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Employment and Training Administration

**20 CFR Parts 652, 661, et al.
Workforce Investment Act Amendments;
Proposed Rule**

DEPARTMENT OF LABOR**Employment and Training Administration**

20 CFR Parts 652, 661, 662, 663, 664 and 667

RIN 1205-AB46

Workforce Investment Act Amendments

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (DOL) is issuing a Notice of Proposed Rulemaking to implement several important policy changes to the Workforce Investment Act and Wagner-Peyser Act Regulations in volume 20 of the Code of Federal Regulations (CFR). Through these regulations, the Department implements these two laws and provides guidance for statewide and local workforce investment systems that have as their goals increasing the employment, retention and earnings of participants. By achieving these goals, the systems strive to improve the quality of the workforce, meet business needs for a skilled workforce, help participants achieve their career aspirations, reduce welfare dependency, and enhance the productivity and competitiveness of the nation. The changes set forth in this proposed rulemaking address some long-standing issues that have arisen under the current WIA regulations, such as problems associated with the large size of State and Local Workforce Investment Boards; the sequence of core, intensive and training services; the governor's authority over eligible training providers, and the availability of Individual Training Accounts to youth. In addition, the changes set forth in this proposed rulemaking address the method of delivery of Wagner-Peyser Act-funded services.

DATES: To be assured of consideration, comments must be in writing and must be received on or before February 20, 2007.

ADDRESSES: Electronic mail is the preferred method for submittal of comments. Comments by electronic mail must be clearly identified as pertaining to this proposed rulemaking and sent to nprm.comments@dol.gov. Electronic comments may also be submitted through the Federal eRulemaking portal at <http://www.regulations.gov> by following the directions at that site. Brief comments (maximum of five pages) clearly

identified as pertaining to this proposed rulemaking may be submitted by facsimile machine (FAX) to (202) 693-2766. Please note that this is not a toll-free number.

Written comments should be sent to Ms. Maria Flynn, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5641, Washington, DC 20210. Please be advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to security concerns. Commenters should consider the possibility of delay when deciding to submit comments by mail. If you would like to receive notification that we have received your comments, you should include a self-addressed stamped postcard.

Comments received will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this rule will be made available, upon request, in large print and electronic file on computer disk. Provision of the rule in other formats will be considered upon request. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternate format, contact Maria Flynn's office at (202) 693-3700 (VOICE) or 887-889-5627 (TTY/TDD). Please note that these are not toll-free numbers. You may also contact Ms. Flynn's office at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Flynn, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5641, Washington, DC 20210, Telephone: (202) 693-3700 (VOICE) or 887-889-5627 (TTY/TDD) Please note that these are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The preamble to this proposed rule is organized as follows:

- I. Background—provides a brief description of the statutory and regulatory background of this proposed rule.
- II. Overview of the Proposed Amendments—describes the amendments that would be accomplished by this proposed rule and explains the reasons for the amendments.
- III. Regulatory Procedure—sets forth the applicable regulatory requirements.

I. Background

The Workforce Investment Act (WIA), enacted in August 1998, reformed

Federal job training programs and created a new, comprehensive workforce investment system. WIA was a groundbreaking piece of legislation that replaced the Job Training Partnership Act and amended the Wagner-Peyser Act. WIA sparked improvements in the delivery of employment and training services nationwide, but after a number of years of operation it has become clear that changes to regulations and legislation are needed. The authorization of appropriations for WIA expired on September 30, 2003. As discussed below, during the 108th Congress legislation to reauthorize and reform WIA was considered but not enacted, and again in the 109th Congress, legislation was considered and is still pending. Because Congressional action on reauthorization reforms has been delayed, the Department of Labor decided to move forward with limited reforms that could be undertaken without changes in the statute. More significant reforms will require Congressional action.

For three years, the Bush Administration has been working with Congress to reform the workforce investment system by advancing changes that would: (1) Streamline services in order to promote more effective programs; (2) reduce bureaucracy and duplicative infrastructure in order to achieve cost savings; and (3) dedicate more funds directly to worker training. While these critical reforms have not been enacted, the realization of all three goals is vital to assuring that the workforce investment system is an asset in assisting workers and fostering U.S. economic competitiveness in a global environment.

Anticipating reauthorization, in 2002 and early 2003, the Department of Labor undertook extensive consultations with stakeholders and the public on how the workforce investment system could be strengthened to address the challenges of globalization, technological advances, and the demographic changes of the American workforce. Based on this and other input, the Department developed the Administration's WIA reauthorization proposal to build on the reforms that were contained in the Act in order to make WIA even more effective and responsive to the needs of local labor markets, to strengthen the One-Stop Career Center system to better serve businesses and individuals with workforce needs, and to promote further innovation. The Administration's reauthorization proposal addressed six key areas:

- Creating a more effective governance structure;
- Strengthening the One-Stop Career Center system;
- Improving comprehensive services for adults;
- Creating a targeted approach to serving youth;
- Improving performance accountability; and
- Promoting State flexibility.

Following hearings and Committee action, both the House of Representatives and the Senate passed versions of WIA reauthorization legislation, incorporating many features of the Administration's proposal. A House-Senate conference to resolve differences between the two bills was not convened during the 108th Congress. In the 109th Congress, WIA reauthorization legislation passed the House in 2005 and the Senate in 2006, but there has been no further action. Congress appropriated funds for WIA activities in the FY 2004, FY 2005 and FY 2006 Department of Labor Appropriations Acts, but substantive reforms have not been made. In addition, language in the appropriations act has proscribed the Department from amending through regulation (until WIA reauthorization legislation is enacted): (1) The definition and functions that constitute administrative costs under WIA, and (2) the procedure for re-designation of local areas.

This proposed rulemaking addresses changes that can be made under current law. Further reforms that require statutory changes are still needed, and the Administration is committed to working with Congress to achieve further reforms. In his FY 2007 Budget Request, the President has proposed to establish Career Advancement Accounts and make other reforms to WIA. Career Advancement Accounts are self-managed accounts of up to \$3,000 (renewable for a second year) that individuals may use to pay for expenses directly related to education and training that are necessary to obtain or retain employment or advance in their careers. Career Advancement Accounts are expected to triple the number of workers trained under WIA.

This rulemaking does not implement changes to WIA made by the Trade Adjustment Assistance Reform Act of 2002. These changes, which pertain to Rapid Response and National Emergency Grants (particularly for Health Coverage Tax Credit grants) will be addressed in a separate rulemaking. Other technical changes will be made as part of a consolidated effort to update all Department of Labor regulations.

The changes set forth in this proposed rulemaking address some long-standing issues under the current WIA regulations, such as problems associated with the large size of State and Local Workforce Investment Boards; the sequence of core, intensive and training services; the governor's authority over eligible training providers, and the availability of Individual Training Accounts to youth. In addition, the changes in this proposed rulemaking address the method of delivery of Wagner-Peyser Act-funded services.

A. Delivery of Wager-Peyser Act-Funded Services

1. Integration of Wagner-Peyser Act Funded Services at One-Stop Career Centers

The Secretary is charged with assisting in the coordination and development of the public labor exchange which is required by sec. 7(e) of the Wagner-Peyser Act (as amended by WIA sec. 305) to be carried out as part of the One-Stop service delivery system. To this end, current Wagner-Peyser Act regulations, at 20 CFR 652.202, state that local Employment Service offices may not exist outside the One-Stop service delivery system, but provide States with flexibility to permit Employment Service offices to operate as affiliated sites provided that certain conditions are met. The intent of the law and regulations is to closely tie Employment Service offices and services to One-Stop Career Centers. However, in some states the two offices continue to exist side-by-side; sometimes with very little coordination. Through informal surveys conducted of ETA staff, we found that 19 States still operate stand-alone Employment Services offices and 13 States operate parallel systems to a substantial degree. Such disconnects at the local level result in confusion for individuals and employers and promote duplication of effort and an inefficient use of resources.

These problems demonstrate that our original interpretation of sec. 7(e) of the Wagner-Peyser Act did not effectively integrate Wagner-Peyser Act-funded labor exchange and reemployment services with WIA-funded One-Stop Career Center services. To address this, we propose to more definitively mandate that Employment Service offices be fully integrated into comprehensive One-Stop Career Centers. Therefore, this NPRM modifies § 652.202 to make clear that local Employment Service offices must be located in comprehensive One-Stop Career Centers, and that the customer

employment services under the Wagner-Peyser Act must be fully integrated with services in comprehensive One-Stop Career Centers. In addition, we propose to amend § 662.100 to provide that stand-alone Employment Service offices will no longer qualify as affiliated One-Stop Career Centers.

Employment Service offices which are operating apart from comprehensive One-Stop Career Centers will no longer be allowed. States and Local areas will need to look at the distribution of services in their area and consider options such as moving those offices into comprehensive One-Stop Career Centers or expanding the services of Employment Service offices into comprehensive One-Stop Career Centers. Real property requirements may be an issue in some areas.

Given that many Wagner-Peyser Act-funded reemployment services are also authorized as core services under WIA, better integrating Employment Service services into the One-Stop Career Centers under these regulations will provide States and local areas with the opportunity to more efficiently manage the costs of such services and eliminate duplication in order to free up other funds for intensive and training services.

2. Use of Section 7(c) Funds

This NPRM makes a technical change to § 652.205(b)(1) by adding the word "otherwise" to more closely track the statutory language in sec. 7(c) of the Wagner-Peyser Act. The statute provides that sec. 7(c) funds may be used to provide additional funds to activities carried out under WIA if certain conditions are met; one of which is that the program "otherwise" meet the requirements of Wagner-Peyser and WIA. This NPRM adds the term "otherwise" to the regulation to avoid a mistaken conclusion that the regulation is intended to differ from the statutory standard.

3. Merit Staffing

In the interest of providing maximum flexibility to all States, and to encourage innovative and creative approaches to delivering employment services with limited resources, we are changing our interpretation of the Wagner-Peyser Act to extend the option of using non-merit-staffed employees to all States. Current Wagner-Peyser Act regulations, at § 652.215, require that job finding, placement, and reemployment services funded under the Wagner-Peyser Act be delivered by State merit-staffed employees. The Wagner-Peyser Act does not explicitly impose this requirement, but rather the Secretary of Labor

previously issued the requirement through the exercise of the Secretary's authority under sections 3(a) and 5(b)(1) of the Act to develop and prescribe minimum standards of efficiency for State public Employment Services and promote uniformity in their administrative procedure. We have reconsidered the necessity of this requirement. States operating demonstration projects using non-merit-based staff systems have shown positive performance outcomes and have provided similar quality services under WIA using non-merit-staffed employees. While we continue to promote uniformity in administrative procedure, we find that variation from delivery by State merit-staffed does not negatively affect the effectiveness and efficiency of the Wagner-Peyser Act-funded Employment Service program.

Under our authority to develop and prescribe minimum standards of efficiency for the provision of State public Employment Services, we will no longer require that these services only be delivered by State merit-staffed employees. Accordingly, we propose to remove 20 CFR 652.215 and 652.216 and replace them with a new § 652.215 that specifically authorizes States to deliver Wagner-Peyser Act-funded Employment Services through methods in addition to State merit-staffed delivery systems.

The requirement under the current regulation is reflected in Office of Personnel Management (OPM) regulations under the Intergovernmental Personnel Act, which identifies the Wagner-Peyser Act as among the Federal programs containing statutory merit-staffing requirements. (5 CFR part 900, subpart F, Appendix A). Because we no longer interpret the Wagner-Peyser Act as containing a mandatory merit-staffing requirement, there are no longer any functions and duties relating to the Wagner-Peyser Act to be transferred to the Director of OPM under the sec. 208 of the Intergovernmental Personnel Act (Pub. L. 91-648). We have consulted with OPM on our determination to no longer require that Wagner-Peyser Act-funded services be delivered only by State merit-staffed employees. The Director concurs that this determination is within the scope of the Secretary's authority to administer the Wagner-Peyser Act. The OPM intends to amend Appendix A to remove the Wagner-Peyser Act from the list of programs identified as having a merit system of personnel. Guidance on services to veterans provided under 38 U.S.C. Chapter 41 will be issued separately by the Office of the Assistant

Secretary for Veterans' Employment and Training Service.

The Department made this determination based on a number of factors. Eliminating merit staffing requirements provides maximum flexibility to all States, and encourages innovative and creative approaches to delivering employment services with limited resources. The policy of requiring all Wagner-Peyser services to be delivered by State merit-staffed employees is an anachronism that creates rigidity and severely limits flexibility in the delivery of services. It does not take into account the intended integration of employment services into the One-Stop delivery system, nor the wide variety of State and local arrangements for delivering these services. This change allows States to deliver services in the manner they feel is most effective and efficient. Some States have taken the initiative to achieve greater flexibility already.

Three demonstrations have showed that it is possible to deliver Wagner-Peyser services efficiently and effectively using non-State merit-staffed employees. Under section 3(a) of the Wagner-Peyser Act, beginning in the early 1990s, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services utilizing non-State agency employees in the States of Colorado, Massachusetts, and Michigan. These three demonstrations were permitted as exceptions to the merit staffing regulations in order to assess the effectiveness of alternative delivery systems—specifically, whether using non-State agency employees was an effective and efficient way to deliver Wagner-Peyser services. While a formal evaluation of the three Wagner-Peyser demonstrations has not been completed, the Department believes the three demonstration states are performing successfully based on their performance outcomes and the absence of customer or stakeholder complaints. Performance for the three states for the Program Year ending June 30, 2005 was similar to the national average performance under Wagner-Peyser.

In addition, the Department has found that similar services are effectively delivered through systems without merit staffing requirements. States have had experience administering similar services through non-merit staff personnel dating back to 1982 under the Job Training Partnership Act and WIA. WIA formula programs provide similar services using non-merit staffed employees (WIA has no merit-staffing requirement). Examples of similar services include: job search assistance, job referral and placement assistance for

job seekers, re-employment services to unemployment insurance claimants, and recruitment services to employers with job openings. WIA outcomes for the Adult and Dislocated Worker Programs for the Program Year ending June 30, 2005 were higher than those for the Wagner-Peyser program. Although WIA and Wagner-Peyser placement and retention rates might not be directly comparable given the differences in the populations served under the programs, the data do show that non-merit staff WIA employees are effectively delivering similar services.

Given the demonstrations have shown that efficient administration of the Employment Service program can be achieved through alternate service delivery systems, and that under a similar program, similar services are delivered by non-merit staff, the Department believes it should provide maximum flexibility to the States by changing our interpretation of the Wagner-Peyser Act to extend the option of using non-merit-staffed employees to all States. States could, at their discretion, continue to have merit staff employees carry out such activities.

B. Changes to WIA Regulations

Part 661—Statewide and Local Governance of the Workforce Investment System Under Title I of the Workforce Investment Act

Part 661 establishes the governance structure for the workforce investment system at the Federal, State and local levels. This NPRM proposes changes to this part to provide States and local areas with additional flexibility to design workforce investment systems that are demand-driven and are responsive to the needs of business and workers.

1. Role of the Department of Labor as the Federal Partner

Section 661.110 describes the Department of Labor's role in providing leadership and guidance to the workforce investment system. The proposed rule would revise this section to emphasize that the workforce investment system should be demand-driven, meeting the needs of businesses and workers for high-demand occupations in the 21st century, and to emphasize the linkage of resources devoted to employment, education, and economic development.

2. State and Local Workforce Investment Board Membership

We propose to amend the State Workforce Investment Board membership requirements to improve

coordination between the workforce investment system and the State Vocational Rehabilitation (VR) program. Current WIA regulations allow another State Board member to represent VR (if, for example, the VR program falls under another umbrella agency). Section 661.200(h)(3) would be amended to specify that the director of the State VR program must be a member of the State Board if that director is not on the State Board as a lead official of a One-Stop partner program. This emphasizes the importance of having the VR program represented on the State Board regardless of the organizational arrangements in a particular State. VR is a key One-Stop partner program that shares common employment-related goals as part of the nation's workforce investment system. It is critical that programs work together in a seamless, coordinated manner to maximize Federal resources to serve individuals with disabilities. This coordination would be facilitated by VR representation on the State Board. The rule would also specify that, in those States where there is more than one VR director, the director of the unit that serves the most individuals with disabilities in the State must be the representative unless the VR directors agree to permit a different VR director to be the representative. However, only one VR director can sit on the board. This change stems from growing concerns about the number of representatives on State Boards and their ability to operate effectively as described in the next paragraph. However, the appointed representative will be expected to provide input for both units.

In addition, we are seeking comments regarding the ability of State and Local Workforce Investment Boards to function efficiently and effectively under existing Board membership requirements. One of the key concerns raised by stakeholders during the implementation of WIA was the size and workability of the State and Local Workforce Investment Boards. As a result of stakeholder briefings on the legislation and the comments received during the development of the rule currently in effect, the August 2000 Final Rule's preamble indicates, "the greatest number of comments on part 661 related to the State and Local Board membership requirements. * * * We received a large number of comments about the requirement, at 661.200(b) and 661.315(a), that at least two or more members of the State and Local Boards be selected to represent the membership categories. * * * The comments reflect

a tension between the need to provide States and Local areas with the flexibility to keep these boards a manageable size with the need for specificity as to what level of participation is guaranteed to stakeholders."

ETA has continued to hear this concern through stakeholder briefings. For example, ETA continues to hear that there are state boards that have approximately 50 members and as a result are very difficult to manage and often have little strategic value. In many instances, the impact of the membership requirements has seriously constrained the Boards' ability to perform their duties. In particular, several stakeholders have reported that the provisions in §§ 661.200(b) and 661.315(a), specifying that the State and Local Boards must contain "two or more members" representing certain categories results in large, unwieldy Boards, which has made planning and decision-making difficult, impeding the flexibility needed to adapt to dynamic State and local economies. We have also been informed that the size of the Boards has deterred the participation of some individuals as Board members. In particular, the reluctance of individuals from the business community to serve as Board members makes it difficult to develop the business-led Boards envisioned by Congress. We are interested in exploring how many Boards are encountering these problems. We invite comments from stakeholders regarding their experience with the existing Board membership requirements and on any possible changes to these requirements, such as our suggestion described below.

In an effort to give States and local areas the opportunity to reorganize their Boards to a more manageable and productive size, we are considering whether to reassess our determination that the law mandates that each Board contain two or more members representing the groups specified in WIA secs. 111(b)(1)(C) (iii)-(v) and 117(b)(2)(A)(ii)-(v). We are considering whether to revise the regulations to require a minimum of one member representing these groups, to provide State and Local Boards with the option to reduce their size, if necessary, to improve the effectiveness of the Board.

Current WIA regulations, at § 661.200(b), specify that the State Workforce Investment Board must contain "two or more members" representing the categories described in WIA sec. 111(b)(1)(C)(iii)-(v). These categories relate to: labor, youth experts, and experts in the delivery of workforce investment activities (including chief

executive officers of community colleges and community-based organizations in the State). For Local Boards, the current WIA regulations, at § 661.315(a), specify the Local Workforce Investment Board must contain "two or more members" representing the categories described in WIA sec. 117(b)(2)(A)(ii)-(v). These categories relate to: education entities, labor, community-based organizations, and economic development agencies. These regulations implement provisions in WIA stating that the Boards must contain "representatives" of these organizations and groups.

We are considering a change to the regulations that would delete language requiring that "two or more representatives" of these membership categories serve on the Board. During the public comment period following the publication of the WIA Interim Final Rule, a commenter suggested that 1 U.S.C. 1 provides legal support for the interpretation that WIA sec. 111(b)'s and 117(b)(2)(A)'s use of the word "representatives" does not necessarily mean that Congress intended to use the word as a plural of each category, but rather as a collective reference. The commenter suggested that 1 U.S.C. 1 provides that in determining the meaning of an Act of Congress, "words importing the plural include the singular." In the final rule, we did not adopt the commenter's suggestion. Instead, we interpreted the language as signifying only the plural in an attempt to serve the interest of broad representation, while acknowledging the potential effects on Board size. 65 FR 49294, 49300 (August 11, 2000). In light of the several Board management problems described above, we are reconsidering the commenter's suggestion.

In reassessing the meaning of the word "representatives" in WIA sec. 111(b) and 117(b)(2)(A), we are seeking comments on whether it is reasonable, as a matter of law and statutory construction, to conclude that Congress did not intend to require more than one representative from each enumerated category. Is there anything in the context of these provisions that indicates that the terms are meant only to import the plural, particularly when such an interpretation has resulted in Boards that are too large to effectively carry out their statutory duties? It appears that when Congress indeed intended to require multiple member representation it did so in a more clearly unambiguous manner. For example, section 111(b)(1)(B) specifically provides that the State legislature is to be represented by "2 members of each

chamber." In light of this, we are considering whether to change our interpretation of WIA's Board membership requirements to conclude that they mandate a minimum of one representative of each category rather than two or more.

We invite comments on whether to change §§ 661.200(b) and 661.315(a) to require a minimum of one representative from each specified membership category to give States flexibility to reduce the size of the Boards. Under such a rule, only one member would be required to represent each of these categories on the State Board and Local Boards. However, Boards would continue to have the option of appointing more than one representative in any category.

3. State and Local Workforce Investment Board Functions

Sections 661.205 and 661.300 set forth the roles and responsibilities of State and Local Workforce Investment Boards, respectively. This NPRM proposes adjustments to these responsibilities to provide States flexibility to undertake more extensive and sophisticated policy-making activities and to provide the leadership needed to guide the workforce system in becoming more demand-driven and responsive to the needs of business. We also propose a change to emphasize Local Board functions with respect to oversight and management of Federal WIA funds.

In particular, we propose to add a new paragraph to § 661.205 to add as a State Board function, the development and review of statewide policies for the One-Stop Career Center system. We propose to add this function as part of the Board's responsibility for developing and improving a statewide system of activities carried out through the One-Stop delivery system under WIA sec. 111(d)(2). The proposed change will help focus the State Board on system-wide leadership for the One-Stop Career Center system rather than on local operations. Local Boards will continue to have operational responsibility for their One-Stop Career Centers.

These policies may include policies for the development of criteria and issuance of certifications for One-Stop Career Centers, policies relating to the appropriate roles of One-Stop operators, approaches to facilitating equitable and efficient cost allocation in One-Stop delivery systems, and strategies for effective outreach to individuals and employers who could benefit from One-Stop services and policies. Giving the State Board responsibility for

developing criteria and issuing certifications of One-Stop Career Centers will ensure that all One-Stop Career Centers in the State meet minimum State criteria, which in turn will promote a higher level of uniformity and consistency of service delivery across the State. It will also provide the State with explicit authority to address deficiencies where they exist. WIA sec. 111(d)(2) provides that the State Board is responsible for developing and continuously improving a statewide system of workforce investment activities carried out by a One-Stop service delivery system. This regulation implements this provision by giving states the option to develop certification standards for One-Stop Career Centers to carry out this responsibility, which is allowable under the statute.

In general, providing an increased State role in the One-Stop system is intended to promote more consistent and better program and system performance. Through the State Board, the State administrators of One-Stop partner programs would also have greater involvement in setting policies for the One-Stop system, resulting in increased participation of the One-Stop partner programs in the system.

This NPRM also proposes to amend §§ 661.300 and 661.305 to emphasize the Local Board's role in the proper administration of funds under WIA title I. This would clarify that one of the Local Board's responsibilities is to oversee the appropriate use and management of funds. The Department believes this change will strengthen accountability at the local level and reinforce the significant role of the Local Board in overseeing the local workforce investment system. The provision is intended to fill a gap in existing regulations with regard to the responsibilities of the Local Board and chief elected official. The relationship between the Local Board and the chief elected official with regard to fiscal management is touched on in several places, but is not clearly expressed in the current regulations. Under WIA sec. 117(d)(3)(B)(i)(III) and 20 CFR 667.705, the chief elected official is the grant recipient and is liable for misuse of funds, but he or she must disburse WIA funds at the direction of the Local Board (unless the disbursement would violate the act). The proposed regulation will make clear that with the Local Board's authority to direct the expenditure of funds comes the responsibility to oversee the appropriate use and management of the funds. This strengthens accountability at the local level and reinforces the significant role

of the Local Board in overseeing the local workforce system. This amendment is not intended to change the relationship between the Local Board and chief elected official or to change the local grant recipient's liability for misuse of funds.

4. State and Local Plan Submission Requirements

Sections 661.220 and 661.230 provide the requirements for submission and modification of the State Workforce Investment Plan. WIA section 112 required the submission of a single five-year plan in order to be eligible to receive funding under title I of WIA and the Wagner-Peyser Act. Several State Plans expired at the end of PY 2003 (June 30, 2004) and the remaining State Plans expired by the end of PY 2004 (June 30, 2005). Because we expect a new round of strategic planning will be necessary when WIA is reauthorized, we did not require the early implementing states with expiring plans to submit a new five-year plan, but instead we permitted them three options: to extend their current plan for one year, to modify the current plan, or to submit only the first year of a new five-year plan. Because these unusual circumstances continue, we did not require States to submit full five-year plans for PY 2005. For PY 2005, States were required to submit plans covering only the first two years of a five-year plan. (70 FR 19206 (Apr. 12, 2005)). We propose to amend § 661.220 to codify the planning options available to States to qualify for funding while WIA reauthorization is pending. As amended, this section provides that the Secretary has authority to permit States to submit plans covering a portion of a five-year planning period or to establish other plan submission options (such as extensions) in unusual circumstances. To provide Governors with authority to provide similar options for local plan submission, we have added new language to § 661.350(d) setting forth specific options for local plan submission, in place of language addressing PY 2000 transitional plans. We intend that the State and local plan submission options will be available for PY 2005 and until such time as WIA is reauthorized. If WIA is reauthorized late in a particular program year, we will reassess the options for transition planning in light of the reauthorized statute.

We also propose changing § 661.240, to permit States to revise existing unified plans by filing a new portion of the plan to replace the expiring portions covering WIA and Wagner-Peyser. Under § 661.240(b)(2)(i), the Department

issued new planning guidelines to provide instructions on submitting such plans. (70 FR 19222 (Apr. 12, 2005)).

5. Regional Planning

Section 661.290 describes the circumstances in which the State may require Local Boards to take part in regional planning activities. This provision permits States to undertake methods to improve performance across area boundaries by requiring local areas to engage in a regional planning process to share employment-related information and to coordinate the provision of local services pursuant to that regional planning. We have reassessed the requirement in paragraph (d) that regional planning may substitute for or replace local planning only when the Governor and all affected local chief elected officials agree. While this requirement was meant to "strike a balance," in effect, it may have led to duplicative planning at both the local and regional level and is counter to the intent of the regional planning provisions. Since the Act clearly authorizes the State to require local areas to participate in regional planning activities, this NPRM proposes to strike section 661.290(d) to avoid the possibility of such duplication. Where the State requires local areas to participate in regional planning, those local areas are not required to undertake local planning activities.

6. Youth Councils for Alternative Entities

Under current regulations, an alternative entity is not required to have a youth council. However, it is required to perform the duties of a youth council specified in WIA sec. 117(h)(4). We propose to amend § 661.335 to clarify that, while it need not have a youth council, an alternative entity must have a process for ensuring that the broader youth representation envisioned in WIA is fully afforded the opportunity to participate in carrying out the responsibilities of the youth council. An alternative entity could fulfill these responsibilities in a number of ways, such as:

- By forming a subcommittee, in the form of a youth council, assigning members of the Local Board with particular interest or expertise in youth policy, to address the specific needs of youth;
- By "grandfathering" in a local youth entity that is substantially similar to a youth council, to carry out youth council responsibilities; or
- By adding members who have specific youth experience (as long as it does not result in a significant change in

the membership structure of the alternative entity).

7. Waivers

Section 661.410 specifies the scope of the Secretary's waiver authority under WIA sec. 189(i). Paragraph (c) provides a higher standard of review for requests to waive provisions that are essential to the key reform principles of WIA; "extremely unusual circumstances where the provision can be demonstrated as impeding reform." In practice, we have found that this regulatory provision is an unnecessary burden. Most State requests relating to key principles have been for provisions not essential to the principles, or the State has met the burden for waiver approval. In order to eliminate this unnecessary burden, we propose to remove this provision. Accordingly, under the proposed regulation, waivers of provisions relating to key reform principles will be considered under the standards of section 661.420(e) in the same manner as requests to waive other provisions.

Part 662—Description of the One-Stop System Under Title I of the Workforce Investment Act

1. Provision of Core Services Under the One-Stop System

Currently, § 662.250 describes where and to what extent One-Stop partner programs must make core services available. Section 662.250(a) requires the WIA Adult and Dislocated Worker programs to make all of the core services available in at least one comprehensive One-Stop Career Center in each local workforce investment area. This requirement holds these two programs to a different level of responsibility than other One-Stop partner programs, which are only required to provide core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser Act. This NPRM proposes to drop the last sentence of paragraph (a), eliminating the requirement that WIA Adult and Dislocated Worker program partners make all of the core services available at the center. This change would mean Wagner-Peyser funds could be used to provide most necessary core services, freeing WIA funds for use in providing intensive and training services. All three services (core, intensive and training) must be available in a local area. However, this change will result in less overlap between WIA title I and Wagner-Peyser activities. We also propose to amend Sections

663.100(b)(1), 663.145(a) and 663.150 to reflect this change.

Part 663—Adult and Dislocated Worker Activities Under Title I of the Workforce Investment Act

1. Use of Title I Funds

Section 663.145 of the regulations requires local areas to ensure that all three types of WIA funded services (*i.e.*, core, intensive and training) are made available to adults and dislocated workers in the local area, but gives the Local Boards discretion to determine the appropriate mix of the three types of services. There exists some ambiguity as to whether this provision is intended to preclude States from having input over the appropriate mix of services provided in local areas. The provision is not intended to do that. The intent of the provision is to ensure that funds are used for all services while allowing for an appropriate level of discretion in determining the mix of services. Where a State wishes to develop a policy regarding the mix of services to be provided throughout the State, such as setting a minimum percentage level of expenditure for training services, we find that is an appropriate policy decision for the State to make.

Our regulations generally give States the authority to set statewide policies and procedures governing the workforce investment system. We see no compelling reason why a State cannot set similar policies regarding the mix of services, provided that it ensures that all three services are available within a local area for adults and dislocated workers. Accordingly, so as not to preclude State policymaking in this area, this NPRM proposes to modify § 663.145(a) by adding the phrase "subject to policies established by the State" at the beginning of the third sentence.

2. Sequence of Services

This NPRM would change the provisions of the current regulations at §§ 663.160, 663.220, 663.240, and 663.310(a) to clarify the sequence of service requirement. As drafted, the current regulations may unintentionally lead some States and local program operators to interpret the regulations to require that all participants must participate first in core services for a specified period of time before moving to intensive services; must then participate in intensive services for a specified period of time before moving to training services; with the test for each move being whether the participant could obtain suitable employment through the services

received during that time period. This interpretation has sometimes resulted in needed services being denied or delayed.

This NPRM clarifies that a local area must make a determination that in order to obtain employment more than core services are needed for an individual to receive intensive services, or that more than intensive services are needed for an individual to receive training services. However, this requirement does not mean that the individual must go through layers of service to prove that need; the determination of need itself can be a core and/or intensive service, such as an assessment or development of an Individual Employment Plan. Thus, a case worker could initially sit down with a participant at a One-Stop Career Center, assess his or her skills and the labor market, and determine that the core or intensive services will not be enough to lead to employment. The provision of training or other needed services can then be provided sequentially, concurrently, or in whatever order makes the most sense for the individual. This is less prescriptive than current rules because it provides more flexibility to enroll individuals in intensive and training services without going through a cumbersome process of sequential services.

The resources of all of the One-Stop partner programs should be taken into account when determining the appropriate mix of activities and services to be provided. Once a participant has become part of the WIA system, she/he should be able to receive whatever services are needed to reach an employment goal.

3. Subpart E Eligible Training Providers

Subpart E describes the methods by which organizations qualify as eligible providers of training services under WIA. It also describes the roles and responsibilities of Local Boards and the State in managing this process. The establishment of an Eligible Training Provider system under WIA was intended to promote the concept of consumer choice in the selection of providers, based on performance information collected on providers, which would determine their eligibility to provide training to WIA participants and receive funding through Individual Training Accounts. In order to ensure the strong relationship between the eligible provider process and program performance, § 663.530 established a maximum eighteen-month period for an organization's initial determination as an eligible training provider.

During the first five years of WIA implementation, there has been ongoing frustration throughout the system regarding the ETP requirements. In some cases entire Statewide educational systems, such as community colleges, considered opting out of providing training to WIA participants due to the requirements for continued performance data on all students, including non-WIA participants. Through a recent report being developed for the Department of Labor, we understand that San Diego does not have any community colleges on the Eligible Training Provider list because they had all opted out of the system. Further evidence of this problem comes from waiver requests, which show that of 353 State requests for waivers during the first five years of WIA, 86 were requests related to the Eligible Training Provider requirements, which led the Department to revisit its interpretation of the statutory language in these provisions. Based on this experience, it appears that regulatory provisions may have led to limiting the availability of qualified training providers to WIA training participants, which is contrary to the intent of customer choice. Until statutory amendments can be considered in a reauthorization bill, we have determined that certain regulatory relief is needed.

Current law, at WIA Section 122, provides that the Governor must establish levels of initial determination of eligibility and the criteria for all subsequent eligibility determinations, and such criteria may require the Local Board to maintain performance outcomes for training institutions it uses, as well as requiring information from the providers themselves. This NPRM would revise the regulation at § 663.530 by removing references to time limits on initial eligibility to clarify that the Governor has maximum flexibility within the law to establish methods of applying for and maintaining the eligibility of providers on a State-approved list of Eligible Training Providers, with input from Local Boards. Specific time periods for initial and/or subsequent eligibility reviews are no longer provided, but are to be determined in the Governor's procedures.

The WIA statute, in section 122(b)(2), describes the procedures to establish initial eligibility and the role that Local Boards must play in the development of the application criteria, as well as in the development of procedures to establish subsequent eligibility under section 122(c). Governors must continue to ensure that the applicable procedures

for determining provider eligibility comply with these provisions.

Part 664—Youth Activities Under Title I of the Workforce Investment Act

1. Individual Training Accounts for Youth

Section 664.510 prohibits participants in the youth program from accessing Individual Training Accounts unless the individual is over 18 and is co-enrolled in the WIA Adult or Dislocated Worker program. This regulation is amended to allow youth participants from 16 to 17 years of age to use Individual Training Accounts (ITAs). Such accounts may be appropriate for certain youth participants and removing this prohibition provides States and local areas with the flexibility to expand the range of services available to all youth participants and increase the amount of youth training. The Department of Labor has approved waivers of this regulatory prohibition, which would no longer be necessary under this proposed amendment.

We originally prohibited ITAs for youth participants based on a narrow reading of the allowable activities for youth. In particular, we contrasted the market-based nature of ITAs with the requirement that providers of youth services be competitively selected based on the providers' ability to meet the needs of youth and found them incompatible. At this time, based upon nearly eight years of experience in administering the youth program, we have reconsidered this narrow reading. The adult and dislocated worker programs have shown that when provided the right information and properly advised, participants make intelligent choices regarding their training needs.

The Department has issued 23 waivers of the prohibition on use of ITAs for youth. States receiving waivers have shown that when offered as part of a comprehensive program of youth services, properly advised youth participants can also benefit from consumer choice. Accordingly, we have changed our interpretation of WIA to find that it does not prohibit the use of ITAs for youth participants and propose to remove the regulatory prohibition to that effect. Consistent with current waivers, we expect that ITAs would be used for those youth who, after assessment, show they have the maturity and information to make good decisions about their training options. We are particularly interested in comments from the waiver States about whether their experience with Youth ITAs has shown that participating youth

have demonstrated the ability to make successful training decisions.

Part 667—Administrative Provisions Under Title I of the Workforce Investment Act

1. General Fiscal and Administrative Rules Applicable to Title I of WIA

We propose to amend § 667.200 to more clearly express our policies regarding certain grant-making issues. These provisions clarify the Department's authority to permit grantees to enter into sub-grants with other organizations, our authority to require recipients of discretionary grants under WIA title I to contribute a portion of cash or in-kind contributions to the project (e.g., matching funds), and our authority to enter into interagency agreements to transfer and receive funds from other Federal agencies. WIA gives the Department the discretion to include such terms in our discretionary grants. As the agency charged with administering WIA, we find that the purposes of WIA are generally better served when our funding efforts result in sustainable ongoing projects. For our direct grants, one way to achieve this goal is to require that recipients of WIA funds commit to contribute a portion of resources toward the project. This requirement derives from our authority as a grant making agency, and is consistent with WIA requirements for demonstration grants under WIA sec. 171(b)(2)(A), which contemplates that recipients of such funds will provide joint funding. We have relied on this authority to require a grantee share in projects that are designed to develop ongoing, sustainable results, and propose to formalize this interpretation by adding a new paragraph (h) to § 667.200.

The overall funding structure of WIA is based upon the relationships between grantor, grantee and subgrantee, as primarily evidenced through the formula funding mechanisms. As part of the Secretary's responsibility for testing the effectiveness of innovative pilot and demonstration programs, it is often useful to replicate this relationship in discretionary grants.

This strategy has proven especially effective when used to fund intermediary organizations, which are able to increase the participation of smaller organizations in the workforce investment system by entering into subgrants with such organizations. For the past several years, ETA has made demonstration grants to intermediary organizations in order to oversee and provide administrative assistance to projects from small faith- and

community-based organizations. Our Office of Faith-Based and Community Initiatives views these projects as effective in increasing the participation of these smaller organizations. The intermediary can manage the grant and provide technical assistance, freeing up the small nonprofit to do what it does best: accessing and serving underserved populations in the community with which it has ties. An evaluation of some of these projects is in process. The report *Compassion at Work: Promising Practices*, available at http://www.dol.gov/cfbci/Promising_Practices.pdf, provides examples of these intermediary grants at work. Also, currently one of ETA's most effective Youth Offender Grants operates as an intermediary model, with the Latino Coalition acting as an intermediary to dozens of smaller FBCOs. Thanks to this model, organizations that otherwise would not have been able to access government funds are providing effective services to adjudicated and at risk youth. We propose to formalize this authority by adding a new paragraph (i) to § 667.200.

An important part of the Secretary's responsibilities as administrator of WIA is to promote and encourage participation of other Federal agencies in the workforce investment system and the coordination of other Federal programs with services provided through the One-Stop system. To perform these duties, it is often advantageous to the agencies to enter into a formal agreement to coordinate and work together to a common purpose. Under WIA sec. 189, the Secretary has the authority to transfer funds to, or to receive funds from, another agency under such agreements. Section 189(b) authorizes the Secretary to accept funds in furtherance of the purposes of WIA title I; sec. 189(c) authorizes the Secretary to enter into such agreements and make such payments as are necessary to carry out WIA title I; and under sec. 189(e) the Secretary is authorized to use the facilities and services of other Federal agencies. Read together, these provisions authorize the Secretary to enter into an interagency agreement under sec. 189(c) to either accept an interagency transfer of funds under sec. 189(b) or to transmit an interagency transfer of funds under sec. 189(e) to purchase the services of another Federal agency. We propose to formalize this authority by adding a new paragraph (j) to § 667.200.

2. Definition of Administrative Costs

In anticipation of WIA reauthorization, we are seeking

comments on the way we define the WIA functions and activities that constitute the costs of administration subject to the administrative cost limit. The current WIA regulations, at § 667.220(b), enumerate the specific functions associated with administrative costs. However, there is evidence that under the current regulations, program funds are being used for what would normally be considered administrative costs. Current regulations specify that awards to subrecipients and vendors that are solely for the performance of administrative functions are classified as administrative costs, but do not allocate all the costs incurred by subrecipients or vendors which perform administrative functions as well as programmatic services or activities between those two cost categories, which could lead to abuse of funds. To the extent that this occurs, it reduces the amount of funding that is used to provide training and other direct services to individuals.

We believe that program operations will improve and levels of service will increase if we more broadly and accurately define administrative costs to minimize the extent that overhead and administrative functions are charged to the program cost category. We expect that WIA reauthorization will take steps toward such reform, and we seek stakeholder input to inform the reauthorization process. One approach to reform would be to more extensively enumerate the items that should be considered administrative costs, making clear that this is not an exhaustive list. An additional measure would be to clarify that administrative cost limits apply to subrecipients and vendors just as they do to primary grant recipients. Although we propose no regulatory amendment at this time, we invite comments from stakeholders regarding their experience with the existing definition of administrative costs, and the impact it has on program services. We are particularly interested in input on our suggested approaches and other ideas for developing a more accurate definition.

3. Grievance Procedures

A basic principle of administrative law holds that an executive agency cannot be sued in Federal or State court unless the party bringing the suit has first exhausted the administrative remedies made available by the agency. (See *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51 (1938); *McKart v. United States*, 395 U.S. 185 (1969); *Pierce*, *Administrative Law Treatise* sec. 15.2, 4th Ed.) This holds true for cases arising under WIA. In

order to avoid any potential misconceptions, we propose to amend § 667.600(h) and to add a new paragraph (e) to § 667.610 to clearly state this principle.

V. Administrative Information

Effect on Family Well-Being

The Department certifies that this notice of proposed rulemaking has been assessed in accordance with 5 U.S.C. 601, note, [section 101(h), title VI, section 654 of Pub. L. 105-277], for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the nation's families.

Executive Order 12866, Regulatory Planning and Review

The Department of Labor has determined that this proposed rule is not an economically significant regulatory action under sec. 3(f)(1) of Executive Order 12866. While this rule modifies existing rules that provide terms and conditions governing the expenditure of Federal funds by the States, the rule itself will not: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof. Because this NPRM may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, this is a significant regulatory action, which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

Executive Order 13132, Federalism

In the August 2000 Final Rule implementing WIA regulations, we determined that 20 CFR 652.215 has Federalism implications because it may have a direct effect on the States' personnel management policies. The existing regulation places restrictions on the States to the extent it requires all employees providing services under the Wagner-Peyser Act to be subject to a system of merit-staffing. Because of this, we engaged in extensive consultations with representatives of State government in the development of the current rule. Based in part on those

consultations and on the general consultations described below, we have decided to ease the restrictions imposed by the current rule. Under the proposed rule, States are no longer required to use merit staff employees to provide Wagner-Peyser funded services. The intent of the provision is to return authority and responsibility to State governments. Therefore, we have found it unnecessary to engage in additional issue-specific consultations at this time.

With respect to this NPRM as a whole, many of the changes proposed in this rule are in response to concerns raised by States and other stakeholders since WIA's enactment in August 1998. The Department of Labor has become aware of these issues through its continuous contact with States and other workforce investment system partners, which takes place through meetings, conferences, forums, correspondence, and individual interactions. As noted above, we undertook extensive consultative efforts with our stakeholder partners, including officials from State and local governments and their respective organizations, as part of our efforts to improve the workforce investment system through reauthorization. We have identified one provision that potentially has federalism implications. In amending §§ 652.202 and 662.100 to require that Employment Service offices exist within comprehensive One-Stop Career Centers we have had to narrow state flexibility in order to achieve national policy goals. We intend to continue to work closely with State government officials and others in the implementation of the proposed rule.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

Regulatory Flexibility and Regulatory Impact Analysis

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided), and small governmental entities (those in areas with fewer than 50,000 residents). We have assessed the potential impact of this proposed rule on small entities. This proposed rule implements policy

changes to the regulations governing the expenditure of Federal grant funds by States. Because the rule only modifies existing rules that provide terms and conditions governing the expenditure of Federal funds by the States, we have determined that it will not have a significant impact on a substantial number of small governments or other small entities. We are transmitting a copy of our certification to the Chief Counsel for Advocacy for the Small Business Administration.

While this proposed rule governs the administration and expenditure of funds appropriated by Congress, the rule itself does not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Accordingly, under the Congressional Review Act, subtitle E of the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that this is not a major rule, as defined in 5 U.S.C. 804(2).

Unfunded Mandates

This proposed rule modifies existing rules that provide terms and conditions governing the expenditure of Federal funds by the States. For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, it does not include any Federal mandate that may result in increased expenditures by any State, local, and tribal governments.

List of Subjects in 20 CFR Parts 652, 661 Through 664 and 667

Employment, Grant programs—Labor, Reporting and recordkeeping requirements, Youth.

Signed at Washington, DC this 12th day of December.

Emily Stover DeRocco,
Assistant Secretary of Labor.

For the reasons provided in the preamble, 20 CFR Chapter V is proposed to be amended as follows:

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

1. The authority for part 652 continues to read as follows:

Authority: 29 U.S.C. 49k.

2. Section 652.202 is revised to read as follows:

§ 652.202 May local Employment Service Offices exist outside of Comprehensive One-Stop Career Centers?

No, local Employment Service Offices may not exist outside of comprehensive One-Stop Career Centers. Local Employment Service Offices must be located at, and fully integrated into, each comprehensive One-Stop Center established under 20 CFR 662.100(c).

3. Section 652.205 is amended by revising paragraph (b)(1) to read:

§ 652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

* * * * *

(b) * * *

(1) The activity otherwise meets the requirements of the Act, and its own requirements.

* * * * *

4. Section 652.215 is revised to read as follows:

§ 652.215 Must Wagner-Peyser Act-funded services be provided by merit-staff employees?

No, Wagner-Peyser Act-funded services are not required to be provided by merit-staff employees.

§ 652.216 [Removed]

5. Section 652.216 is removed.

PART 661—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 661 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105–220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 661.110 is amended by revising paragraph (b) to read as follows:

§ 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?

* * * * *

(b) The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have the flexibility to implement systems and deliver services in a manner designed to best achieve the goals of WIA based on their particular needs. This system should involve the private sector to ensure that it meets the needs of business customers by providing adults and youth with the

necessary educational, occupational, and other skills training and services needed for high-demand occupations in the 21st century. The underlying vision of the Department is to bring together resources devoted to employment, education and economic development, and use them strategically to create opportunities for current and future workers while building the skilled workforce that American industries need to remain globally competitive. The WIA regulations provide the framework in which State and local officials can exercise flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are broadly defined, and are subject to State and local interpretation.

* * * * *

3. Section 661.200 is amended by revising paragraph (i)(3) to read as follows:

§ 661.200 What is the State Workforce Investment Board?

* * * * *

(i) * * *

(3) The director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, as representative of the State Vocational Rehabilitation Services program (VR program). In a State with more than one designated State unit, the VR program director of the unit serving the greatest number of individuals with disabilities in the State must be appointed as the representative of the VR program, unless the VR program directors agree to permit a different Vocational Rehabilitation director to be the representative. Only one VR program director may sit on the Board, but that program director must represent both units.

* * * * *

4. Section 661.205 is amended by adding paragraph (b)(3) to read as follows:

§ 661.205 What is the role of the State Board?

* * * * *

(b) * * *

(3) Development and review of statewide policies for the One-Stop Career Center system, which may include:

- (i) Criteria for issuing certifications of the One-Stop Centers;
- (ii) Policies relating to the appropriate roles of One-Stop operators;
- (iii) Approaches to facilitating equitable and efficient cost allocation in One-Stop delivery systems; and

(iv) Strategies for effective outreach to individuals and employers who could benefit from One-Stop services and policies.

* * * * *

5. Section 661.220 is amended by adding paragraph (f) to read as follows:

§ 661.220 What are the requirements for submission of the State Workforce Investment Plan?

* * * * *

(f) Upon expiration of a five-year plan submitted under the Workforce Investment Act of 1998, a State may meet the plan submission requirements of paragraph (a) by filing a plan covering a portion of a five-year planning period in accordance with planning guidelines issued under paragraph (b). In unusual circumstances, the Secretary may, through appropriate guidance, provide other options by which a State may meet the plan submission requirements of paragraph (a) of this section.

6. Section 661.240 is amended by revising paragraph (b)(2) to read as follows:

§ 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?

* * * * *

(b)(2)(i) Subject to paragraph (b)(2)(ii) of this section, a State may submit a unified plan meeting the requirements of the Interagency guidance entitled *State Unified Plan, Planning Guidance for State Unified Plans Under Section 501 of the Workforce Investment Act of 1998*, in lieu of completing the individual State planning guidelines of the programs covered by the unified plan.

(ii) Following the expiration of the five-year WIA and Wagner-Peyser portion of a unified plan, a State may submit a new WIA and Wagner-Peyser portion of such plan in accordance with planning guidelines issued by the Secretary of Labor.

* * * * *

§ 661.290 [Amended]

7. Section 661.290 is amended by removing paragraph (d).

8. Section 661.300 is amended by revising paragraph (b) to read as follows:

§ 661.300 What is the Local Workforce Investment Board?

* * * * *

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the statewide workforce investment system within the local area and oversees the proper

administration of funds under title I of WIA.

9. Section 661.305 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 661.305 What is the role of the Local Workforce Investment Board?

(c) In cooperation with the chief elected official, the Local Board oversees the proper administration of funds in local areas under title I of WIA.

10. Section 661.335 is amended by adding paragraph (e) to read as follows:

§ 661.335 What is a youth council, and what is its relationship to the Local Board?

(e) An alternative entity is not required to have a youth council. However, it is required to perform the duties of a youth council specified in WIA section 117(h)(4).

11. Section 661.350 is amended by revising paragraph (d) to read as follows:

§ 661.350 What are the contents of the local workforce investment plan?

(d) Upon expiration of a five-year plan submitted under the Workforce Investment Act of 1998, the Governor may permit local areas to:

- (1) Submit a new plan, which may be met by filing a plan covering a portion of a five-year planning period;
(2) Modify its existing plan for an additional year; or
(3) Extend its existing plan for an additional year.

§ 661.410 [Amended]

12. Section 661.410 is revised by removing paragraph (c).

PART 662—DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 662 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105-220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 662.100 is amended by revising paragraph (d) introductory text and adding paragraph (f), to read as follows:

§ 662.100 What is the One-Stop delivery system?

(d) While each local area must have at least one comprehensive center (and may have additional comprehensive

centers), WIA section 134(c) allows for arrangements to supplement the center. Except as provided in paragraph (f) of this section, these arrangements may include:

(f) A stand-alone Employment Service office is not permitted to qualify under paragraph (d) of this section as an affiliated site; a component of a network of One-Stop partners; or a specialized center.

3. Section 662.250 is amended by revising paragraph (a) to read as follows:

§ 662.250 Where and to what extent must required One-Stop partners make core services available?

(a) At a minimum, the core services that are applicable to the program of the partner under § 662.220, and that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program, must be made available at the comprehensive One-Stop Center. These services must be made available to individuals attributable to the partner's program who seek assistance at the center.

PART 663—ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 663 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105-220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 663.100 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 663.100 What is the role of the Adult and Dislocated Worker programs in the One-Stop delivery system?

(1) Core services for adults and dislocated workers must be made available, as required by 20 CFR 662.250(a), in at least one comprehensive One-Stop Center in each local workforce investment area.

3. Section 663.145 is amended by revising paragraph (a) to read as follows:

§ 663.145 What services are WIA title I Adult and Dislocated Workers formula funds used to provide?

(a) WIA title I formula funds allocated to local areas for Adults and Dislocated Workers must be used to provide core, intensive and training services through the One-Stop delivery system. Under 20 CFR 662.250, WIA Adult and Dislocated

Worker funds must be used to make available core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser Act. Subject to policies established by the State, Local Boards determine the most appropriate mix of these services, but all three types must be available for both adults and dislocated workers. There are different eligibility criteria for each of these types of services, which are described at §§ 663.110, 663.115, 663.220 and 663.310.

4. Section 663.150 is amended by revising paragraph (a) to read as follows:

§ 663.150 What core services must be provided to adult and dislocated workers?

(a) At a minimum, all of the core services described in WIA section 134(d)(2) and 20 CFR 662.240 must be provided in each local area through the One-Stop delivery system. Under 20 CFR 662.250, WIA Adult and Dislocated Worker funds must be used to make available core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser Act.

5. Section 663.160 is revised to read as follows:

§ 663.160 Are there particular core services an individual must receive before receiving intensive services under WIA section 134(d)(3)?

No. To be eligible for intensive services, WIA requires that the local area determine that an individual is unlikely or unable to obtain or retain employment through core services and is in need of intensive services in accordance with the requirements of § 663.220. The determination of the need for intensive services under § 663.220 must be contained in the participant's case file.

6. Section 663.220 is revised to read as follows:

§ 663.220 Who may receive intensive services?

There are two categories of adults and dislocated workers who may receive intensive services:

(a) Adults and dislocated workers who are unemployed, and who are determined by a One-Stop operator to be unlikely or unable to obtain employment through core services and to be in need of intensive services to obtain employment; and

(b) Adults and dislocated workers who are employed, and who are determined by a One-Stop operator to be in need of intensive services to obtain

or retain employment that leads to self-sufficiency, as described in § 663.230.

7. 663.240 is revised to read as follows:

§ 663.240 Are there particular intensive services an individual must receive before receiving training services under WIA section 134(d)(4)(A)(I)?

No. To be eligible for training services, WIA requires that the local area determine that an individual is unlikely or unable to obtain or retain suitable employment through intensive services and is in need of training services as provided in § 663.310. The determination of the need for training services under § 663.310 may be established through an individual employment plan, a comprehensive assessment or in any other manner, but documentation of the determination must be contained in the participant's case file.

8. Section 663.310 is amended by revising paragraph (a) to read as follows:

§ 663.310 Who may receive training services?

* * * * *

(a) Have met the eligibility requirements for intensive services under § 663.220 and have been determined unlikely or unable to obtain or retain employment through such services.

* * * * *

9. Section 663.530 is revised to read as follows:

§ 663.530 Is there a time limit on the period of initial eligibility for training providers?

Yes, under WIA section 122(c)(5), the Governor must require training providers to submit performance information and meet performance levels annually in order to remain eligible providers following the expiration of the period of initial eligibility. As part of the procedures developed under § 663.515(c)(1), the Governor must establish the period of initial eligibility. Such procedures may include a process for extending the

period of initial eligibility in appropriate circumstances.

PART 664—YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 664 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105-220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 664.510 is revised to read as follows:

§ 664.510 Are Individual Training Accounts allowed for youth participants?

Yes, a local program may choose to provide the occupational skills training element through an Individual Training Account or similar mechanism. In addition, individuals age 18 and above, who are eligible for training services funded under the Adult and Dislocated Worker programs, may receive Individual Training Accounts through those programs. Requirements for concurrent participation requirements are set forth in § 664.500. To the extent possible, in order to enhance youth participant choice, all youth participants should be involved in the selection of educational and training activities.

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

1. The authority citation for part 667 is revised to read as follows:

Authority: Sec. 506(c), Pub. L. 105-220 (20 U.S.C. 9276(c)); 20 U.S.C. 2939(a).

2. Section 667.200 is amended by adding paragraphs (h), (i), and (j) to read as follows:

§ 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?

* * * * *

(h) *Grantee's share.* Where appropriate, the Secretary may require recipients of discretionary grants under WIA title I to contribute a portion of

cash or in-kind contributions to the project. For competitive grants, the amount of the contribution will be specified in the Solicitation for Grant Applications.

(i) *Subgrants.* Where appropriate, the Secretary may authorize recipients of discretionary grants under WIA title I to distribute grant funds to other organizations through subgrants. For competitive grants, the conditions under which grantees may enter into such subgrants will be specified in the Solicitation for Grant Applications.

(j) *Interagency agreements.* Where appropriate, the Secretary may enter into a memorandum of understanding, interagency agreement or other agreement with other Federal agencies under which the Secretary may transfer funds to, or accept funds from, the other agencies.

3. Section 667.600 is amended by revising paragraph (h) to read as follows:

§ 667.600 What local area, State and direct recipient grievance procedures must be established?

* * * * *

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized by other Federal, State or local law. However, the Department of Labor may not be made a party to another lawsuit until the administrative remedies under this section have been exhausted.

4. Section 667.610 is amended by adding paragraph (e) to read as follows:

§ 667.610 What processes do we use to review State and local grievances and complaints?

* * * * *

(e) The Department of Labor may not be made a party to another lawsuit until the applicable administrative remedies under subparts F and G of this part have been exhausted.

