

YOUTHBUILD TRANSFER ACT

Synopsis and Section-By-Section Analysis

Background

On September 22, 2006, President Bush signed into law the YouthBuild Transfer Act (YBTA) Public Law (PL) 109-281. The YouthBuild program authorizes grants for the provision of job training and educational activities to at-risk youth who, as part of their training, help construct or rehabilitate housing for low-income or homeless individuals and families in their respective communities. Participants receive a combination of classroom and job skills development and on-site training in a construction trade.

The White House Task Force for Disadvantaged Youth recommended transferring the administration of the YouthBuild program from the Department of Housing and Urban Development (HUD) to the Department of Labor (DOL). The transfer is intended to link the program more closely to the nation's workforce investment system. The YBTA amends the Workforce Investment Act of 1998 (WIA) (PL 105-220; 29 U.S.C. 2801 *et seq.*) to transfer the YouthBuild program from HUD to DOL. The YBTA repeals the YouthBuild program's statutory authority under the Cranston-Gonzalez National Affordable Housing Act (PL 102-550; 49 U.S.C. § 12899 *et seq.*) and essentially transfers the statute, with needed modifications and improvements, to subtitle D of title I of WIA. Among other things, the YBTA incorporates technical modifications to the YouthBuild statute to make it consistent with WIA's job training, education, and employment goals. In addition, the YBTA includes provisions to facilitate the transition of the YouthBuild program to DOL by delegating to the HUD and DOL Secretaries sufficient discretion to accomplish the transfer, with appropriate Office of Management and Budget (OMB) oversight.

Synopsis

Aside from transferring the administration of the program from HUD to DOL, the YBTA expands the activities authorized under the YouthBuild program to include many activities authorized under the WIA youth formula program. For instance, the YBTA authorizes new education and workforce investment activities, such as occupational skills training, internships, and job shadowing, as well as community service and peer-centered activities. Moreover, the YBTA places greater emphasis on providing training through "registered apprenticeship programs," which can lead to certifications that meet accepted industry skills standards. The YBTA also permits the use of some YouthBuild funds to pay for supervision and training costs to allow participants to develop skills and obtain work experience in the rehabilitation or construction of community and other public facilities. These and other new activities authorized by the YBTA will better assist at-risk youth in preparing for employment in occupations in demand.

The YBTA allows for greater coordination of the YouthBuild program with the WIA system, including local workforce investment boards, One-Stop Career Centers, and its partner programs. These strengthened connections will enhance the job training and employment opportunities available to participating at-risk youth. Further, to enhance the accountability of YouthBuild

programs, the YBTA authorizes DOL to apply the common performance measures that the Administration developed for Federal youth and lifelong learning employment and training programs.

The YBTA retains the age requirements in the Cranston-Gonzalez Act for YouthBuild eligibility. Eligible YouthBuild participants are school dropouts between the ages of 16 and 24. The YBTA further provides that participants must be members of a low-income family, a foster care youth, a youth offender, a youth with disability, children of incarcerated parents, or a migrant youth. In addition, to ensure that other at-risk youths have access to the program, the YBTA includes an eligibility exemption permitting secondary schools to refer students to a YouthBuild program leading to the attainment of a secondary school diploma.

Finally, the YBTA includes necessary transition provisions that DOL and HUD are utilizing to ensure the seamless transition of the YouthBuild program. The YBTA stipulates that the OMB will make final determinations regarding the appropriate resource transfers.

Section-By-Section Analysis

Section 1 – YouthBuild Transfer Act is the short title of the bill.

Section 2 – Establishment of YouthBuild program in DOL.

Subsection (a) of section 2 establishes the YouthBuild program in DOL by inserting a new section 173A into WIA.

- **Subsection 173A(a)**

Subsection (a) of section 173A retains the stated purposes of the Cranston-Gonzalez Act as indicated in 42 U.S.C. § 12899, but now emphasizes that one purpose of the YouthBuild program is to provide job training and employment services for at-risk youth and to provide education and employment skills to prepare youth for occupations in demand, making the program more consistent with DOL programs that serve disadvantaged youth.

- **Subsection 173A(b)**

Subsection (b) of section 173A incorporates many of the definitions previously included in the Cranston-Gonzalez Act at 42 U.S.C. § 12899f; however, the YBTA omits several definitions because WIA already provides useful definitions for the same or related terms. The WIA definitions for title I contained in section 101 of WIA, 29 U.S.C. § 2801, automatically apply to section 173A for terms such as “postsecondary educational institution,” “school dropout,” “State,” and “Secretary.” Further, subsection (b) provides definitions for new terms referenced throughout section 173A, including an “individual of limited English proficiency,” and a “registered apprenticeship program.” In addition, the terms “Indian” and “Indian tribe” under this subsection comport with WIA’s definition of the terms as contained in section 166(b)(2), 29 U.S.C. § 2911(b)(2). The definition of “applicant” has been modified to clarify that a broad range of “eligible entities”, such as entities carrying out activities under title I of WIA (e.g., One-Stop Career Centers), are

expressly included in the pool of potential grantees and/or contractors. Finally, it is noteworthy that the YBTA defines a “qualified national nonprofit agency” – an entity eligible for certain technical assistance and other YouthBuild grants – as a nonprofit agency that “has significant national experience providing services consisting of training, information, technical assistance, and data management to YouthBuild programs or similar projects.” Unlike the definition of a qualified nonprofit in the Cranston-Gonzalez Act, the new definition no longer requires prior experience in the *operation* of projects similar to the YouthBuild program. Thus, the YBTA will help ensure that entities that have not garnered direct experience in the operation of a YouthBuild or similar project, but have “the capacity to provide those services,” will be eligible to provide technical and other assistance to YouthBuild grantees.

- **Subsection 173A(c)**

Paragraph (1) of subsection 173A(c) authorizes DOL to issue YouthBuild grants similar to the “implementation grants” formerly found in the Cranston-Gonzalez Act at 42 U.S.C. § 12899c. It is noteworthy that the YBTA does not include authority to issue “planning grants” as was formerly authorized under the Cranston-Gonzalez Act (42 U.S.C. §§ 12899a(1) and 12899b). The main reason for this omission is that “planning grants” were only needed during the start-up phase of the YouthBuild program at HUD.

Paragraph (2) of subsection 173A(c) details new education and workforce investment activities that are eligible for funding and augment the YouthBuild program’s connections with the workforce investment system. In particular, the YBTA’s authorized activities are similar to relevant elements for youth programs as stated in section 129(c)(2) of WIA, 29 U.S.C. § 2854(c)(2). For instance, YouthBuild grants can be used to provide occupational skills training, internships and job shadowing, alternative secondary school services, supportive services, community service and peer-centered activities that encourage responsibility and other positive social behaviors during non-school hours, and comprehensive guidance and counseling (including drug and alcohol abuse counseling and job search and placement assistance). In addition, the YBTA revises references to “apprenticeship programs” to clarify that such programs should be “registered apprenticeship programs,” which are programs that lead to industry-recognized skill certifications. By incorporating these changes, the YBTA more closely aligns YouthBuild with DOL programs that prepare youth for employment that meets the needs of a demand-driven economy.

Subparagraph (2)(C) of subsection 173A(c) authorizes YouthBuild grants to fund the supervision and the training costs for YouthBuild participants to perform rehabilitation or construction of community and public facilities. Funding for this purpose is limited to only 10% of the total appropriated YouthBuild funds for any fiscal year. The 10% ceiling ensures that affordable *residential* housing construction and rehabilitation remains a lasting end-result of YouthBuild activities. By expanding the use of funds to the rehabilitation or construction of community and public facilities, the YBTA helps to enhance job training and career opportunities for YouthBuild participants.

Paragraph (3) of subsection 173A(c) retains essentially all of the grant application requirements of the Cranston-Gonzalez Act (42 U.S.C. § 12899c(c)), but also includes

several new requirements. Among the new requirements, an applicant is required to provide labor market information for the local market area where the grant will be used, including projections on career opportunities in appropriate industries, such as the construction industry. In addition, an applicant's statement of qualifications must describe its relationships with the workforce investment system and with employers. Another new requirement is that applicants provide a description of the arrangements that will be made with community or faith-based organizations to recruit YouthBuild participants. The Cranston-Gonzalez Act had only required such a description in relation to community-based organizations. Other new requirements are that applicants describe how they will meet common performance measures for youth and lifelong learning programs, identify the role of employers in the program, and describe their ability to grant industry-recognized skills-based certifications.

Paragraph (4) of subsection 173A(c) expands the selection criteria that the Secretary of Labor can use to make grant determinations. The new factors include the applicant's focus on preparing youth for careers in occupations in demand or postsecondary education; the extent to which an applicant will coordinate with the workforce investment system, employers, and educational institutions in conducting their YouthBuild activities; the applicant's ability to serve different regions, including rural areas and States without prior YouthBuild programs; and the extent to which housing that is rehabilitated or constructed with YouthBuild funds will include previously homeless individuals in the rental housing provided by the program.

Paragraph (5) of subsection 173A(c) directs the Secretary of Labor – to the extent practicable – to notify each applicant of the approval or disapproval of the grant application not later than 5 months after the date of the receipt of the application.

[Under the Cranston-Gonzalez Act, 42 U.S.C. § 12899c(b)(4)(E)(6), YouthBuild awards could fund the “operating expenses and replacement reserves of the property covered by the YouthBuild program;” however, the YBTA omits this provision because such funding would detract from the employment, education, and job-training goals of the YouthBuild program.]

- **Subsection 173A(d)**
Subsection (d) of section 173A maintains some basic rental and homeownership restrictions, which are similar to the major restrictions specified in the Cranston-Gonzalez Act (42 U.S.C. § 12899d). However, the YBTA does not retain the extensive restrictions found in the Cranston-Gonzalez Act. It is anticipated that other Federal housing funding sources will continue to place more extensive housing-related restrictions on the YouthBuild properties, allowing DOL to focus its YouthBuild funding on providing job training, education, and employment opportunities for at-risk youth. The YBTA does stipulate that YouthBuild residential properties must only be available for rental by, or sale to, homeless individuals or low-income families, and/or for use as transitional or permanent housing for homeless individuals transitioning to independent living. Furthermore, **subsections 173A(c)(3)(B)(xx)-(xxi)** maintain the certification requirements in the Cranston-Gonzalez Act (42 U.S.C. §§ 12899c(b)(4)(P)-(Q)). These certification provisions require that YouthBuild grant applicants continue to provide a certification from a public official that the

proposed YouthBuild activities are consistent with the State or local government’s housing strategy. Second, applicants must continue to certify their intended compliance with the requirements of the Fair Housing Act and that they will affirmatively further fair housing. Further, section 188 of WIA, 29 U.S.C. § 2938, which automatically applies to YouthBuild grantees, requires compliance with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 – statutes that are effectively enforced by other federal agencies like the Department of Justice.

- **Subsection 173A(e)**

Subsection (e) of section 173A establishes criteria for participation in a YouthBuild program. Paragraph (1) would retain two requirements in the Cranston-Gonzalez Act (42 U.S.C. § 12899e), that participants are between the ages of 16 and 24 years on the date of enrollment and that they are school dropouts. A third eligibility criterion, that a participant also be a member of a very-low income family, would be replaced by a requirement that a participant be a member of a low income family (which subsumes members of very-low income families), a youth in foster care (including a youth aging out of foster care), a youth offender, a youth with a disability, a child of incarcerated parents, **or** a migrant youth. As with the Cranston-Gonzalez Act, the YBTA provides that up to 25% of the participants may be individuals that do not meet the standard eligibility criteria. Clause (i) of subsection 173A(e)(1)(B) clarifies that even high school graduates who are “basic skills deficient” as defined by WIA, 29 U.S.C. § 2801(4), may participate in the program under the 25% exception. In addition, clause (ii) of subsection 173A(e)(1)(B) now permits, as part of the exception, the participation of youth who are referred by a secondary school for participation in a YouthBuild program leading to the attainment of a secondary school diploma.

Paragraph (2) of subsection 173A(e) clarifies that individuals selected for participation in a YouthBuild program must be offered full-time participation for a period of at least 6 months and not more than 24 months. Paragraph (3) of this subsection requires that YouthBuild programs be structured so as to offer specific educational and related services and activities during at least 50% of the participation time and to offer specified work and skill development activities during at least 40% of the remaining time. This is an improvement over the Cranston-Gonzalez Act’s requirements (42 U.S.C. § 12899e(b)) that participants spend 50% of their participation time in educational activities, but placing no duration requirement on the time devoted to work and skill development activities. Paragraphs (4) and (5) retain the requirements of the Cranston-Gonzalez Act (42 U.S.C. § 12899e(d)-(e)), that no federal employee can exercise direction and control over the educational materials, curriculum, and related activities and items of the YouthBuild program; but rather, that these elements be subject only to State and local educational standards.

[The Cranston-Gonzalez Act’s nondiscrimination provision (42 U.S.C. § 12899e(e)) is omitted from the YBTA because this provision is subsumed by WIA’s nondiscrimination provision, section 188, 29 U.S.C. § 2938.]

- **Subsection 173A(f)**

Subsection (f) of section 173A authorizes the Secretary of Labor to engage one or more qualified national nonprofit agencies to provide management and technical assistance to the

Secretary. This is an improvement over the Cranston-Gonzalez Act in that the YBTA allows such contracts to be awarded to one or more providers, rather than a single provider. Paragraph (2) retains the requirement in the Cranston-Gonzalez Act that, from each fiscal year appropriation, the Secretary must reserve 5% of YouthBuild funds for technical assistance to YouthBuild grantees. In addition, paragraph (3) permits the Secretary of Labor to use up to 3% of funds from each fiscal year appropriation to provide grants for capacity building activities to one or more providers, with DOL advancing a 25% federal share. The remaining 75% would be leveraged from private sources.

- **Subsection 173A(g)**

Subsection (g) of section 173A authorizes YouthBuild grantees to contract or subgrant their YouthBuild grants to provide services and activities. This mirrors the Cranston-Gonzalez Act provision (42 U.S.C. § 12899h) regarding the manner in which grant recipients can provide services (*e.g.*, contracts), except that the YBTA clarifies that subgrants are also authorized and that each YouthBuild program should specifically coordinate with “postsecondary educational institutions” in implementing their educational services and activities, along with the other entities previously specified (*i.e.*, State and local housing development agencies, other public agencies, agencies of Indian tribes, or private organizations).

[The YBTA omits 42 U.S. C. § 12899h-1, a provision that made Indian tribes ineligible under the Cranston-Gonzalez Act for YouthBuild funding after fiscal year 1998. Under WIA, the benefits of the workforce investment system, and especially the targeted activities under section 166 of WIA (Native American Programs), are readily available to Indian tribes. Therefore, the text of section 12899h-1 was not included in new section 173A.]

- **Subsection 173A(h)**

Paragraph (1) of subsection 173A(h) authorizes the appropriation of necessary sums for DOL to carry out the YouthBuild program from fiscal year 2007 through fiscal year 2012. In addition, paragraph (2) allows YouthBuild funds to be obligated on a fiscal year basis, rather than WIA’s standard program year basis that begins July 1. This will help ensure that current YouthBuild grantees do not experience a disruption of their funding streams.

[The YBTA omits 42 U.S.C. § 12899i, a provision that authorized the issuance of regulations under the Cranston-Gonzalez Act to carry out the YouthBuild program. Since the Secretary of Labor already has authority under title I of WIA to issue implementing regulations for the YouthBuild program, this provision is no longer necessary.]

Subsection (b) of section 2 of the YBTA alters the table of contents of WIA to make a clerical change reflecting the addition of a new section 173A for the YouthBuild program.

Subsection (c) of section 2 of the YBTA amends section 189(g)(1)(A) of WIA, 29 U.S.C. § 2939(g)(1)(A), to provide an exception to the program year cycle requirement that would otherwise apply to the YouthBuild program, which is consistent with the fiscal year appropriations cycle authorized by section 173A(h).

Subsection (d) of section 2 of the YBTA makes conforming amendments to other Federal statutes to reflect the establishment of the YouthBuild program in DOL.

Subsection (e) of section 2 of the YBTA repeals the YouthBuild program's statutory authority under the Cranston-Gonzalez National Affordable Housing Act (PL 102-550; 49 U.S.C. § 12899 *et seq.*).

Subsection (f) of section 2 of the YBTA provides that the effective date of the amendments made by section 3 of the bill was the earlier of September 30, 2006 or the date of enactment of the YBTA. (The effective date is September 22, 2006, since that is when the President signed the bill, making the law effective on that date.)

Section 3 – Authority to Transfer YouthBuild Program Functions to DOL.

Subsection (a) of section 3 of the YBTA defines certain terms, such as “functions”, only for purposes of section 3.

Subsection (b) of section 3 of the YBTA transfers from HUD to DOL all of the functions associated with the YouthBuild program, as such functions existed prior to enactment of the bill, including the functions of HUD officers and employees related to YouthBuild.

Subsection (c) of section 3 of the YBTA stipulates that the OMB will make any necessary determinations as to the functions transferred by subsection (b) of section 3.

Subsection (d) of section 3 of the YBTA authorizes the Secretary of Labor to appoint officers and employees to carry out the functions transferred. The Secretary is also authorized to hire necessary experts and consultants to assist with the transfer of the YouthBuild program.

Subsections (e) of section 3 of the YBTA authorizes the Secretary of Labor to delegate and assign the functions transferred to officers and employees of DOL.

Subsection (f) of section 3 of the YBTA permits the Secretary to make any necessary reorganizations that may be needed within DOL to carry out the functions transferred.

Subsection (g) of section 3 of the YBTA authorizes the Secretary of Labor to prescribe necessary rules and regulations to administer and manage the transferred functions at DOL.

Subsection (h) of section 3 of the YBTA transfers from HUD to DOL the assets, liabilities, grants, contracts, properties, records, and unexpended balances of appropriations, authorizations, allocations, and other funds used, held, arising from, available to, or to be made available in connection with the functions transferred to DOL. These transfers are all subject to the requirements of the Economy Act, 31 U.S.C. § 1531, which, among other things, stipulates that unexpended funds transferred between agencies must be used for the purpose for which such funds were originally authorized and appropriated.

Subsection (i) of section 3 of the YBTA stipulates that the Director of OMB can make any necessary determinations or dispositions as to the transfers detailed in subsection (3)(h), consistent with 31 U.S.C. § 1531; terminate the affairs of any entities terminated by section 3; and take other measures necessary to effectuate the purposes of section 3.

Subsection (j) of section 3 of the YBTA includes savings provisions that would ensure the continuing legality of documents. Paragraph (1) provides that YouthBuild-related documents that have been issued and are effective, or will become effective, remain in effect unless the documents are revoked or otherwise superseded as determined by the President, the Secretary of Labor, the courts, or by operation of law. Paragraph (2) provides that any pending proceedings at HUD must continue to take their course or continue to be in effect as if the bill had not been enacted. Likewise, paragraph (3) provides that suits and related proceedings, orders, and judgments shall continue as if the bill had not been enacted. Paragraph (4) provides that legal actions or other proceedings against HUD or its officers and employees acting in an official capacity will not abate due to the enactment of section 3. Finally, paragraph (5) permits DOL to continue administrative actions relating to the promulgation of regulations that began at HUD with the same effect as if section 3 had not been enacted.

Subsection (k) of section 3 of the YBTA provides that if any provision of section 3 is held to be invalid, the remaining provisions of section 3 shall not be affected.

Subsection (l) of section 3 of the YBTA grants DOL the authority to request employees on a detail basis from HUD to assist with the transition of the YouthBuild program to DOL.

Subsection (m) of section 3 of the YBTA requires that the Secretary of Labor and the Secretary of Housing and Urban Development take appropriate actions to accomplish the orderly transfer of the functions described in subsection (b).

Subsection (n) of section 3 of the YBTA allows HUD to continue to administer existing grants from fiscal year 2006 and preceding years. In this way, DOL will assume the administration of the YouthBuild program by issuing only prospective grants with fiscal year 2007 resources.

Subsection (o) of section 3 of the YBTA provides that any references in federal documents and laws to the Secretary of Housing and Urban Development or to HUD with respect to the functions transferred by subsection (b) of section 3, are deemed to refer to the Secretary of Labor or to DOL.

Subsection (p) of section 3 of the YBTA provides that the effective date of the transfer and transition provisions of section 3 was the earlier of September 30, 2006 or the date of enactment of the YBTA. Since the President signed the bill on September 22, 2006, that date is the effective date of the transfer.