502(b)(3).) These reciprocal arrangements and the contents of the SCSEP IEP and WIOA IEP should be negotiated in the MOU.

§ 641.240 Are SCSEP participants eligible for career and training services under title I of WIOA?

(a) Although SCSEP participants are not automatically eligible for career and training services under title I of WIOA, local boards may deem SCSEP participants, either individually or as a group, as satisfying the requirements for receiving adult career and training services under title I of WIOA.

(b) SCSEP participants who have been assessed and for whom an IEP has been developed have received a career service under 20 CFR 680.220(a) of the WIOA regulations. In order to enhance skill development related to the IEP, it may be necessary to provide training beyond the community service assignment to enable participants to meet their unsubsidized employment objectives. The SCSEP grantee or sub-recipient, the host agency, the WIOA program, or another One-Stop partner may provide training as appropriate and as negotiated in the MOU. (See § 641.540 for a further discussion of training for SCSEP participants.)

Subpart C—The State Plan

5. Revise § 641.300 to read as follows:

§ 641.300 What is the State Plan?

The State Plan is a plan, submitted by the Governor, or the highest government official, in each State, as an independent document or as part of the WIOA Combined State Plan, that outlines a 4-year strategy for the statewide provision of community

service employment and other authorized activities for eligible individuals under the SCSEP as described in § 641.302. The State Plan also describes the planning and implementation process for SCSEP services in the State, taking into account the relative distribution of eligible individuals and employment opportunities within the State. The State Plan is intended to foster coordination among the various SCSEP grantees and sub-recipients operating within the State and to facilitate the efforts of stakeholders, including State and local boards under WIOA, to work collaboratively through a participatory process to accomplish the SCSEP's goals. (OAA sec. 503(a)(1).) The State Plan provisions are listed in § 641.325.

6. Amend § 641.302 by revising paragraphs (f) and (g) to read as follows:

§ 641.302 What is a four-year strategy?

* * * * *

(f) The State's strategy for continuous improvement in the level of performance for entry into unsubsidized employment;

(g) Planned actions to coordinate activities of SCSEP grantees with the activities being carried out in the State under title I of WIOA, including plans for using the WIOA One-Stop delivery system and its partners to serve individuals aged 55 and older;

* * * * *

7. Amend § 641.315 by revising paragraph (a)(2) to read as follows:

§ 641.315 Who participates in developing the State Plan?

(a) * * *

(2) State and local boards under WIOA;

* * * * *

8. Amend § 641.320 by revising paragraph (b) to read as follows:

§ 641.320 Must all national grantees operating within a State participate in the State planning process?

* * * * *

(b) National grantees serving older American Indians, or Pacific Island and Asian Americans, with funds reserved under OAA sec. 506(a)(3), are exempted from the requirement to participate in the State planning processes under sec. 503(a)(9) of the OAA. Although these national grantees may choose not to participate in the State planning process, the Department encourages their participation. Only those grantees using reserved funds are exempt; if a grantee is awarded one grant with reserved funds and another grant with non-reserved funds, the grantee is required under paragraph (a) of this section to participate in the State planning process for purposes of the non-reserved funds grant.

9. Amend § 641.325 by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 641.325 What information must be provided in the State Plan?

* * * * *

(c) The current and projected employment opportunities in the State (such as by providing information available under sec. 15 of the Wagner-Peyser Act (29 U.S.C. 491-2) by occupation), and the types of skills possessed by eligible individuals;

(d) The localities and populations for which projects of the type authorized by OAA title V are most needed;

(e) Actions taken and/or planned to coordinate activities of SCSEP grantees in the State with activities carried out in the State under title I of WIOA;

(f) A description of the process used to obtain advice and recommendations on the State Plan from representatives of organizations and individuals listed in § 641.315, and advice and recommendations on steps to coordinate SCSEP services with activities funded under title I of WIOA from representatives of organizations listed in § 641.335;

* * * * *

10. Revise § 641.335 to read as follows:

§ 641.335 How should the Governor, or the highest government official, address the coordination of SCSEP services with activities funded under title I of WIOA?

The Governor, or the highest government official, must seek the advice and recommendations from representatives of the State and local area agencies on aging in the State and the State and local boards established under title I of WIOA. (OAA sec. 503(a)(2).) The State Plan must describe the steps that are being taken to coordinate SCSEP activities within the State with activities being carried out under title I of WIOA. (OAA sec. 503(a)(4)(F).) The State Plan must describe the steps being taken to ensure that the SCSEP is an active partner in each One-Stop delivery system and the steps that will be taken to encourage and improve coordination with the One-Stop delivery system.

11. Amend § 641.365 by revising paragraph (a) to read as follows:

§ 641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?

(a) Governors, or highest government officials, must describe in the State Plan the steps that are being taken to comply with the statutory requirement to avoid disruptions in the provision of services for participants. (OAA sec. 503(a)(7).)

* * * * *

12. Add § 641.370 to subpart C to read as follows:

§ 641.370 May a State incorporate its 4-year plan for SCSEP into a Combined State Plan under WIOA?

Yes. A State may include its 4-year plan for SCSEP in its WIOA Combined State Plan according to the requirements in 20 CFR 676.140 through 676.145. For a State that obtains approval of that Combined State Plan under 20 CFR 676.143, the requirements of sec. 103 of WIOA and 20 CFR part 676 will apply in lieu of sec. 503(a) of the OAA and this subpart, and any reference in this part to a “State Plan” will be considered to be a reference to that Combined State Plan.

Subpart D—Grant Application and Responsibility Review Requirements for State and National SCSEP Grants

13. Amend § 641.410 by revising paragraph (c) to read as follows:

§ 641.410 How does an eligible entity apply?

* * * * *

(c) *State applicants.* A State that submits a Combined State Plan under sec. 103 of WIOA may include the State's SCSEP grant application in its Combined State Plan. Any State that submits a SCSEP grant application as part of its WIOA Combined State Plan must address all of the application requirements as published in the Department's instructions. Sections 641.300 through 641.370 address State Plans and modifications.

Subpart E—Services to Participants

14. Revise § 641.500 to read as follows:

§ 641.500 Who is eligible to participate in the SCSEP?

Anyone who is at least 55 years old, unemployed (as defined in § 641.140), and who is a member of a family with an income that is not more than 125 percent of the family income levels prepared by the Department of Health and Human Services and approved by OMB (Federal poverty guidelines) is eligible to participate in the SCSEP. (OAA sec. 518(a)(3), (9).) A person with a disability may be treated as a “family of one” for income eligibility determination purposes at the option of the applicant.

15. Revise § 641.512 to read as follows:

§ 641.512 May grantees and sub-recipients enroll otherwise eligible job ready individuals and place them directly into unsubsidized employment?

No, grantees and sub-recipients may not enroll as SCSEP participants job-ready individuals who can be directly placed into unsubsidized employment. Such individuals should be referred to an employment provider, such as the One-Stop Center for job placement assistance under WIOA or another employment program.

16. Amend § 641.535 by revising paragraphs (a)(2)(ii), (a)(3)(i), and (a)(7) to read as follows:

§ 641.535 What services must grantees and sub-recipients provide to participants?

(a) * * *

(2) * * *

(ii) Performing an initial assessment upon program entry, unless an assessment has already been performed under title I of WIOA as provided in § 641.230. Subsequent

assessments may be made as necessary, but must be made no less frequently than two times during a 12-month period (including the initial assessment);

(3)(i) Using the information gathered during the initial assessment to develop an IEP that includes an appropriate employment goal for each participant, except that if an assessment has already been performed and an IEP developed under title I of WIOA, the WIOA assessment and IEP will satisfy the requirement for a SCSEP assessment and IEP as provided in § 641.230;

* * * * *

(7) Providing appropriate services for participants, or referring participants to appropriate services, through the One-Stop delivery system established under WIOA (OAA sec. 502(b)(1)(O));

* * * * *

17. Amend § 641.540 by revising paragraph (c) to read as follows:

§ 641.540 What types of training may grantees and sub-recipients provide to SCSEP participants in addition to the training received at a community service assignment?

* * * * *

(c) Training may be in the form of lectures, seminars, classroom instruction, individual instruction, online instruction, and on-the-job experiences. Training may be provided by the grantee or through other arrangements, including but not limited to, arrangements with other workforce development programs such as WIOA. (OAA sec. 502(c)(6)(A)(ii).)

* * * * *

18. Amend § 641.545 by revising paragraph (a) to read as follows:

§ 641.545 What supportive services may grantees and sub-recipients provide to participants?

(a) Grantees and sub-recipients are required to assess all participants' need for supportive services and to make every effort to assist participants in obtaining needed supportive services. Grantees and sub-recipients may provide directly or arrange for supportive services that are necessary to enable an individual to successfully participate in a SCSEP project, including but not limited to payment of reasonable costs of transportation; health and medical services; special job-related or personal counseling; incidentals such as work shoes, badges, uniforms, eyeglasses, and tools; dependent care; housing, including temporary shelter; needs-related payments; and follow-up services. (OAA secs. 502(c)(6)(A)(iv), 518(a)(8).)

* * * * *

19. Amend § 641.565 by revising paragraph (a)(1)(ii) to read as follows:

§ 641.565 What policies govern the provision of wages and benefits to participants?

(a) * * *

(1) * * *

(ii) SCSEP participants may be paid the highest applicable required wage while receiving WIOA career services.

* * * * *

Subpart F—Pilot, Demonstration, and Evaluation Projects

20. Amend § 641.630 by revising the section heading and paragraph (b)(2) to read as follows:

§ 641.630 What pilot, demonstration, and evaluation project activities are allowable under the Older Americans Act?

* * * * *

(b) * * *

(2) Improve the provision of services to eligible individuals under One-Stop delivery systems established under title I of WIOA;

* * * * *

21. Revise subpart G to read as follows:

Subpart G—Performance Accountability

Sec.

- 641.700 What performance measures apply to Senior Community Service Employment Program grantees?
- 641.710 How are the performance measures defined?
- 641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?
- 641.730 How will the Department assist grantees in the transition to the new core performance measures?
- 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?
- 641.750 Will there be performance-related incentives?

Subpart G—Performance Accountability

§ 641.700 What performance measures apply to Senior Community Service Employment Program grantees?

(a) *Measures of performance.* There are seven core performance measures. Core measures (defined in § 641.710) are subject to goal-setting and corrective action (described in § 641.720); that is, performance level goals for each core measure must be agreed upon between the Department and each grantee as described in § 641.720, and if a

grantee fails to meet the performance level goals for the core measures, that grantee is subject to corrective action.

(b) *Core measures.* Section 513(b)(1) of the OAA establishes the following core measures of performance:

(1) Hours (in the aggregate) of community service employment;

(2) The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project;

(3) The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project;

(4) The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project;

(5) Indicators of effectiveness in serving employers, host agencies, and project participants;

(6) The number of eligible individuals served; and

(7) The number of most-in-need individuals served (the number of participating individuals described in OAA sec. 518(a)(3)(B)(ii) or (b)(2)).

(c) *Affected entities.* The core measures of performance are applicable to each grantee without regard to whether such grantee operates the program directly or through sub-contracts, sub-grants, or agreements with other entities. Grantees must assure that their sub-grantees and lower-tier sub-grantees are collecting and reporting program data.

(d) *Required evaluation and reporting.* An agreement to be evaluated on the core measures of performance is a requirement for application for, and is a condition of, all SCSEP grants.

§ 641.710 How are the performance measures defined?

The core measures are defined as follows:

(a) “Hours of community service employment” is defined as the total number of hours of community service provided by SCSEP participants divided by the number of hours of community service funded by the grantee's grant, after adjusting for differences in minimum wage among the States and areas. Paid training hours are excluded from this measure.

(b) “The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project” is defined by the formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the second quarter after the exit quarter divided by the number of participants who exited during the reporting period multiplied by 100.

(c) “The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project” is defined by the formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the fourth quarter after the exit quarter divided by the number of participants who exited during the reporting period multiplied by 100.

(d) “The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project” is defined by the formula: For all participants who exited and are in unsubsidized employment during the second quarter after the exit quarter: The wage that is at the midpoint (of all the wages) between the highest and lowest wage earned in the second quarter after the exit quarter.

(e) “Indicators of effectiveness in serving employers, host agencies, and project participants” is defined as the combined results of customer assessments of the services received by each of these three customer groups.

(f) “The number of eligible individuals served” is defined as the total number of participants served divided by a grantee's authorized number of positions, after adjusting for differences in minimum wage among the States and areas.

(g) “Most-in-need” or the number of participating individuals described in OAA sec. 518(a)(3)(B)(ii) or (b)(2) is defined by counting the total number of the following characteristics for all participants and dividing by the number of participants served.

Participants are characterized as most-in-need if they:

- (1) Have a severe disability;
- (2) Are frail;
- (3) Are age 75 or older;
- (4) Meet the eligibility requirements related to age for, but do not receive, benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*);
- (5) Live in an area with persistent unemployment and are individuals with severely limited employment prospects;
- (6) Have limited English proficiency;
- (7) Have low literacy skills;
- (8) Have a disability;
- (9) Reside in a rural area;
- (10) Are veterans;
- (11) Have low employment prospects;

(12) Have failed to find employment after utilizing services provided under title I of the Workforce Innovation and Opportunity Act; or

(13) Are homeless or at risk for homelessness.

§ 641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?

(a) *First 2 years.* Before the beginning of the first program year of the grant, each grantee must reach agreement with the Department on levels of performance for each measure listed in § 641.700 for each of the first 2 program years covered by the grant agreement. In reaching the agreement, the grantee and the Department must take into account the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section.

The levels agreed to will be considered the expected levels of performance for the grantee for such program years. Funds may not be awarded under the grant until such agreement is reached. At the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

(b) *Third and fourth year.* Each grantee must reach agreement with the Department prior to the third program year covered by the grant agreement, on levels of performance for each measure listed in § 641.700, for each of the third and fourth program years so covered. In reaching the agreement, the grantee and the Department must take into account the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section. The levels agreed to will be

considered to be the expected levels of performance for the grantee for such program years. Funds may not be awarded under the grant until such agreement is reached. At the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

(c) *Factors.* In reaching the agreements described in paragraphs (a) and (b) of this section, each grantee and the Department must:

(1) Take into account how the levels involved compare with the expected levels of performance established for other grantees;

(2) Ensure that the levels involved are adjusted, using an objective statistical model based on the model established by the Secretary of Labor with the Secretary of Education in accordance with sec. 116(b)(3)(A)(viii) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3141(b)(3)(A)(viii)); and

(3) Take into account the extent to which the levels involved promote continuous improvement in performance accountability on the core measures and ensure optimal return on the investment of Federal funds.

(d) *Adjustments based on economic conditions and individuals served during the program year.* The Department will, in accordance with the objective statistical model developed pursuant to paragraph (c)(2) of this section, adjust the expected levels of performance for a program year for grantees to reflect the actual economic conditions and characteristics of participants in the corresponding projects during such program year.

§ 641.730 How will the Department assist grantees in the transition to the new core performance measures?

As soon as practicable after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], the Department will determine if a SCSEP grantee's performance under the measures in effect prior to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] would have met the expected levels of performance for the Program Year 2018. If the Department determines that the grantee would have failed to meet the Program Year 2018 expected levels of performance, the Department will provide technical assistance to help the grantee to transition to eventually meet the expected levels of performance under the measures in § 641.700.

§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?

(a) *Aggregate calculation of performance.* Not later than 120 days after the end of each program year, the Department will determine if a grantee has met the expected levels of performance including any adjustments to such levels made in accordance with § 641.720(d) by aggregating the grantee's core measures. The aggregate is calculated by combining the percentage of goal achieved on each of the individual core measures to obtain an average score. A grantee will fail to meet its performance measures when it does not meet 80 percent of the agreed-upon level of performance for the aggregate of all the core measures. Performance in the range of 80 to 100 percent constitutes meeting the

level for the core performance measures. Performance in excess of 100 percent constitutes exceeding the level for the core performance measures.

(b) *Consequences*—(1) *National grantees*. (i) If the Department determines that a national grantee fails to meet the expected levels of performance in a program year, as described in paragraph (a) of this section, the Department, after each year of such failure, will provide technical assistance and will require such grantee to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) The corrective action plan must detail the steps the grantee will take to meet the expected levels of performance in the next program year.

(iii) Any national grantee that has failed to meet the expected levels of performance for 4 consecutive years will not be allowed to compete in the subsequent grant competition, but may compete in the next grant competition after that subsequent competition.

(2) *State grantees*. (i) If the Department determines that a State fails to meet the expected levels of performance, as described in paragraph (a) of this section, the Department, after each year of such failure, will provide technical assistance and will require the State to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) The corrective action plan must detail the steps the State will take to meet the expected levels of performance in the next program year.

(iii) If the Department determines that the State fails to meet the expected levels of performance for 3 consecutive program years the Department will require the State to conduct a competition to award the funds allotted to the State under sec. 506(e) of the

OAA for the first full program year following the Department's determination. The new grantee will be responsible for administering the SCSEP in the State and will be subject to the same requirements and responsibilities as had been the State grantee.

(c) *Evaluation.* The Department will annually evaluate, publish and make available for public review, information on the actual performance of each grantee with respect to the levels achieved for each of the core measures of performance, compared to the expected levels of performance established under § 641.720 (including any adjustments to such levels made in accordance with § 641.720(d)). The results of the Department's annual evaluation will be reported to Congress.

§ 641.750 Will there be performance-related incentives?

The Department is authorized by OAA secs. 502(e)(2)(B)(iv) and 517(c)(1) to use recaptured SCSEP funds to provide incentive awards. The Department will exercise this authority at its discretion.

Subpart H—Administrative Requirements

22. Amend § 641.827 by revising paragraph (b) to read as follows:

§ 641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?

* * * * *

(b) Recipients and sub-recipients of SCSEP funds are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR part 38 if:

(1) The recipient:

(i) Is a One-Stop partner listed in sec. 121(b) of WIOA, and

(ii) Operates programs and activities that are part of the One-Stop delivery system established under WIOA; or

(2) The recipient otherwise satisfies the definition of “recipient” in 29 CFR 38.4.

* * * * *

23. Amend § 641.833 by revising paragraph (a) to read as follows:

§ 641.833 What policies govern political patronage?

(a) A recipient or sub-recipient must not select, reject, promote, or terminate an individual based on political services provided by the individual or on the individual's political affiliations or beliefs. In addition, as provided in § 641.827(b), certain recipients and sub-recipients of SCSEP funds are required to comply with WIOA nondiscrimination regulations in 29 CFR part 38. These regulations prohibit discrimination on the basis of political affiliation or belief.

* * * * *

24. Amend § 641.850 by revising paragraph (d) to read as follows:

§ 641.850 Are there other specific allowable and unallowable cost requirements for the SCSEP?

* * * * *

(d) *One-Stop costs.* Costs of participating as a required partner in the One-Stop delivery system established in accordance with sec. 121(e) of WIOA are allowable, provided that SCSEP services and funding are provided in accordance with the MOU required by WIOA and OAA sec. 502(b)(1)(O), and costs are determined in accordance with the applicable cost principles. The costs of services provided by the SCSEP,

including those provided by participants/enrollees, may comprise a portion or the total of a SCSEP project's proportionate share of One-Stop costs.

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Subpart I—Grievance Procedures and Appeals Process

25. Amend § 641.910 by revising paragraph (d) to read as follows:

§ 641.910 What grievance procedures must grantees make available to applicants, employees, and participants?

* * * * *

(d) Questions about, or complaints alleging a violation of, the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, sec. 504 of the Rehabilitation Act of 1973, sec. 188 of the Workforce Innovation and Opportunity Act (WIOA), or their implementing regulations, may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW., Washington, DC 20210. In the alternative, complaints alleging violations of WIOA sec. 188 may be filed initially at the grantee level. See 29 CFR 38.69, 38.72. In such cases, the grantee must use complaint processing procedures meeting the requirements of 29 CFR 38.69 through 38.76 to resolve the complaint.

26. Amend § 641.920 by revising paragraph (b) to read as follows:

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

* * * * *

(b) Appeals of suspension or termination actions taken on the grounds of discrimination are processed under 29 CFR part 31 or 29 CFR part 38, as appropriate.

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