

U.S. Department of Labor

Office of Inspector General—Office of Audit

**EMPLOYMENT AND TRAINING
ADMINISTRATION**



**SENIOR COMMUNITY SERVICE
EMPLOYMENT PROGRAM
ANTIDEFICIENCY ACT VIOLATION**

Date: November 21, 2008
Report Number: 25-09-001-03-360

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



November 21, 2008

Assistant Inspector General's Report

The Honorable Tom Harkin
Chairman, Subcommittee on Labor, Health and Human
Services and Education, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable David R. Obey
Chairman, Subcommittee on Labor, Health and Human
Services and Education, and Related Agencies
Committee on Appropriations
United States House of Representatives

In response to your letter dated September 26, 2008, we have reviewed recent actions taken by the Department of Labor (DOL) related to the Senior Community Service Employment Program (SCSEP), and obtained answers to the following questions that you posed:

- What are the facts surrounding the Antideficiency Act violation, including DOL's delay in providing formal notification of such violation?
- What are the functions and specific activities being performed under contract to the Employment and Training Administration's Older Workers office?
- What options are potentially available to DOL for using sources other than SCSEP formula funds to pay for contractor-provided technical assistance?
- Is the proposed SCSEP regulation consistent with existing law and does it meet the standards laid out in White House Chief of Staff Joshua Bolten's memorandum of May 9, 2008?

In conducting our work, we reviewed the following: agency documents such as emails and other correspondence related to the Antideficiency Act (ADA) violation; contracts awarded using SCSEP funds; and information associated with the proposed SCSEP regulation. We also met with staff from the Employment and Training Administration (ETA), Office of the Assistant Secretary for Administration and Management (OASAM), and the Office of the Solicitor (SOL) to discuss actions taken by the Department and obtain explanations regarding the information provided. We provided a draft of this report to Departmental officials and made changes to this final report to address comments they provided.

Results in Brief

As reported in the Secretary's letter to the President dated September 11, 2008, the ADA violation occurred because the Department carried over SCSEP funds from one year to the two succeeding years, in violation of provisions in the Department's appropriation acts. Our interviews with program officials in ETA and budget officials in ETA, the Office of the Assistant Secretary for Administration and Management, and the Office of the Solicitor, as well as review of related documentation, found that many people in DOL were aware or had been informed that unspent SCSEP funds were being recaptured and reobligated. After OMB informed DOL that an ADA violation may have occurred, DOL conducted factual and legal research to determine if an ADA violation did, in fact, occur; continued to discuss this issue with OMB staff, and drafted the required ADA notification letters. The ADA notification letter to the President stated that the total amount of the ADA violations was \$39,450,476; however, ETA has provided documentation to OIG showing violations totaling \$37,461,482. We are continuing to work with ETA officials to reconcile the amounts of SCSEP funds that were recaptured, reobligated, and expended.

Functions and activities being performed under contract to the Employment and Training Administration's Older Workers office fall into three categories: developing and maintaining the information technology infrastructure for the SCSEP Performance and Results Quarterly (SPARQ) system; providing support to SCSEP grantees on technological aspects of the SPARQ system; and providing performance improvement technical assistance to grantees, including program performance and data collection, training on the new regulations, and travel and logistics for SCSEP conferences.

The alternate options for funding contractor-provided technical assistance, apart from recaptured funds, are the 1.5 percent set-aside of SCSEP formula funds, as provided by the 2006 Amendments to the Older Americans Act (Public Law 109-365, dated October 17, 2006), or the use of funds from ETA's Program Administration account.

We did not find any direct inconsistency between DOL's proposed SCSEP regulations and the Older Americans Act, as amended. However, the timeline for the proposed regulations did not comport with Mr. Bolten's May 9, 2008 memorandum.

Background

SCSEP is a community service and work-based training program for older workers. It was authorized by Congress in Title V of the Older Americans Act of 1965 to provide subsidized, part-time, community service work-based training for low-income persons age 55 or older who have poor employment prospects.

SCSEP is currently funded at \$521,625,000 for Program Year 2008 (July 1, 2008 through June 30, 2009). All funds are allocated by a formula among 56 units of state and territorial governments, and 18 national nonprofit organizations. See Exhibit 1 for a list of these national organizations.

On September 11, 2008, the Secretary of Labor reported a recurring violation of the Antideficiency Act (ADA) that occurred in the SCSEP program in each of the Fiscal Years (FYs) 2003 through 2008, covering appropriations enacted for FYs 2001 through 2005. The Department reported that the total amount of the violations was \$39,450,476. The Department stated that the violations related to the obligation of expired FY 2001-2005 funds beyond the period allowed for new obligations as established in the Department's annual SCSEP appropriation. According to the Department, the violation occurred because it failed to recognize that a provision in the Department's appropriation acts, which limited the availability of funds appropriated to SCSEP to one fiscal year, superseded a provision in the Older Americans Act, which authorizes the Secretary of Labor to reobligate SCSEP funds beyond the end of the fiscal year.

Results

What are the facts surrounding the Antideficiency Act violation, including DOL's delay in providing formal notification of such violation?

What caused the Antideficiency Violation?

The 2000 Amendments to the Older Americans Act (Public Law 106-501, dated November 13, 2000, Section 515(c) allowed DOL to recapture unexpended SCSEP funds at the end of the Program Year, and reobligate such funds within the two succeeding years. In FY 2003, the Department first began recapturing and reobligating unexpended Program Year (PY) 2001 SCSEP funds. ETA officials stated that they believed it was proper to do so, based on Section 515(c) of the Older Americans Act Amendments of 2000:

At the end of the program year, the Secretary may recapture any unexpended funds for the program year, and reobligate such funds within the two succeeding program years for –

- (1) incentive grants;
- (2) technical assistance; or
- (3) grants or contracts for any other program under this title.

According to ETA officials, the “structural design” of the SCSEP often results in grantees having unspent funds at the end of the Program Year. Program funds are primarily used to subsidize the salaries of those enrolled in community service work-base training. Due to illness, absenteeism, vacations, enrollee turnover and other factors, it is difficult for grantees to keep their allotted training slots fully occupied, resulting in unspent funds at year end. According to an ETA official responsible for overseeing SCSEP, the impetus for the change to the statute in the 2000 Amendments was to allow the recapture and reobligation of these unspent funds, rather than having the unspent funds returned to the Treasury.

On May 22, 2003, ETA issued Older Worker Bulletin No. 03-04. This bulletin, signed by John R. Beverly, III (who was at that time the Administrator, Office of National Programs) and Ria Moore Benedict (who was at that time Chief of the Division of Older Worker Programs), provided the procedures for the recapture and reobligation of unexpended Program Year 2001 SCSEP grant funds. The bulletin stated:

Under Section 515(c) of the OAA, the Department has the authority to recapture unexpended funds from SCSEP recipients at the end of the Program Year (PY) and reobligate such funds within the two succeeding PYs to be used for incentive grants, technical assistance or grants or contracts for any other SCSEP program.

The SCSEP grant closeout process will be used to identify and recapture unexpended funds for use in subsequent SCSEP grant cycles. The Department currently intends to recapture PY 2001 funds for use in PY 2003. Such funds may be used to support activities as authorized under Section 515(c).

Our interviews with program and budget officials in ETA found that these officials were aware that unspent SCSEP funds were being recaptured and reobligated and they believed this to be appropriate. In addition to these interviews, we also reviewed e-mail traffic provided by an ETA budget official that shows that many DOL program officials and staff were aware or had been informed of the recapture and reobligation. Included among these program officials and staff were:

| Name | Position/Title | Current Employment Status |
|-------------------|--|---------------------------------------|
| Emily DeRocco | ETA Assistant Secretary | Left DOL |
| Mason Bishop | ETA Deputy Assistant Secretary | Left DOL |
| David Dye | ETA Deputy Assistant Secretary | Retired |
| Douglas Small | ETA, Deputy Assistant Secretary | Current DOL Employee |
| Tom Dowd | ETA Director, National Programs | Current DOL Employee |
| Lance Grubb | ETA Director, Office of Grants & Contract Management | Retired |
| Lorraine Saunders | ETA Grants Office | Current DOL Employee |
| Esther Johnson | ETA Comptroller | Current DOL Employee |
| Gay Gilbert | ETA Director, Office of Workforce Investment | Current DOL Employee |
| Christine Ollis | ETA, Chief, Division of Adult Services | Current DOL Employee |
| Judith Gilbert | ETA SCSEP Senior Staff Employee | Current DOL Employee |
| Gale Gibson | ETA Team Leader, Older Worker Programs | Retired |
| Lois Engel | ETA SCSEP Staff Assistant | Retired |
| Alex Brezak | ETA Budget Analyst | Retired |
| Erica Cantor | Former ETA Budget Officer | Current DOL Employee |
| Michael Jones | Former ETA Budget Officer | Current DOL Employee |
| Deborah Eschmann | Former ETA Budget Officer | Current DOL Employee (on loan to CFC) |
| Shirley Womack | ETA Accounting Staff | Retired |
| Thomas Ryan | OASAM Budget Analyst | Retired |
| Mark Morin | SOL Attorney | Current DOL Employee |

While the 2000 Amendments to the Older Americans Act authorized the recapture and reobligation of unspent SCSEP funds, language in Section 502 of the "General Provisions" of the Department's appropriations acts for FY 2001 through 2005, contained conflicting instructions, as follows:

Title V – General Provision - SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

The above appropriation language superseded the authorization language contained in the 2000 Amendments to the Older Americans Act. By continuing to recapture and reobligate SCSEP funds during the period FY 2003 through FY 2008, the Department violated the Antideficiency Act.

The ADA notification letter to the President stated that the total amount of the ADA violations was \$39,450,476; however, ETA provided documentation to OIG showing violations totaling \$37,461,482. We are continuing to work with ETA

officials to reconcile the amounts of SCSEP funds that were recaptured, reobligated, and expended.

When Did the Department Discover the Antideficiency Act Violation?

The Department reported an unrelated ADA violation in December 2006 involving the apportionment of WIA funds, and subsequently created an Apportionment Task Force, headed by the Assistant Secretary for Administration and Management (ASAM), to “to identify budget execution shortcomings.” The Task Force was comprised of senior Departmental officials who were charged with identifying budget execution issues within their respective agencies. During the Task Force’s review of various fund accounts, ETA officials determined that the recaptured SCSEP obligations might be subject to apportionment. The recaptured funds had not been apportioned previously.

In February 2008, OMB notified the Departmental Budget Center that \$21 million in prior-year recoveries listed on the SCSEP apportionment request should probably be removed, pending further discussions on prior-year recoveries for this account. After researching OMB’s questions regarding the prior year recoveries, Departmental and OMB officials concluded in April 2008 that an ADA violation had likely occurred.

What Happened After the ADA Violation Was Discovered?

The requirements for reporting ADA violations are contained in OMB Circular A-11, Section 145. Section 145.9 states the following:

Whenever OMB determines that a violation of the Antideficiency Act may have occurred, OMB may request that an investigation or audit be undertaken or conducted by the agency. In such cases, a report describing the results of the investigation or audit will be submitted to OMB through the head of the agency.

. . . If the report indicates that a violation of the Antideficiency Act has occurred, the agency head will report to the President, Congress, and the Comptroller General in accordance with Section 145.7 as soon as possible. . . .

According to Departmental officials, on February 5, 2008, OMB notified the Departmental Budget Center that \$21 million in prior-year recoveries listed on the SCSEP apportionment request should probably be removed, pending further discussions on prior-year recoveries for this account.

On February 28, 2008, officials from ETA, the Departmental Budget Center and the Office of the Solicitor met to discuss OMB’s questions regarding SCSEP recoveries. The Departmental Budget Center provided the information requested by OMB on March 12, 2008, including the authorizing language from the 2000

Amendments to the Older Americans Act that permitted the use of recovered funds. OMB suggested that DOL obtain an opinion from its Office of the Solicitor on whether the recoveries can be apportioned.

On April 15, 2008, the Office of the Solicitor met with officials from the Departmental Budget Center to discuss the use of recaptured SCSEP funds and indicated there was likely an ADA violation because Section 502 of the Labor/HHS/Education Appropriations Act limited the availability of SCSEP funding to one fiscal year. Departmental budget officials sent a draft ADA letter to OMB for review on April 23, 2008, and received comments back from OMB on May 14, 2008. During June and July, meetings were held involving the Deputy Secretary, ETA, OASAM, Office of the Solicitor, Office of Congressional and Intergovernmental Affairs, and Office of the Chief Financial Officer to discuss the violation, the Department's response, and corrective actions, as well as ETA's plans to reserve PY 2008 funds to provide technical assistance and payment of outstanding invoices from prior-year funding. Departmental budget officials met with OMB on July 25, 2008, to discuss the ADA letter. OMB provided Departmental budget officials with a template to use in finalizing the letter and the Department continued working with OMB until the ADA letter to the President was approved and signed on September 11, 2008.

What are the functions and specific activities being performed under contract to the Employment and Training Administration's Older Workers office?

From FY 2003 through May 2008, ETA utilized recaptured funds to contract for program support services for the Older Workers/SCSEP program. Once ETA recognized that SCSEP appropriations law restricted the use of program funds to the current fiscal year, it ceased utilizing the recaptured funds. For PY 2008, ETA utilized the Secretary's discretionary authority under Section 506(a)(1) of the Older Americans Act to reserve SCSEP funds for program support activities.

The program support activities that ETA has contracted for include: the development and maintenance of its SCSEP Performance and Quarterly Results (SPARQ) system; training and assistance to grantees on the use of the SPARQ system, and assistance to grantees on improving their performance.

ETA provided information to OIG showing that the agency had recaptured funds totaling \$44,071,438 during the period PY 2001 through PY 2005. Data that ETA provided to OIG showed that it had obligated \$37,461,482 of the recaptured funds, including \$18,359,974 for program support contracts: \$4,388,766 for contracts to develop and maintain the SPARQ system; \$5,206,640 for contracts to provide support to grantees on the use of the SPARQ system; and \$8,764,568 for contracts to provide assistance to grantees on improving their performance.

An ETA official responsible for overseeing SCSEP stated that changes to the Older Americans Act necessitated more technical assistance than was needed in prior years when the program rules and processes had remained relatively static. New provisions resulting from the 2000 and 2006 amendments included requirements for greater coordination with the Workforce Investment Act; submission of annual state plans; new performance measures; and corrective action and sanctions for poor performance. Regulations were issued in April 2004 and a comprehensive data collection and performance evaluation system (SPARQ) was created to help provide grantees meet the new and existing requirements, and additional technical assistance was required for actual implementation of the regulations and SPARQ. Finally, the 2006 amendments changed the performance measures and added new requirements for durational limits, both requiring changes in SPARQ and on-going technical assistance to grantees.

ETA also provided information to OIG showing that it had awarded \$19,101,511 of the recaptured funds to SCSEP grantees for program activities. Exhibit 2 provides a summary and detailed listing of the contractors that ETA stated had performed technical assistance utilizing reobligated funds, as well as grantees awarded additional funds.

In its September 11, 2008, letter to the President reporting the Antideficiency Act violation, the Department stated that the total amount of the violations was \$39,450,476. We are continuing to work with ETA officials to reconcile the amounts reported as recaptured, reobligated, and expended.

What options are potentially available to DOL for using sources other than SCSEP formula funds to pay for contractor-provided technical assistance?

The Older Americans Act (OAA) of 2000 authorized the use of unspent SCSEP funds for technical assistance, and the 2006 amendments specifically allowed the Secretary to reserve up to 1.5 percent of the annual SCSEP appropriation for such support. ETA senior officials reported that the only other possible funding source would be resources obligated to administration (Salary and Expenses). When asked how the Department provided technical assistance prior to these provisions in the law, senior ETA officials noted that Federal program office staff generally provided such support directly or through the issuance of Older Worker Bulletins by the SCSEP national office.

Title V of the Older Americans Act, Section 502(a)(2) states:

USE OF APPROPRIATED AMOUNTS – Amounts appropriated to carry out this title shall be used only to carry out the provisions in this title.

To carry out Title V, the Department makes grants to public and nonprofit private agencies and organizations, State agencies, and tribal

organizations. The objectives of these grants are to foster individual economic self-sufficiency and promote useful opportunities in community service activities, including community service employment, for unemployed, low-income persons who are age 55 or older.

In FY 2003, the Department began using recaptured unexpended grant funds to pay for contractor-provided technical assistance. This use of Title V funds was authorized by Section 515(c) of the Older Americans Act Amendments of 2000:

At the end of the program year, the Secretary may recapture any unexpended funds for the program year, and reobligate such funds within the two succeeding program years for –

- (1) incentive grants;
- (2) technical assistance; or
- (3) grants or contracts for any other program under this title.

After the Department recognized that a provision in the Department's appropriation acts prohibited the recapture of unexpired funds, it issued an order dated May 16, 2008, to suspend work on all SCSEP contracts funded with improperly reobligated funds.

On May 30, 2008, ETA issued Training and Employment Guidance Letter (TEGL) 30-07 that reduced previously announced SCSEP funding amounts by \$5 million and authorized positions by 447. The purpose of the reduction was to reserve funds for evaluation, training and assistance, and other activities authorized under Section 502(e) of the OAA. The \$5 million represented about 1 percent of the SCSEP funds appropriated for PY 2008; the OAA permits up to 1.5 percent of SCSEP funds to be used for such purposes.

In its Spending Plan for SCSEP PY 2008 Reserved Funds, ETA requested the following for Evaluation, Training and Technical Assistance Needs:

| Contractor | Purpose of Contract | Amount |
|-----------------------|---|--------------------|
| CITI/SAIC | Provide IT development and implementation for SPARQ, including completion of grantee performance evaluation required by the SCSEP reauthorization | \$900,000 |
| Mathematica | Provide specifications, testing, and grantee/sub-grantee technical assistance on all technological aspects of SPARQ | \$1,080,000 |
| DOLETA PROTECH Office | In-house IT infrastructure to house and maintain SPARQ | \$500,000 |
| Charter Oak Group | Manage annual customer satisfaction evaluation surveys and data analysis | \$400,000 |
| Charter Oak Group | Technical assistance to grantees on performance evaluation measures and data collection | \$400,000 |
| | (Kathleen Dorcy – consultant) Consulting services to coordinate and deliver technical assistance activities for SCSEP grantees | \$200,000 |
| | (Joyce Welch – consultant) Consulting services to develop and deliver training and individual technical assistance to SCSEP grantees | \$125,000 |
| Exceed Corporation | Technical assistance with employer engagement, partnership development, outreach, and administrative support | \$260,000 |
| To be identified | Graphics design, printing, housing and distribution of outreach materials used by SCSEP grantees for program recruitment and National Employ Older Workers Week | \$100,000 |
| Total | | \$3,965,000 |

ETA indicated that it anticipated additional spending requests to provide training and technical assistance to SCSEP grantees based on their PY 2007 performance deficiencies and on the pending new regulations.

ETA could use funds from its Program Administration account to provide technical assistance to SCSEP grantees. The Program Administration account provides for the Federal administration of all Employment and Training Administration programs. ETA's FY 2008 budget request included \$216 million for Program Administration.

Prior to the enactment of amendments to the OAA in 2000 that authorized the use of recaptured funds to provide technical assistance to grantees, a SCSEP official stated that such technical assistance was provided by Federal SCSEP staff. Currently, the SCSEP program is staffed by four employees in the National Office, with the assistance of field representatives in ETA's six regional offices. These employees' salaries are paid out of ETA's Program Administration account.

Is the proposed SCSEP regulation consistent with existing law and does it meet the standards laid out in White House Chief of Staff Joshua Bolten’s memorandum of May 9, 2008?

We did not find any direct inconsistency between the Department’s proposed SCSEP regulations and the Older Americans Act, as amended. However, we did find that the Department’s proposed regulation imposing a one-year, one-time extension for an individual’s participation in the program beyond the 48-month period specified by Congress was more restrictive than the maximum 36 month extension contained in the statute. We also noted that the Department’s proposed regulation sets a 1,300-hour limit on annual community service employment participation, but the 2006 OAA does not contain any requirement to limit the number of hours an SCSEP participant spends annually in his/her community service employment assignment.

To determine if any conflict exists, OIG reviewed the NPRM, the Older Americans Act which authorizes the SCSEP (including the 2006 amendments), the relevant legislative history, as well as comments received by the Department following the August 2008 publication of the Notice of Proposed Rule Making (NPRM). In concluding whether the proposed regulation was consistent with existing law, we recognized that agency regulations are by their very nature “interpretive,” whereas statutory language enacted by Congress is typically more broad and sweeping in scope. The purpose of agency regulations is to interpret and implement statutory provisions. As long as the implementing regulations did not directly contradict the statutory language, we concluded that there was no improper or illegal conflict between the two.

The proposed regulation does not meet the standards laid out in White House Chief of Staff Joshua Bolten’s memorandum of May 9, 2008. The May 9, 2008, memorandum stated that all proposed regulations should be issued no later than June 1, 2008, and final regulations no later than November 1, 2008. The proposed SCSEP regulation was not issued until August 14, 2008 and, to date, the final regulations have not been issued.

Is the proposed SCSEP regulation consistent with existing law?

On October 17, 2006, President Bush signed the Older Americans Act Amendments of 2006, Public Law 109-365 (2006 OAA Amendments). The law amended the statute authorizing the SCSEP and required changes to the SCSEP regulations. On June 29, 2007, the Department issued an interim final rule on Subpart G of the law which addresses performance accountability measures for the program (e.g., performance outcomes, one-year retention, customer satisfaction). The Department issued its proposed rules on other sections of the Older Americans Act Amendments of 2006 on August 14, 2008.

The August 14, 2008 NPRM proposed changes in the following areas:

- Definitions
- Coordination with the Workforce Investment Act
- The State Plan
- Grant Application and Responsibility Review Requirements
- Services to Participants
- Pilot, Demonstration, and Evaluation Projects
- Administrative Requirements

According to ETA, the Department received 1,507 comments on the NPRM and is in the process of reviewing those comments prior to finalizing the rule. These comments included 13 form letters totaling 959 comments, and 1 petition with 182 signatures (each signature counts as a comment). Removing the known duplicates, the Department received 380 specific comments on the NPRM. The Department reported it did not perform any “trend analysis” that might show the distribution of the 380 comments by subject. However, senior ETA managers noted “a number of comments” on two provisions in Subpart E—Services to Participants:

- Section 641.570 (b). Increased periods of individual participation. The provision would grant certain individuals (e.g., persons age 75 or older, persons with a severe disability) a one-time, one-year extension beyond the limit of 48 months of participation; and
- Section 641.577. Community service employment assignment hours. The provision would reinstate a previous policy limiting the hours that a participant may work at his/her community service employment assignment to 1,300 per year.

The following chart compares the statutory and proposed regulatory language for key provisions in the NPRM:

Comparison of Selected Provisions in Older American Act Title V (2006 Amendments) and Proposed Title V Regulations (August 14, 2008)

| Issue | Statute (section) | Provision | NPRM (section) | Provision | OIG Comments |
|---|------------------------|---|----------------|--|--|
| Increased periods of participation | 502 (b) (1) (C) (ii) | Grantees may extend an individual's participation in the program up to 36 months under specific conditions (e.g., certain barriers to employment). | 641.570 | Imposes a one-year, one-time extension for participants above and beyond the 48 month period specified by Congress | Numerous commenters questioned the proposed time limits, and noted that the statute did not set an absolute limit. While the proposed rule does not violate the statute because the Department did not go beyond the 36-month limit, the one-year, one-time extension is more restrictive than the maximum 36 month limit in the statute. |
| Community service employment assignment (1,300-hour annual limit) | No provision | The 2006 OAA does not contain any requirement to limit the number of hours an SCSEP participant spends annually in his/her community service employment assignment. | 641.577 | Sets a 1,300-hour limit on annual community service employment participation. | There is no requirement that the NPRM implement a specific provision in the law. The Department notes the provision reinforces that the SCSEP is intended to provide temporary, part-time work. In its Preamble to the NPRM, the Department notes that the 1,300 hours is above the average number of hours worked per year by SCSEP participants in their community service jobs--e.g., 20 hours or 1,040 per year. The Preamble states that a similar provision appeared in a 1995 rule on the OAA. Numerous commenters questioned the provision--saying it disregarded specific needs of a community (such as a responding to a natural disaster) and the conditions of the labor market. |

Comparison of Selected Provisions in Older American Act Title V (2006 Amendments) and Proposed Title V Regulations (August 14, 2008)

| Issue | Statute (section) | Provision | NPRM (section) | Provision | OIG Comments |
|--|--------------------------|--|-----------------------|---|---|
| Purpose of the SCSEP | 502 (a) (1) | "Foster ...economic self-sufficiency...and increase the number of persons who may enjoy the benefits of unsubsidized employment..." | 641.110 | SCSEP [trains unemployed, low-income older workers] in part-time community service employment assignments...to facilitate their transition to unsubsidized employment." | The NPRM conforms to the law because it does not contain any language to specifically prohibit participation in community service activities. Some commenters felt the provision emphasized placement over community service--citing Section 516 of the 2006 OAA. Section 516 ("Sense of Congress") contains no reference to unsubsidized employment as a program goal. |
| New definition of community service employment (CSE) | 518 (a) (2) | CSE is "part-time, temporary employment...individuals are engaged in community service and receive work experience and job skills that lead to unsubsidized employment." | 641.140 | This section contains definitions for the program--but not one for CSE. | Some commenters suggested the Department add the CSE definition to section 641.140. But the omission does not violate the statute because the Department has flexibility in deciding which definitions to include in the NPRM. |

Comparison of Selected Provisions in Older American Act Title V (2006 Amendments) and Proposed Title V Regulations (August 14, 2008)

| Issue | Statute (section) | Provision | NPRM (section) | Provision | OIG Comments |
|--|-------------------|--|----------------|--|---|
| Income eligibility and calculation | 518 (3) (A) | The law changed how the Department determines income eligibility for the SCSEP. Excludes certain types of income received under the Social Security Act, unemployment compensation, and benefit payments under laws administered by the Secretary of Veterans Affairs. | 641.510 | Explains how the Department is to calculate income eligibility for SCSEP. | NPRM is consistent with the 2006 OAA and states that the Department may update administrative guidance, as needed. |
| Coordination with other Federal programs | 503 (b) | Directs Secretary to “coordinate the [SCSEP] with programs carried out under other titles of the statute, to increase employment opportunities available to older individuals.” | 641.200 | Only mentions coordination with the Workforce Investment Act--but not the other Federal programs under other legislation mentioned by the OAA--e.g., the Rehabilitation Act of 1973, Domestic Volunteer Service Act. | The proposed regulation would not violate the 2006 OAA by omitting any references to these other programs. However, commenters noted the NPRM “fails to strengthen coordination that is required between SCSEP and other Federal programs, including other OAA programs.” |

Does the proposed regulation meet the standards laid out in White House Chief of Staff Joshua Bolten's memorandum of May 9, 2008?

The proposed regulation does not meet the standards laid out in White House Chief of Staff Joshua Bolten's memorandum of May 9, 2008.

On May 9, 2008, White House Chief of Staff Joshua Bolten sent a memorandum to the heads of all executive departments and agencies that provided deadlines for proposing and issuing new regulations. In the memorandum, the White House directed officials to issue proposed regulations no later than June 1, 2008, and final regulations no later than November 1, 2008. The memorandum stated exceptions could be made for "extraordinary" circumstances.

The Department did not adhere to the two deadlines outlined in Mr. Bolten's memorandum. In the first instance, the Department did not publish the proposed SCSEP rules in the Federal Register until August 14, 2008 — more than 10 weeks after the June 1, 2008, cut off date.

We asked Department officials what "extraordinary" circumstance allowed the Department to publish the proposed regulation after the June 1, 2008 cut off date. Both ETA program staff and OASAM budget officials said the Department began drafting the regulation before the White House issued its May 2008 memorandum. Officials noted that the NPRM on the 2006 OAA appeared as one of ETA's four priority regulatory initiatives in the Department's Fall 2007 Semiannual Regulatory agenda.¹

ETA continues to review and respond to comments on the NPRM; therefore, it has not met the second deadline for publishing final regulations by November 1, 2008. According to one senior ETA official, the agency is on a "normal" schedule for publishing the final rule for the 2006 OAA no later than March 2009.



Elliot P. Lewis

¹ See <http://www.dol.gov/asp/regs/unifiedagenda/plan07.htm>

Exhibit 1

Listing of SCSEP National Grantees

AARP Foundation
Asociacion Nacional Pro Personas Mayores
Easter Seals
Experience Works
Goodwill Industries International
Institute for Indian Development
Mature Services
National Able Network
National Asian Pacific Center on Aging
National Caucus and Center on Black Aged
National Council on the Aging
National Indian Council on Aging
National Urban League
Quality Career Services
Senior Service America
SER – Jobs for Progress National
Vermont Associates for Training & Development
The Workplace

**Summary of Recaptured Funds Obligated
For Technical Assistance Contracts**

| Type of Technical Assistance | PY 2001 | PY 2002 | PY 2003 | PY 2004 | PY 2005 | Total PY 2001-2005 |
|--|------------------|------------------|--------------------|--------------------|------------------|---------------------------|
| Develop and Maintain SPARQ System | \$-0- | \$-0- | \$2,233,705 | \$1,216,961 | \$ 938,100 | \$4,388,766 |
| SPARQ System Support to SCSEP Grantees | 495,124 | 2,189,439 | 1,000,078 | 1,037,503 | 484,496 | 5,206,640 |
| Performance Improvement | 140,185 | 3,715,786 | 1,952,851 | 2,140,038 | 815,708 | 8,764,568 |
| Total | \$635,309 | 5,905,225 | \$5,186,634 | \$4,394,502 | 2,238,304 | 18,359,974 |

**Schedule of SCSEP Contractors Involved in
Developing and Maintaining the SPARQ System**

| Contractor | Amount of Recaptured Funds Obligated | | | | |
|----------------------|---|----------------|--------------------|--------------------|----------------|
| | PY 2001 | PY 2002 | PY 2003 | PY 2004 | PY 2005 |
| KT Consulting | | | \$890,000 | | |
| SAIC | | | 750,000 | | |
| Ancon Group | | | 250,000 | | |
| Mythics | | | 115,482 | | |
| Heitech | | | 76,842 | \$197,270 | 123,202 |
| Tsystems | | | 53,110 | | |
| Manila | | | 34,243 | | |
| Colding Tech | | | 28,500 | 72,868 | |
| Carahsoft | | | 10,469 | 20,271 | |
| World Wide Tech | | | 6,936 | | |
| Oracle | | | 5,506 | 34,007 | |
| Panamerica | | | 4,513 | | |
| SCM Solutions | | | 3,600 | 180 | |
| Computer Assoc. | | | 3,595 | | |
| Spectrum Systems | | | 909 | 383 | |
| Creative Info Tech | | | | 847,263 | 799,966 |
| T COOMBS | | | | 18,743 | |
| Dynamic | | | | 14,221 | |
| Grafik Industries | | | | 7,290 | |
| Comp Assoc Interns | | | | 2,520 | |
| Merlin International | | | | 1,945 | |
| DLT Solutions | | | | | 7,761 |
| Force 3 | | | | | 7,171 |
| Total | | | \$2,233,705 | \$1,216,961 | 938,100 |

**Schedule of SCSEP Contractors Providing
SPARQ System Support to SCSEP Grantees**

| Contractor | Amount of Recaptured Funds Obligated | | | | |
|-------------------|---|------------------|--------------------|--------------------|------------------|
| | PY 2001 | PY 2002 | PY 2003 | PY 2004 | PY 2005 |
| Mathematica | \$495,124 | \$1,140,080 | \$1,000,078 | \$995,503 | \$484,496 |
| Affordable Supply | | 125,000 | | 42,000 | |
| SAIC | | 924,359 | | | |
| Total | \$495,124 | 2,189,439 | \$1,000,078 | \$1,037,503 | \$484,496 |

**Schedule of SCSEP Contractors Providing
Program Improvement Technical Assistance**

| Contractor | Amount of Recaptured Funds Obligated | | | | |
|---|---|--------------------|--------------------|--------------------|----------------|
| | PY 2001 | PY 2002 | PY 2003 | PY 2004 | PY 2005 |
| DTI | \$84,998 | \$796,226 | \$415,383 | \$100,048 | |
| KRA Corporation | 25,000 | 275,000 | 8,083 | | |
| Lindberg Group | 24,504 | | | | |
| Industrial Strength Production | 5,000 | 2,375 | | | |
| Coffey Communications | 683 | 1,555,338 | | | |
| Exceed | | 535,732 | 347,000 | 211,000 | 135,017 |
| TATC | | 319,738 | 549,189 | 322,316 | 80 |
| Dah | | 113,211 | | | |
| Native American Management Services | | 97,998 | | | |
| Patricia Carroll | | 7,100 | | | |
| National Academies Press | | 6,864 | | | |
| Dorinda Fox | | 4,504 | | | |
| Citibank – Enviroics | | 1,400 | | | |
| Citibank – Center on Budget & Policy | | 300 | | | |
| MH West & Co | | | 620,000 | 100,000 | |
| Communications Professional | | | 13,196 | | |
| Charter Oak Group | | | | 1,356,669 | 600,000 |
| McNeely, Pigott & Fox | | | | 50,005 | 80,611 |
| Total | \$140,185 | \$3,715,786 | \$1,952,851 | \$2,140,038 | 815,708 |

**Schedule of SCSEP Grantees That Received
Additional Awards Using Recaptured PY 2001 Funds**

| Grantee | Amount of Award |
|------------------------|------------------------|
| AARP | \$200,000 |
| ANPPM | 30,000 |
| Easter Seals | 125,000 |
| Experience Works | 230,000 |
| Mature Services | 30,000 |
| NICOA | 598,799 |
| NAPCA | 731,201 |
| National Able Network | 30,000 |
| National Urban League | 400,000 |
| NCOA | 30,000 |
| NCCBA | 30,000 |
| Senior Service America | 125,000 |
| SER Jobs for Progress | 180,000 |
| USDA Forest Service | 30,000 |
| Total | \$2,770,000.00 |

**Schedule of SCSEP Grantees That Received
Additional Awards Using Recaptured PY 2002 Funds**

| Grantee | Amount of Award |
|-----------------------|------------------------|
| Easter Seals | 79,277 |
| NAPCA | 2,000,000 |
| NICOA | 7,294 |
| National Able Network | 296,612 |
| Total | \$2,383,183 |

**Schedule of SCSEP Grantees That Received
Additional Awards Using Recaptured PY 2003 Funds**

| Grantee | Amount of Award |
|---------------------|------------------------|
| NAPCA | 2,000,000 |
| USDA Forest Service | 1,000,000 |
| Total | \$3,000,000 |

**Schedule of SCSEP Grantees That Received
Additional Awards Using Recaptured PY 2004 Funds**

| Grantee | Amount of Award |
|-------------------------|------------------------|
| AARP | \$2,129,909 |
| NICOA | 1,332,385 |
| Quality Career Services | 1,129,464 |
| SER Jobs for Progress | 2,422,182 |
| USDA Forest Service | 500,000 |
| Vermont | 1,423,916 |
| Total | \$8,937,856 |

**Schedule of SCSEP Grantees That Received
Additional Awards Using Recaptured PY 2005 Funds**

| Grantee | Amount of Award |
|--|------------------------|
| AARP | \$272,209 |
| ANPPA | 10,000 |
| Easter Seals | 10,000 |
| Experience Works | 538,022 |
| Goodwill Industries | 52,891 |
| Institute for Indian Development | 69,536 |
| NAPCA | 291,600 |
| National Caucus on Black Aged | 81,398 |
| National Council on the Aging | 54,491 |
| National Indian Council | 244,244 |
| National Urban League | 85,483 |
| Operation Able | 19,729 |
| Mature Services | 19,456 |
| Quality Career Services | 10,000 |
| SSA | 80,307 |
| SER Jobs for Progress | 142,450 |
| Vermont Association for Training & Development | 10,677 |
| Tennessee | 329 |
| The Workplace | 17,650 |
| Total | \$2,010,472 |