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Part II

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Employment and Training Administration

20 CFR Part 652 et al.
Workforce Investment Act; Final Rules

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 652 and Parts 660 through 671

RIN 1205–AB20

Workforce Investment Act

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

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is issuing a Final Rule implementing provisions of titles I, III and V of the Workforce Investment Act. Through these regulations, the Department implements major reforms of the nation's job training system and provides guidance for statewide and local workforce investment systems that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation. Key components of this reform include streamlining services through a One-Stop service delivery system, empowering individuals through information and access to training resources through Individual Training Accounts, providing universal access to core services, increasing accountability for results, ensuring a strong role for Local Boards and the private sector in the workforce investment system, facilitating State and local flexibility, and improving youth programs.

DATES: This Final Rule will become effective on September 11, 2000.

ADDRESSES: All comments received during the comment period following the publication of the Interim Final Rule (64 FR 18662, *et seq.*, Apr. 15, 1999) are available for public inspection and copying during normal business hours at the Employment and Training Administration, Office of Career Transition Assistance, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Copies of the Final Rule are available in alternate formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The Final Rule is also available on the WIA web site at http://usworkforce.org.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Office of Career Transition Assistance, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210, Telephone: (202) 219–7831 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This Final Rule does not add any new information collection requirements to those of the Interim Final Rule. Certain sections of this Final Rule, such as §§ 667.300, 667.900, 668.800, and 669.570 contain information collection requirements. These requirements have not been changed. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Labor submitted a copy of these sections to the Office of Management and Budget for review. No comments were received about and no changes have been made to the information collection requirements.

We have prepared documents providing guidance on specific information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted these documents to the Office of Management and Budget (OMB) for its review. Affected parties do not have to comply with the information collection requirements contained in this document until we publish in the **Federal Register** the control numbers assigned by the Office of Management and Budget. Publication of the control numbers notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995. For further information contact: Ira Mills, Departmental Clearance Officer, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–5095, ext. 143.

I. Background

A. WIA Principles

On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA), comprehensive reform legislation that supersedes the Job Training Partnership Act (JTPA) and amends the Wagner-Peyser Act. WIA also contains the Adult Education and Family Literacy Act (title II) and the Rehabilitation Act Amendments of 1998 (title IV). Guidance or regulations implementing titles II and IV will be issued by the Department of Education.

WIA reforms Federal job training programs and creates a new, comprehensive workforce investment system. The reformed system is intended to be customer-focused, to help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers. This new law embodies seven key principles. They are:

- *Streamlining services* through better integration at the street level in the One-Stop delivery system. Programs and providers will co-locate, coordinate and integrate activities and information, so that the system as a whole is coherent and accessible for individuals and businesses alike.
- *Empowering individuals* in several ways. First, eligible adults are given financial power to use Individual Training Accounts (ITA's) at qualified institutions. These ITA's supplement financial aid already available through other sources, or, if no other financial aid is available, they may pay for all the costs of training. Second, individuals are empowered with greater levels of information and guidance, through a system of consumer reports providing key information on the performance outcomes of training and education providers. Third, individuals are empowered through the advice, guidance, and support available through the One-Stop system, and the activities of One-Stop partners.
- *Universal access.* Any individual will have access to the One-Stop system and to core employment-related services. Information about job vacancies, career options, student financial aid, relevant employment trends, and instruction on how to conduct a job search, write a resume, or interview with an employer is available to any job seeker in the U.S., or anyone who wants to advance his or her career.
- *Increased accountability.* The goal of the Act is to increase employment, retention, and earnings of participants, and in doing so, improve the quality of the workforce to sustain economic growth, enhance productivity and competitiveness, and reduce welfare dependency. Consistent with this goal, the Act identifies core indicators of performance that State and local entities managing the workforce investment system must meet—or suffer sanctions. However, State and local entities exceeding the performance levels can receive incentive funds. Training providers and their programs also have to demonstrate successful performance to remain eligible to receive funds under the Act. And participants, with their ITA's, have the opportunity to make training choices based on program outcomes. To survive in the market, training providers must make accountability for performance and customer satisfaction a top priority.
- *Strong role for local workforce investment boards and the private sector,* with local, business-led boards

acting as ''boards of directors,'' focusing on strategic planning, policy development and oversight of the local workforce investment system. Business and labor have an immediate and direct stake in the quality of the workforce investment system. Their active involvement is critical to the provision of essential data on what skills are in demand, what jobs are available, what career fields are expanding, and the identification and development of programs that best meet local employer needs. Highly successful private industry councils under JTPA exhibit these characteristics now. Under WIA, this will become the norm.

• *State and local flexibility.* States and localities have increased flexibility, with significant authority reserved for the Governor and chief elected officials, to build on existing reforms in order to implement innovative and comprehensive workforce investment systems tailored to meet the particular needs of local and regional labor markets.

• *Improved youth programs* linked more closely to local labor market needs and community youth programs and services, and with strong connections between academic and occupational learning. Youth programs include activities that promote youth development and citizenship, such as leadership development through voluntary community service opportunities; adult mentoring and followup; and targeted opportunities for youth living in high poverty areas.

Many States and local areas have already taken great strides in implementing these principles, supported by grants from the Department of Labor (DOL) to build One-Stop service delivery systems and school-to-work transition systems. The Act builds on these reforms and ensures that they will be available throughout the country.

We wish to emphasize that DOL considers the reforms embodied in the Workforce Investment Act to be pivotal, and not ''business as usual.'' This legislation provides an unprecedented opportunity for major reforms that can result in a reinvigorated, integrated workforce investment system. States and local communities, together with business, labor, community-based organizations, educational institutions, and other partners, must seize this historic opportunity by thinking expansively as they design a customer-focused, comprehensive delivery system.

The success of the reformed workforce investment system is dependent on the development of true partnerships and honest collaboration at all levels and among all stakeholders. While the Workforce Investment Act and these regulations assign specific roles and responsibilities to specific entities, for the system to realize its potential necessitates moving beyond current categorical configurations and institutional interests. Also, it is imperative that input is received from all stakeholders and the public at each stage of the development of State and local workforce investment systems.

The cornerstone of the new workforce investment system is One-Stop service delivery which unifies numerous training, education and employment programs into a single, customer-friendly system in each community. The underlying notion of One-Stop is the coordination of programs, services and governance structures so that the customer has access to a seamless system of workforce investment services. We envision that a variety of programs could use common intake, case management and job development systems in order to take full advantage of the One-Stops' potential for efficiency and effectiveness. A wide range of services from a variety of training and employment programs will be available to meet the needs of employers and job seekers. The challenge in making One-Stop live up to its potential is to make sure that the State and Local Boards can effectively coordinate and collaborate with the network of other service agencies, including TANF agencies, transportation agencies and providers, metropolitan planning organizations, child care agencies, nonprofit and community partners, and the broad range of partners who work with youth.

B. Rule Format

The format, as well as the substance, of the Final Rule, reflects the Administration's commitment to regulatory reform and to writing regulations that are reader-friendly. We have attempted to make these regulations clear and easy to understand, as well as to anticipate issues that may arise and to provide appropriate direction. To this end, the regulatory text is presented in a ''question and answer'' format. We have organized the regulations in a way that will help those implementing the new system to recognize the various steps that must be taken to develop the organization and services that make up the workforce investment system. In many cases, the provisions of WIA are not repeated in these regulations. In response to comments, however, we determined that, in a number of instances, the regulations would provide context and be more reader-friendly if the Act's provisions were included in an answer rather than merely cross-referencing the statute.

C. Prior Actions

Since the passage of the Workforce Investment Act in August of 1998, we have used a variety of means to initiate extensive coordination with other Federal agencies that have roles and responsibilities under WIA. In addition, the Department of Labor, the Department of Education, the Department of Health and Human Services, the Department of Transportation, and the Department of Housing and Urban Development continue to meet on a regular basis to resolve issues surrounding WIA implementation.

Before publishing the Interim Final Rule, we also requested and received input from a broad range of sources about how to structure guidance on how to comply with a number of WIA statutory provisions. We solicited broad input on WIA implementation through a variety of mechanisms: establishing a web site to encourage input; publishing a **Federal Register** notice on September 15, 1998; conducting regional and national panel discussions in October 1998; publishing a White Paper announcing goals and principles governing implementation; posting issues on the usworkforce.org web site; sharing a discussion draft of regulatory issues with stakeholders; holding town hall meetings across the country in December 1998; conducting several workgroups in December 1998; issuing draft Planning Guidance in December 1998; and conducting a series of WIA Implementation Technical Assistance Conferences across the country in March and April of 1999.

On April 15, 1999, the Interim Final Rule was published in the **Federal Register**, at 64 FR 18662 through 18764, and a 90-day comment period commenced. We continued to provide information by posting questions and answers on the usworkforce.org web site; publishing a series of consultation papers in April, May and August of 1999, on defining and measuring performance, incentives and sanctions, customer satisfaction, and continuous improvement; conducting a second round of Town Hall meetings across the country in August of 1999; and hosting ''Voice of Experience'' forums in February and March of 2000 where practitioners shared insights and suggestions for successful implementation of WIA. An Interim Final Rule implementing section 188 nondiscrimination and equal

opportunity provisions of WIA, codified in 29 CFR part 37, was published separately in the **Federal Register**, at 64 FR 61692 through 61738, Nov. 12, 1999. Comments received on those regulations will be addressed in the preamble to that Final Rule.

We reviewed every comment received during the comment period following publication of the Interim Final Rule, as well as the experience of early implementing States, and suggestions received from partners and stakeholders when considering whether the Final Rule should differ from the Interim Final Rule. These comments are discussed in the Summary and Explanation of the individual provisions of the Final Rule. Section 506(c)(1) of the Act required the Secretary of Labor to issue this Final Rule implementing provisions of the WIA under the Department's purview by December 31, 1999. While we were unable to meet this deadline, we have endeavored to issue this Final Rule as expeditiously as possible without compromising the quality of the document. Under Secretary of Labor's Order No. 4–75, the Assistant Secretary for Employment and Training has been delegated the responsibility to carry out WIA policies, programs, and activities for the Secretary of Labor. We have determined that this Final Rule, as promulgated, complies with the WIA statutory mandate to issue a Final Rule and provides effective direction for the implementation of WIA programs.

II. Summary and Explanation

This section contains our response to comments received on the Interim Final Rule during the comment period. The comments are discussed at considerable length in order to make clear our interpretation of WIA through these final regulations and of their application to some of the challenges that may arise in implementing the Act.

We have set regulations only where they are necessary to clarify or to explain how we intend to interpret the WIA statute, to provide context for interpretations or to provide a clear statement of the Act's requirements. In several instances—for example, the Indian and Native American Programs, and Migrant and Seasonal Farmworker Programs—the regulations were developed in consultation with advisory councils and are more comprehensive in order to assist those grantees. Consistent with the Act, the Final Rule provides the States and local governments with the primary responsibility to initiate and develop program implementation procedures and policy guidance regarding WIA administration.

There are a limited number of changes in the Final Rule because of our commitment to allowing maximum flexibility at the State and local level. Section 661.120 formalizes this flexibility in the regulations. A number of comments suggested that we specify certain groups of providers and participants and types of activities in numerous sections of the regulations. Among others, these comments suggested revising the regulations to: add new definitions, and additional State and local planning requirements; require States and locals to consult with specific organizations in order to fulfill the public comment process requirements; and identify certain types of programs, providers or participants, such as service learning opportunities, and nontraditional employment and training opportunities for women and dislocated homemakers, in matters where States and localities have discretion to define terms and make other discretionary decisions. To provide policy-making flexibility to States and local areas and to avoid suggesting that any one group or activity is more important than those not highlighted in the regulations, we have generally not made those changes. However, we do believe that consultation with and inclusion of these groups is important to obtaining the optimal functioning of the cooperative system envisioned by WIA. We fully expect that States and local areas will consult broadly before adopting plans and policies; and that their workforce investment systems will be structured to include all providers and programs that may help meet the needs of their populations, and equitably serve all population segments within their service areas.

In addition to the changes made based upon the comments received, in order to clarify policy and interpretation and improve upon the Rule's reader-friendly format, we have also made technical changes to correct typographical errors, such as consistent capitalization, abbreviations, grammatical corrections and citations, and for consistency with the regulations implementing the nondiscrimination and equal opportunity provisions of WIA section 188, which were first published in the **Federal Register** on November 12, 1999 (64 FR 61692 through 61738, 29 CFR part 37).

When publishing a Final Rule following a comment period, it is customary to publish only changes made to the rule, however, in order to be more user-friendly, we are publishing the entire Rule, including those parts that have not been changed, for WIA titles I and V. This means that one document which contains all of the regulations and commentary may be consulted rather than needing to compare various documents. Similarly, the new Wagner-Peyser regulations at part 652 subpart C are republished in full.

Description of Regulatory Provisions

Part 660—Introduction to the Regulations for the Workforce Investment Systems Under Title I of the Workforce Investment Act

Part 660 discusses the purpose of title I of the Workforce Investment Act and explains the format of the regulations governing title I.

A few commenters suggested we add the attainment of self-sufficiency to the description of the purpose of title I in § 660.100.

Response: While we agree that the attainment of self-sufficiency is an important goal of workforce investment systems under title I of the Act, we have not added that phrase to the regulation since the current language tracks section 106 of the Act.

Part 660 also provides definitions which are not found in the Act, as well as some of the statutory definitions we felt should be added for emphasis or clarification. Sections 101, 142, 166(b), 167(h) 301 and 502 of the Act contain additional definitions. We received several comments on the definitions contained in § 660.300. One commenter suggested that we add ''youth'' to the definition of ''employment and training activity''.

Response: The three terms, ''workforce investment activity,'' ''employment and training activity,'' and ''youth activity,'' are defined in section 101 of WIA. We have not added ''youth'' to the definition of ''employment and training activity'' since employment and training activities are a separate subset of workforce investment activities under title I, Chapter 5 of the Act. Workforce investment activities are the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, and youth activities.

A commenter requested that we define the term ''labor federation'' as used in relation to nomination requirements for labor representatives to the State and Local Boards, stating ''[i]t is our understanding that [this term] is intended to include AFL-CIO State Federations, State Building and Construction Trades Councils, AFL-CIO Central Labor Councils, and Local

Building and Construction Trade Councils.''

Response: We have added a definition of the term ''labor federation'', similar to that used in JTPA, which will include these groups within that term.

We received several comments on the definition of ''literacy''. One commenter suggested that the definition of ''literacy'' be expanded to mean the ability to read, write and speak in English or an individual's native language, if that is not English.

Response: In order to promote consistency among Federal Programs, title I, section 101(19) of WIA defines ''literacy'' by stating that it is the same definition used in title II, section 203(12) of the Act. Section 660.300 of the regulations restates this definition for the convenience of the reader. Literacy is defined as the ''ability to read, write, and speak in English, compute and solve problems, at the levels of proficiency necessary to function on the job, in the family of the individual and in society.'' No change has been made to this statutory definition.

Another commenter suggested that the term ''literacy'' be amended to include computer literacy since it is an important and necessary workplace skill.

Response: We agree that computer literacy is a key skill, however, as stated above, no changes have been made to the definition of ''literacy'' since it is a statutory definition found in section 203(12) of title II of WIA.

Among the regulatory definitions, we have defined the term ''register'' in order to clarify that programs do not need to register participants until they receive a core service beyond those that are self-service or informational. This point in time also corresponds to the point when the participants are counted for performance measurement purposes. A few commenters suggested that the term ''register'' be redefined to require all adults and dislocated workers who receive services, including those who only receive self-service or informational services, to be registered in order to track universal participation in the workforce investment system.

Response: The process of registration is designed to signal when an individual is counted against the core measures of performance title I programs. Since the Act exempts informational and self-service activities from the core measures, we are not requiring individuals who only receive those services to be registered. However, States and local areas are authorized to collect information beyond what is required at the Federal level. In March 2000, we issued Training and Employment Letter (TEGL) 7–99 which provides additional guidance on the point of registration. This guidance can be found on the Internet at *www.usworkforce.org.* Additional discussion of this issue is contained in part 663 and part 664 of these regulations. Part 666 provides new guidelines on when a service is determined to be self-service or informational. Finally, while participants may not need to be registered until they receive core services for performance measurement purposes, recipients must collect equal opportunity data regarding any individual who has submitted personal information in response to a request by the recipient for such information. See 29 CFR 37.4 (definitions of ''applicant'' and ''registrant''), and § 37.37(b)(2).

Another commenter suggested that the term ''register'' be more clearly defined, and requested a description of the differences between registration, enrollment and participation.

Response: While we have not changed the definition of ''register,'' additional guidance on the registration process and its connection to the performance accountability system can be found in TEGL 7–99, as well as part 663 and part 664 of these regulations. In general, ''enrollment'' is not a term that is being used in the WIA title I performance system. An individual who registers for services is determined eligible and is counted against the core indicators of performance. This registered individual is considered a participant while receiving services (except followup services) funded under subtitle B of WIA title I.

This commenter also suggested that we clarify that information on citizenship and selective service status be collected at the time of registration.

Response: In addition to any other statutory or regulatory requirements, under WIA section 188(a)(5)—''Prohibition on Discrimination Against Certain Non-Citizens''—participation in programs or activities, or receiving financial assistance under WIA title I, must be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees and other immigrants authorized to work in the United States. Compliance with the non-discrimination provisions of WIA is addressed in the Interim Final Regulations promulgated by the Department's Civil Rights Center at 29 CFR part 37 (64 FR 61692, November 12, 1999). A discussion of these provisions can be found in the preamble discussion of 29 CFR 37.37(b)(2), at 64 FR 61705.

Section 189 of WIA provides that the Military Selective Service Act (50 U.S.C. App. 453) must be complied with to receive any assistance or benefit under title I. In order to allow the greatest possible flexibility in the provision of services, we will not dictate specific ways to comply with this straightforward requirement.

Several commenters suggested adding definitions of ''contract'' and ''commercial organization'' or ''for-profit entity'' and modifying the definitions of ''grant,'' ''subrecipient,'' and ''vendor'' to ensure consistency with the Federal Grant and Cooperative Agreement Act, (31 U.S.C. 6301), and to reduce confusion about what awards are subject to the uniform procurement requirements at 29 CFR 95.40 through 95.48 and 29 CFR 97.36, and what awards are not subject to these requirements.

Response: We have decided not to add definitions of ''contract,'' ''commercial organization'' or ''for-profit entity'', because these terms are defined or discussed in the Department's rules on uniform administrative requirements at 29 CFR parts 95 and 97 (the ''Common Rules''), as well as in the Department's rules on audit requirements for grantees in 29 CFR parts 96 and 99, all of which are incorporated by reference at 20 CFR 667.200. We are modifying the definitions of ''subrecipient'' and ''vendor'' to cross-reference the discussion in the DOL audit requirements, at 29 CFR 99.210, which contrasts the differences between subrecipients and vendors. Since the definition of ''grant'' in § 660.300, is already quite specific as to the types of organizations which may be awarded grants, we consider changes to this term to be unnecessary. We also are modifying the definition of ''recipient'' to indicate that the term refers to the entire legal entity receiving the award, not just the particular component within that entity which is designated in the award document. The modification is consistent with the definition of ''recipient'' in the JTPA regulations at 20 CFR 626.5 and the definition of ''grantee'' in the Common Rule at 29 CFR 97.3. Also, we are reiterating the Common Rule's definition of the term ''subgrant'' for the convenience of the reader.

Another commenter suggested defining the term ''obligation'' so that Individual Training Account (ITA) commitments could be treated as obligations for purposes of the reallotment and reallocation procedures

of 20 CFR §§ 667.150 and 667.160, even though they might not meet the standards of obligation used by particular State or local governments.

Response: Section 667.150 of the regulations provides for recapture by the Secretary of unobligated balances from States with unobligated balances which exceed 20 percent of the amount allotted in the previous program year, after adjustment for amounts reserved by a State for administration and amounts transferred by the State between youth and adult funds. Reallotment is then made to States which have obligated at least 80 percent of the amounts allotted in the previous program year, after adjustment for transfers and amounts reserved for administration. Section 667.160 covers the recapture and reallocation of amounts within the State using the same factors used in the Secretary's reallotment process.

We have added a definition of ''obligation'' to § 660.300 which, for the purpose of reallotments under 20 CFR 667.150, specifically excludes: (1) Amounts allocated to a single local area State or to a balance of State local area administered by a unit of the State government; and (2) inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities. These exclusions were also in effect under JTPA. The purpose of these exclusions is to treat similar financial transactions the same way in all States, even where a State only recognizes a financial transaction as a legally enforceable ''obligation'' if it involves an arms-length award to another party or if performance has already occurred. We also are adding the definition of ''unobligated balance,'' which appears at 29 CFR 97.3, for the convenience of the reader.

With respect to the comment regarding defining commitments under ITA's as obligations, we are not aware of any unique characteristics of ITA's which necessitate expanding the definition of ''obligation'' provided in § 660.300 of these regulations. Commitments under ITA's should be treated the same way as similar commitments of the recipient's or subrecipient's non-WIA funds, whether as obligations or otherwise.

Other commenters suggested we include a definition of the term ''individual with a disability'' to encourage One-Stop center staff to have a knowledge and sensitivity to the needs of such individuals.

Response: Since the provision of quality services to individuals with disabilities is a key facet of the One-Stop service delivery system, we have added the WIA title I, section 101(17) definition of the term ''individual with a disability'' to § 660.300.

One commenter was concerned that the definition of ''veteran'' contained in section 101(49) of the Act was too broad and raised uncertainty as to which veterans were to be served under title I of WIA. The commenter suggested that we replace the definition in the Interim Final Regulations with the definition of ''veteran'' contained in title 38 of the U.S. Code since it provides more specificity and consistency between programs.

Response: Since the definition of ''veteran'' appears in title I of WIA, we are not making any change in the Final Regulation. We encourage States and local areas to take these definitions into account as they undertake their responsibility to assure that the delivery of services under WIA title I programs and activities authorized under the chapter 41 of U.S.C. title 38 partner program are coordinated through the One-Stop service delivery system.

One commenter suggested that we add definitions of a sectoral employment intervention strategy and the self-sufficiency standard. A sectoral employment intervention strategy is an approach to community economic development that connects members of low-income communities to employment opportunities, self-sufficiency wages and/or advancement opportunities by both redirecting training resources and education, and facilitating direct linkages to employers in targeted regional industries. The self-sufficiency standard defines the minimum amount of cash resources needed for a family to meet its basic needs and be self-sufficient.

Response: While we encourage State and Local Boards to develop linkages between their workforce and economic development systems, we do not think it is appropriate to highlight one strategy for achieving such linkages. As for a definition of self-sufficiency, 20 CFR 663.230 requires State or Local Boards to set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, defined in WIA section 101(24). No changes are being made to the regulations.

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

Introduction

This part covers the critical underpinnings of how the Workforce Investment system is organized under WIA at the State and Local levels. Specifically, it consists of four subparts—General Governance Provisions, State Governance Provisions, Local Governance Provisions and Waiver Provisions. The General Governance subpart broadly describes the WIA system and describes the roles of the governmental partners. The State and Local Governance subparts cover the State and Local Workforce Investment Boards and the designation process, including alternative entities, and the planning requirements. The waiver subpart discusses the processes for obtaining general and work-flex waivers.

Subpart A—General Governance Provisions

Subpart A describes the Workforce Investment system, and sets forth the roles of the government partners in the system: the Federal government, State governments and Local governments.

Section 661.120 provides authority to State and Local governments to establish their own policies, interpretations, guidelines and definitions relating to program operations under title I, as long as they are not inconsistent with WIA, these regulations, and Federal statutes and regulations governing One-Stop partner programs. The reference to Federal statutes and regulations governing One-Stop partner programs has been added to § 661.120 (a) and (b) as a reminder that State and local administration of the One-Stop system must be consistent with the requirements of the Federal law applicable to the partner's program. In the case of local governments such policies, interpretation, guidelines and definitions may not be inconsistent with State policies. This section has also been revised to correct an inconsistency between terms used in the question and answer. The question refers to ''Local and State governmental partners'' while the answer refers to Local and State Boards. We do not intend to exclude the Governors and local elective officials from the authority to develop State and local policies relating to WIA title I, provided those policies are consistent with the Act, regulations and, where appropriate, other State policies. Therefore, paragraphs (a) and (b) are revised to replace the phrases ''Local

Boards'' and ''State Boards'' with ''Local areas'' and ''States'' respectively so that they will not appear to be inconsistent with the terms used in the question.

To assist with the State and local interpretations authorized under § 661.120, we have issued technical assistance guidance, with the participation of other Federal agencies, as appropriate, to help States and localities interpret WIA and the regulations. This guidance is not intended to limit State flexibility, but rather is intended to provide helpful models on which States and Local governments can rely to ensure that their own interpretations are not inconsistent with the Act and regulations. In our role as Federal partner we will continue to provide technical assistance to States and localities, in collaboration with other Federal agencies as appropriate, however we remain committed to the principles in the statute which allow and encourage flexibility.

A commenter suggested that the standard against which State and local policies, interpretations, etc. are measured under § 661.120 should be whether they are ''consistent'' with WIA and the regulations rather than ''not inconsistent.'' The commenter suggests that the current language may send an inappropriate message about the need to conform to statutory and regulatory requirements and may lead to differing interpretations of some provisions.

Response: We don't agree that this provision should be changed. The workforce investment system is a partnership between State, local and Federal stakeholders. One of WIA's key principles is that States and localities have increased authority to implement innovative workforce investment strategies to best serve the needs of the labor market. While we take very seriously our responsibility to ensure that State and local policies, interpretations, guidelines and definitions do not violate the provisions of the statute and these regulations, where differing interpretations are legally possible we believe that States and localities should have the flexibility to implement systems that they feel are best suited to their particular needs. The current regulation best serves this flexibility, because it does not imply that there is only one ''consistent'' interpretation available. Therefore, we have not changed the regulation.

Several commenters expressed differing views regarding the relative roles of State and local partners in the One-Stop system. Some commenters requested that we expressly state that States and localities are equal partners in the One-Stop system, while others requested that we clarify that States have clear authority to promulgate interpretations and other guidance to State and local agencies.

Response: In our view, neither of these positions is absolutely correct. The success of the workforce investment system depends on a commitment, particularly among the governmental entities and the One-Stop partners, to collaborate and form real partnerships. On many matters, the State has the authority to set Statewide policies applicable to local areas. However, WIA also gives certain responsibilities and authority to local areas. Close coordination among State and local government partners is essential to the success of the system. The flexibility of the WIA system offers a unique opportunity for leadership from both the State and local level to work cooperatively with one another to address the specific workforce needs of each community and benefit the State as a whole. We do not think it would be productive to enumerate where each entity has authority, but trust that in establishing the workforce investment system Governors and chief executive officers will take their roles and responsibilities seriously and work together to create a system that best helps their community aid those in need.

According to one commenter, there may be confusion resulting from the language in WIA section 117(d)(3)(B)(i) that holds chief elected officials liable, as grant recipient, for misuse of local formula funds (unless the Governor agrees to undertake such liability). The commenter reported that some local areas were worried that this liability would be interpreted as the personal liability of the elected official.

Response: While we have not changed the regulations, we wish to clearly state our interpretation of this provision. We interpret this provision as holding the chief elected officials (and the Governor, when appropriate) liable in their official capacity and not holding them personally liable for misuse of WIA funds.

Subpart B—State Governance Provisions

1. State Workforce Investment Board: Sections 661.200–661.210 describe the membership requirements and responsibilities of the State Workforce Investment Board (State Board) and procedures for designating an alternative entity to perform the functions of the State Board. Section 661.200(a) requires that the State Board be established by the Governor. Of course, the Governor must select the members of the State Board in a nondiscriminatory fashion, in accordance with the requirements of 29 CFR part 37. A correction is made to paragraph 661.200(i), to correct a cross-reference to provisions in part 662 identifying One-Stop partners.

WIA and these regulations provide significant flexibility to States and local areas to develop policies, interpretations, guidelines and definitions relating to program operations under WIA title I. Several commenters requested that we require that State and local boards include significant policies and interpretations in the State and local plans or consult with specified parties when developing these policies and interpretations. We do not believe we can mandate these suggestions, but encourage State and local boards to include in the plans any significant policies and interpretations etc., that are not already required to be included. Moreover, under §§ 661.200(j) and 661.305(d), the development of significant policies, interpretations, guidelines and definitions, as an activity of the boards must be done in an open manner. To emphasize this requirement, we have moved these requirements to new §§ 661.207 and 661.307, and have specified that the development of significant policies, interpretations, guidelines and definitions must be conducted in an open manner. We consider policies and interpretations etc,. relating to eligibility requirements and self-sufficiency standards to be the type of significant policies and interpretations etc., that must be developed in an open manner.

One commenter recommended that we require that any newly established State Board review and/or ratify any policies implemented by the entity acting as the Board during the State's transition to WIA.

Response: We find this to be a helpful suggestion, but do not believe it is appropriate to impose it as a mandatory requirement on States. We believe that an effective State Board will periodically review State policies as part of its oversight role. It seems natural that a newly established Board might find the need to reconsider some of the policies implemented by its predecessor. In that case, § 661.230(a) provides the State Board with the authority to submit a modification to the State plan.

The greatest number of comments on part 661 related to State and Local Board membership requirements. Many of the comments on State Boards are equally applicable to Local Boards. We have consolidated our discussion of State and Local Board membership

requirements in the following paragraphs.

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 set forth at WIA sections 111(b)(1)(C) (iii)–(v) and 117(b)(2)(A) (ii)–(v), and that the Local Board contain at least one member representing each One-Stop partner. The comments reflect a tension between the need to provide States and Local areas with the flexibility needed to keep these Boards at a manageable size, with the need for specificity as to what level of participation is guaranteed to stakeholders in the Workforce Investment system. Many commenters felt that the two or more member requirement led to large, unwieldy-sized Boards and requested that this requirement be eliminated. Other commenters sought clarification of the number of members of each partner on the Local Board. Many commenters requested clarification about whether an individual seated on the State or Local Board could represent more than one entity or institution, particularly when multiple grantees of a One-Stop partner program are located in a local area.

Many commenters requested more specificity as to which entities are entitled to a seat on the Boards. For example, many commenters felt that the language in the preamble to the Interim Final Rule did not go far enough in recommending that States consider appointing representatives from both the designated State unit under section 101(a)(2)(B) of the Rehabilitation Act and from the State agency for the blind to represent programs that provide vocational rehabilitation services. These commenters recommended that we amend the regulations to change this recommendation into a requirement that States appoint representatives from both of these organizations. Others sought specific appointment of members representing community-based organizations (CBO's), mental health agencies, disabled youth and disabled youth service providers, disabled adults, literacy providers, non-labor construction workers, and other groups.

Response: In our view, no individual (other than the Governor) or group is entitled to a ''seat'' on a State or Local Workforce Investment Board. However, certain specified groups, including One-Stop partner programs, are entitled to a ''voice'' on the Boards through a representative.

A partner program may feel that it should have the right to choose who sits on a State or Local Board as its representative. The regulations cannot provide this power to the partners, because WIA gives the authority to select State or Local Board members to the Governor or chief elected official (CEO), respectively. However, the Governor's and CEO's discretion to select individuals to serve as representatives of partner programs and other entities on State and Local Boards must be exercised in a manner that is consistent with the requirements set forth in WIA and these regulations. For One-Stop partner programs, the individual selected as the Local Board representative may or may not be the specific individual that each funded entity would prefer, but that individual must be an individual with ''optimum policy-making authority'' within an entity that receives funds or carries out activities under the partner program.

We recognize that the representation issue is a legitimate and serious concern. It is exacerbated by equally legitimate concerns over Board size, especially at the local level. We encourage as broad a representation as possible on all WIA Boards, especially representation of those entities identified as required partners in the Act. We expect that local workforce investment areas will follow the regulations and that States will ensure that all required partner programs have appropriate and effective representation on Local Boards. We encourage local parties to resolve issues of representation to their mutual satisfaction, in accordance with the Act and regulations. We view this generally as a matter of local implementation. We believe that consultation between Governors or CEO's and partner programs, and other organizations entitled to representation on the Boards, in the selection of Board representatives will help to develop positive relationships leading to more effective delivery of services, and we encourage such consultations. The final regulations attempt to facilitate this process by providing Local areas with flexibility for finding the right mix of representatives on the Local Board, while ensuring that the Board is an effective policy-making body by protecting the rights of all participants in the system and by stressing the requirement that members be individuals with optimum policy-making authority.

To this end, we have made several changes to the interim final rule. However, we did not change the requirement that each Board contain two or more members representing the groups specified in WIA sections 111(b)(1)(C) (iii)–(v) and 117(b)(2)(A) (ii)–(v). As indicated in the preamble to the Interim Final Rule, we are constrained by statutory language to follow this requirement. One commenter suggested that the provision at 1 U.S.C. 1 may provide justification for a more flexible interpretation of the membership requirement. While this provision provides the general rule that statutory reference to plurals includes the singular, we think that, in this instance, the context of WIA section 111 and 117, indicates that the term ''representatives'' was intended to mean two or more. The requirement that the Local Board contain at least one member representing each local One-Stop partner program is consistent with this interpretation. As is does for the other membership classes specified at WIA section 117(b)(2)(A) (ii) through (v), the Local Board must contain two or members representing the class of One-Stop partner programs identified at section 117(b)(2)(A)(vi). Because each One-Stop system will include many partners, the requirement that the class is represented by two or more members will neccesarily be met by one member representing each partner program. Consequently, we have not changed this requirement.

We have made several changes to clarify what is meant by representation on the State and Local Workforce Investment Boards. We have made changes to accommodate the concerns of those commenters who asked whether an individual seated on the Board could represent more than one entity or institution. While such ''multiple entity'' representation may not be appropriate in all cases, we believe that there may be instances when such representation may be an effective tool for reducing Board size while still ensuring that all parties entitled to representation receive effective representation. Therefore, we have added new paragraphs to §§ 661.200 and 661.315 to permit it when appropriate. For example, where the same State agency has authority for several One-Stop partner programs, such as a State employment security agency which oversees the employment service and unemployment insurance service, the head of the agency (or other official with optimum policy-making authority) may be appointed to the State Board to represent both of these programs. On the other hand, such ''multiple entity'' representation will not be appropriate where the individual so appointed does not have authority to make policy for all of the programs that s/he purportedly represents. For example, appointing a local business

person, who is a member of a veterans' organization, as representative of the 41 U.S.C. chapter 38 veterans' program and of local business and/or the local veterans' organization, will not satisfy the Local Board membership requirements if the individual does not possess optimum policy-making authority within the 41 U.S.C. chapter 38 program and within the veterans' organization and within the business. Similarly, if the State vocational rehabilitation agency (including the vocational rehabilitation agency for the Blind) is primarily concerned with the rehabilitation of individuals with disabilities under section 101(a)(2)(B)(i) of the Rehabilitation Act, then the head of that agency must represent the vocational rehabilitation program on the State Board. An individual from any other State agency would not be an appropriate representative of the vocational rehabilitation program.

We have added a new § 661.203, in which we have defined the terms ''optimum policy-making authority'' and ''expertise relating to [a] program, service or activity'' in order to assist States and Local areas in determining when such representation is appropriate. A representative with ''optimum policy making authority'' is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. In the case of a One-Stop partner program, an individual who does not have ''optimum policy-making authority'' within an entity that receives funds or carries out activities under the partner program cannot serve as that program's representative on the Local Board. A representative with ''expertise relating to [a] program, service or activity'' includes a person who is an official with a One-Stop partner program and a person with documented expertise relating to the One-Stop partner program.

Finally, we have added new § 661.317 to clarify representation when there are several Local grantees or operating entities of a partner program in a One-Stop system. In such a case, the Local Board membership requirements may be met by the appointment of one member to represent all of the Local partner program entities. Also, § 661.317 permits the chief elected official to solicit nominations from One-Stop partner program entities to facilitate the selection of such representatives. Soliciting nominations from partner program entities may be useful to chief elected officials in identifying the individual who will be able to represent the program most effectively in the work of the Local Board. Of course, the chief elected official can opt to appoint more than one member to represent this program, if he or she so chooses and the selection criteria permit it.

To implement the policy described in the joint letter, dated March 24, 2000, from the Assistant Secretary of Labor for Employment and Training, the Assistant Secretary of Education for Special Education and Rehabilitative Services, and the Commissioner of the Rehabilitative Services Administration regarding Vocational Rehabilitation (VR) representation on State Boards, we have added a new paragraph (3) to § 661.200(i). Under this provision, if the director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, does not represent the State Vocational Rehabilitation Services program (VR program) on the State Board, then the State must describe in its State Plan how the members of the State Board representing the VR program will effectively represent the interests, needs, and priorities of the VR program and how the employment needs of individuals with disabilities in the State will be addressed.

Other comments on the State and Local Board membership requirements questioned the different descriptions relating to the creation of State and Local Boards, the different processes for selecting the chairpersons of the Boards, and suggested that we mandate that the business majority requirement apply to any subcommittees of Boards.

Response: Section 661.200(a) describes the State Board as being ''established'' by the Governor, while § 661.300(a) describes the Local Board as being ''appointed'' by the CEO. These descriptions are intended to simply reflect the terms used in the statute and are not meant to imply an inferior or superior relationship. Section 661.200(g) provides that the Governor must select a State Board chairperson from the business representatives on the Board, while § 661.320 provides that the Local Board members elect a chairperson from the business representatives. Because these different processes are specified in WIA sections 111(c) and 117(b)(5), we have not changed the rule. With regard to the business majority requirement, we agree with the commenter that a strong role for business representatives is an essential ingredient for successful Boards, but we do not think it is appropriate that the regulations should dictate the internal structure and day-to-day workings of the Boards. Within the framework required by the statute and regulations, States and localities have the flexibility to design Boards that best serve their needs.

A commenter suggested that we add sanctions provisions to make clear that the Governor can refuse to appoint to the State Board a representative of partners which have not cooperated in good faith with the One-stop system at the local level.

Response: As the commenter pointed out, § 661.310 addresses this very issue at the local level. Under this section, one of the sanctions for a partner failing to engage in good faith negotiations over the terms of the local MOU is a loss of representation on the Local Board. We expect that this provision, will be sufficient incentive for Local Boards and One-stop partners to engage in good faith negotiation. If experience does not bear this out, we will consider issuing additional guidance in the future.

A commenter requested that we define the term ''labor federation'' as used in the nomination requirements for labor representatives to the State and Local Boards, stating ''[i]t is our understanding that [this term] is intended to include AFL–CIO State Federations, State Building and Construction Trades Councils, AFL–CIO Central Labor Councils, and Local Building and Construction Trade Councils.''

Response: We have added to 20 CFR 660.300 a definition of the term ''labor federation'', similar to that used in JTPA, which will include groups such as those suggested within that term.

2. Alternative Entities: Because many of the comments relating to alternative entities are applicable at both the State and local levels, we have consolidated our discussion of this issue here. One commenter expressed the view that the requirement in §§ 661.210(c) and 661.330(b)(2), that the State and local plans must describe how the Boards will ensure an ongoing role for any required membership groups not represented on an alternative entity, is not supported by WIA.

Response: We find that the ongoing role requirement is a reasonable interpretation of WIA requirements relating to Board membership and responsibility. It is clear from the statute that Congress intended that certain specified groups have a strong leadership role in the State and local workforce investment systems, as expressed by the representation requirements. The regulatory requirement that Boards provide an ongoing role for any of those statutorily identified entities which are not represented on the alternative entity is consistent with this intent. The regulation does not specify the scope of

a group's ongoing role, but rather permits States and localities to determine it as part of the public planning process. Therefore, we have maintained this requirement. However, as described below, we have made changes to this regulation to provide guidance as to how the ongoing role requirement may be met.

There were several comments regarding the provision in §§ 661.210(d) and 661.330(c) about changes in the membership structure of an alternative entity serving as the State Workforce Investment Board or as a Local Workforce Investment Board. Two commenters thought that the rule was overly restrictive about permitting changes to alternative entities and suggested that we revise the Interim Final Rule to permit incremental changes to these entities so that at least some of the representational groups required by the WIA Board membership requirements could be added to existing entities, or that we permit incremental changes that increase the efficiency and effectiveness of the workforce investment system. A commenter noted that in single workforce investment areas states, where the State Board is acting as the Local Board under WIA section 117(c)(4), the use of an existing state board under the alternative entity provisions may exclude even more partners from participation on the board at the local level.

Response: We are sympathetic to these concerns, but believe that permitting incremental changes to the boards will, in fact, act as a disincentive to the creation of Workforce Investment Boards that include all required representatives, by permitting inclusion of some groups while still excluding other groups. By requiring the establishment of a new WIA-compliant Board whenever the membership structure of an alternative entity is significantly changed, other excluded groups will be able ''to ride the coattails'' of the newly added group. Therefore, because we remain committed to the goal of encouraging fully compliant Workforce Investment Boards in each State and local workforce investment area, the requirement that a new WIA-compliant Board must be created when the membership structure of an alternative entity is significantly changed has not been changed. However, we have added language to clarify the type of situation in which the membership structure of an alternative entity is considered to have been significantly changed. Specifically, a significant change in the membership structure is considered to have occurred when members are added to represent groups not previously represented on the entity. A significant change in the membership structure is not considered to have occurred when additional members are added to an existing membership category, when non-voting members (including a Youth Council) are added, or when a member is added to fill a vacancy created in an existing membership category. A change to the charter is not itself grounds for disqualification of an alternative entity. The relevant question is whether the organization or membership structure has been changed. However, we continue to consider the need for a change to the charter as a good indicator of a significant change in the membership structure, and have clarified that this is true regardless of whether the required change has been made.

Other commenters identified the need for additional guidance as to what measures an alternative entity must take to ensure an ongoing role in the State or Local Workforce Investment system for any of the WIA-specified membership groups who are not represented on the alternative entity. As discussed below in relation to the Migrant and Seasonal Farmworker (MSFW) program, commenters have sometimes found that it is difficult to ensure full and active participation in a One-Stop system when a partner or other membership group is not represented on an alternative entity.

Response: To address this problem, we have added language to § 661.210(c) and have added a new paragraph 661.330(b)(3) to identify ways in which to ensure such an ongoing role. For example, the Boards could provide for regularly scheduled consultations, may provide an opportunity for input into the State or local plan or other policy development, or may establish an advisory committee of unrepresented groups. We also require that the alternative entity engage in good-faith negotiation over the terms of the MOU, with all omitted partner programs. We have made a change to more clearly identify those groups which are specified for representation on State and local boards under WIA but are not represented on the alternative entity as ''unrepresented membership groups''. This replaces the somewhat ambiguous term ''such groups'' used in the Interim Final Rule.

3. State Workforce Investment Plan Requirements: Section 661.220 describes the requirements for submission of the State Workforce Investment Plan and the process for review and approval of that plan. A commenter pointed out that the reference to Wagner-Peyser Act State Plan modifications in § 661.230(c) was inaccurate. We have edited § 661.230(c)(2) to reference 20 CFR 652.212. Under her authority to provide for an orderly transition from JTPA to WIA, the Secretary permitted States to submit a transition plan during program year 1999 to allow the provision of WIA services with funds appropriated for JTPA services. Such a plan would be approved for program year 1999, but would not be considered an approved five-year Workforce Investment Plan. To reflect this practice, a new paragraph (e)(3) is added to § 661.220 is added to clarify that a plan that is incomplete or does not contain sufficient information to determine whether it is fully compliant with the statutory and regulatory requirements of WIA and the Wagner-Peyser Act is considered to be inconsistent with these requirements for plan approval purposes.

A commenter requested that the provision of § 661.230(e)(2) describing the plan approval process be revised to more clearly indicate that the portion of the plan describing Wagner-Peyser Act activities, requirements and delivery of services is an integral part of the plan and not a separate plan.

Response: We agree and have made the suggested change.

Some commenters remarked that they found that the State Plan requirements focused on process and compliance rather than on strategic planning issues.

Response: We believe that the State Plan guidelines seeks the information needed to support broad strategic planning objectives while ensuring compliance with the statutory requirements. We acknowledge that it is difficult to balance these two goals. Based upon our experience with early implementing States, we hope to amend the planning guidelines to streamline them, but remain committed to requiring that States submit the information we need to assess whether the plan complies with the statute and regulations.

We received several comments on the need for specific public comment periods for State Plans, consistent with Local Plan requirements. Others felt that modifications as well as planning documents should be subject a public comment period.

Response: We intend that the information contained in the State Plan be subject to the broadest possible stakeholder involvement in policy development and the broadest possible range of public comment. The Interim Final Rule, at § 661.230(d) already requires that plan modifications undergo the same public review and

comment as the State plan. The Workforce Investment Act State planning guidelines set forth the information needed for the Secretary to make an informed judgment about whether a State Plan is consistent with WIA, and the plan review process requires evidence of a public comment period. We have clearly stated the need for an open and inclusive planning process at both the State and local levels and we expect the States to establish the appropriate time lines and procedures. Consequently, no change in the rule is being made at this time, although we will carefully review State plans for compliance with the WIA public comment requirements.

Commenters suggested that we change § 661.220(d) to require that States submit to us all oral and written comments made during the public comment process, including comments made on drafts, and responses to those comments, that we review the responses as part of our plan review process, and that we specify that failure to actively consult with local areas is grounds for plan disapproval. Other commenters suggested that we mandate a 30-day review period as part of the State plan public comment process.

Response: Based upon our review of plans submitted by early implementing States, we have found that requiring submission of comments on State plans does not significantly help the plan review process. Given the short time period for plan review and approval, we are unable to provide any meaningful review to comments submitted with the plan. We do not think it is necessary to impose a mandatory public comment period on the States. We expect that States will undertake a good faith effort to develop State plans through a meaningful public process. We believe that our review of the State plan's description of the process will enable us to ensure that the State planning process complies with this requirement. A failure to develop the plan through the public comment and consultation process described in the regulations could be grounds for plan disapproval under the existing standards. No change has been made to the regulation.

Section 661.240 contains provisions relating to unified plans, submitted under the authority of WIA section 501. On January 14, 2000, the Department, in partnership with the Departments of Agriculture, Education, Health and Human Services, and Housing and Urban Development, and with the assistance of the Office of Management and Budget, issued joint unified planning guidance entitled *State Unified Plan, Planning Guidance for State Unified Plans Submitted Under Section 501 of the Workforce Investment Act of 1998.* This document was published in the **Federal Register** at 65 FR 2464 (Jan. 14, 2000). We have revised § 631.240(b) to add a new paragraph (2), that specifically provides that States may submit unified plans that contain the information required in the unified planning guidance in lieu of the individual planning guidelines of the programs covered by the unified plan.

One commenter remarked that the unified planning guidelines were too narrowly focused to lead to effective unified planning. Other comments on § 661.240 requested that we hold unified plans to the same public review and comment requirements as required of standalone WIA State plans, that we explain how to resolve different planning timetables for programs included in the unified plan, and that we provide incentives to encourage States to submit unified plans.

Response: We believe that the unified planning guidance is an important first step towards collaborative planning and effective coordination of federal programs. Currently, it is the only planning approach that streamlines existing non-statutory planning requirements. We believe these streamlined planning requirements offer an incentive encouraging States to undertake unified planning. While it may not go as far as some would like, we believe that, as the Federal partners work with the States to acquire more experience with unified planning, we will be able to develop alternative approaches that could offer even greater flexibility and burden reduction.

With regard to the substantive comments on § 661.240, WIA section 501(c)(1) provides that the portion of the unified plan covering a particular program or activity is still subject to the applicable planning requirements of the statute that authorizes the program. Therefore, for unified plans containing the State WIA/Wagner-Peyser Act plan, the WIA plan review and public comment requirements, at § 661.220(d) still apply. Similarly, while the WIA/Wagner-Peyser Act portion of the unified plan is submitted on a five-year planning cycle, the inclusion of a plan on a different planning cycle does not change the plan for that program to a five-year plan. We believe that the time saved through joint planning is itself a strong incentive towards engaging in unified planning. Joint planning also benefits States by leading to an improved use of State and Federal resources, increased coordination at the local level, and burden reduction through elimination of duplicate planning processes. These and other benefits of unified planning are discussed in the unified planning guidance at 65 FR 2464, 2468.

4. Local Workforce Investment Area Designation Requirements: Sections 661.250 through 661.280 discuss the requirements applicable to the designation of local workforce investment areas (local areas). Section 661.250 sets forth the process for designating local areas. Commenters noted that this section did not refer to the provision, at WIA section 116(b), that permits Governors of States which were single service delivery area States under JTPA, as of July 1, 1998, to designate the State as a single local workforce investment area.

Response: We interpret section 116(b) as limiting single local area designations to only those States which were designated as a single service delivery area State under JTPA, as of July 1, 1998. Section 661.250 is revised to by adding a new paragraph (d) to specifically authorize Governors of States which were single service delivery area States under JTPA, as of July 1, 1998, to designate the State as a single local workforce investment area.

A commenter noted that the applicability of the automatic local area designation provisions for units of general local government of 500,000 or more may depend upon the population statistics used in making designations. An area may or may not be found to meet this threshold population level depending on whether 1990 Census data or more up-to-date estimates are used. The commenter suggested specifying certain data, or specifically delegating the authority to determine which data to use to the Governor.

Response: While we do not believe it is appropriate that we specify the source of the data to be used in the regulations, we agree with the suggestion to specify that the Governor has the authority to determine which population data to use when making designation determinations. Section 661.260 is amended to make this clear.

A commenter noted that § 661.280(c) provides that, on appeal of a denial of a request for designation, the Secretary can require that an area be designated solely upon her finding that the area was not afforded the procedural rights guaranteed by the statute. The commenter suggested that, in that instance, a finding that the area meets the requirements for designation should also be required before the State can be ordered to designate the area.

Response: We think that § 661.280(c) accurately restates the provisions of

WIA section 116(a)(5) that the Secretary may require designation upon a finding of either a denial of procedural rights or a finding that the area meets the requirements for designation. No change has been made to the regulation.

Section 661.290 describes the State's authority to require regional planning by Local Boards. Paragraph (d) of this section provides that regional planning may not substitute for or replace local planning unless the Governor and all the affected CEO's agree to the substitution or replacement. A commenter opined that WIA does not give the Department the authority to undermine the State's authority to require regional planning in this way.

Response: We do not agree that this regulation impermissibly undermines the State's authority. Section 661.290(a) is consistent with WIA section 116 by providing the State with authority to require Local Boards to participate in a regional planning process. The agreement of the local areas is not required for this. Requiring local area agreement before regional planning can replace local planning may reduce the ability of the State to unilaterally impose effective regional planning, since the regional planning may overlap or duplicate local planning. However, we believe that this provision fairly balances the rights of States and localities. In our view, the most effective regional planning will occur when all parties in the region are committed to cooperating with one another.

Subpart C—Local Governance Provisions

This subpart covers the designation of Local Workforce Investment areas and the responsibilities and membership requirements of Local Boards. Because many issues relating to Local Boards and alternative entities are equally applicable at the State and local level, comments on these issues are discussed above, under subpart B.

1. Responsibilities of Chief Elected Officials: Section 300(a) requires chief elected officials to appoint the Local Board in accordance with State criteria established under WIA section 117(b). Appointments to the Local Board must be made in a nondiscriminatory fashion, in accordance with the requirements of 29 CFR part 37. A few commenters found the provision in § 661.300, authorizing the Local Board and the chief elected official(s) in a local area to enter into an agreement that describes the respective roles and responsibilities of the parties to be confusing in light of the statement in 20 CFR 667.705 regarding liability of funds in local areas comprised of more than one unit of general local government.

Response: Under 20 CFR 667.705, when a local area is comprised of more than one unit of general local government, the liability of the individual jurisdictions for funds provided to the local area must be specified in a written agreement between the chief elected officials. This is a mandatory provision. The agreement authorized in § 661.300(c) regarding a description of general roles and responsibilities is optional. Chief elected officials are not required to enter into such an agreement, but the agreement may be a useful tool for specifying the division of duties among the chief elected officials in the local area. No change has been made to the regulations.

A few commenters asked for clarification as to what extent a chief elected official(s) may delegate their responsibilities under title I of WIA.

Response: In general, the chief elected official(s) is authorized to delegate their authority under title I of WIA to other entities such as the Local Board or a local governmental agency. In multiple jurisdiction local areas, the chief elected officials may delegate certain roles as part of the agreement authorized in § 661.300(c), as discussed above. For example, WIA section 117(d)(3)(B)(i)(II) specifically authorizes the chief elected official(s) to designate an entity to serve as a local fiscal agent in order to assist in the administration of grant funds at the local level. Similarly, the chief elected official(s) may designate an entity to carry out their other responsibilities. Under § 661.300(c), the chief elected official(s) may enter into an agreement with the Local Board that describes the respective roles and responsibilities of the parties. However, the chief elected official(s) remains liable for funds received under title I of WIA unless they reach an agreement with the Governor to bear such liability. This is the only situation in which the chief elected official(s) is not liable for funds.

Some commenters requested a clarification of the role of the chief elected official as a One-Stop partner.

Response: This issue is addressed in the preamble to 20 CFR part 662.

2. Local Boards as Service Providers: Section 117(f)(1) of WIA places limitations on Local Boards' direct provision of core services, intensive services, or training services. These limitations and waivers of the limitation on providing training services are set forth in § 661.310. Commenters noted that § 661.310(b) permits a waiver of the prohibition on providing training services to be renewed only once.

Response: This limitation was inadvertent. We have revised this paragraph to indicate that a waiver may be renewed more than once, although no waiver may be for more than one-year at a time.

A commenter opined that the provision in § 661.310(c) that extended the service delivery restrictions of the Local Board to the staff of the Board is not supported by WIA.

Response: We don't agree that this provision is inconsistent with WIA. The limitation on the Local Board's authority to be a service provider in § 661.310(c) is meant to ensure that the Local Board serves as the ''board of directors'' for the local area. This frees the Board from the day-to-day functioning of the local workforce system and allows the Local Board to focus on strategic planning, policy development and oversight of the system. To permit the staff of the Local Board to provide direct services on behalf of the Board would undermine this principle.

However, we read the service delivery limitations in WIA section 117 as applying to the Local Board as an entity and not to the members of the Board as individuals. Therefore, members of the Local Board may not provide services in their capacity as a member of the Board. However, if an individual member of the Board is also an employee of a service provider, then as an employee of that service provider entity s/he may provide services on behalf of that entity. Of course, this must be consistent with federal, state and local conflict of interest requirements. The same rules apply to the staff of the Local Board. Members of the Local Board's staff may also be employees of the entity administering the local area's WIA grant. We acknowledge that many local areas use staff from inter-related agencies to provide support to the Local Board as well as the administrative entity for the grant recipient. When these roles are clearly defined, the fact that an individual works for both the Local Board and the entity administering the WIA grant does not preclude the entity from providing services.

3. Youth Council: Sections 661.330 and 661.335 describe the membership requirements and responsibilities of the Youth Council. Commenters suggested that we amend this section to require that representatives of vocational rehabilitation agencies and members with experience in nontraditional training employment for women be selected for the Youth Council.

Response: We have not made the suggested change, because we do not believe it is appropriate to specify certain groups for Youth Council membership beyond those provided by statute. However, we agree that the viewpoint of these groups could serve the Youth Council well. We encourage chief elected officials to consider appointing such representatives under the existing Youth Council membership categories.

One commenter suggested changes to § 661.335(b)(4) which lists ''parents of eligible youth seeking assistance under subtitle B of title I of WIA'' as required members of the youth council. The commenter expressed a fear that it will be difficult to find parents of participants and former participants who will be likely to make a positive contribution to the youth council. The commenter asked whether a local area will be penalized if it is unable to find parents and participants to serve on the youth council and suggests changing § 661.335(b)(4) to read ''parents, that may include those of eligible youth seeking assistance. . . .''

Response: We recognize the commenter's concern, however, the regulation restates the language of WIA section 117 (h)(iv) and (v). Therefore, these membership categories have been statutorily mandated by Congress. We do not interpret the statutory standard to limit youth council membership to parents of youth participants. Section 117(h)(iv) of the Act requires the youth council to include members who are: ''parents of eligible youth seeking assistance under this subtitle.'' This statutory phrase is somewhat confusing, since it could be read as requiring parents of eligible youth seeking assistance rather than parents of participants who are receiving assistance. We interpret this language to mean that the representatives for this membership category must come from families who currently experience the barriers described in WIA section 101(13)(A) and (B), and in §§ 664.200 or 664.220, or who have faced those barriers in the past. This interpretation allows those families who have successfully overcome their barrers to education and employment to have a voice on the youth council. We believe that it is important that youth councils include the views of parents, especially the views of parents of youth participating in WIA youth programs. We feel it is important that the representatives for this membership category possess a first-hand understanding of the needs and barriers facing eligible youth and strongly encourage chief elected officials to seek out parents of WIA youth participants. Just as the Individual Training Account system in the adult and dislocated worker programs empowers the customer to take an active role in the training process, these membership categories empower the families most affected by youth services to take an active role in designing and improving the system. This interpretation, of course, does not prohibit the appointment of other parents in the community under WIA section 117(h)(2)(B), which authorizes the appointment of ''other individuals as the chairperson of the Local Board, in cooperation with the chief elected official, determines to be appropriate.''

Similarly, this commenter also requested a change to § 661.335(b)(5), which lists ''Individuals, including former participants, and members who represent organizations that have experience relating to youth activities'' as required members of the youth council. The suggestion would have § 661.335(b)(5) state ''individuals, that may include former participants, and members who . . .'' We have not made the commenter's change because the regulation already uses the phrase ''individuals, including former participants . . . .''

4. Local Workforce Investment Plan: Sections 661.345 through 661.355 describe requirements relating to the submission and modification of local workforce investment plans.

A commenter disagreed with the provision, in § 661.345(c), that the Secretary performs the roles of the Governor in reviewing the local plan developed in a single local workforce investment area State, particularly regarding the review of the MOU's. The commenter compared this process with the process in other States where the Governor reviews locally developed MOU's submitted as part of the local plan. The commenter emphasized that development and review MOU's should remain as close as possible to the local level.

Response: We agree that successful implementation of the One-Stop system in a single local workforce investment area State requires strong local involvement. MOU's should be developed at the local level. Section 661.350(c)(3) facilitates local involvement by ensuring that the local chief elected officials in those States retain their roles in the system. However, we believe that an independent review of local plans is necessary. In a single workforce investment area State, where, in essence, the State itself is the local area, we believe it is appropriate that the Secretary undertake the role of providing independent review of the local plan for the State. Since the MOU's are required to be included in the local plan, the Secretary's review will include review of the MOU's. No change has been made to the regulation.

With regard to the required local plan contents of § 661.350, several commenters suggested that we encourage States to require additional items, such as a comprehensive assessment of activities in the local area, a description of services available to displaced homemakers, disadvantaged individuals and to other groups, a description of nontraditional training and employment activities, a local plan for the provision of supportive services, and to use a ''sectoral approach'' to link the needs of employers with the skills of workers.

Response: The authority to require additional items in local plans, beyond the requirements specified in § 661.350, lies with the Governor. We encourage Governors to consider the suggested items when establishing those requirements.

A commenter requested that we add language to § 661.350(a)(3)(ii) to authorize the submission with the plan of a status report on MOU's when some MOU's are still in negotiation. The commenter stated that it appears that it will take some time to negotiate all the necessary MOU's and asks that we recognize this and permit the plan process to move forward.

Response: We recognize that the commenter may have a valid point. Our experience with early implementing States has shown that the negotiation of MOU's can be an involved process. However, because the MOU's are the primary means for coordinating the services of the One-Stop partners, they are the foundation of the entire workforce investment system. The MOU's address issues with the partners such as which services each partner will provide through the One-Stop system, how the costs of the system will be allocated among the partners, how customers will be referred by the One-Stop operator to the appropriate partner, among others. Because the resolution of these issues forms the building blocks of the One-Stop system, we are not prepared to change the regulation at this time. We strongly encourage States and localities to take the necessary steps to ensure that the negotiation of these important documents will be done in a timely manner. However, in recognition of the fact that some local areas may need additional time to develop a fully approvable local plan, we have added a new § 661.350(d), authorizing Governors

to approve local plans on a transitional basis during program year 2000. Governors may use this authority to give transitional approval to local areas that have not finalized their MOU's or other elements of their plan. Such a conditional approval is considered to be a written determination that the local plan is not approved, but will allow implementation of WIA reforms as they finalize the transition from JTPA to WIA. This authority is similar to, and derives from, the Department of Labor's authority under WIA sec. 506(d), to approve incomplete State plans on a transitional basis.

There were a few comments about the requirements for local plan modifications at § 661.355. One commenter suggested that we drop, as unnecessary, the requirement in § 661.355 that the Governor establish procedures for modification of local plans.

Response: While the commenter may be correct that Governors already know their responsibilities so this regulation is not needed, we believe that there is value in clearly specifying the responsibility to establish these procedures so that it is not inadvertently overlooked.

A commenter suggested that we amend the illustrative list of the circumstances when a local plan modification may be required by the Governor, at § 661.355, to include changes to the membership structure of the Local Board among those circumstances.

Response: The regulation as written already includes this factor. The conditions under which a State plan modification is required, in § 661.230(b), also include changes to the membership structure of the State Board.

Another commenter asked, regarding one of the existing circumstances in which a local plan modification may be required—at what point is a ''change in the financing available to support WIA title I and partner-provided WIA services'' significant enough to warrant a modification?

Response: When developing the local plan modification procedure under § 661.355, this is one of the questions the Governor should consider. The answer is likely to be different for different states and possibly for different areas. We do not think it is appropriate to restrict the Governors' authority by setting a federal standard.

Subpart D—General Waivers and Work-Flex Waivers

Subpart D indicates the elements of WIA and the Wagner-Peyser Act that may and may not be waived under either the general waiver authority of WIA section 189(i) or the work-flex provision at WIA section 192. In response to comments, we have made a technical correction in § 661.420, changing paragraph (g) to (f).

We received several comments about the exceptions to the Secretary's waiver authority, described at § 661.410, and work-flex waiver authority, described at § 661.430. Commenters requested that the regulation be amended to specify that the Secretary will not approve waivers of title I of the Rehabilitation Act, nor of the State merit staffing requirements of the Wagner-Peyser Act, and deleting the Older Americans Act from work-flex waiver authority.

Response: Regarding the Rehabilitation Act, the regulations make clear that the Secretary's authority to approve waiver requests is limited to requests for waiver of certain provisions of WIA and the Wagner-Peyser Act. We cannot waive provisions of other statutes. While we are not making the suggested change, we wish to make clear that the Department does not intend, nor do we have authority to entertain or grant waivers of title I of the Rehabilitation Act. Similarly, an exception for the Wagner-Peyser Act State merit staffing requirement is not necessary. Our authority to waive Wagner-Peyser Act provisions is limited to requirements under sections 8 through 10 of that Act. The requirement that Wagner-Peyser Act services be provided by State merit staff employees derives from sections 3 and 5(b)(1) of the Wagner-Peyser Act. Accordingly, we do not intend to, nor do we have authority to entertain or grant waivers of the Wagner-Peyser Act merit staffing requirement. Finally, we have retained the authority for Governors to approve waivers of certain provisions of the Older Americans Act, because WIA section 192(a)(3) specifically provides that authority.

Other commenters suggested that we define the existing exception prohibiting waivers of provisions relating to worker rights, participation and protections to prohibit waivers of provisions relating to labor nominations and appointments to State and Local Boards, opportunities for comment on State and local plans, and the certification process for eligible training providers. The commenters also requested that States be required to establish a public comment process, that includes comment from organized labor, on proposed waivers and a work-flex plan; and asked that we conduct periodic evaluation of the impact of waivers and work-flex activities.

Response: We have not added the suggested definition of the worker rights, participation and protection exceptions. First, we do not agree that the suggested provisions fall within the scope of the worker rights, participation and protection exceptions. Secondly, we do not think it is appropriate to define the scope of these provisions by regulation and believe it will be more effective to deal with waiver requests as they occur. On the other hand, we believe that requests for waivers of the provisions suggested by the commenters will likely fall within other exceptions to waiver authority. Section 661.410(a)(9) excludes waivers of requirements relating to procedures for review and approval of plans, which would exclude a waiver of the public comment requirements for State and local plans. Provisions related to the establishment and function of Local Boards may not be waived. This will prohibit waivers of the nomination and appointment requirements for Local Boards. The eligible training provider requirements seem to fall within the key principles of empowering individuals and increasing accountability identified at § 661.400(b)(2) and (4). Provisions relating to the key principles may not be waived under Work-flex authority, and will only be waived by the Secretary in extremely unusual circumstances when the provision can be demonstrated to be impeding reform.

We agree with the commenters' suggestion regarding the public comment process for waiver plans and work-flex plans. Section 661.430(e) already requires that the State work-flex plan undergo a public comment process, similar to that of the State five-year plan. While WIA section 189(i) does not specifically require that a stand-alone waiver plan go through a similar process (a waiver plan included within the State five-year plan would undergo public review along with the rest of that plan), the requirement for Local Board comment on the waiver plan at WIA section 189(i)(4)(B)(v) and the sunshine provisions for State and Local Board activities at WIA sections 111(g) and 117(e) indicate clear Congressional intent that major decisions involving the workforce investment system be made in a public and open manner. In our view, the decision to request a waiver of statutory or regulatory requirements is such a major decision. Accordingly, we have revised § 661.420(a)(5), to require a description of the process used to ensure meaningful public comment, including comment by business and organized labor, on the State waiver plan. Finally, we agree on the need for

evaluation of the waiver process. Although, we have not yet made specific plans for such a review, we intend to do so in the future.

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

Introduction

The establishment of a One-Stop delivery system for workforce development services is a cornerstone of the reforms contained in title I of WIA. This delivery system streamlines access to numerous workforce investment and educational, and other human resource services, activities and programs. The Act's requirements build on reform efforts that are well established in all States through the Department's One-Stop grant initiative. Rather than requiring individuals and employers to seek workforce development information and services at several different locations, which is often costly, discouraging and confusing, WIA requires States and communities to integrate multiple workforce development programs and resources for individuals at the ''street level'' through a user friendly One-Stop delivery system. This system will simplify and expand access to services for job seekers and employers.

The Act specifies nineteen required One-Stop partners and an additional five optional partners to coordinate activities and streamline access to a range of employment and training services. WIA requires coordination among all Department of Labor funded programs as well as other workforce investment programs administered by the Departments of Education, Health and Human Services, and Housing and Urban Development. WIA also encourages participation in the One-Stop delivery system by other relevant programs, such as those administered by the Departments of Agriculture, Health and Human Services, and Transportation, as well as the Corporation for National and Community Service. In addition, local areas are authorized to add additional partners as local needs may require. All of the Federal Agencies will continue to work together to ensure effective communication and collaboration at the Federal level in support of One-Stop service delivery.

Subpart A—One-Stop Delivery System

1. Structure: Subpart A describes the structure of a One-Stop delivery system. Section 662.100, describes the One-Stop system as a seamless system of service delivery created through the collaboration of entities responsible for separate workforce development funding streams. The One-Stop system is designed to enhance access to services and improve outcomes for individuals seeking assistance. The regulation specifically defines the system as consisting of one or more comprehensive, physical One-Stop centers in a local area. Core services specified in WIA section 134(d)(2) must be provided at the One-Stop center as must access to the other activities and programs provided under WIA and by each One-Stop partner. In addition to the statutory list of core services, States and locals are encourated to add additional core services such as the provision of information relating to the availability of work supports, including, Food Stamps, Medicaid, Children's Health Insurance Program, child support, and the Earned Income Tax Credit. In locating each comprehensive center, Local Boards should coordinate with the broader community, including transportation agencies and existing public and private sector service providers, to ensure that the centers and services are accessible to their customers, including individuals with disabilities.

In addition to the comprehensive centers, § 662.100(d) describes three other arrangements to supplement the comprehensive center. These supplemental arrangements include: (1) A network of affiliated sites that provide one or more of the programs, services and activities of the partners; (2) a network of One-Stop partners through which the partners provide services linked to an affiliated site and through which all individuals are provided information on the availability of core services in the local area; and (3) specialized centers that address specific needs. In essence, this structure may be described as a ''one right door and no wrong door'' approach. One-Stop partners have an obligation to ensure that core services that are appropriate for their particular populations are made available at one comprehensive center, and through additional sites, as described in the local plan and consistent with the local memorandum of understanding (MOU). If an individual enters the system through one of the network sites rather than the comprehensive One-Stop center, the individual may obtain certain services at the network site and must be able to receive information about how and where the other services provided through the One-Stop system may be obtained.

Some commenters expressed concern that the description in § 662.100 emphasizes physical locations rather than the development of systems. The commenters suggested that the regulations be expanded to provide that, in addition to the comprehensive center, it is expected that local areas will build a One-Stop system by developing affiliate relationships with existing public and private sector providers. The commenters further suggested that more examples should be offered as to how the centers and affiliates may mix and match services.

Response: The purpose of § 662.100 is simply to describe the general objectives of the One-Stop system and to identify the required components of that system as well as the alternative designs specified in WIA. While we agree that effective networks connecting the centers and affiliates will generally be critical to the success of the One-Stop system, WIA allows local areas significant flexibility in tailoring the design of the system to best meet local needs. Therefore, rather than include examples as part the requirements of this regulation, we will disseminate information and provide technical assistance about how different local areas have designed effective One-Stop systems.

Commenters also requested clarification that physical co-location at the centers was not required for all of the services provided by a partner's program and that each partner was not required to be co-located at the centers.

Response: The description of the One-Stop system in § 662.100 and the requirements for the provision of services at the centers in § 662.250 make it clear that WIA requires the provision of specified core services at the centers. However, § 662.250(b) specifically provides that the core services may be provided at the centers by the partners in a variety of ways, including agreements with service providers at the centers to provide the core services or the provision of appropriate technology, as alternatives to the co-location of personnel. The extent to which services in addition to the specified core services are provided at the centers and how services are to be provided are matters to be addressed in the local MOU's, and are not specified by WIA. We believe the current provisions are clear on these issues and have not made changes to the regulations.

Some commenters also expressed concern that the description of the One-Stop system did not address access for individuals with disabilities, and suggested that we reiterate the applicability of the Americans with Disabilities Act and Section 504 of the

Rehabilitation Act of 1973 to the One-Stop system.

Response: Section 667.275(a)(3) specifically states that the ADA and Section 504, as well as the nondiscrimination provisions of WIA section 188, are applicable to the One-Stop system as well as the other activities administered under title I of WIA. We believe that, as with other uniform requirements, adding this statement to every affected section of these regulations would be duplicative and potentially confusing. The Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) extensively address this issue.

Subpart B—One-Stop Partners

1. Responsibilities: Subpart B identifies the One-Stop partners and their responsibilities in the One-Stop delivery system. The required partners are entities that carry out the workforce development programs. They are specifically identified in section 121(b)(1) of WIA and § 662.200. Section 662.200(b)(1)(i through vii) separately specifies the programs under title I that are included as required partners. Section 662.200(b)(2)–(12) also identifies the other required programs, with some clarification of the particular provisions of certain Acts (for example, the Vocational Rehabilitation Act and the Carl D. Perkins Act) that authorize the required partner program. Section 662.210 identifies additional partners that may be a part of the One-Stop system.

One commenter suggested that the Governor has the authority under WIA to require that additional partners be included in all the local One-Stop delivery systems in the State and asks that the regulation include such authority. The commenter cites section 112(b)(8)(A) of WIA, which requires the State to describe in the State plan procedures to assure coordination and avoid duplication among specified programs, and section 117(b)(1) of WIA, which provides that the Governor establish criteria for the appointment of members of local boards, as the basis for this authority.

Response: We agree that the provisions cited by the commenter authorize the State to require that additional partners participate as partners in all of the One-Stop systems in the State. This includes the program specified in WIA section 121(b)(2)(B)(i) through (iv) or any other appropriate program under WIA section 121(b)(2)(B)(v). We have added a new section 662.210(c) to clarify that the State does have this authority. The State's authority to identify additional partners to be included in all One-Stop systems does not affect the CEO's authority to include locally-identified human resource programs as One-Stop partners. Under WIA section 121(b)(2), the CEO and Local Board may approve any appropriate Federal, State or local program, including programs in the private sector, for participation as a partner in the local One-Stop system.

Entities—Section 662.220 provides a general definition of the ''entity'' that carries out the specified programs and serves as the partner. In light of the responsibilities of the partners, which are described in § 662.230 and which include decisions about the use and administration of program resources, the regulation defines the ''entity'' as the grant recipient or other entity or organization responsible for administering the program's funds in the local area. The term ''entity'' does not include service providers that contract with or are subrecipients of the local entity. Section 662.220(a) provides that for programs that do not have local administrative entities, the responsible State agency should be the One-Stop partner. In addition, § 662.220(b) (1) and (2) specifies the appropriate entities to serve as partner for the Adult Education and Vocational Rehabilitation programs. Entities that serve as the partner under the Indian and Native American, Migrant and Seasonal Farmworker, and Job Corps programs are identified in the parts of the regulations applicable to those programs (parts 668, 669, and 670 respectively).

One commenter requested two clarifications about the partner representing the Adult Education and Literacy programs under title II of WIA. First, while the regulation specifies that the partner for those programs is the State eligible entity or an eligible provider designated by the State entity, the commenter suggested adding authority for the State entity to designate a consortium of eligible providers as the partner. Second, the commenter suggested clarifying that the State eligible entity also has the authority to designate the individual representing the partner on the local boards, not just the entity.

Response: We agree that the State eligible entity may designate a consortium of eligible providers to serve as the local One-Stop partner and have modified the regulation to clarify this authority. However, we assume that any consortium so designated would have mechanisms in place so that it speaks with one voice on behalf of Adult Education and Literacy programs on issues affecting the One-Stop system. We would not expect that the designation of a consortium would require the Local Board to separately negotiate with each member of the consortium about how the responsibilities of the partner will be carried out.

The second issue is addressed in the preamble discussion of 20 CFR part 661.

Another commenter noted that § 662.220(b)(3) only defines national programs under title I of WIA as required partners if such programs are present in the local area and suggested that the regulation apply the same condition to the other required partners.

Response: We agree that the responsibilities of a required partner apply in those local areas where the required partner provides services. We do not believe WIA was intended to require programs not serving local areas to begin to provide services in such areas, but instead to require collaboration through the One-Stop system in any local area in which such services are provided. While we believe that the vast majority of local areas are currently served by the required partner programs, the regulation is modified to clarify this requirement.

Several commenters also noted that several of the programs identified as required partners may be administered by the same entity in the State or local area and the regulation should indicate that one individual from that entity may represent all such programs on the local board.

Response: This issue is addressed in the preamble discussion of 20 CFR part 661.

Partner Responsibilities—Section 662.230 describes and elaborates on the statutory responsibilities of the partners and identifies the five provisions of the Act that describe these responsibilities. These responsibilities include: (1) Making available through the One-Stop system appropriate core services that are applicable to the partner's program; (2) using a portion of funds available to the partner's program, to the extent not inconsistent with the Federal law authorizing the program, to create and maintain the One-Stop delivery system and to provide core services; (3) entering into an MOU regarding the operation of the One-Stop system; (4) participating in the operation of the One-Stop system; and (5) provide representation on the Local Board.

Several commenters expressed concerns about the required use of a portion of the partners' funds to support the One-Stop system. Some commenters suggested that certain authorizing laws, such as the Perkins Vocational Education Act, would not permit such

use. Other commenters suggested that since the WIA statutory language requires that partner funds be used to ''establish'' the One-Stop system, the regulatory requirement be limited to initial start-up of the system and not include any responsibility to use funds to ''maintain'' the system. In addition, some commenters were concerned about whether we could enforce the use of funds requirement and suggested that unless the partners contributed real resources, the overall WIA vision would not be achieved.

Response: WIA section 134(d)(1)(B) specifically requires all of the required partners to use a portion of their funds to support the One-Stop system. We believe the language providing that the use of the partners' funds not be inconsistent with the authorizing law may affect the particular One-Stop activities the partner may support, but is not intended to nullify this requirement. Several of the core services (e.g., outreach) are authorized under all programs, and each partner should collaborate to ensure that the local One-Stop system is providing workforce investment activities that are of benefit to participants in the partner's program. A portion of the partner's funds is then used to support the system in providing those activities. The details of the particular portion and use of those funds are to be addressed in the MOU. These issues are further addressed in the subsequent regulatory provisions of this subpart.

With respect to the responsibility to assist in maintaining the system, we believe that the requirement in § 662.230(a)(2)(i) that a portion of funds be used to ''create and maintain'' the One-Stop system is the appropriate interpretation of the statutory requirement in WIA section134(d)(1)(B) that a partner use a portion of funds to ''establish'' the One-Stop delivery system. There is nothing in WIA or the legislative history to suggest that ''establish'' refers to a one-time start-up activity. To the contrary, all of the partners' responsibilities apply as long as the One-Stop system is in operation and include participation in the operation of the One-Stop system (WIA section121(b)(1)(B)) and carrying out the MOU that includes the details on the funding of the system (WIA sec. 121(c)). We do not believe that Congress intended that the partners continue to participate in the operation of the one-stop system, but that their responsibility to use funds to support that system terminate as soon as some undefined start-up period is completed. Rather, we believe the only reasonable interpretation is that a required partner's responsibility to use a portion of funds to support the system continues along with the participation of the partner in the system. Therefore, we have not changed this provision of the regulations.

With respect to enforcement of these requirements, we are working with the other Federal agencies to ensure that all partner programs are aware of and carry out these requirements. We believe that full participation in the One-Stop system will be of great benefit to the partners' programs and to their participants, and, therefore, these requirements should be viewed as promoting a comprehensive and effective system of service delivery for each local area.

Section 662.240 addresses the core services applicable to a partner's program that are to be provided through the One-Stop system. Section 662.400(a) lists the core services that are described in section 134(d)(2) of WIA, and defines ''applicable'' to mean the services from that list that are authorized and provided under the partner programs. The extent to which core services are applicable to a partner program, as well as the manner in which services are provided, are determined by the program's authorizing statute.

Some commenters suggested we further define many of the listed core services. For example, one suggestion was to require career counseling to include a discussion of self-sufficiency standards to assist in setting long-term employment goals. Another suggestion was to require additional employment statistics information relating to high wage jobs and employment laws. Other suggestions included adding computer literacy to the initial assessment, and information relating to employment rights to follow-up services.

Response: We believe many of the proposed elements would enhance the provision of services. However, we believe they should be disseminated as technical assistance rather than as regulatory requirements. The purpose of this provision is to identify the list of core services contained in the statute that must be made available through the One-Stop system. The specific elements of these services is a matter that may be addressed in the MOU and should be tailored to meet local needs. Therefore, we have not made any changes to the statutory list of core services under this regulation.

Availability of Services—Section 662.250 describes where and to what extent the One-Stop partners must make available the applicable core services. Since section 134(c) of WIA requires that core services be provided, at a minimum, at one comprehensive physical center, the regulation requires that the core services applicable to the partner's program be made available by each partner at that comprehensive center. To avoid duplication of services traditionally provided under the Wagner-Peyser Act, this requirement is limited to those applicable core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program. While a partner would not, for example, be required to duplicate an assessment provided under the Wagner-Peyser Act, the partner would be responsible for any needed assessment that includes additional elements specifically tailored to participants under that partner's program. We encourage partners to work together at the local level to tailor the initial assessment so that the information taken can provide a gateway to the partner program's more specific requirements. However, it is important to note that the adult and dislocated worker partner programs are required to make all of the core services available at the center (see § 662.250(a)).

Flexibility—Section 662.250(b) also provides significant flexibility about how the core services are made available at the One-Stop center by allowing for services to be provided through appropriate technology at the center, through co-location of personnel, cross-training of staff, or through contractual or other arrangements between the partner and the service providers at the center.

Proportionate Responsibility: Section 662.250(c) provides that the responsibility for the provision of and financing for applicable core services is to be proportionate to the use of services at the center by individuals attributable to the partners' programs. Section 662.250(d) further provides that the individuals attributable to a partners' program may include individuals referred through the center and enrolled in the partner's program after the receipt of core services, individuals enrolled prior to the receipt of core services, individuals who meet the eligibility criteria for the partner's program and who receive an applicable core service, or individuals who meet an alternative definition described in the MOU. This ''proportionate responsibility'' provision is intended to provide an equitable principle for sharing cost and service responsibilities among the partners. The regulation provides that the specific method for determining proportionate responsibility (for example, surveys) must be described in the MOU.

Additional Sites—Section 662.250(e) provides that, under the MOU, core services may be provided at sites in addition to the comprehensive center. Therefore, it is not required that partners provide core services exclusively at a One-Stop center. If an individual seeks core services at the One-Stop center rather than at the partner's site, they should be made available to him or her without referral to another location, but a partner is not required to route all of its participants through the comprehensive One-Stop center.

There were a number of comments on these provisions about the availability of core services and proportionate responsibility. Commenters questioned whether the requirement that partners provide core services at the One-Stop center went beyond the statute, and whether proportionate responsibility was required by the statute. Several commenters expressed concern that the concepts of proportionate responsibility and attributable individuals did not provide clear direction. In addition, some commenters requested clarification that not all applicants for a partner's program would be attributable to that program while others suggested the regulation should provide that only individuals enrolled in the program should be attributable. Finally, some commenters were concerned that proportionate responsibility would require undue tracking and recordkeeping.

Response: We believe these regulatory provisions are appropriate interpretations of WIA and the general cost principles enunciated in the relevant OMB circulars. We believe that, read together, the requirements of WIA section 134(c)(1), regarding the actual provision of core services and the provision of access to other services, WIA section 134(c)(2), regarding the accessibility of these services at a physical center, and WIA section 121, requiring that the partners provide the applicable core services, support the requirement that each partner provide the applicable core services at the center. As noted above, such core services may also be provided at other sites in the One-Stop delivery system in addition to being provided at the center. Section 662.250 does include provisions to ensure that there is significant flexibility in the manner in which core services may be provided at the center, and does not require partners to provide those core services at the center that are traditionally provided by the Wagner-Peyser program. The Department, in partnership with other federal agencies will provide additional technical assistance to help implement these requirements. We believe these requirements are essential to ensure that basic information and services relating to workforce development can truly be obtained at ''One-Stop'', and that the partners effectively collaborate to provide a seamless system of service delivery.

The principle of a partner's responsibility for the proportionate use of these services by individuals attributable to the program of the partner is derived from general cost principles of the OMB circulars, as well our interpretation of the WIA provisions relating to the required provision of applicable core services. As noted above, we believe this is an equitable principle that is intended to ensure an appropriate level of participation by the partners in a manner that is fair to the partners. We do not want to prescribe how such proportionate use is to be calculated, but simply to identify options that we believe would be acceptable under the circulars for attributing individuals to a program. The regulation does not require that a particular option be used, only that the methods be described in the MOU. Therefore, whether attribution is based on enrollment in the program or some other basis is a matter to be determined locally among the partners. Tracking and recordkeeping will also be affected by how the local area chooses to determine proportionate use and we do not believe such requirements need be unduly burdensome. Consistent with our principle of writing these regulations to provide maximum State and local flexibility, the regulation seeks to balance the need for Federal guidance to ensure that the objectives of WIA are realized with the need for flexibility at the State and local level to tailor specific approaches to meet local needs. We do not want this flexibility to be used to avoid implementing the changes in service delivery required under WIA, but we also do not want to preclude innovative approaches to implementing those changes. Therefore, we intend to retain the regulatory requirements of this section and offer technical assistance to facilitate implementation.

Access to Services—Section 662.260 provides that, in addition to the provision of core services, the One-Stop partners must use the One-Stop system to provide access to the partners' other activities and programs. This access must be described in the MOU. This requirement is essential to ensuring a seamless, comprehensive workforce development system that identifies the service options available to individuals and takes the critical next step of facilitating access to these services.

Several commenters suggested that we maintain a flexible interpretation of the term ''access'' in § 662.260 when referring to the access to activities and services, other than the core services, that a partner must provide through the One-Stop system. These commenters expressed concern that a partner with a broad array of services could not provide all services at a single One-Stop center, and suggested that we encourage flexible delivery models, such as outstationing of staff or electronic access, to meet this requirement.

Response: We have intentionally not defined what constitutes access to these other activities and services in the regulation and the regulation simply requires each local area to describe how access is provided through the One-Stop system in the MOU. We believe access is intended to go beyond the mere listing of a program and location, but instead that the One-Stop will provide added value by assisting customers to identify the services and programs that may best meet their particular needs and by arranging to obtain such services. Co-location of certain services at the center may be the most user-friendly approach to providing access in some areas, while other areas may rely more on electronic and other affiliate connections to ensure access. That is a matter to be determined among the partners in the local area through the MOU and this section of the regulation retains that requirement.

2. Cost Sharing: Section 662.270 provides that the particular arrangements for funding the services provided through the One-Stop system and the operating costs of the One-Stop system must be described in the MOU. Each partner must contribute a fair share of the operating costs based on the use of the One-Stop delivery system by individuals attributable to the partner's program. This is an equitable principle and there are a number of methods that may be used for allocating costs among partners that are consistent with this principle and the OMB circulars. To promote efficiency and optimal performance, partner contributions for the costs of the system may be re-evaluated annually through the MOU process. This regulation identifies a number of methodologies, including cost pooling, indirect cost allocation, and activity based cost allocation plans, that may be used. The Department, in consultation with other affected Federal agencies, issued guidance. The guidance was published in the **Federal Register** on June 27, 2000.

There were numerous comments about this section. Many of the comments about the requirement that each partner contribute a fair share to the operation of the One-Stop system based on proportionate use of the system by individuals attributable to the program of the partner were the same as or similar to the comments on proportionate responsibility under § 662.250. Some commenters suggested that the methodology for allocating costs of the One-Stop system be strengthened and clarified. Some commenters suggested prescribing particular approaches, such as requiring cost sharing only be based on real costs directly attributable to the use of One-Stop center space and utilities when the partners are co-located, while others suggested limiting the methods for attributing individuals to a program to services received after enrollment in the program. Some commenters suggested that the regulation provide for pooling of overhead costs and proportionate allocation of service costs. Some commenters expressed concern that the multiple cost allocation methodologies identified in the regulation were at odds with the proportionate use approach, while others expressed concern that the proportionate use approach required extensive recordkeeping and tracking. Some commenters stressed the need for time to determine baseline percentages of how many people each partner serves relative to the total traffic and suggested that we provide additional guidance on developing baselines. A commenter expressed concern that a proportionate cost allocation approach could cause discord and undercut collaboration and co-location, while other commenters expressed concern about whether this approach could be enforced.

In addition, some commenters suggested clarifying that operating costs include both administrative and programmatic costs. Other commenters suggested that the regulations allow the fair share to be contributed ''in-kind''. Some commenters suggested removing the multiple methodologies described in the regulation while others expressed concern that without more specific requirements title I programs would end up paying all the costs.

Some commenters expressed concern that reliance on the OMB circulars based on benefit to the program would be a barrier to One-Stop delivery and suggested a new circular that would promote integrated service delivery should be developed. A number of commenters indicated that it was important that Federal agencies work together to present a coherent message in support of sharing costs and integrating programs and that technical assistance be provided to facilitate the development of acceptable cost allocation methodologies.

Response: We believe that the ''fair share'' requirement of this regulation is the appropriate interpretation of the WIA provisions relating to the contributions of the One-Stop partners and the applicable OMB circulars. The regulation is intended to identify each partner's responsibility to contribute to the operation of the system based on proportionate use, while allowing each local area significant flexibility in providing how that contribution is to be determined. While prescribing a more detailed methodology may provide clearer direction and facilitate more rapid resolution of the cost allocation issue at the local level, it would also significantly limit the ability of each local area to tailor the arrangements to meet their particular needs. Therefore, we believe that the ''fair share'' requirement is a reasonable and flexible standard that should be retained and supplemented by technical assistance that will inform local areas of acceptable approaches in more detail. The cost allocation and resource sharing guidance published in the **Federal Register** by the Department, in consultation with the Federal partner agencies, on June 27, 2000, addresses this issue in more detail.

The proportionate use standard is not intended to be rigid and we do not believe the multiple methodologies identified in the regulation are inconsistent with that standard. The various methodologies offer different approaches that may be used in implementing these requirements. As indicated with respect to § 662.250, we do not believe that this standard necessarily requires extensive tracking and recordkeeping. The burdens attendant to the adoption of a particular cost allocation method are a legitimate factor to be considered in negotiating MOU's. We believe that local areas have the flexibility to refine and modify the cost allocation procedures as more experience is gained. For example, there is the flexibility to refine the development of baselines on proportionate use over time, and such adjustments may be facilitated if the funding arrangements in the MOU are revised annually.

Contrary to the concern that the proportionate use standard will promote discord and deter co-location and collaboration, we believe that standard provides an equitable framework which should assist local areas and partners in reaching agreement and within which a more detailed methodology may be developed that supports the particular design of the One-Stop system in each area. With respect to enforcement, we are working with other Federal agencies to develop models of acceptable methodologies and to assist in ensuring that partners are aware of the opportunities of the One-Stop delivery system and of their responsibilities under WIA.

On the question of the kinds of operating costs of the One-Stop system for which the One-Stop partners must contribute, we believe those costs are the common costs of operating the One-Stop system, and could include such items as space and occupancy costs, utilities, common supplies and equipment, a common receptionist, and other shared staff. However, these common costs will vary depending on the design of the One-Stop system and we intend to address these costs as part of the technical assistance that we are developing in partnership other federal agencies. Therefore, we have not modified the regulation to further define these costs.

On the question of whether the contribution of the partners to the operating costs of the One-Stop system may be ''in-kind,'' which we understand to mean provided with resources other than cash, we understand that the OMB circulars recognize the provision of noncash resources as acceptable in meeting certain costs. However, the contributions of partners may also consist of cash resources, or a mixture of cash and noncash resources. Rather, the determination regarding the forms of the contributions is a matter to be determined locally through the MOU negotiation process, taking into account the needs of the One-Stop system to ensure customer-friendly access to services and the proportionate responsibility of and resources available to the partners. We also intend to address this issue in the technical assistance we will provide with other agencies and have not modified the regulation.

On the issue of reliance on the OMB circulars, while the circulars do set parameters that relate the allocation of costs to the benefit received by a program, we believe they also allow flexibility to develop cost allocation methodologies that support integrated service delivery. We do not expect the issuance of a new circular to address One-Stop delivery, but, as noted above, we are working with OMB and other agencies to identify cost allocation methodologies that will be useful in a One-Stop environment.

Finally, we agree with the comment about the importance of Federal

agencies working together in support of cost sharing and integrating programs. There have been significant joint efforts to assist in implementing WIA, including issuance of the streamlined unified planning guidance, and other joint communications designed to assist the partners in working together. This effort includes the joint technical assistance being prepared on cost allocation methodologies and additional ongoing activities intended to assist in the implementation of the other elements of the One-Stop system.

Allocation Process—Section 662.280 clarifies that the requirements of each partner's authorizing legislation continue to apply under the One-Stop system. Therefore, while the overall effect of linking One-Stop partners in the One-Stop system is to create universal access to core services and to facilitate access to partner services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under the program. As noted above, consistent with this principle, there are a variety of methods for allocating costs among programs. This regulation is intended to clarify that participation in the One-Stop delivery system is a requirement that is in addition to, rather than in lieu of, the other requirements applicable to the partner program under each authorizing law.

There were several comments suggesting that we reiterate in several different sections of part 662 that the requirements of the laws authorizing the programs of the partner continue to apply. For example, commenters suggested that § 662.260, on access to services and § 662.300, on MOU's, be revised to specifically provide that the requirements of the laws authorizing the programs of the partner continue to apply.

Response: We believe that § 662.280 effectively describes the continued applicability of the requirements of the authorizing laws and have not repeated this language in other sections except where the underlying statutory provision specifically makes reference to consistency with the authorizing laws. We have made no change to the regulations.

Subpart C—Memorandum of Understanding (MOU)

Subpart C describes the requirements relating to the local Memorandum of Understanding MOU that governs the operation of the local One-Stop system. Section 662.300 addresses the contents of the MOU that must be executed between the Local Board, with the agreement of the local elected official, and the One-Stop partners. The MOU must describe the services to be provided through the One-Stop delivery system, the funding of the services and the operating costs of the system, the methods for referring individuals between the One-Stop operators and the partners and the duration of and procedures for amending the MOU. The MOU may also include other provisions about the operation of the One-Stop system that the parties consider appropriate. For example, the parties may use the MOU to address the coordination of equal opportunity responsibilities such as the handling of discrimination complaints or other grievances relating to the One-Stop system.

Section 662.310 provides that the local areas may develop a single umbrella MOU covering all partners and the Local Board, or separate MOU's between partners and the Local Board. In many areas, the umbrella approach may be the preferred means to facilitate a comprehensive and equitable resolution of the operational issues relating to the One-Stop, adding information specific to each individual partner organization. The regulation also emphasizes that it is a legal obligation for the partners and the Local Board to engage in good faith negotiation and reach agreement on the MOU. The partners and the Local Boards may seek the assistance of the appropriate State agencies, the Governor, State Board or other appropriate parties in reaching agreement. The State agencies, the State Board and the Governor may also consult with the appropriate Federal agencies to address impasse situations. If an impasse has not been resolved, in addition to any programmatic remedies that may be taken, parties that fail to execute an MOU may not be permitted to serve on the Local Board. In addition, if the Local Board has not executed an MOU with all required parties, the local area is not eligible for State incentive grants awarded for local coordination.

Several commenters suggested that the regulation provide that only required partners ''in the area'' must enter into the MOU and also requested clarification as to whether optional partners were required to enter into MOU's.

Response: We agree that a required One-Stop partner must enter into an MOU only in those local areas in which the partner's program provides services. However, that condition also applies to carrying out the other responsibilities of a required partner, and, as described above, we have modified section 662.220(a) to clarify that condition. We do not believe it is necessary to repeat that condition in this section. We also believe the intent of WIA section 121 is that optional partners must be included in the MOU, or execute a separate MOU with the Local Board, to become part of the One-Stop system. Since the MOU describes the operational details of the One-Stop system, we believe WIA intends that the MOU also be the vehicle for addressing the specified issues of services, costs, and referrals with the optional partners. WIA section 121(c) refers to One-Stop partners as parties to the MOU without distinguishing between required and optional partners. However, we note that the regulation similarly refers to One-Stop partners generally and is not limited to required partners. We therefore do not believe it necessary to modify the regulation.

Some commenters indicated that the involvement of the chief elected official was critical to the successful development and implementation of MOU's and expressed concern that while the agreement of the chief elected official to the MOU was required under § 662.300, the chief elected official was not identified as a party to the MOU in § 662.310.

Response: We agree that the chief elected official has a significant role to play in facilitating the development, completion and operation of the MOU's. This role is explicit in WIA section 121(c), which provides that the Local Board is to develop and enter into MOU's with the agreement of the chief elected official. This role is included in § 662.300 and we are adding similar language to § 662.310. In addition, the chief elected official will often have authority over many of the title I One-Stop partners in the role of grant recipient/fiscal agent for the adult, dislocated worker and youth programs and may play an important role in ensuring that those partners contribute to the effective development and implementation of MOU's.

Some commenters stated that strong guidance and support for MOU's at the State level was essential and that a strategy should be developed to monitor and evaluate MOU's at the State and local levels. Other commenters suggested that local systems would benefit from MOU's that offer incentives or penalties to required partners depending on their performance relative to systemize performance. These commenters also suggested that the regulations should provide incentives to Governors to make MOU's and partnerships strong at the outset so that

regulatory effort need not be spent on developing sanctions and penalties for those who fail to perform as intended. Several commenters questioned whether the sanctions specified in the regulation for failure to execute an MOU were consistent with WIA, arguing that WIA requires that partners be represented on the Local Board without reference to whether or not they have executed an MOU, while other commenters suggested that exceptions to the sanctions be allowed by the regulation where a party has exhibited good faith.

Response: We agree that the Governor and the State have a critical role to play in facilitating the execution of local MOU's. That role is reflected in the requirement in WIA section 112(b)(14) that the State plan describe the strategy of the State for assisting local areas in the development and implementation of fully operational One-Stop delivery systems. The regulation also identifies a State role in assisting local areas to reach agreements on the MOU. We do not believe the regulations need to provide additional incentives for the State to promote strong MOU's since the development of MOU's will generally be critical to enabling local areas and the State to obtain the performance outcome levels needed to qualify for Federal incentive payments. The State also has a significant role since many of the parties to the MOU will be State agencies under the direction of the Governor. We believe it is important that the Governor work with those agencies and with localities to ensure that effective MOU's are executed and implemented. We agree, however, that the suggested inclusion in the MOU of performance-based incentives or penalties, whether based on the relative performance of partners or their shared performance, may be useful in many local areas. We are willing to assist in the development of performance-based provisions that meet relevant legal requirements while promoting State and local objectives. However, we do not believe the regulation needs to contain incentive or penalty provisions since WIA and the regulations already provide for the addition of provisions that the parties deem appropriate.

With respect to the sanctions identified in § 662.310(c), we believe it is reasonable to interpret the reference to representatives of the One-Stop partners on the Local Board in WIA section 117(b)(2)(A)(vi) as referring to those One-Stop partners that meet the requirements for being partners in the local One-Stop system, including executing the MOU. Since the MOU is the vehicle through which the partner's role in the local system is detailed, the inability to reach agreement on that role means that an entity has not assumed the role of a One-Stop partner in that local system for purposes of representation on the Local Board.

On the question of allowing a ''good faith'' exception that would permit local areas to be eligible for a State coordination incentive grant even if the area has not executed an MOU with all required partners, we believe that such grants are only intended to be awarded to areas that demonstrate exemplary coordination activities that are in addition to meeting the minimum requirements for coordination under WIA. We believe that incentive grants are not intended to be awarded to areas that are unable to meet the minimum requirement that the local area have an MOU executed with all required partners, even if the Local Board has acted in good faith in attempting to reach agreement.

We also believe it should be noted that the sanctions specified in § 662.310(c) are in addition to rather than in lieu of any other remedies that may be applicable to the Local Board or to each of the partners for failure to comply with the Federal statutory requirement that they execute an MOU and have clarified this point in the regulation.

Some commenters suggested that the regulation specify that the details of the assessments of individuals seeking services through the One-Stop system be described in the MOU and that we set parameters that will help the States and localities reach agreement on assessment goals, tools and processes.

Response: We agree that the MOU is a vehicle that local areas should use to coordinate how assessments and other services are to be carried out in the One-Stop system. We will work with other Federal agencies and interested State and local partners to provide technical assistance that promotes agreement on and enhances how assessments and other services are delivered. However, we believe that WIA allows States and localities significant flexibility in determining how, consistent with the Federal authorizing laws, such services are carried out and coordinated and, therefore, do not believe it is appropriate to establish parameters for these services in the regulations.

Some commenters suggested that the regulation be modified to require that the MOU's contain specific information on staffing arrangements, including assignment and supervision of staff, staff training and related personnel policies. In addition, these commenters suggested that the regulation require written concurrence from appropriate labor organizations when such arrangements affect their members or a collective bargaining agreement. These commenters also suggested that the MOU contain the assurances described in WIA section 181(b)(7) prohibiting the use of funds to assist, promote, or deter union organizing.

Response: We believe the MOU may be an appropriate vehicle to address certain personnel issues in many local areas. Section 652.216 of these regulations, governing the Wagner-Peyser Act, provides that personnel matters for the State merit staffed employees funded under the Wagner-Peyser Act are the responsibility of the State agency, although, as part of the MOU, Wagner-Peyser funded employees may receive guidance on the provision of labor exchange services from the One-Stop operator. However, we do not believe it would be appropriate to mandate that additional personnel issues be addressed in the MOU. The determination of the extent to which such issues are addressed in the MOU remains with the parties to the MOU under this regulation.

WIA section 181(b)(2)(B) provides that activities carried out with funds under title I of WIA must not impair collective bargaining agreements and that no activity inconsistent with the terms of a collective bargaining agreement may be undertaken without the written concurrence of the labor organization and employer concerned. Therefore, to the extent an MOU provides that title I funds be used in a manner inconsistent with a collective bargaining agreement, written concurrence is required. However, we do not believe it is necessary to restate this requirement in this section of the regulation since this requirement applies to all activities undertaken with title I funds.

Similarly, the prohibition on the use of title I funds to assist, promote or deter union organizing is applicable to the use of all WIA title I funds. However, since this prohibition applies to all WIA-funded activities, we do not believe that WIA requires that an assurance regarding this prohibition be written into each MOU. Local areas may be prudent in doing so, but the regulation has not been modified to require that the MOU contain such a written assurance.

Several commenters suggested that the final rule require MOU's to be available for public review and comment before execution, particularly to training providers.

Response: WIA section 118(b)(2)(B) requires that the MOU's be part of the local plan that is subject to public

review and comment requirements. We believe this requirement ensures public review and that an additional regulatory requirement is unnecessary. However, we do encourage local areas to provide significant opportunities for public input regarding the form and contents of the MOU as early in the process as is possible.

Several commenters suggested that, due to potential shifts in the annual appropriations affecting the programs of the partners, the regulation require annual review of the MOU's by the parties. Other commenters suggested that due to the difficulty in reaching agreement and the need for stability, the regulation clarify that multi-year agreements are permissible.

Response: Section 662.300(b) provides, as does WIA section 121(c)(2)(A)(iv), that the duration of the MOU, and the procedures for modification, must be addressed in the MOU itself and does not prescribe an annual review process. Section 662.310(a) indicates that, in light of the annual appropriations process, the financial agreements ''may'' be negotiated annually, but also allows a multi-year agreement. We believe these provisions are appropriate interpretations of WIA and have not modified the regulations.

Subpart D—One-Stop Operator

This subpart addresses the role and selection of One-Stop operators. One-Stop operators are responsible for administering the One-Stop centers and their role may range from simply coordinating service providers in the center to being the primary provider of services at the center. The role is determined by the chief elected official. In areas where there is more than one comprehensive One-Stop center, there may be separate operators for each center or one operator for multiple centers. The operator may be selected by the Local Board through a competitive process, or the Local Board may designate a consortium that includes three or more required One-Stop partners as an operator. The Local Board itself may serve as a One-Stop operator only with the consent of the chief elected official and the Governor.

This subpart also addresses the ''grandfathering'' of existing One-Stop operators. Section 662.430 provides some continuity for areas that have already established One-Stop systems while ensuring that fundamental features of the new One-Stop system are incorporated. A local area does not have to comply with the One-Stop operator selection procedures if the One-Stop delivery system, of which the operator is a part, existed before August 7, 1998 (the date of the WIA's enactment). However, that One-Stop system must be modified to meet the WIA requirements about the inclusion of the required One-Stop partners and the MOU.

Some commenters suggested that the regulations be modified to allow for a system operator (rather than separate center operators) that may be responsible for the coordination of the entire local one-stop system, or the maintenance and development of the linkages and technology between centers.

Response: While WIA section 121(d) refers to the operator primarily in connection with the operation of centers, we believe that the law does not preclude the expansion of that role to include additional coordination responsibilities relating to the One-Stop system. The particular role may vary depending on the design of the local system. We have modified section 662.410(c) to include the possibility of broader One-Stop operator coordination responsibilities.

Several commenters suggested that the regulations be modified to clarify that the public must have the opportunity to review and comment on documents relating to the selection of a One-Stop operator if a competitive selection process is used.

Response: WIA section 117(e) contains a general sunshine provision that requires the Local Board to make available on a regular basis information regarding its activities, including information on the designation and certification of One-Stop operators. This requirement applies to whatever designation process is used by the local area, whether it be competitive or an agreement with a consortium. Section 662.420(b) referred to this requirement only in connection with the designation of the Local Board as the operator and the designation of an existing operator. We have removed the reference in § 662.420(b) and have modified § 662.410 to clarify that the Local Board's sunshine provision, which is now described in § 661.307, applies to all designations and certifications of One-Stop operators.

Some commenters suggested that the regulation describe the various financial assistance agreements that may be made with the One-Stop operator following the selection process. Specifically, the commenters suggested that the regulation identify grants, cooperative agreements, and procurement contracts as the alternative arrangements and identify the OMB circulars that apply to each arrangement.

Response: We believe that the fiscal and administrative rules relating to the use of WIA title I funds, including the use of such funds to support the One-Stop operator, are appropriately described in 20 CFR 667.200 and need not be restated in each section of the regulations to which they are applicable.

Some commenters suggested that we should encourage the grandfathering of One-Stop operators that were designated pursuant to a collaborative process. These commenters also suggested that § 662.430 appears to impose more requirements on the grandfathering of existing One-Stop operators than apply to new designations and that those requirements should be uniform.

Response: We believes that WIA provides options for the designation of One-Stop operators and intends for each local area to determine the approach that best meets local needs. We will disseminate information relating to the experience of local areas that have used each of the allowable options. We will also modify this regulation to clarify that the only difference between One-Stop systems that choose to grandfather the One-Stop operator and systems that designate the operator pursuant to competition or consortium agreement is the selection process. The WIA requirements relating to the inclusion of required partners, the provision of services, and the execution of the MOU's apply to all One-Stop systems, including those with operators retained under the grandfathering provision. Such systems must be modified, to the extent necessary, to comply with all WIA requirements regarding the One-Stop system. We have modified § 662.430 to make these distinctions clearer.

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

Introduction

This part of the regulations describes requirements relating to the services that are available for adults and dislocated workers. The required adult and dislocated worker services, described as core, intensive, and training services, form the backbone of the One-Stop delivery system for services to two workforce program customers, job seekers and employers. The WIA goal of universal access to core services is achieved, among other strategies, through close integration of services provided by the Wagner-Peyser, WIA adult and dislocated worker partners and other partners in the One-Stop center and system. Intensive and

training services are available to individuals who meet the eligibility requirements for the funding streams and who are determined to need these services to achieve employment, or in the case of employed individuals, to obtain or retain self-sufficient employment. Supportive services, to enable individuals to participate in these other activities, including needs-related payments for individuals in training, may also be provided.

These regulations also introduce the Individual Training Account (ITA), which is a key reform element of the Workforce Investment Act. Individuals will now be able to take a proactive role in choosing the training services which meet their needs. They will be provided with quality information on providers of training and, armed with effective case management, an ITA as the payment mechanism. These tools will enable them to choose the training provider that best serves their individual needs.

Along with part 664, this part contains most of the program service requirements that apply to WIA title I formula funds. WIA provides States and local areas with significant flexibility to deliver services in ways that best serve the particular needs of each State and local communities. These regulations support that principle; wherever possible, program design options and categories of service are defined broadly. States and local areas are reminded that they must use that flexibility in a manner that broadens the opportunities available under the Act to all customers. Recipients of financial assistance under WIA title I must be mindful of their responsibilities under the nondiscrimination provisions of section 188, and must not unfairly exclude individuals from opportunities or otherwise make decisions based upon race, color, religion, sex, national origin, age, political affiliation or belief, disability status, or citizenship. The Department published comprehensive regulations implementing section 188 at 29 CFR part 37. 20 CFR 667.275 makes clear that all recipients of financial assistance under WIA title I must comply with 29 CFR part 37 when exercising the flexibility provided by WIA and this Final Rule.

Subpart A—One-Stop System

1. Role of the Adult and Dislocated Worker Programs in the One-Stop System: Section 663.100 provides that the One-Stop system is the basic delivery system for services to adults and dislocated workers. The concept of a single system that provides universal access to certain services to all individuals age 18 or older is a key tenet of the Workforce Investment Act. The regulation reflects the emphasis in WIA to consolidate and coordinate services. The grant recipient(s) for the adult and dislocated worker program becomes a required partner of the One Stop system, and is subject to 20 CFR 662.230 regarding required partner responsibilities, including serving on the Local Board. Access to services through the One-Stop system ensures that individual needs are identified and, to the extent possible, met. The consolidation of and access to services will result in improved services for both adults and dislocated workers.

One comment on § 663.100 noted that adult and dislocated worker programs are separate activities with separate funding streams, and asked whether they might each have separate representatives on the Local Board.

Response: We understand that the heading for § 663.100 may be misleading, in that it may be read to imply that there is a single program serving adults and dislocated workers, which is clearly not the case. As accurately noted by the commenter, these are separate programs with separate funding streams. Accordingly, we have revised the headings and regulatory text in §§ 663.100, 110 and 115 to pluralize the word ''Program,'' to more accurately reflect the discrete nature of the two programs. On the matter of separate representation for each of these programs on the Local Board, we feel the rule already sufficiently addresses this issue in the Local Governance provisions at 20 CFR 661.315, and 662.200(a), concerning the required One-Stop partners. These sections make it clear that the Local Board must have at least one member representing each One-Stop partner program—including the Adult and Dislocated Worker programs. The CEO may select one member to represent the Adult program and a different member to represent the Dislocated Worker program. Or, under new paragraph 661.315(f), the CEO may select one member to represent both of those programs, if that member meets all the criteria for representation for each program. Accordingly, no change has been made to the Rule.

Another commenter observed that Individual Training Accounts were the only method for providing training specifically referenced in § 663.100(b)(3) and suggested that the Final Rule also list all training services, including contract training, OJT, and customized training.

Response: The purpose of § 663.100 is to highlight the key facets of the Adult and Dislocated Worker programs in the One-Stop delivery system, one of which is the establishment of ITAs. Since the purpose of this provision is to highlight ITAs as an important component of the new workforce investment system, rather than to clarify the types of training that may be provided under the adult and dislocated worker programs, no change is being made to the regulations. Section 663.300 clarifies that training services are listed in WIA section 134(d)(4), and that the list is not all-inclusive and additional training services may be provided.

2. Registration and Eligibility: Sections 663.105 through § 663.115 address registration and basic eligibility requirements. These sections provide general guidance in the regulation at § 663.105 on when adults and dislocated workers must be registered. Sections 663.110 and 663.120 contain the basic eligibility criteria for adults and dislocated workers, respectively.

Registration is an information collection process that documents a determination of eligibility. It is also the point at which performance accountability information begins to be collected. Individuals who are seeking information and who, therefore, do not require a significant degree of staff assistance, do not need to be registered. Accordingly, of the core services listed in the Act, only staff assisted services such as individualized job search services, career counseling, and job development will automatically require registration. Additional core services offered at the discretion of the State and Local Boards, and not listed in the Act, may or may not require registration, depending on the degree of staff assistance involved, and other established local policies. Participation in any intensive or training service, whether those specifically listed in the Act, or another offered at the State or Local Board's discretion, will always require registration.

In addition to the responsibility to register participants, EO data must be collected on every individual who is interested in being considered for WIA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the recipient. See 29 CFR 37.4 (definition of ''applicant'') and 29 CFR 37.37(b)(2). The point at which such personal information should be collected is within the recipient's discretion; however, the recipient's request for and receipt of that information with regard to a specific individual triggers the accompanying responsibility to collect EO data at the same time. The EO data

must be maintained in a manner that allows the individuals from whom the data was collected to be identified, and that ensure confidentiality. This responsibility is separate from, and might not arise at the same point in the process, as the registration responsibility. We will issue further guidance on this data collection requirement. Further, all requirements of WIA Section 188 and 29 CFR part 37 must be followed during the registration and eligibility determination process to ensure non-discrimination in the assessment process.

Additional information needed to determine eligibility for assistance other than Title I of WIA available at the One-Stop site may also be determined at the same time. Program operators should determine what information they need for cost allocation purposes and when they can most efficiently collect it. Electronic records systems allow information to be collected incrementally as higher levels of assistance are provided.

One commenter felt that the rule at § 663.105(b), which requires registration for any service other than self-service or informational activities, is in conflict with the goal of universal access.

Response: There has been confusion over the issue of precisely when participants must be registered. For the core services listed in the Act, only those core services that are not informational and for which the participant requires significant staff-assistance, such as follow-up services, individual job development, job clubs and screened referrals, will require registration under title I of WIA. This interpretation preserves the goal of universal access and makes the services delivery process as customer-friendly as possible, consistent with the legislative requirements of performance accountability. All persons will have access to core employment-related information and self-service tools without restrictions or additional eligibility requirements. No change has been made to the Final Rule. Additional information on the issue of registration under title I of WIA is contained in Training and Employment Guidance Letter (TEGL) 7–99 which can be accessed at www.usworkforce.org.

We received many comments expressing concern that there is no mechanism in the regulations to ensure that unregistered individuals receiving informational and self-help core services are benefitting from those services. Two comments suggested that One-Stops should either be required to track these individuals' outcomes or that the Department itself engage in some sort of periodic tracking. Another commenter questioned whether a State could collect this information independent of a regulatory requirement to do so.

Response: While we have chosen not to require registration or collection of outcomes information for those using only self-service or informational activities, this does not preclude States and One-Stop operators from collecting a variety of other information about service use, customer outcomes consistent with rules governing confidentiality, and/or customer satisfaction if they so choose. We strongly encourage States and local areas to seek customer feedback regarding the quality of services available, in order to further their continuous improvement efforts. Finally, local areas may also choose to have less formal tracking mechanisms which fall short of official registration, including paper-based or electronic ''sign-in'' when individuals enter the center. Realizing that some assessment of the value of these services is important for determining what resources are devoted to these types of activities we will convene a workgroup of Federal, State and local representatives to discuss the issue of self-service measures in the Fall of 2000. We anticipate that this workgroup will develop a menu of optional self-service measures that States and local areas can utilize.

We also received comments which argued that the existing data collection requirements are too burdensome and should be limited. In addressing the data collection requirements in the regulations, we have attempted to strike a reasonable balance which satisfies our reporting needs under WIA without over-burdening States and local areas. No change has been made to the Final Rule in response to these comments. We issued a **Federal Register** notice on WIA title I reporting requirements on April 3, 2000. The purpose of the notice was to solicit comments concerning the new management information and reporting system including the WIA Standardized Record Data, the Quarterly Summary Report and the Annual.

One commenter suggested that, in order to avoid redundancy, individuals eligible for TAA, or NAFTA–TAA, or those referred from the Worker Profiling and Reemployment Services initiative, should automatically be eligible for dislocated worker services and should be specifically included in § 663.115 in the Final Rule.

Response: We agree that most workers certified as eligible for the TAA and NAFTA–TAA programs will also meet the Act's definition of dislocated workers. To determine dislocated worker eligibility, the One-Stop operator must have sufficient information from which to make that determination, and in States with common intake systems, no further collection of registration information may be required in order to determine eligibility. One of the key reforms of WIA is streamlining customer services, and we would encourage local areas to examine methods through which they can determine eligibility for multiple programs at one time, through the coordination of One Stop Center partner activities. We further recommend that TAA and NAFTA–TAA certified workers who qualify as dislocated workers should also be enrolled under Title I of WIA. By doing this, those TAA and NAFTA–TAA workers who are determined to be in need of intensive, supportive or training services would be able to receive any of these services that cannot be provided under the TAA or NAFTA–TAA programs under Title I of WIA. Procedures to govern these processes should be part of the MOU's developed between WIA partners, in accordance with the dislocated worker eligibility determination procedures described in § 663.115(b) of these regulations.

Acceptance of profiled and referred Unemployment Insurance (UI) claimants as eligible dislocated workers is a decision to be made by Governors and Local Boards consistent with the definition at WIA Section 101(9). The policies and procedures established by Governors and Local Boards may include a policy that the UI profiling methodology and referral process meets the criteria in WIA Section 101(9). In such instances, no further documentation would be needed to establish the ''unlikely to return'' criterion at WIA section 101(9)(A)(iii). Other eligibility criteria could also be documented by the unemployment compensation system through this process. Since acceptance of TAA, NAFTA–TAA and UI profiling data to prove eligibility are matters for State or local decision, no change has been made to the Final Rule.

One comment suggested that language be added to § 663.105 in the Final Rule permitting the use by One-Stops of intake application data and other information collected by non-WIA funded providers for registration and eligibility determination.

Response: We support the goal of developing common intake systems that can be used across a variety of programs and which eliminate redundancy of data collection and encourage States and local areas to develop such systems. We

think that these activities are an essential part of the reforms envisioned by WIA and the creation of the One-Stop system and can lead to improved efficiency for program operators and better customer service. One Stop partners must work cooperatively to develop procedures, outlined in the MOU's, which will facilitate such streamlining. At the Federal level we are working with other Federal agencies to develop common definitions and data elements to facilitate this process. Since the integration of intake systems is currently permissible under the regulations as long as all necessary data is collected, no change has been made in the Final Rule.

Another comment suggested State and Local Boards should be prohibited from developing dislocated worker definitions that exclude groups of workers based on their industry, occupation, or union affiliation.

Response: In considering the procedures for determining eligibility, we believe that need for services should be based on individual circumstances, and that State and locally developed definitions must be consistent with WIA section 101(9). There is no language in that Section that we interpret as authorizing an eligibility definition based on industry or union affiliation, thereby allowing any exclusions based on the same. We strongly agree that workers should not be prohibited from receiving services based on their union affiliation. Blanket exclusions based on industry or occupation are too general to accommodate individual needs and unique situations. It should also be noted that the union representative as well as other members of the Local Board have an opportunity to raise concerns regarding consideration of such blanket eligibility decisions, through the WIA ''sunshine provisions'' in sections 111 and 117 and described in new §§ 661.207 and 661.307, governing Board activity, and through the required public comment process.

Many comments from the Vocational Rehabilitation system suggested that eligibility for Vocational Rehabilitation services must remain a distinct concept from eligibility determination for services under Title I of WIA.

Response: While we acknowledge there are separate eligibility criteria for the two programs, we see no need for additional regulatory language on this issue. 20 CFR 662.280 clearly addresses this issue and states that the eligibility requirements of each One-Stop partner's program continue to apply. Additionally, the resources of each partner may only be used to provide services that are authorized and provided for under the partner's program, to individuals that are eligible under such program. We encourage local One-Stops to maximize coordination arrangements which promote convenient and accurate eligibility determination for individuals with disabilities who may need Vocational Rehabilitation services, while maintaining the integrity of the One-Stop Center's integrated service strategy. One benefit of a closely coordinated One-Stop system is increased administrative efficiency, as well as more seamless service to the customer, through the use of common intake systems. Moreover, we emphasize that under 29 CFR 37.7, individuals with disabilities should be served through the same channels as individuals without disabilities, receiving reasonable accommodation as appropriate under 29 CFR 37.8.

Several commenters noted that, under § 663.115, Governors and Local Boards are allowed to develop policies and procedures for the interpretation of the dislocated worker eligibility criteria, and asked how disputes between these parties would be resolved.

Response: While we provide technical assistance on matters of legislative and regulatory interpretation, we look to the State and Local Boards to develop a process to avoid, and if necessary resolve any disagreements. Under 20 CFR 661.120, local policies must be consistent with established State policies, as well as the Act and the regulations. Thus, while Local Boards may develop policies which supplement State policies, they may not adopt policies which conflict with State policies. No change has been made to the Final Rule.

One comment stated that dislocated worker programs serving union members must consult the union in the design and implementation of those programs.

Response: Unions are well-positioned to understand the needs of their members and can be a valuable resource in the design of effective dislocated worker programs. WIA requires that organized labor participate in the development and design of available services to dislocated workers, through their representation on State and Local Boards. Additionally, the public, including the organized Labor community, must have an opportunity to review and comment on the proposed design of programs serving dislocated workers, as part of the plan review and approval process. State and Local Boards are encouraged to use input from all key stakeholders, including employees, their representatives, and employers, and to work collaboratively with them when designing services. It is up to the governance structure at the Local level to set procedures to ensure this input is considered in program planning. Accordingly, no change has been made to the Final Rule.

One commenter requested that the regulations provide that where the Local Board wishes to pursue training services not listed in the Act, that such services must be identified in the Local Plan, and that a review process that includes consultation with labor organizations whose members have skills in the specific training being proposed by the One-Stop operator, prior to funding such activities.

Response: The Act, at section 118(b), provides, among other things, that the Local Plan identify the current and projected employment opportunities in the local area, and the job skills necessary to obtain such employment opportunities. Although the Act does not include ''formal'' consultation with labor organizations whose members have skills like those in which training is proposed, such issues may be addressed as part of the development of the Local Plan, and the public plan review and approval process. Local Boards include representatives of labor organizations who will participate in the development of the Plan, and therefore in the design of training activities to be conducted in the local area. Additionally, the Act, at section 118(b)(7), provides that the Local Plan include a public comment process which includes an opportunity for representatives of labor organizations to provide comments on the Plan, and input into the development of the Local Plan, prior to its submission. In addition, 20 CFR 667.270 provides safeguards to ensure that participants in WIA training activities do not displace other employees. No change to the Final Rule is necessary.

Another commenter suggested that we amend the regulations to require One-Stop operators to consult with the appropriate labor organizations whose members have skills in the area in which the OJT or customized training is proposed in the development of the training contract. The comment does not limit this consultation to circumstances where a collective bargaining agreement is in effect.

Response: WIA section 181(b)(2)(B) requires consultation, and written concurrence of the labor organization and employer, where the proposed training would impair an existing collective bargaining agreement. It does not address consultation in other circumstances. We believe, however,

that informal consultation with organized labor on the nature and scope of proposed OJT or customized training can help to ensure its quality and relevance. The labor representative(s) on the Local Board is in an ideal position to establish policies about the consultation role of organized labor and to help identify situations where appropriate labor organizations should be consulted in the development of an OJT contract. Accordingly, no change to the Final Rule is necessary.

One comment suggested that we define the term ''substantial layoff,'' as found in WIA Section 101(9)(B)(i) and § 663.115, to include situations in which employers use layoff status to avoid their WARN Act obligations to announce a plant closing or significant permanent downsizing.

Response: The purpose of this comment is unclear. However, any definition of the term ''substantial layoff'' for defining an eligible dislocated worker under WIA section 101(9)(B)(i) is irrelevant to employer obligations under the WARN Act. WIA provisions cannot be used to enforce WARN Act employer notification obligations. We believe that the definition of ''substantial layoff'' for WIA purposes is best left to State and local areas to decide in light of their particular economic conditions. We do not plan to further define ''substantial layoff'' at this time.

The same commenter also suggested State and Local Boards be encouraged to develop the broadest possible definition of a general announcement of a plant closing, including information that is ''public knowledge,'' despite the failure of the employer to acknowledge the closing.

Response: Rapid response activity may be triggered by a variety of information sources such as public announcements or press releases by the employer or representatives of an employer, and other less formal information developed by early warning networks, individual phone calls, or other sources. A Rapid Response contact with an employer may confirm a planned plant layoff or closing. ''Public knowledge'' is, however, a very elusive concept and public funds are limited. It is important to have a creditable source of information or confirmation from the employer or some other clearly credible evidence of an imminent dislocation event before triggering rapid response activities. No change has been made to the Final Rule.

3. Displaced Homemaker Eligibility: Section 663.120 clarifies that a displaced homemaker who has been dependent on the income of another family member but is no longer supported by that income, is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment, may receive assistance with funds available to Local Boards for services to dislocated workers.

Several commenters recommended that we require State Plans to further discuss the eligibility of displaced homemakers and the service strategies for meeting this group's special needs.

Response: States are required to discuss displaced homemaker service strategies as part of their State Plans (WIA Section 112(b)(17)(A)(iv)). This requirement is addressed in the WIA Planning Guidance for Strategic Five Year State Plans. This requirement is also addressed in, Final Unified Plan Guidance for the Workforce Investment Act, published in the **Federal Register** Vol.65, No. 10 on January 14, 2000, which contains instructions for plan narrative discussions on how special populations, including displaced homemakers, will be served. Services to displaced homemakers are also addressed in 20 CFR 665.210(f), which provides that, among other things, implementing innovative programs for displaced homemakers is an allowable Statewide workforce investment activity. No changes have been made to the Final Rule.

4. Title I Funds: Section 663.145 clarifies how title I adult and dislocated worker funds are used to contribute to the provision of core services, and to provide intensive and training services through the One-Stop delivery system. All three types of services must be provided, but the Local Boards determine the mix of the three services.

One commenter supported the requirement that all three types of services, (core, intensive, and training), must be available through the One-Stop delivery system, but wanted the regulations to limit the provision of the ''discretionary'' services authorized under WIA section 134(e)(1) to those that do not reduce the availability or accessibility of other mandatory services to eligible participants under the Act.

Response: While it is not entirely clear from the comment, we assume that the commenter is referring only to those employment and training activities labeled ''discretionary'' under WIA section 134(e)(1), and not to all ''permissible'' local activities under section 134(e) of the Act. We agree that required activities for eligible individuals take precedence over the permissible discretionary activities described in § 663.145(b), and that core, intensive and training services, as defined in section 134(d)(2) through (4), must be provided in each local area. However, to impose a hard and fast rule on when each State or local area may provide discretionary activities, reduces the flexibility of Boards to make more localized decisions, which is contrary to the reforms of WIA. In the past, these kinds of concerns were addressed through mandatory spending percentages for various categories of services, such as the 50 percent for training provision under the Job Training Partnership Act. The customized screening and referral services listed in section 134(e)(1)(A) may provide useful and necessary services to eligible participants and could be very valuable in some labor markets. The customized employer services listed in section 134(e)(1)(B) are to be provided on a fee-for-service basis and should not result in any diminution of available WIA funds. In either case, it is up to the States and Local Boards to develop a mix of activities and services which will best serve the customers of their area. 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 all the services needed to reach an employment goal. We do not think it is appropriate to attempt to set a rule that constrains the way in which States and Local Boards provide that mix of services as long as mandatory services are made available.

5. Sequence of Services: WIA provides for three levels of services: core, intensive, and training, with service at one level being a prerequisite to moving to the next level. The regulations establish the concept of a tiered approach but allow significant flexibility at the local level. We chose not to establish a minimum number of ''failed'' job applications or a minimum time period but, instead, the regulations allow localities to establish gateway activities that lead from participation in core to intensive and training services. Any core service, such as an initial assessment or job search and placement assistance, could be the gateway activity. In intensive services, the gateway activity could be the development of an Individual Employment Plan (IEP), individual counseling and career planning or another intensive service. Key to these gateway activities is the determination, made at the local level, that intensive or training services are required for the participant to achieve the goal of

obtaining employment or, for employed participants, obtaining or retaining self-sufficient employment. The three levels of services are discussed separately in the regulations.

We received many comments concerning our general approach to regulating participant progression through the sequence of services. The commenters were uniformly pleased that the regulations did not require a certain number of failed job search attempts or minimum lengths of time in one service tier before an individual could be found eligible for the next tier of services. Several commenters, however, felt we should do even more to ensure that the Act is not interpreted as a ''work first'' program. Some comments suggested that we should preclude State and Local Boards from establishing minimum time periods of participation in core and intensive services.

Response: While the regulations do not explicitly preclude State or Local Boards from establishing minimum time periods within each tier of services, we agree that mandatory waiting periods are not consistent with customization of services according to each participant's unique needs. Consistent with our intent to write regulations that maximize State and local flexibility, however, we continue to support the idea that local level program operators are best positioned to determine the appropriate mix, and duration of services.

6. Core Services: Sections 663.150 to § 663.165 discuss the core services. All of the core services that are listed in the Act must be made available in each local area through the One-Stop system. Follow-up services must be available for a minimum of 12 months after employment begins, to registered participants who are placed in unsubsidized employment. We have made a technical correction to § 663.150, to conform with the statutory requirement that followup services be made available ''as appropriate'' to the individual. This means that the intensity of the followup services provided to individuals may vary, depending upon the needs of the individual. Among the core services available is information on targeted assistance available through the One-Stop system for specific groups of workers, such as Migrant and Seasonal Farm Workers, and veterans.

Core services also include assistance in establishing eligibility for the Welfare-to-Work program, and programs of financial aid for training and education programs. The specific form of this assistance is determined at the local level based on the participant's needs and in coordination with the other partner programs. This assistance may include: referrals to specific agencies; information relating to, or provision of, required applications or other forms; or specific on-site assistance.

Another core service is the provision of information relating to the availability of supportive services, including child care and transportation available in the local area, and referral to such services as appropriate. Local Boards are encouraged to establish strong linkages with a variety of supportive service programs and work supports, including child support, EITC, dependent care, housing, Food Stamps, Medicaid programs, and the Children's Health Insurance Program, that may benefit the customers they are serving at the One-Stop Center. Such programs provide key supports for low-income working families and families making the transition from welfare to self-sufficiency.

We also encourage Local Boards to establish strong linkages to child support agencies and organizations serving fathers. WIA services can help raise the employment and earnings of non-custodial fathers and fathers living with their children so that they can better support their children. Child support payments help low income single parents stabilize and raise their income. At the same time, it is important for One-Stop programs to be aware of the impact that child support requirements may have on non-custodial parents who may seek services.

One commenter recommended that the provision of ''brokering services,'' as presently performed by CBO's under JTPA be expressly permitted under Part 663. These services include facilitating and brokering relationships between low-income community residents, local businesses, and specialized groups, as well as referrals to groups to provide training and placement.

Response: While we agree that these brokering services are valuable activities, decisions about program design, including the selection of outreach, recruitment and referral activities, are within the purview of the Local Board, operating within State policies. We expect that Local Boards will consider a wide variety of services in designing their WIA programs. We expect CBO's, as well as other stakeholders, will be an integral part of program planning and design decisions through their membership on the Local Board, their provision of input through the public review process, and in many cases as customer service providers. Accordingly, no change has been made to the Final Rule.

Commenting on § 663.150, one organization remarked on the importance of ensuring that individuals seeking assistance through core services be provided with opportunities for self-service, facilitated self-help, and staff-assisted services.

Response: The service delivery options cited by the commenter are activities specified in the Wagner-Peyser Act regulations at 20 CFR 652.207, to ensure universal access to Wagner-Peyser labor exchange services for job seekers and employers. Although technically, these three levels of service do not apply to core services provided with funds other than Wagner-Peyser funds, practically, it makes sense to have all three service levels available for all core services. Also, in order to best serve the diverse needs of workforce investment customers, both job seekers and employers, multiple service delivery formats must be available. State and Local Plans are expected to address WIA service delivery strategies. Local Plans should ensure that the service delivery design reflects the needs of all customer groups in the mix of self-service, informational and staff-assisted core services. Since the issue is covered in the Wagner-Peyser regulations, no change has been made to the Final Rule.

One commenter asked that the regulations provide a list of available followup services which could be provided to all adults and dislocated workers. The commenter also requested that the regulations ensure that followup services are provided to all participants.

Response: The goal of follow-up services is to ensure job retention, wage gains and career progress for participants who have been referred to unsubsidized employment. While we do not think it is necessary to specify or define followup services in § 663.150(b), to provide further guidance we discuss an illustrative list of possible followup services below. Followup services must be made available for a minimum of 12 months following the first day of employment. While followup services must be made available, not all of the adults and dislocated workers who are registered and placed into unsubsidized employment will need or want such services. Also, as discussed above, the intensity of appropriate followup services may vary among different participants. Participants who have multiple employment barriers and limited work histories may be in need of significant followup services to ensure long-term success in the labor

market. Other participants may identify an area of weakness in the training provided by WIA prior to placement that will affect their ability to progress further in their occupation or to retain their employment. Therefore, we have chosen not to change the regulatory language that such services must be ''made available''.

Followup services could include, but are not limited to: additional career planning and counseling; contact with the participant's employer, including assistance with work-related problems that may arise; peer support groups; information about additional educational opportunities, and referral to supportive services available in the community. In determining the need for post-placement services, there may also be a review of the participant's need for supportive services to meet the participant's employment goals. As provided in § 663.815, financial assistance, such as needs-related payments, for employed participants is not an allowable follow-up service since, under WIA section 134(e)(3)(A), needs-related payments are restricted to unemployed persons who have exhausted or do not qualify for unemployment compensation and who need the payments to participate in training. We expect that the provision of training and supportive services after entry into unsubsidized employment (''post-placement'') will be limited, and will be part of the IEP, clearly documented in the participant case file. Such post-placement training and supportive services may be provided consistent with policies established by the State or Local Board, and determined to be necessary on an individual basis by the One Stop partner.

Several commenters noted there is no uniform understanding of ''assessment'' and that many One-Stop partners have different ideas of what assessment should entail. Some comments also asked for examples or additional guidance concerning best practices in this area.

Response: The purpose of assessment is to help individuals and program staff make decisions about appropriate employment goals and to develop effective service strategies for reaching those goals. We strongly believe that meaningful service planning cannot occur in the absence of effective assessment practices. We also believe there is no single correct approach to conducting assessment—it could be accomplished through the use of any number of formalized instruments, through structured interviews, or through a combination of processes developed at the local level. Further, assessments could be conducted by the One-Stop operator, by a partner agency, or by an outside organization on a contract basis.

Clarifying language has been added to the regulations at § 663.160 which states that initial assessment ''provides preliminary information regarding the individual's skill levels, aptitudes, interests, (re)employability and other needs.'' As a core service, the initial assessment is necessarily a brief, preliminary information gathering process that, among other things, will provide sufficient information about an individual's basic literacy and occupational skill levels to enable the One-Stop operator to make appropriate referrals to services available through the One-Stop and partner programs. Comprehensive assessment, which is an intensive service, is a more detailed examination of these issues and may explore any number of things relevant to the development of a person's IEP. These might include some combination or all of the following: educational attainment; employment history; more in-depth information about basic literacy and occupational skill levels; interests; aptitudes; family and financial situation; emotional and physical health, including disabilities; attitudes toward work; motivation; and supportive service needs. We expect that all partner agencies in the One-Stop, under any applicable State policies, will work to achieve consensus on the required components of the assessment system for the One-Stop system at any local level. In doing so, they should take into account any special assessment needs that may be experienced by individuals with disabilities and other populations with multiple barriers to employment. As we proceed with the implementation of WIA we will consider gathering ''best practices'' on the delivery of assessment services to share with the system.

One commenter suggested adding language to § 663.160 mandating that assessment and service strategies identified in IEPs conducted by a non-WIA program, satisfy the conditions of WIA, thereby making participants eligible for intensive and training services under the Act.

Response: Because there are differences in the legal and program requirements among the various programs that might provide assessments, we do not think we can require that all assessments from any source be accepted as valid for WIA. We do, however, support efforts to create common intake systems and to share data across programs, thereby eliminating duplication of effort for program staff or customers. We also believe that assessments, evaluations, and service strategies developed by partner agencies for individuals are the product of that agency's unique expertise, and, therefore, should be given careful consideration. We encourage Local Boards and partner agencies to develop MOU's, with required and optional partners, that provide for procedures to ensure that, where appropriate, partner assessments will be accepted as valid for WIA, and WIA assessments will be accepted as valid for partner programs. Of course, to be acceptable, an assessment, from any source, must provide the information needed by the One-Stop operator or the partner program. Local Boards and partner programs should work together to develop assessment tools that will serve all partner interests. If necessary for WIA purposes, the One-Stop operator may choose to supplement assessment information provided from another agency. Given the limited funding available, it is important to avoid duplication of services. No changes have been made to the Final Rule in this section.

Subpart B—Intensive Services

1. Intensive Services for Adults and Dislocated Workers: Section 663.200 discusses intensive services. It provides that intensive services beyond those listed in the Act may also be provided. Out-of-area job search expenses, relocation expenses, internships, and work experience are specifically mentioned to clarify that they are among the additional intensive services that may be provided. Intensive services are intended to identify obstacles to employment through a comprehensive assessment or individual employment plan in order to determine specific services needed, such as counseling and career planning, referrals to community services and, if appropriate, referrals to training.

Several commenters supported § 663.250 which provides that there is no minimum amount of time for individuals to stay in core or intensive services, stating that this approach maximizes local flexibility and ensures that each person's needs are properly addressed. In general, the comments received on subpart B related both to expanding or limiting allowable intensive services, to listing specific populations as among those potentially eligible for intensive services, and to proposing definitions of ''self sufficiency.''

We received several comments on the definition of intensive services at

§ 663.200(a). Two comments wanted nearly all of the specific statutory language illustrating intensive services, at WIA Section 134(d)(3)(C), reiterated in this section. They also requested that ''orientation and mobility training for persons with disabilities'' be added to the list of allowable intensive services. One commenter recommended adding to the list of intensive services ''English as a Second Language (ESL), Vocational Education integrated with ESL (VESL), Functional Context Education Programs that integrate literacy or ESL and job training.'' Another commenter asked that the Final Rule define literacy to include reading and math literacy.

Response: § 663.200(a) refers to the provisions at WIA Section 134(d)(3)(C) on the types of intensive services. The list of services in this section is not intended to be all inclusive and may be expanded by State Boards and Local Boards based on, among other things, local conditions and the needs of the various populations within the local area for such additional intensive services. Although the types of services recommended by the commenters may have merit for certain populations and would be permissible WIA-funded intensive services, we believe that the determination of the specific types of intensive services to be provided are matters for local decision-making and should be an integral part of the State and Local Plan process. Clearly, we expect State and Local Boards to consider the needs of the local population, including individuals with disabilities and other special needs populations, in the design and delivery of services which respond to those needs. It is also expected that concerned parties will have the opportunity to contribute to the planning and design of local programs and services through either representation on the State and Local Workforce Investment Boards or the open plan review and comment process.

On the suggestion of including ESL, VESL and Functional Context Education Programs that integrate literacy or ESL and job training as intensive services, we note that WIA section 134(d)(4)(D), which describes ''Training services,'' specifically includes adult education and literacy activities provided in combination with other job skills training. Such adult education and literacy training activities, when combined with a job may include ESL, and other needed educational services for participants, including reading and math literacy, as determined by Local Board policies, and the individual assessment. As indicated above, the list of intensive services is not all inclusive. However, language skills independent of skills training would appear to be of limited value in leading to (re)employability for individuals without significant work histories and occupational skills. We expect that basic language skills will be provided as a short-term prevocational service when part of an Individual Employment Plan in which such activities are followed by additional language skills training as a ''training service,'' in accordance with procedures established by the State or Local Board. Such determinations are for State and local decision-making. No change has been made in the Final Rule.

Several commenters expressed concern about the inclusion, at § 663.200(a), of internships and work experiences as intensive services, rather than as training services. Some commenters were concerned that participants could be exploited in unpaid work experience and recommended that we establish time limits (*e.g.*, not to exceed 90 days) for such activities, and emphasize that labor standards apply. One commenter thought that there may be a potential conflict with Wage and Hour rules if work experience is in the private for-profit sector and unpaid. Other commenters wanted to exclude work experiences with private for-profit employers, limiting it to public and private non-profit entities, and allow placement with private for-profit employers only for on-the-job training (OJT), because of the potential for abuse by employers that the commenter believes has occurred in the past.

A few commenters indicated that since internships and work experiences are designed to impart specific skill and behavioral competencies they should be defined as ''training'' rather than ''intensive services.'' One comment suggested that, consistent with prior JTPA provisions, work experience under WIA should be only for those individuals with no significant work history. Another comment asserted that, given the high cost of providing work experience, participants could be best served by job readiness or some other intensive service.

Two commenters indicated that internships and work experience must be measured through outcomes, including training-related placements, career ladders, and competencies. One of the commenters added that these must be paid activities. One commenter recommended that the Final Rule make clear that work experience could be with a public sector employer, including a service or conservation corps.

Response: We understand the commenters' general concerns regarding internships and work experience, particularly unpaid work experience. We expect that work experience will be paid in most cases and labor standards will apply in any situation where an employer/ employee relationship, as defined by the Fair Labor Standards Act, exists. We have revised § 663.200(b) to clarify this policy.

We believe that the use of unpaid internships and work experiences should be limited and based on a service strategy identified in an Individual Employment Plan, and combined with other services. We expect that such activities will be of limited duration, based on the needs of the individual participant. State and Local Boards are responsible for developing policies on the use, and duration, of both paid and unpaid internships and work experiences as a service strategy. Similarly, we expect that, along with other activities, State and Local Boards will monitor and evaluate the effectiveness of intensive services, including internships and work experience, in responding to the needs of participants and the results on participant outcomes. While not minimizing the commenters' concerns, there are good examples of local programs using paid and unpaid work experience which respond to the needs of participants, for example the School-to-Work Opportunities initiative provided many young people the experience the needed to secure higher paying, higher skilled employment.

On the issue of defining internships and work experience as ''training'' rather than ''intensive services,'' we believe that such services may respond to the needs of particular clients which, when combined with core services already received and other intensive services, may result in positive employment outcomes without the need for ''training'' services. For other clients, such experiences may prove beneficial in identifying the need for, and referral to, needed training services consistent with the Individual Employment Plan. No change has been made in the Final Rule.

On the issue of limiting internships and work experience to the public and private non-profit sectors, we feel that such a limitation would unnecessarily restrict the employment opportunities for clients seeking services and, to a degree, limit customer choice since the majority of employment opportunities exist in the private for-profit sector. Nothing in the rule prevents Local Boards from providing work experience with community service or conservation

service corps programs. No change has been made to the Final Rule.

2. Delivery of Intensive Services: We received a few comments on the provisions in § 663.210 about how intensive services are to be delivered. A few commenters wanted to revise § 663.210(a) to address special needs populations by adding at the end of the first sentence ''<, including specialized One-Stop centers as authorized.,'' and, in the second sentence inserting after ''service providers'' and before ''that''—'', which may include contracts with public, private for-profit, and private non-profit service providers, and including specialized service providers (*i.e.*, community rehabilitation programs for persons with disabilities).''

Response: Section 134(c)(3) of the Act authorizes specialized centers as part of the One-Stop service delivery system. Language has been added to § 663.210(a) in the Final Rule to clarify that intensive services may be provided through such specialized One-Stop centers. Section 134(d)(3)(B)(ii) of the Act provides that intensive services may be provided through contracts with service providers, which may include contracts with public, private for-profit, and private non-profit entities approved by the Local Board, and as noted, language has been added in the Final Rule at § 663.210(a) to reflect the statutory provision on delivery of intensive services through contracts with service providers, and have clarified that such service providers may include specialized service providers. However, we have not added the parenthetical phrase related to community rehabilitation programs.

One commenter felt that the Final Rule must make clear that intensive services cannot be provided through individual training accounts or vouchers.

Response: We believe that the statutory and regulatory provisions are sufficiently clear on how WIA-funded services are delivered to participants. The Individual Training Account is a tool for providing WIA title I funded training services under section 134(d)(4)(G). The requirements for delivery of intensive services are described at WIA section 134(d)(3)(B) and § 663.210. Consistent with our policy of providing flexibility to States and local areas, we believe the method of delivery of intensive services is a matter of State and local discretion, provided that the statutory and regulatory requirements are met. Therefore, no change has been made to the Final Rule.

3. Participation in Intensive Services: Section 663.220 explains that intensive services are provided to unemployed adults and dislocated workers who are unable to obtain employment through core services and require these services to obtain or retain employment, and employed workers who need services to obtain or retain employment that leads to self-sufficiency. Sections 663.240 through § 663.250 specify that an individual must receive at least one intensive service, such as the development of an Individual Employment Plan with a case manager or individual counseling and career planning, before the individual may receive training services and that there is no Federally required minimum time for participation in intensive services. Each person in intensive services should have a case management file, either hard copy, electronic or both. Section 663.240 explains that the case file must contain a determination of need for training services, as identified through the intensive service received.

A number of commenters expressed concern that § 663.220(a) describes eligibility for unemployed individuals as simply requiring that they are unable to obtain employment through core services while § 663.220(b) describes employed and/or dislocated workers as in need of intensive services to obtain or retain employment that leads to self-sufficiency. Commenters felt this appeared to set a double standard and conflicted with the provisions of Titles II and IV of WIA which clearly tie self-sufficiency to employment in all cases. The commenters felt that these provisions might be interpreted to mean that unemployed individuals may be put in jobs that do not lead to self-sufficiency. Commenters recommended that the Final Rule provide that States and Local Boards may set their own standards for employment, e.g., using the Self-Sufficiency Standard for all job-seekers.

Response: We agree that the ultimate goal for all employment, whether under WIA or any other program, should be self-sufficiency for the job seeker. However, that is different from establishing eligibility for adults and dislocated workers to receive intensive services under WIA. The eligibility criteria set forth in § 663.220 restates the statutory definition established in WIA section 134(d)(3)(A). The reference to employment leading to self-sufficiency appears only in WIA section 134(d)(3)(A)(ii), governing the eligibility of employed individuals to receive intensive services. A determination that an employed or dislocated worker is in need of intensive services to obtain or retain employment that allows for self-sufficiency is one of the criteria for the receipt of such services. Although the statute establishes slightly different eligibility criteria for unemployed and employed adults and dislocated workers to receive intensive services, we do not believe that there is a direct conflict with the provisions of WIA Titles II and IV concerning self-sufficiency as it relates to Adult Education and Literacy Programs and Vocational Rehabilitation Programs, respectively.

While it is true that the difference in eligibility for intensive services for unemployed and employed adults and dislocated workers might be interpreted to mean that unemployed individuals can be put in jobs which do not lead to self-sufficiency, we want to make clear that the eligibility criterion is a service requirement and not an employment outcome. Other provisions in WIA pertaining to wage and benefit requirements, which appear at WIA section 181, labor standards, at WIA section 181(b), employment in demand and growth occupations, at WIA section 134(c)(4)(G)(iii), and employment in jobs with upward mobility, at WIA section 195(1), to cite a few, all enhance opportunities for employment which allows for self-sufficiency. Additionally, the performance standard measures, at WIA section 136(b)(2)(A), will also be a spur to placing, and retaining, participants in jobs with good, self-sufficient wages. As the eligibility criteria are statutory requirements which the Secretary does not have authority to change, no change has been made to the Final Rule.

We agree with the suggestion the State and Local Boards be allowed to set their own standards for employment, using the self-sufficiency standard developed by the State or Local Boards for all employment. There is nothing in the Act or Interim Final Rule that would preclude such a policy as a goal for participant outcomes. Any such policy must meet the minimum requirements in § 663.230 for defining self-sufficiency. While statutory language prevents us from mandating such a policy, we do strongly recommend it. No change has been made to the Final Rule.

One commenter suggested that leaving it solely to the One-Stop operator to determine who is in need of more intensive or training services could be problematic, particularly if the operator is a for-profit entity which could financially benefit from limiting access to intensive and training services.

Response: WIA contains provisions which address this commenter's concerns. Section 121(d) of WIA provides that the Local Board, with the agreement of the chief elected official

(CEO), is authorized to designate or certify One-Stop operators and to terminate, for cause, the eligibility of such operators. The eligibility provisions for One-Stop operators at WIA section 121(d)(2)(A) provide that such operators must be designated or certified through a competitive process or through an agreement between the Local Board and a consortium of entities that, at a minimum, must include three or more of the One-Stop partners described at WIA section 121(b)(1). In addition, the One-Stop operators are subject to the provisions of the local Memorandum of Understanding which must include, among other things, methods for referral of individuals between the One-Stop operator and the One-Stop partners, for the appropriate services and activities. Potential problem areas may also be identified through local program monitoring and oversight, requiring that action be taken to correct identified deficiencies. Additionally, the regulations, at 20 CFR 667.600, provide for the establishment of local grievance procedures for handling complaints and grievances from participants and other interested parties affected by the local workforce investment system, including an opportunity for local level appeal to the State. These and other provisions will help State and Local Boards ensure the integrity of the new program. Accordingly, no change has been made to the Final Rule.

We received a few comments about to the sequencing of intensive and training services at § 663.240.

One commenter supported the requirement that participants must receive at least one intensive service such as development of individual employment plan or individual counseling and career planning before receiving training services. Another commenter wants an Individual Employment Plan to be required for any worker seeking intensive or training services.

Response: We agree that doing an Individual Employment Plan for participants determined eligible for intensive services is a good idea, and we recommend that an IEP be developed for every individual who uses intensive or training services. However, the Act provides that the development of an Individual Employment Plan is only one of the intensive services that may be provided to individuals determined to be in need of such services; it is not a condition to receive that service. Accordingly, no change was made to the Final Rule.

One commenter acknowledged that the One-Stop partners, the Local Board, and the CEO must participate in the development of policies for eligibility beyond core services, but recommended that these policies must also be available for public review and comment to assure fairness in the selection process.

Response: We agree with the comment and believe that, although not specifically required, such policies should be included in the Local Plan and available for public review and comment. While we cannot mandate their inclusion, we encourage Local Boards to include such a policy in their local workforce investment plan development process. If such policies are not included in the plan, their development, as an activity of the Board, is subject to the sunshine provision at WIA section 117(e) and new section 20 CFR 661.307. The sunshine provision requires that the Board make information about its activities publicly available through open meetings and minutes of meetings, on request. These requirements also provide an opportunity for public input into Local Board plans and policies. No changes have been made to the Final Rule.

A few comments requested that a new sentence be added at the end § 663.220(b) to read: ''Persons with disabilities and other special needs populations may also qualify for intensive services.''

Response: Eligibility for intensive services is open to all unemployed adults and dislocated workers and all employed adults and dislocated workers who meet the eligibility criteria and are determined to be in need of such services. To single out specific populations in the regulations would imply that there are different criteria for those populations to receive intensive services, which is not the case. Individuals with disabilities and other special needs populations may as easily qualify for intensive services under the existing eligibility criteria as any other person or group since the eligibility criteria are based on need for the services. In addition, any barrier to employment an individual may face (which may include a disability) should be taken into account during the process of determining eligibility for intensive services. We believe that the existing language adequately addresses the statutory requirements, and is consistent with the key principle to provide maximum flexibility to States and local areas, that additional proscriptive language in regulations is not needed.

4. Self-sufficiency: Section 663.230, discusses how ''self-sufficiency'' should be determined. WIA requires a determination that employed adults and dislocated workers need intensive or training services to obtain or retain employment that allows for self-sufficiency as a condition for providing those services. Recognizing that there are different local conditions that should be considered in this determination, the regulation provides maximum flexibility, requiring only that self-sufficiency mean employment that pays at least the lower living standard income level. State Boards or Local Boards are empowered to set the criteria for determining whether employment leads to self-sufficiency. Such factors as family size and local economic conditions may be included in the criteria. It may often occur that dislocated workers require a wage higher than the lower living standard income level to maintain self-sufficiency. Therefore, the Rule allows self-sufficiency for a dislocated worker to be defined in relation to a percentage of the lay-off wage.

From our review of the comments received on § 663.230, it appears that there is some confusion with respect to the term ''self-sufficiency'' and how it applies under WIA. A number of commenters are clearly under the mistaken impression that the provisions of §§ 663.220(b) and 663.230 treat ''employment leading to self-sufficiency'' as a performance outcome measure under WIA, which is not the case. The commenters raised the point that the manner in which self-sufficiency is defined could impact performance outcomes if standards are set low in one area and higher in another. If such measures will be used in comparisons across State and local lines, setting higher standards for employment that leads to self-sufficiency could negatively impact the outcomes achieved by the local system with higher standards.

WIA section 136 establish the WIA performance accountability system, including State and local performance measures intended to assess the effectiveness of States and local areas in achieving continuous improvement of WIA Title I–B funded workforce investment activities. Although the core indicators of performance for WIA adult and dislocated worker activities look at outcomes such as wage gain, job retention and other factors in determining successful performance of the programs; ''self-sufficiency'' is not one of the statutory core indicators. Section 663.230 is not intended to imply that this is the case.

Unlike predecessor employment and training programs, WIA opens up employment and training services to

employed adults and dislocated workers. In doing so, the Act establishes certain criteria that employed workers must meet in order to receive services beyond core services. As indicated in our response to the comments received on the ''Participation in Services'' sections, the use of the term ''self-sufficiency'in § 663.220(b) only applies in the context of establishing eligibility for employed adults and employed dislocated workers to receive intensive services under WIA. A determination that an employed adult or dislocated worker is in need of intensive services to obtain or retain employment that allows for self-sufficiency is one of the criteria for the receipt of such services. This provision serves as a ''limiter'' in determining service eligibility for such employed workers, which helps ensure that intensive services are provided to those employed adults or dislocated workers most-in-need of such services, such as individuals employed in low skill/low wage jobs and dislocated workers who may be working but who have not achieved the wage replacement rate for self-sufficiency defined by a State or Local Board for dislocated workers.

As indicated above, the regulations at § 663.230 were developed with the recognition that the ''self-sufficiency'' definition would vary from State-to-State, and even from area-to-area within a State. Therefore, the regulations provide that, for the purposes of determining the eligibility of employed and dislocated workers for intensive services, State and Local Boards are responsible for establishing the criteria for determining whether employment leads to self-sufficiency. Accordingly, the regulation provides maximum flexibility, requiring only that self-sufficiency mean employment that pays at least 100 percent of the lower living standard income level (LLSIL).

In general, the majority of the comments received on § 663.230 dealt with two areas: (1) recommendations on factors that should be included in defining ''self-sufficiency,'' and (2) the need for a more reliable measure of self-sufficiency than the LLSIL.

A few commenters asked why, since the LLSIL takes family size and economic conditions into account, there was a need to require the use of other factors in determining self-sufficiency. The commenters also asked for clarification of the purpose of asking State and Local Boards to set additional criteria for self-sufficiency, as well as the benefit to a local system.

Response: Under JTPA, the LLSIL was used as one of the ceilings to measure whether a participant was economically disadvantaged. Service Delivery Areas had little discretion in setting local definitions different from the statutory definition. Under WIA, in contrast, the LLSIL is a floor to measure whether a job leads to self-sufficiency and States and local areas have broad discretion to set a standard above that floor. The Preamble to the Interim Final Rule clearly indicates that factors such as family size and local economic conditions may be included in criteria developed by a State or Local Board to define self-sufficiency. The LLSIL also includes, and is adjusted using, these and other factors. In acknowledging that conditions vary from place to place, we have maintained maximum flexibility by allowing States and Local Boards to determine what self-sufficiency means in their areas, which may include other factors not included in determining the LLSIL.

As indicated above, State and Local Boards are responsible for determining self-sufficiency and must develop criteria for making that determination. The reason for authorizing the State and Local Boards to develop criteria for making these determinations is that State and Local Boards are best able to judge such factors as the cost of living in a local area and the wages available in jobs in the local area. Thus, they are best able to set a standard for self-sufficiency that meet the needs of their local economy. The ''benefit'' to a local system is the flexibility provided to develop such criteria, above the established floor of the LLSIL, so that local conditions may be taken into account. Therefore, no change has been made to the Final Rule.

A number of commenters stated that since the regulations use self-sufficiency as a means to measure WIA success, it should be defined in an individualized way. Further, data collection systems must be able to account for higher living expenses experienced by persons with disabilities in any determination of ''self-sufficiency''. One commenter added that Federal and State work incentives used by people with disabilities should not be viewed as lack of self-sufficiency. Another commenter said that self-sufficiency must also include measures for long-term success in the labor market.

One commenter noted that the regulations say that self-sufficiency for employed dislocated workers may be defined relative to a percentage of the layoff wage, and suggested specifying in the Final Rule that for displaced homemakers, self-sufficiency may be defined as a percentage of household income before displacement. One commenter indicated that the definition for self-sufficiency must include discrete measures for benefits, particularly health benefits. Also, the commenter suggested that we provide guidance and technical assistance to State and Local Boards to help them develop measures of self-sufficiency that are tied to family wage/benefit levels needed to live in local communities.

Response: The regulations provide that State and Local Boards have the responsibility for developing the criteria for determining whether employment leads to self-sufficiency. With the exception of establishing the minimum LLSIL requirement for such criteria, we have refrained from establishing further criteria in the regulations to provide maximum flexibility to State and Local Boards in developing such criteria. That flexibility includes tailoring definitions of self sufficiency to meet factors peculiar to an individual or group. The State and Local Boards are in the best position to develop criteria which reflect local economic conditions and other factors impacting on the financial needs of the populations to be served, in defining self-sufficiency for determining eligibility for intensive services. Although the factors suggested by the commenters may have merit, and serve as examples that Boards might consider, the development of such criteria is subject to local decision-making and should be explored at that level. We do, however, expect State and Local Boards to consider, among other things, the needs of individuals with disabilities, and other special needs populations with multiple barriers to employment, in the development of such criteria. We have modified § 663.230 to reflect this expectation.

One commenter stated that the regulations must require Local Boards to consult with organized labor and community based organizations in the development of self-sufficiency measures, and wants the process for establishing and updating self-sufficiency measures included in the plan as well as all plan modifications.

Response: Organized labor and community-based organizations will participate in the development of self-sufficiency measures by virtue of their representation on State and Local Boards, along with other representatives and local partners on the board. As with other policies and procedures not specifically addressed in the Local Plan requirements at WIA section 118, we believe that, although not specifically required, such self-sufficiency policies should be included in the Local Plan and available for public review and comment. While we cannot mandate

inclusion, we encourage the Local Boards to include such a policy in their plan development process. If such policies are not included in the plan, they are, their development, as an activity of the Board, is subject to the Sunshine Provision at WIA section 117(e) and new section 20 CFR 661.307.

One commenter, while appreciative that self-sufficiency as it relates to intensive services is set at the lower living standard income level, added that research has shown that a ''true'' standard for self-sufficiency should be even higher, at 150 percent of the lower living standard. The comment concluded that this level has a potential for setting a high bar for measuring success under WIA—sending a signal that the system has not succeeded when individuals end up in minimum wage jobs. The commenter urged that the regulations require that the Local Plans spell out how the local areas will define self-sufficiency, so that it may be subject to public comment and review. Another commenter felt that the LLSIL is not a reliable measure of self-sufficiency, and recommended that the Bureau of Labor Statistics (BLS) develop a new LLSIL that reflects the costs of self-sufficiency for today's families, including the cost of child care. Until such a measure is developed it was recommend that the self-sufficiency floor be set at 150% of the LLSIL.

Response: As indicated earlier, ''self-sufficiency'' is an eligibility criterion for the determination of need for intensive services for employed workers. Also, the regulations set the floor for self-sufficiency at employment that pay *at least* 100 percent of the LLSIL. State and Local Boards may adjust the level upward in defining employment that leads to self-sufficiency, based on, among other things, local conditions and the needs of the populations to be served. Our intent in drafting § 663.230 was to give State and Local Boards maximum flexibility to define ''self-sufficiency''. As indicated above, we intended to use the LLSIL as a floor below which Boards cannot go in their definition. We agree with the commenters that there are good arguments that the ''real'' measure of self-sufficiency will be above the LLSIL in most areas, sometimes significantly above it. We think that one of the important purposes of the workforce investment system is to help customers find jobs that will support them and their families. We expect that State or local definitions will reflect this reality and this purpose. We do not, however, wish to constrain State and local discretion too far. Neither can we reasonably select a higher floor that we can be sure will cover all of the variety of economic conditions that exist in this diverse nation. Therefore, no change has been made to the Final Rule.

One commenter wanted to know what action we will take if the State Board and the Local Board decide to set different criteria for self-sufficiency and they do not agree?

Response: It is entirely possible that self-sufficiency measures developed by a State Board and a Local Board may, in some respects, differ depending upon local conditions and other factors that may not be present in other areas within the State. The regulations provide maximum flexibility to State and Local Boards to address this issue. It is also possible that the State board might establish some general guidelines for use by Local Boards in developing such measures, with latitude for the Local Boards to tailor the measures to their local needs. However, since Local Boards must comply with the State policies, State Boards are encouraged to adopt policies that Local Boards can adapt. We do not anticipate that this will be a problem area, however, if it does become one, we are available to provide technical assistance upon request.

One commenter felt that using the minimum requirement of the LLSIL will result in various definitions for different individuals, depending on the size of the family, and suggested it is more reasonable to use a percentage of the area's average annual income.

Response: We agree that the LLSIL is based on family size and will result in different income levels for individuals, depending on family size. The LLSIL is adjusted for regional, metropolitan, urban, and rural differences and family size. The use of a single measure as suggested would be an insufficient measure of self-sufficiency because it would exclude other factors that impact on such a determination, most importantly family size. We encourage State and Local Boards to adopt definitions which reasonably reflects local economic conditions and family needs, and made no change to the Final Rule.

One commenter would like the definition of low-income to be changed to 100 percent of LLSIL, rather than 70 percent.

Response: The term ''low income individual'' is statutorily defined at WIA section 101(25). We do not have authority to change this statutory provision. However, § 663.230 provides that, at a minimum, self-sufficiency is at least 100 percent of LLSIL for determining if employed adults and dislocated workers need intensive services. No change has been made to the Final Rule.

We received comments on the definition of an Individual Employment Plan at § 663.245. One commenter recommended inserting, ''including support services'' between the words ''appropriate combination of services'' and ''for'' in order to ensure that the potential need for supportive services is discussed and that appropriate information, supportive services and referrals for services are provided. Another commenter suggested replacing the word ''strategy'' with ''process'' to convey a more interactive mode between case manager and client.

Response: Section 663.245, defining the Individual Employment Plan, provides that these plans will identify the appropriate combination of services for the participants to achieve their employment goals. The ''appropriate combination of services'' would, by definition, include supportive services if determined appropriate, based on the need of the individual participant. To single out a specific service in the regulations would imply that the service is a plan element in all cases, which is not the necessarily the case. A determination on the need for services, and the appropriate service mix to respond to those needs, are made at the local level on a case-by-case basis. On the suggestion to replace ''strategy'' with ''process,'' while not wanting to appear to quibble over the choice of words, we feel that, in this case, the former is the more proactive word and conveys the idea of a well planned approach for individual employment goals worked out in an interactive way by the case manager and the participant, as envisioned under WIA. No changes have been made to the Final Rule.

One commenter felt that the employment goals should include earning a self-sufficiency wage. States should be encouraged to pursue innovative strategies to meet that goal, as provided for in the Act, including access to training and employment in nontraditional fields for women, entrepreneurship training and asset-building instruction and guidance.

Response: As indicated earlier, we think that self-sufficient employment is an important goal for all employment whether under WIA or any other program. The workforce investment system contemplated under WIA encourages State and Local Boards to develop innovative approaches in the design and delivery of services which respond to the needs of all job seekers, including those suggested by the commenter. The Act, however, only requires a determination that

employment leads to self-sufficiency when deciding whether an employed adult or dislocated worker is eligible for intensive or training services and we do not think we can require it as a precondition to all employment. Therefore, no change has been made to the Final Rule.

Some comments addressed § 663.250, which provides that there is no minimum length of time a participant must spend in intensive services.

One commenter recommended that, even though § 663.250 places no minimum time limit for participation in intensive services before receiving training services, local One-Stop systems be urged to provide sufficient intensive services to ensure that individuals are well prepared for training and long term employment opportunities. Another commenter said that States and Local Boards must be precluded from establishing minimum and maximum time periods for participation in intensive services.

Response: Section 663.250 recognizes that the duration of intensive services will vary among individual participants. State and Local Boards have the flexibility to develop policies on the delivery of intensive services, which may include limits on the duration of particular services, depending on the types of services provided and the needs of the participant. We expect that the time spent in intensive services will be sufficient for the participant to receive needed services, consistent with employment goals, and have modified § 663.250 to reflect that expectation. We have not made a change in the regulations in response to the comment suggesting we preclude States or Local Boards from establishing minimum and maximum time periods for participation in intensive services, since we want to ensure State and local flexibility in this important area.

A commenter recommended that States be required to establish measures for determining the ongoing effectiveness of intensive services to assure that participants receive the maximum benefit.

Response: Under WIA sections 111 and 117, State and Local Boards are required to monitor and evaluate the effectiveness of the WIA program and we expect this to include monitoring the effectiveness of intensive services to respond to the needs of participants and to produce good participant outcomes. Additionally, the State, in accordance with WIA section 136(e), must conduct ongoing evaluation studies of Statewide title I–B workforce investment activities. Such studies are intended to promote, establish, implement and utilize methods for continuously improving such activities in order to achieve high-level performance within, and high-level outcomes from, the statewide workforce investment system. The State is required to periodically prepare and submit reports of the evaluation studies to State and Local Boards to promote efficiency and effectiveness of the statewide system in improving the employability for job seekers and competitiveness for employers. We think that these requirements meet the intent of the commenter's request. No change has been made to the Final Rule.

Subpart C—Training Services

1. Training Services: Training services are discussed in §§ 663.300 and 663.320. Training services are designed to equip individuals to enter the workforce and retain employment. Under JTPA, a dislocated worker participating in training under title III of JTPA is deemed to be in training with the approval of the State Unemployment Compensation Agency. With such approval, unemployment compensation cannot be denied to the individual solely on the basis that the individual is not available for work because he or she is in training. Although there is no comparable provision in WIA, this JTPA provision will remain in effect during the transition period under the Secretary's authority to guide that transition from JTPA to WIA. We will seek an amendment adding similar language to WIA which would deem all adults participating in training under title I of WIA to be in approved training for the purposes of unemployment compensation qualification.

One commenter asked that we clarify in the Final Rule that, under WIA, training may be provided to both employed and incumbent workers.

Response: While this statement is true on its face, we believe there is confusion within the workforce development community about the distinctions between ''employed'' and ''incumbent'' workers. The State Board defines the term incumbent worker since incumbent worker training is an allowable statewide activity under WIA section 134(a)(3)(A)(iv)(I). Funding for incumbent worker training must be drawn from the State's combined adult, youth, and dislocated worker ''15-percent funds.'' As provided at 20 CFR 665.320(d)(2), the State may also use a portion of its dislocated worker ''25-percent rapid response funds'' to devise and oversee strategies for incumbent worker training. These *latter* funds, however, may not be used to directly fund the incumbent worker training itself. These individuals do not necessarily have to meet the eligibility criteria for dislocated workers contained at section 101(9) of the Act nor do they have to meet the criteria for employed adults and dislocated workers under WIA section 134(d)(4)(A).

''Employed'' adults and dislocated workers may also receive training services through the One-Stop system under WIA when certain conditions are met. These individuals must meet the statutory definition of an eligible adult or dislocated worker and, to receive intensive services, and ultimately training, an employed individual must be determined by a One-Stop operator to be in need of such services to obtain or retain employment that leads to self-sufficiency. Funding for these activities comes from the ''formula'' funds provided to the Workforce Investment Area.

One commenter felt that, in order to protect participants, any training service that a Local Board offers that is in addition to those listed in the Act must be identified in the Local Plan so that there can be public review and comment. Similarly, any additional training services that are offered after the approval of the Local Plan must also be subject to public review and comment.

Response: We agree with the comment and believe that, although not specifically required, the training services that the Local Board intends to offer should be included in the Local Plan and available for public review and comment. While inclusion is not mandated, we encourage the Local Boards to include such information in their plan development process. This allows the Local Board to communicate its vision and its proposed priorities in the delivery of services, and ensures that all interested parties have an opportunity to review and comment on those proposed policies. We also agree with the comment that the plan should contain policies concerning plan modifications, including a definition of ''substantive change,'' and provide that when such changes occur there should be a similar process allowing for public review and comment. As indicated in earlier discussions on Local Plan requirements, if such policies are not included in the plan, they are, as an activity of the Board, subject to the sunshine provision at WIA section 117(e) and new § 661.307 and must be developed in an open manner. No change has been made to the Final Rule.

Two commenters suggested that the regulations should list non-traditional job training, including entrepreneurial training, asset building, financial literacy training, micro enterprise

development, and vocational English as a Second Language training, as well as other kinds of training services not specifically listed in the Act.

Response: We support the provision of a wide variety of training services for eligible customers of the workforce development system, including all those mentioned by the commenter. As noted in the regulations at § 663.300, the list of training services in the Act is not all-inclusive and additional services may be provided. We believe that this language provides State and Local Boards the flexibility necessary to offer training services appropriate to their particular needs, without prescribing to the Local Boards what those services should be. Accordingly, no change has been made in the Final Rule.

2. Determining the Need for Training: Section 663.310 provides, among other things, that the One-Stop operator or partner determines the need for training based on an individual (1) meeting the eligibility requirements for intensive services; (2) being unable to obtain or retain employment through such services; and (3) being determined after an interview, evaluation or assessment to be in need of training. Section 663.310 requires that, to receive training, an individual must select a program of services directly linked to occupations in demand in the area, based on information provided by the One-Stop operator or partner. If individuals are willing to relocate, they may receive training in occupations in demand in another area.

We received numerous comments about the impact of training eligibility criteria on individuals with disabilities. The commenters were concerned about the requirement that eligible individuals must be found to have the skills and qualifications to successfully participate in the selected program of training services. Commenters felt that this could limit the opportunities available for disabled persons.

Response: While we are sensitive to these concerns, we must point out that this criterion is taken directly from the Act at section 134(d)(4)(ii), and is, therefore, a required element for all One-Stop operators making training eligibility decisions. This criterion applies only to training funded by WIA title I and not to training funded by other WIA partners. We believe all training eligibility decisions should be made on the basis of each individual's skills, abilities, interests, and needs. It would, of course, be inappropriate to enroll any individual, whether or not they are disabled, into training programs for which they did not have the skills to be successful. We also recognize that care must be taken not to stereotype persons with barriers to employment, including disabilities, when evaluating their skills, abilities, interests, and needs. Occasionally, some question may arise as to whether a particular individual—such as a person with disabilities—has the capacity to be successful in a given training program, taking into consideration the availability of reasonable accommodation or modification under 29 CFR 37.8. An advantage of the One-Stop service delivery structure is that partner agencies with specialized expertise will be available, when necessary, to assist with determinations as to what training may fall within a particular individual's skills and qualifications. We encourage One-Stop operators and staff to take advantage of the unique expertise of these partners when serving individuals with special needs. We also note that individuals with a disability, or any others, who feel they have been improperly assessed by One-Stop staff regarding their skills and qualifications may appeal the decision using the appropriate local grievance or complaints procedures established in accordance with WIA section 181(c) and 20 CFR 667.700. No change has been made to the Final Rule. An individual who feels that he or she has been discriminated against because of his or her disability may file a complaint in accordance with procedures for processing discrimination complaints, as set forth in 29 CFR 37.70 through 37.80.

One comment suggested that § 663.310 was not sufficiently specific in linking training services to occupations in demand, as required by the Act.

Response: The language used in the rule at § 663.310(c) is essentially the same as that found in the Act at section134(d)(4)(A)(iii). Section 134(d)(4)(A)(iii), discussing eligibility for training uses the phrase ''directly linked to the employment opportunities in the local area or in another area. . . .'' In contrast, section 134(d)(4)(G)(iii), dealing with ITA's uses a slightly different phrase, ''directly linked to occupations that are in demand in the local area. . . .'' We assume that when Congress uses different language, it means different things. In this case, we think that the differences in phrasing mean that a person may be eligible to receive training if she/he seeks training in an occupation in which there are jobs available in the local area or in another local area to which the person is willing to relocate. On the other hand, training may not be financed through an ITA unless the training sought is in an occupation in demand in the local area or in an area to which the participant is willing to relocate. Thus, if a participant is found eligible for training because he/she seeks training in an occupation in which there are employment opportunities available but which is not classified by the local area as an occupation in demand, the training can only be provided if it can be arranged through one of the three exceptions to ITA's. While it is possible that individual may not be able to receive WIA-funded training because of this distinction, we think that there will not be many cases where this occurs. Since § 663.310 correctly reflects the statutory language, no change has been made to the Final rule. We do, however, encourage State and Local Boards to consider a range of approaches for identifying ''employment opportunities in the local area,'' including allowing participants to demonstrate employer-identified job opportunities.

We received a number of comments about the effects of the requirement that training programs selected must be directly linked to demand occupations in the local area, or in another area to which the individual is willing to relocate, on individual with disabilities. Commenters felt that this could restrict persons with disabilities from participating in the title I program and suggested granting a waiver of the requirement in appropriate cases.

We think that the commenters' concerns about the occupations in demand requirement are misplaced. As discussed above, the requirement for training eligibility is that the training must be linked to an employment opportunity available in the local community or in a place to which the participant is willing to relocate. The phrase on which the commenters focus, the occupations in demand requirement, is an eligibility condition for receipt of an ITA. Thus, a participant may be eligible for and receive training in any occupation (job) that is available to the participant. If the job is not in an occupation in demand, the participant may not be able to have the training funded through an ITA, but may still receive the training through one of the exceptions to ITA's, for example, through contracted training provided by a CBO with demonstrated effectiveness in serving populations with special needs. No change has been made to the regulations.

There were several other more general comments about the criteria governing training eligibility. One commenter urged that training services be linked with employment opportunities in high

wage/high skill demand occupations that provide career and upgrade opportunities.

Response: We agree that this is a worthy goal, and one which promotes employment opportunities leading to economic self-sufficiency. However, in order to ensure that State and Local Boards retain maximum flexibility to establish training policies that best meet their unique needs and circumstances, we have refrained from including additional regulatory requirements. The regulations do contain other provisions that impact on this issue. The provisions on performance accountability, at 20 CFR 666.100, include measures on, among other things, job retention, wage gains and credentialing which may serve as an incentive to stress training in high wage and high skill demand occupations. No change has been made in the Final Rule.

Similarly, another comment suggested that § 663.310(c) be modified to clarify that training should only be for employment opportunities ''that provide a self-sufficiency wage.'' We agree, in concept, that the ultimate goal for all employment, whether under WIA or any other program, should be self-sufficiency for the job seeker. We expect that State and Local Boards will consider a wide range of issues including training for jobs that allow participants the opportunity to attain self-sufficiency. Section 663.310, as written, is essentially a recitation of the Act's training eligibility provisions. No change has been made to the Final Rule.

One comment suggested that the One-Stop partners, the Local Board, and the chief elected official must participate in the development of training eligibility policies, and that those policies must also be made available for public review and comment to assure fairness in the selection process.

Response: We agree that the Local Board, which must include representatives of the One-Stop partner agencies, is the entity responsible for making policy at the local level. We also believe that, although not specifically required, such policies should be included in the Local Plan and available for public review and comment. We encourage the Local Boards to include such a policy in their plan development process. If such policies are not included in the plan, their development, as an activity of the Board, is subject to the sunshine provision at WIA section 117(e) and new section 20 CFR 661.307. No change has been made to the Final Rule.

Another commenter suggested that Title I of the Act ''radically'' and ''bureaucratically'' restricts access to job skills training, and believed that the regulations require unemployed individuals to accept any job available, regardless of whether that job enables the participant to rise above the poverty level or not.

Response: We strongly disagree that the regulations require the result suggested by the commenter. The intent is not to require unemployed individuals to accept just any job. As we have stated above, in responding to comments on eligibility for intensive services, the different eligibility criteria for unemployed adults or dislocated workers should in no way be construed to allow participants to be placed in jobs that do not provide the opportunity for participants to attain self-sufficiency. The regulations clearly state there are no federally imposed minimum waiting periods before participants can progress to the next tier of services. Neither is there a federally imposed minimum number of failed job searches to demonstrate eligibility for the next tier of services. Rather, the regulations reflect our position that decisions regarding which services to provide, and the timing of their delivery, are best made on a case-by-case basis at the local level. Finally, we again note that neither the Act nor the federal regulations mandate a ''work first'' system that forces individuals into the first-available employment, regardless of whether or not that employment leads to self-sufficiency. No change has been made to the Final Rule.

3. Requirements When Other Grant Assistance is Available to Participants: Section 663.320 implements the requirements of WIA section 134(d)(4)(B), which limit the use of WIA funds for training services to instances when there is no or insufficient grant assistance from other sources available to pay for those costs. The statute specifically requires that funds not be used to pay for the costs of training when Pell Grant funds or grant assistance from other sources are available to pay those costs. Section 663.320 is intended to give effect to this WIA requirement and still give effect to title IV of the Higher Education Act (HEA), as amended (20 U.S.C. 1087uu), which prohibits taking into account either a Pell Grant or other Federal student financial assistance when determining an individual's eligibility for, or the amount of, any other Federal funding assistance program.

Section 134(d)(4)(B) of WIA requires the coordination of training costs with funds available under other Federal programs. To avoid duplicate payment of costs when an individual is eligible for both WIA and other assistance, including a Pell Grant, § 663.320(b) requires that program operators and training providers coordinate by entering into arrangements with the entities administering the alternate sources of funds, including eligible providers administering Pell Grants. These entities should consider all available sources of funds, excluding loans, in determining an individual's overall need for WIA funds. The exact mix of funds should be determined based on the availability of funding for either training costs or supportive services, with the goal of ensuring that the costs of the training program the participant selects are fully paid and that necessary supportive services are available so that the training can be completed successfully. This determination should focus on the needs of the participant; simply reducing the amount of WIA funds by the amount of Pell Grant funds is not permitted. Participation in a training program funded under WIA may not be conditioned on applying for or using a loan to help finance training costs.

With such coordination and arrangements, the WIA counselor is likely to know the amount of WIA funds available to the WIA participant when calculating the amount of financial assistance needed for the participant to complete the training program successfully. The WIA counselor needs to work with the WIA participant to calculate the total funding resources available as well as to assess the full ''education and education related costs'' (training and supportive services costs) incurred if the participant is to complete the chosen program. This also ensures both that duplicate payments of training costs are not made and that the amount of WIA funded training is not reduced by the amount of Federal student financial assistance in violation of 20 U.S.C. 1087uu.

It is important to note that the Pell Grant is not school-based; rather, it is a portable grant for which preliminary eligibility can, and should, be determined before the participant enrolls in a particular school or training program. The Free Application for Student Aid (FASA), which is used to establish Pell Grant eligibility, should be readily available at all One-Stop centers for assistance in the completion of these ''gateway'' financial aid applications.

Section 663.320(c) implements the requirements of WIA section 134(d)(4)(B)(ii). This section permits a WIA participant to enroll in a training program with WIA funds while an application for Pell Grant funds is pending, but requires that the local

workforce investment area be reimbursed for the amount of the Pell Grant used for training if the application is approved. Since Pell Grants are intended to provide for both tuition and other education-related costs, the Rule also clarifies that only the portion provided for tuition is subject to reimbursement.

In the limited cases where contracts are used rather than ITA's, the contracts negotiated by the One-Stop center must prohibit training institutions or organizations from holding the student liable for outstanding charges. Otherwise, the performance agreements would be undercut because the incentive for the institution or organization to perform would be removed. Also, the practice of withholding Pell Grants from students is prohibited by the U.S. Department of Education.

We received a few comments on Pell Grant issues. One commenter stated that WIA section 134(d)(4)(B) does not require disbursement from that portion of Pell paid to WIA participants for education-related expenses. The commenter recommended that, although the issue was discussed in the preamble to the Interim Final Rule, the rule should be modified to state that the training provider must reimburse only for ''tuition portion'' of the Pell grant. The commenter also raised the issue of the need for reimbursement arrangements for WIA funds used to ''underwrite the training'' with training provider while Pell funding is pending. The commenter also requested clarification on whether tuition costs include or exclude specifically required fees for lab, supplies and other fees. Another commenter noted that the regulations appear to assign the One-Stop operator the responsibility for making arrangements with training providers to process reimbursements when WIA participants enroll in training while their application for a Pell Grant is pending. This precludes the other One-Stop partners from having this responsibility. The commenter recommended that we replace all references in the regulations that assign specific responsibilities to the One-Stop operator with language that allows for flexibility.

Response: We will continue to work with the U.S. Department of Education to address the coordination of Pell grant assistance with WIA title I funded training assistance. We will provide additional guidance to the WIA Workforce Development System through administrative issuance. We are also pursuing a legislative amendment to make clear the order of payment for training costs for individuals eligible for both WIA activities and Pell Grant educational assistance. In the meantime, we have adopted the changes suggested by the commenters.

Subpart D—Individual Training Accounts

1. Definition of an Individual Training Account: Sections 663.400 through 663.430 contain information about Individual Training Accounts (ITA's). A key reform tenet of the Workforce Investment Act is that adults and dislocated workers who have been determined to need training may access training with an Individual Training Account which enables them to choose among available training providers, thus bringing market forces into federally funded training programs. Section 663.410 provides a definition for an ITA that seeks to provide maximum flexibility to State and local program operators in managing ITA's. These regulations do not establish the procedures for making payments, restrictions on the duration or amounts, or policies regarding exceptions to the limits of the ITA, rather they provide that authority to the State or Local Boards.

One commenter felt that the accountability requirements in the Act and regulations deny States and Local Boards the flexibility needed to ensure that individuals have enough financial power over their use of ITA's, but believes that this is a necessary result of the accountability requirements of the Act and regulations. The commenter suggested that, to accomplish the desired flexibility, Congress and the Department must lower performance and accountability expectations.

Response: We believe the performance and accountability expectations of the Act must be balanced against the flexibility provided to the State and Local Boards to design their ITA programs. The performance and cost information that training providers must submit to be identified as an eligible provider of training services under WIA section 122, combined with the negotiated local area performance measures, are essential for ensuring high quality individual and program-wide outcomes. Within this structure, we have attempted to give State and Local Boards the maximum possible discretion to develop ITA programs. No change has been made to the Final Rule.

Procedures for making payments—State and Local Boards have the authority to establish procedures for making payments for ITA's funded under WIA section 134(d)(4)(g) and § 663.410. There were a number of comments about the nature of payments to training providers under ITA's. Two commenters suggested that the regulations explicitly state that payments to community colleges for a training program or program segment must be made under the same terms that the colleges require of other students, rather than incrementally. Other commenters supported the current language in § 663.410 that offers the flexibility for incremental payments to training providers.

Response: We generally agree that the normal form and manner of tuition payments to community colleges should not change as the result of the use of ITA's. At the same time, we do not want to prohibit Local Boards from adopting methods that tie payments to contractually agreed upon benchmarks that can benefit both participants and training providers, and support the achievement of performance measures. No change has been made to the regulations.

One commenter, which favored retention of the regulatory language authorizing interim payments, seemed to believe that such a payment methodology would also apply to the supportive services that an ITA participant might be receiving.

Response: We do not read the regulations to require that when a Board chooses to make incremental payments for training, it is under an obligation to pay for other associated services in that same manner.

Another commenter recommended that the regulations require an ITA payment system that incorporates independent verification procedures that will ensure that the training provider has measured and certified the training received. That same commenter also suggested we establish a payment system that is efficient and easy to use while providing the strongest fiscal controls to prevent abuse.

Response: We have chosen not to impose a particular payment procedures but we note that the process of identifying eligible training providers in and of itself helps to ensure quality training. We also encourage Local Boards to adopt other practices that promote quality training, such as documentation by the training provider of the delivery of training or the participant's achievement of agreed upon benchmarks or outcomes, on-site and desk reviews of the training provider and regular contact with the participant. We also agree that payment systems should be designed to ensure strong fiscal accountability and to

prevent fraud and abuse. No change has been made to the Final Rule.

Role of the case manager—WIA section 134(d)(4)(A)(ii) provides that one of the eligibility criteria for adults and dislocated workers to receive training services is that, after an interview, evaluation, or assessment and case management, the participant has been determined by a One-Stop operator to be in need of training services and to have the skills and qualifications to successfully participate in the selected program of training services. Commenters supported the role that is described for case managers in § 663.410, that is, assisting the participant to select the eligible provider from which to purchase training. One of these commenters further suggested that we emphasize the need for skilled, professional case managers while another pointed out that demonstration studies on the use of vouchers have found that skill, professional case management was the key factor in determining the effectiveness of vouchers

Response: We acknowledge the critical role of case managers and urge, where necessary, States and/or local areas to arrange quickly for staff training to ensure case managers have the understanding and knowledge to carry out this role effectively. We believe, however, that prescribing the role of case managers in the regulations is inconsistent with our principle that the regulations should permit State and Local Boards the maximum possible flexibility. The regulations have not been changed.

National data collection and evaluation of the new ITA system: There were also comments urging us to collect information on the actual costs of training and to conduct evaluations of the relationship between training and job placement, as well as the relationship between the amount and duration of ITA's and the success of workers in securing jobs that provide self-sufficiency. Additionally, the commenter asked us to establish a system to collect information on outcomes for ITA's including the relationship of training to job placement.

Response: We believe that both evaluations and analyses of JTPA SPIR data have already demonstrated the strong relationship between training, including training durations, and outcomes. The evaluations that will be conducted of current ITA demonstrations will further examine the issues raised by the commenters. Also, WIA section 136(d)(2)(A) requires States to report on entry into unsubsidized employment that is related to the training provided to participants, and section 136(d)(2)(C) requires States to report the cost of workforce investment activities (which include training) relative to the effect of the activities on the performance of participants, to the Department as part of their annual report. We encourage State and Local Boards, as part of their ongoing responsibility to manage performance, to examine those same issues. In addition, we will continue to provide technical assistance regarding various program design issues and the implications and potential unintended consequences that must be considered in making ITA policy decisions. No change has been made to the Final Rule.

Two other commenters suggested that the regulations authorize the use of ITA's to pay the full cost of customized training programs in which tuition is not otherwise charged.

Response: The Act specifically identifies customized training as an exception to ITA's. In general, customized training is provided based on a specific training curriculum ''customized'' to the particular worker skill needs of a specific employer or group of employers. While participants may choose to participate in such training, there is no provision for customer choice among training providers, rather there is a single training provider who has been selected to ''customize'' the training. Because there is no customer choice on the part of the participant, ITA's are not an appropriate mechanism for customized training. On the separate issue of the use of WIA funds to pay for the full cost of customized training, we are constrained by section 101(8)(C) of the Act, which requires the employer to pay not less than 50 percent of the cost of the training. No change has been made to the Final Rule.

2. Limitations on the amount and duration of ITA's: A number of commenters raised concerns about the policies that State and Local Boards might establish with respect to a dollar and/or duration limitation for ITA's. Section 663.420 provides guidance for State and Local Boards in their policy decisions to impose amount or duration limits on ITA's. In general, although the regulations allow limits, we expect that the limits will be realistic and will neither preclude people from getting the training that they need nor providers from participating in the system. In setting limits, State and Local Boards need to consider the factors described above to be sure that the limits are not too restrictive.

A commenter recommended that the limits on ITA's be as flexible as possible to allow workers to invest in training that will lead to a living wage and long-term self sufficiency and a second urged State and Local Boards to consider the needs of different populations in setting limits.

Response: Section 663.420(b)(1) allows State and Local Boards to establish limits based on a participant's needs, which should include the need for a job that leads to self-sufficiency. In addition, § 663.420(b)(2) allows State or Local Boards to set a range of limits, an option which Boards may choose when considering the varying needs of different population groups. These two options provide considerable flexibility to the Local Board to support a policy that provides for variations in the funding of ITA's. Thus, particular occupational training that leads to self-sufficiency, or furthers other goals of the workforce investment, could be set at different dollar limits. Similarly, Local Boards could seek to ensure a large number of providers of entry level skills training are available to aid participants in avoiding transportation costs and long commutes during training. While we agree with the comment, and do not want limits of amount of duration to preclude people from getting the training they need or training providers from participating in the system, in order to preserve State and local flexibility, no change has been made to the regulations.

To ensure that State and Local Board are able to make informed decisions about how effectively different populations can be served under an ITA system, commenters recommended that we encourage State and Local Boards to gather data from training providers and other stakeholders on the actual costs of and time needed for training. One commenter focused this concern on low-income unemployed individuals. The commenter asked that we include affirmative examples to States and Local Boards in regulations or in guidance to ensure that such limitations do not impede the success of intervention. Other commenters suggested that there is evidence that previously established limits have been too restrictive to effectively serve low income populations.

Response: We believe that is important for the eligible training provider list to include sufficient numbers of training providers to ensure that customer choice is a reality. This means that State and Local Boards must develop ITA policies that ensure the marketplace can operate and that a number of training providers across a

wide variety of occupations will believe it is in their best interests to apply to become an eligible provider. If the number of training providers seeking to be included on the eligible provider list is sufficient to ensure healthy competition, then the need for extensive cost analysis may be eliminated. No change has been made to the Final Rule.

We have begun to develop additional information about ITA's, including information drawn from a new ITA demonstration that will explore a number of approaches to the administration of ITA's and provide a laboratory for stakeholders and local operators to visit and observe. We will use this information to provide guidance to the system through conference workshops.

Numerous comments concerned § 663.420, which gives the State or Local Board the authority to establish limits on the dollar amount and the duration of an ITA. Several commenters were concerned that cost and duration limitations on ITA's will limit customer choice. They were especially concerned that cost limitations would be set too low to provide a range of eligible training providers from which to choose. The commenters voiced concern that the cost limitations could be set at amounts less than the actual cost of training services. They requested that we provide regulations or guidance to ensure that ITA administration does not become a limiting factor in serving job seekers. Similarly, many commenters felt that limits on the amount and duration of an ITA conflicted with Title I of the Rehabilitation Act and limits informed choice of individuals with disabilities.

Response: We are also concerned that the dollar and duration limitations could have the potential for limiting customer choice. Consequently, § 663.420(c) provides that these limitations should be implemented in a manner that maximizes customer choice. We emphasize that any limits established by a State or Local Board apply only to training under Title I of WIA, not to training under Title I of the Rehabilitation Act. We also note that, under WIA, access to training or any other services is not an entitlement. Local Boards must exercise discretion in establishing ITA's for eligible participants. The regulations at § 663.420(b) permit State and Local Boards to establish ITA limitations in a number of different ways and provides substantial discretion to allow for other circumstances such as the availability of other funding, the contribution such training would make to the overall workforce skill needs of the community, or the needs of the individual participant to be taken into consideration.

We have added language to § 663.420(c) to clarify that any ITA limitations that are established may provide for exceptions to the limitations in individual cases. We believe that more effective programs will include this type of flexible limitation policies, so that individuals are not excluded from training solely because of an ITA limitation. In establishing guidance or limits on training funding, a number of factors may be taken into consideration, such as the skill shortages identified by local employers, the costs of training to address these occupations in demand, and the training needs and interests of the participants. The availability of other funding resources should also be considered in the development of the training portion of the Individual Development Plan, including Rehabilitation Act funds, TANF, Pell Grants, and other Federal and State funding. Coordination and cost sharing between Local Boards and Rehabilitation Act grantees as well as other partners with training funds is a matter for local negotiation and inclusion in the MOU. 20 CFR part 662 contains a detailed discussion of MOUs.

DOL's WIA title I performance accountability specifications do not measure cost per participant, therefore, the setting of cost limitations for ITA's will not have an impact on the performance accountability system. The decision to establish cost and duration limitations should be made after fully considering their benefits to the overall workforce system and their effects on individuals and populations in need of training. In making such decisions, State and Local Boards should consider all public costs, not simply available WIA funds, the value of such training in contributing to the competitiveness of local businesses that may be ''at risk'' or may be expanding and other economic development benefits.

One commenter suggested that the language in § 663.420(a) which gives the State or Local Board responsibility for establishing dollar and duration limits be revised to give the Local Board the sole responsibility.

Response: State and Local Boards both play an important role in the ITA/eligible training provider systems. Local Boards have an important familiarity with the local labor market and local training providers, while the State plays an important leadership role in the establishment of the workforce investment system as a whole—including the ITA/eligible training provider system. As a result, no change has been made to the Final Rule.

One commenter asked how disagreements between a State and Local Board over the establishment of limits to ITA's would be resolved.

Response: The State Board's limits would prevail in such a case. State or Local Boards should consider the range of costs and types of training in demand by employers throughout the State in setting limits. Policies concerning spending limits on ITA's should not unduly exclude eligible providers or unduly limit customers' training options in any geographical area of the State. Any cost limits established by State or Local Boards apply only to WIA funds, and not to the total cost of training. Where the cost of the desired training exceeds the established State or Local Board limit for ITA's, an eligible participant should still be able to access WIA ITA funds, when the WIA training funds will be supplemented with funds from other sources—such as Pell Grants, scholarships, severance pay and other sources. Section § 663.420 has been changed by adding a new paragraph (d) to reflect the ability of participants to access ITA funds when the ITA funds will not pay the full cost of training. This approach is supported by § 663.310(d) which provides that training services may be made available to employed and unemployed adults and dislocated workers who are unable to obtain sufficient grant assistance from other sources to pay the cost of training and require WIA assistance in addition to other sources of assistance.

Although discussing limits to ITA's, one commenter suggested that State and Local Boards be required to establish criteria and written policies governing access to and the distribution of ITA's and that the process for developing these policies be required to include consultation with appropriate labor organizations. Further, the commenter suggested that such policies be available to the interested parties, the general public and all individuals served through the One-Stop system.

Response: The State is required, in 20 CFR 661.220(d), to provide an opportunity for public comment on and input into the development of the state plan prior to its submission. The required opportunity for public comment requires that representatives of labor organizations, as well as representatives of business and chief elected officials be afforded the opportunity to comment. Similarly, § 661.345(b)(2) requires that the Local Board provide an opportunity for public comment on and input to the development of the local workforce

investment plan, prior to its submission, be provided to representatives of labor organizations and business. WIA section 117(e) also requires the Local Board to provide information to the public on Local Board activity.

We believe that access to and distribution of ITA's is based broadly on the Local Board's policy decision about the amount of funding to be devoted to training services and, more narrowly, on individual participants' need for training and their eligibility for it. We strongly encourage Local Boards to consult with a variety of organizations, including organized labor, when making policy decisions concerning ITA's. No change has been made to the Final Rule.

A commenter recommended that we should include a prohibition on discrimination on the basis of union affiliation in the selection of training programs.

Response: We believe that WIA section 122 and Subpart E of part 663, which provides further direction regarding eligible training providers, establish sufficiently objective procedures to ensure against discrimination in the selection of training offered either by unions or by employer organizations. No change has been made to the Final Rule.

Another commenter requested authority for training providers to reject students with ITA's where they think the student will not succeed in, or benefit by, the program.

Response: There is no requirement that eligible training providers must accept any participant who seeks to enroll under the local workforce investment area's ITA program. Further, we are not limiting an eligible training provider's ability to set entrance criteria or screening tests to determine that the participant is likely to success in the particular training curriculum. We believe that the intensive services provided to a participant, especially assessment and career counseling in consultation with the case manger in developing a realistic Individual Employment Plan, combined with customer-oriented information on eligible training providers that reflects the entrance criteria for the desired training curriculum, will be critical to the participant's selection of appropriate training in which they can achieve success and ultimately, job placement. No change has been made to the regulations.

3. Exceptions to ITA's: The Act, at § 134(d)(4)(G)(ii), and the regulations at § 663.430, provide that, under certain limited circumstances, contracts for training rather than ITA's may be used. Specifically, on-the-job training contracts with employers and customized training contracts are authorized. Contracts may also be used when there is an insufficient number of eligible providers in a local area. This exception applies primarily to rural areas. The exceptions to ITA's are to be used infrequently. The Act reforms the local service delivery system by eliminating the current practice of assigning participants to contracted training services and instead establishing a system that maximizes customer choice in the selection of training providers. When the Local Board determines there are an insufficient number of eligible providers in the local area to accomplish the purposes of a system of ITA's, and intends to use contracts for services, there must be at least a 30 day public comment period for interested providers.

Contracts for Special Populations—Section 663.430(b) also authorizes contracts for training when the Local Board determines that there are special populations that face multiple barriers to employment and that there is a training services program of demonstrated effectiveness offered by an eligible *provider.* Section 663.430(a)(3) explains that an eligible provider in this case is a community based organization (CBO) or other private organization. We have received many suggestions about this exception and the extent to which it may be used.

Response: Generally, it is our position that this exception is intended to meet special needs and should be used infrequently. Those training providers operating under the ITA exceptions still must qualify as eligible providers, as required at § 663.505. We believe that effective eligible training providers, including CBO's and other training providers, can and will compete for individual training accounts and that providers should view the use of ITA's as an opportunity to expand their customer base.

Numerous comments recommended that the list of special participant populations be expanded to include individuals with disabilities who require multiple services over extended periods of time. Other commenters recommended that the list also be expanded to include older individuals or low income older individuals. Two commenters disagreed, in part, with the recommendation that individuals with disabilities be included as a special participant populations. They made the point that such individuals should not be automatically perceived as a special participant population and excluded from benefitting from ITA's.

Response: The Act does not specifically list any of these populations in section 134(d)(4)(F)(iv). The Act and § 663.430(b) do, however, list as one of the four special participant populations defined in the Act ''Other hard-to-serve populations as defined by the Governor involved.'' As a result, Governors have the authority to add additional groups, such as individuals with disabilities, to the list contained in the statute. Other provisions that assure that persons with disabilities will have full and fair access to WIA services. For example, section 188(a)(2) provides that no individual shall be excluded from or denied benefits under any WIA title I program or activity on the basis of disability. Regulations implementing this provision are found at 29 CFR part 37. In addition, section 112(b)(17) of the Act requires the Governor to describe, in the State Plan, how the State will serve the employment and training needs of ''individuals with multiple barrier to employment (including older individuals and individuals with disabilities).'' We believe that this direction, which is included in the WIA State Planning Guidance, provides sufficient direction for consideration of these and other population groups not specifically mentioned in section 134(d)(4)(F)(iv) of WIA. The requirement for public comment on the plan in § 661.220 of the regulations allows interested parties the opportunity to promote the interests of those two groups.

In addition, we would like to clarify that within the special participant populations that are listed in the Act and that are identified by the Governor, there will be individuals for whom an ITA is the most appropriate avenue to employment. We encourage One-Stop operators and intensive service providers to consider all training options when working with special participant populations. It is important that consumer reports reflect adequate information to determine the appropriateness of training provided by an eligible training provider with regard to accessibility, auxiliary aids and services, etc., to enable customers with special needs to make an informed choice.

One commenter recommended that the Governor be required to solicit comments from key stakeholders, including business, organized labor, and CBO's, when identifying additional populations.

Response: Section 112(b)(17)(A)(iv) of the Act requires the Governor to have this information in the State plan, which is, of course, subject to comment.

No change has been made to the Final Rule.

Criteria for ''Demonstrated Effectiveness'': Section 663.430(a)(3), provides that when the exception for special populations is used, the Local Board must have in place criteria it developed to determine ''demonstrated effectiveness,'' particularly as it applies to the special participant population it proposes to serve. This determination is in addition to meeting the requirements for qualifying as an eligible training provider. The criteria listed in the regulation are illustrative and Local Boards should develop specific criteria applicable to their local areas.

One commenter suggested that, in selecting CBO's as training providers through a contract for services to serve special participant populations, State and Local Boards should be able to consider quality training even if that training program is not included on the eligible provider list.

Response: We cannot agree to that recommendation since WIA section 122 requires that all training providers meet the requirements for inclusion on the eligible provider list. Section 122(f) lists two exceptions to the requirement that deliverers of training services be eligible training providers; on-the-job training and customized training. We interpret these exceptions to be exclusive; providers of all other training services must go through the eligible provider process. No change has been made to the Final Rule.

One commenter felt that one of the criteria of demonstrated effectiveness established in § 663.430(a)(3), ''financial stability,'' was too restrictive and should not be a factor in considering CBO's which have a record of providing crucial services to disadvantaged groups.

Response: In order to ensure the proper expenditure of Federal funds, we believe the financial stability of a CBO or of any private organization is relevant in a Local Board's determination when selecting a training provider for special participant populations. While financial stability is not the only factor that a Local Board may consider, and may not be the decisive factor, it is reasonable for a Local Board to consider the financial stability of an organization in which it may invest scarce training funds. No change has been made in the Final Rule.

The same commenter also recommended that we change § 663.430(a)(3)(ii) to establish, as an alternative to the listed program measures, the criterion of a demonstrated ability to do outreach to and serve populations that face multiple barriers.

Response: Section 663.430(a)(3) does not limit Local Boards to the listed factors in establishing criteria for demonstrated effectiveness. The Local Board may also consider the CBO's or private organization's success in reaching out to disadvantaged populations. No change has been made to the Final Rule.

Another commenter suggested expanding the criteria for demonstrated performance to include the attainment of a self sufficiency wage.

Response: Although we have, in § 663.230, established a minimum definition of self-sufficiency—employment that pays at least the lower living standard income level, as defined in WIA section 101(24)—the criteria for determining whether employment leads to self-sufficiency is left to the State and Local Boards. This means the criteria to be applied could vary substantially from area to area. In addition, the performance accountability system, established in section 136 of WIA, does not refer to attainment of self-sufficiency. While, as we have said above, we recognize the importance of self-sufficiency as a goal for all employment and training activities and urge State and Local Boards to adopt that standard, we are not prepared to impose that standard on the system. However, § 663.430(a)(3) does not limit the ability of the State or Local Board to adopt additional criteria of demonstrated effectiveness by including attainment of self-sufficiency as a measure of demonstrated performance. No change has been made to the regulations.

One commenter suggested expanding the criteria for demonstrated performance to include the demonstrated ability to serve ''hard to serve'' populations.

Response: We have modified § 663.430(a)(3)(ii) to clarify that the criteria listed in that section are among the ways available to demonstrate effective delivery of services to hard to serve populations.

4. *Requirements for Consumer Choice:* WIA section 134(d)(4)(F), and the regulations, at § 663.440, identify the information on training providers that must be made available to One-Stop center customers. They require Local Boards to make available, through the One-Stop centers, the eligible training provider list as well as the performance and cost information associated with each provider. Section 663.440(c) provides additional guidance on how participants may use that information to select a training provider and have an ITA established on their behalf. We received a number of comments on the contents of the information, the manner in which it would be made available, and the level of authority the Local Board and the One-Stop operator will have in establishing ITA's.

A commenter expressed concern that, if the same entities that establish ITA's also offer training, they will have the potential to steer individuals toward their own training services.

Response: The introduction of ITA's was intended to maximize customer choice and reduce any forms of inappropriate referral practices that may have existed. The limited circumstances in which exceptions to ITA's are authorized are a further safeguard against the recurrence of such practices. The Act, at Section 117(f)(1)(B), also establishes stringent conditions that a Local Board must meet before a Governor can consider a waiver of the general prohibition against a Local Board's provision of training. Further, the Act, at section 134(d)(4)(F), requires Local Boards to make available through the One-Stop centers the eligible training provider list and the program and cost information associated with each eligible provider. The availability of that information will allow participants to assume more control over the choice of training provider. Finally, through its monitoring and oversight role, the State may identify and review any unusual patterns of eligible provider usage to determine if corrective action is necessary. We believe these protections are sufficient to avoid the practices the commenter fears. No change has been made to the final regulations.

Another commenter asked how customer choice requirements apply to incumbent workers.

Response: It is important to recognize the difference between incumbent and employed workers. As we have explained above, incumbent workers are individuals who are employed, however, not all incumbent workers are also eligible for services to employed worker as described in WIA sec. 134(d)(3)(A)(ii). Training for incumbent workers is specifically authorized only as a Statewide Workforce Investment Activity under WIA section 134(a)(3(A)(iv)(I) and § 665.210(d). This is an optional activity in which the States may decide to engage. Generally, incumbent worker training is developed with an employer or employer association to upgrade skills training of a particular workforce. It usually takes place in the workplace or after work hours for employees of a specific employer or employer association.

There is no requirement that all incumbent workers to be trained must be determined to be in need of training services to obtain or retain employment that allows for self-sufficiency. Frequently, such training is part of an economic development or business retention strategy developed by a State. In such cases, the employer is involved in the arrangement of the training curricula and usually has a role in the selection of the training provider. Since the training is usually arranged by the employer with a specific training provider, there is no customer choice on the part of the individual incumbent worker other than whether or not to participate in the training. This issue is also addressed in the preamble discussion of 20 CFR part 665.

In contrast, when a One-Stop operator determines that an employed worker meets the eligibility criteria, established under WIA Sec. 134(d)(3)(A)(ii), for training with local (formula) funds, that worker should is no different from any other worker found eligible for training services and must enjoy the same degree of consumer choice as any other person eligible for training. An Individual Employment Plan would be developed for the employed worker as part of the intensive services provided to the participant and a training plan, if so indicated, developed in the same manner as for any other participant. Since the customer choice requirements do not apply to incumbent worker training, no change has been made to the regulations.

Availability of training funds—There were several comments about the language in § 663.440(c) which requires a One-Stop operator to refer an eligible individual to a training program and establish an ITA ''unless the program has exhausted funds for the program year. . . .'' One commenter suggested that, to avoid the early exhaustion of program funds, we should add language requiring the use other available State and local resources, particularly for incumbent workers, before using WIA funds for ITA's. Another commenter felt that the language infringed upon a Local Board's authority to allocate funds among core, intensive and training services, presumably by mandating the expenditure of funds on training at the expense of core and intensive services.

Response: It is important to emphasize that, under section 134(d)(4)(B), the opportunity for an individual to enroll in a training program does not rely exclusively on the availability of WIA training funds. In all cases, the resources of partners as well as Federal, State, local and personal funding sources should must also be taken into account in the development of the Individual Employment Plan. Thus, an eligible individual may receive intensive services and receive assistance in making arrangements for training regardless of whether the local WIA program has exhausted training funds for the program year and is unable to provide an ITA. Since we have already discussed the requirements to consider and use other funding sources in § 663.320, we do not think it is necessary to add an additional mandate that operators consider other funding sources before approving training. Section 195(2) of the Act establishes a ''maintenance of effort'' type of requirement by mandating that WIA funds be used for activities that are in addition to those already available in the local area, and § 663.310(d) specifies that training services may be made available to eligible adults and dislocated workers who are unable to obtain grant assistance from other sources. In an effective One-Stop system, the One-Stop operator will have knowledge of additional resources and will be able to coordinate WIA services with those of other partner programs, thus increasing the opportunity to provide increased services to customers of all the partner programs. Finally, incumbent worker training activities are funded from statewide workforce investment funds authorized under section 134(a)(3)(A)(iv)(I) and rather than local training funds.

In response to the second comment, the ''exhausted funds'' language of § 663.440(c) is not intended to contradict, and must be read in conjunction with, the Local Board's authority to determine the appropriate mix of core, intensive and training services in the local area, described in § 663.145(a). In recognition of this, we have changed § 663.440(c) to clarify that a One-Stop operator must refer an individual to training and establish an ITA except when the Local Board determines that training funds have been exhausted.

The commenter also suggested that the costs of referral to training be borne by the One-Stop operator.

Response: No change has been made in the regulations since § 663.440(d) already requires that the cost of that referral be paid by the applicable Title I adult or dislocated worker program.

Another commenter suggested that in order to assure ''true'' customer choice, the consumer information provided by the Local Board should include a listing of the types of jobs into which providers have placed people and the wages earned in those jobs.

Response: WIA section 122(d) does not require eligible training providers to submit specific information on jobs, although the Governor or the Local Board may choose to include such a requirement; that same section does, however, require the submission of information on wages and permits requiring the submission of information on the percentage of individuals who obtain employment in an occupation related to the program (WIA sec.122(d)(1)(A)(i)(II)). We note, though, that the information required by section 122(d) must be submitted for each specific training program on the list of eligible training programs, not for the eligible provider's full range of programs. Information on the specific training program, along with information submitted at the Governor's or Local Board's option on training-related placements, may serve as a useful substitute for the specific job information the commenter seeks. As discussed further in subpart E, WIA section 122(d)(3) sets conditions under which additional information may be requested. No change has been made in the regulations.

Another commenter supported the requirement in § 663.430(a)(2) for a public comment period of 30 days before a Local Board can determine that there is an insufficient number of eligible training providers in the local area to accomplish the purposes of ITA's.

Response: The regulations retain that requirement.

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. Although no single entity has full responsibility for the entire process, the State must play a leadership role in ensuring the success of the eligible provider system. The Governor establishes minimum performance levels for initial determination of non-Higher Education Act/registered apprenticeship providers and for all subsequent eligibility determinations. The Local Board may establish additional local performance levels for subsequent eligibility determinations. The eligible provider process requires a collaborative effort among the State, Local Boards, and other partners. The regulations attempt to amplify and clarify the intent of the Act, by linking statutory language on eligible providers in WIA section 122 with the provisions covering Individual Training Accounts

(ITA's) in WIA section 134. In § 663.505, the regulations clarify that all training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in on-the-job and customized training (for which the Governor may establish qualifying procedures, as discussed in § 663.595). Finally, in order to ensure the strong relationship between the eligible provider process and program performance, § 663.530 establishes a maximum eighteen month period for an organization's initial determination as an eligible provider.

Before publication of the Interim Final Rule, some traditional providers of training under previous workforce programs, such as community-based organizations, expressed concern that they would face difficulties in participating in this system. The regulations clarify that such organizations have the opportunity to deliver training funded under WIA, provided that they deliver services that customers value and meet training performance requirements. It is important that States provide access to these organizations in order to maximize customer choice. States should provide access to a broad and diverse range of providers, including CBO's, while maintaining the quality and integrity of training services.

A commenter recommended that the Act and the regulations for subpart E be changed to permit use of a competitive procurement process, such as that permitted for youth providers in the Act, since the identification of eligible training providers for adult training services was viewed as ''overly complicated.''

Response: We recognize that the eligible training provider requirements may present significant implementation challenges to States and local areas. However, these requirements are essential to the new system envisioned under WIA, in which consumer choice and accountability are key principles. Although ITA's must be used for most training services, contacts for training are permissible in certain limited circumstances (discussed in § 663.430): for customized or on-the-job training (OJT); when there are a limited number of providers, or for programs of demonstrated effectiveness offered by CBO's or other private organizations for special participant populations facing multiple barriers to employment. Under 20 CFR 661.350(b)(10), Local Boards are required to describe in their local plan the competitive process to be used to award contracts for training services when exceptions are made to the use of ITA's. No change has been made to the Final rule.

Several commenters suggested that language should be added in § 663.500 and throughout the subpart to clarify that programs, not providers, are made eligible, and that eligibility is not automatically conferred on all of an eligible provider's programs.

Response: We agree that clarification is needed. We have added language throughout the subpart (in §§ 663.500, 663.510, 663.515, 663.535, 663.550, 663.565, 663.570, 663.585, and 663.590) to clarify that:

- *programs* as well as providers must be eligible;
- providers are eligible to provide training services *only* for the programs described in their applications;
- the Local Board and the Governor may require application information on providers as institutions, in addition to information regarding programs;
- application requirements for all *programs* not eligible under the Higher Education Act nor registered under the National Apprenticeship Act (regardless of the type of provider) fall under the Governor's initial eligibility procedures;
- providers submit performance information on *programs* and those *programs* that don't meet performance levels must be removed from local lists;
- providers may continue to be eligible if at least one of their programs is eligible (even if other of their programs are determined ineligible and removed from the local and State lists); and
- State and local lists must include information on eligible training *programs* as well as providers.

A number of commenters wanted us to add specific language in § 663.500 and throughout this subpart on the need to assure that there is diversity in the types of programs offered and in entrance requirements, that community-based organizations are included, and that nontraditional employment for women be a suggested focus for new training providers.

Response: Under § 663.440(a), training services must be provided in a manner that maximizes consumer choice. We agree with the commenters that maximizing consumer choice requires that Governors and Local Boards ensure that eligible training provider systems offer a diverse array of high-quality programs that meet the varying career interests, skill levels, and training needs of WIA customers, including low income adults, dislocated workers, and other priority groups under WIA. Governors and Local Boards are strongly encouraged to provide outreach, technical assistance, and leadership to different types of providers, including CBO's and providers of non-traditional employment and training opportunities, in order to ensure a diverse array of high-quality training options. In fact, 29 CFR 37.42 requires recipients (including Governors and Local Boards) to conduct outreach efforts to various populations. Community-based organizations, recognized at § 663.590 as being able to apply and be determined eligible, have, in many local areas, proven to be a key source of quality programs. We do not think it would be useful to try to prescribe a uniform rule to cover the variety of State and local selection processes and criteria that will exist. We encourage Governors and Local Boards to administer the selection process in a manner that assures that significant numbers of competent providers, offering a wide variety of programs are available to customers, and have added language indicating this to § 663.500.

A number of commenters were concerned that the requirements in section 122 of the Act and all of §§ 663.500 through 663.595 of the regulations would be in conflict with ''informed choice'' requirements in title I of the Rehabilitation Act of 1973, as amended by title IV of the Workforce Investment Act. Commenters noted that State Vocational Rehabilitation (VR) agencies have their own vendor approval procedures, maintain their own vendor lists, and that some organizations that work with persons with disabilities may not be on a WIA eligible training provider list.

Response: While VR agencies are required partners in the One-stop system, participants in VR-funded services can select vendors, including training providers, approved under the State VR agency's procedures and policies. Only when VR participants also use WIA title I funds must training services be from a provider and program eligible under WIA title I.

Both title I of WIA and Section 102(d) of the Rehabilitation Act (title IV of WIA) contain provisions that we believe are intended to serve the same goal—providing participants with the opportunity and the means to make informed choices about the services they receive. Title I of WIA mandates that training be delivered in a manner that maximizes consumer choice and requires the use of ITA's, provision of descriptive and performance information on eligible providers and programs, and delivery of intensive services, such as assessment and case management. Similarly, section 102(d) of the Rehabilitation Act requires State VR agencies to implement policies to

assure that individuals can exercise informed choice in decisions related to assessment, selection of employment outcome, specific vocational rehabilitation services, the entity that will provide services, the employment setting in which services will be provided, and the methods available for procuring services.

We encourage State VR agencies and WIA systems to harmonize and coordinate their respective policies and procedures on informed consumer choice and the creation of lists of, and information on, eligible or approved providers of training services. Both systems could explore, for example, common application requirements or approval criteria for vendors of training services, expediting the application or approval process to assure timely inclusion of vendors from the partner system, providing outreach to their respective providers on how they can become eligible or approved under the partner's system, and creation of a common, accessible consumer information system on programs and providers that can be used by participants in both WIA title I and VR as they exercise their choice.

As we noted earlier, we encourage Governors and Local Boards to ensure that the eligible training provider system provides access to a broad diversity of programs that can accommodate the varying needs, career interests and preferences of priority groups under WIA. We encourage Governors and Local Boards to make sure that State and local WIA procedures, while maintaining the quality and integrity of training services, afford adequate and timely opportunities for applications from training programs and providers serving individuals with disabilities. Also, when developing initial and subsequent eligibility procedures, under §§ 663.515(c)(1)(I) and 663.535 (a)(1), Governors must solicit and take into consideration the recommendations of providers. We encourage Governors to extend this opportunity to providers offering training services to individuals with disabilities. Since we do not see a conflict between WIA's customer choice and VR's informed choice requirements, no change has been made to the Final rule.

Section 663.505—What are Eligible Providers—One commenter wanted to ensure that § 663.505 permits apprenticeship programs with applications pending to be recognized as eligible training providers.

Response: Apprenticeship programs awaiting State or federal approval can be recognized as eligible by Local Boards. However, since such programs are not yet registered under the National Apprenticeship Act, the provider would have to apply under the Governor's procedures for initial eligibility, which requires the provision of performance and cost information. No change has been made to the Final rule.

A commenter suggested that § 663.505 (b)(2)(iii), be revised to specifically mention service or conservation corps as other eligible providers of training services.

Response: Service or conservation corps programs are among the types of programs that could be eligible to provide adult training services under State and local initial eligibility procedures. There are many types of organizations that could apply and become eligible, but we do not think it is appropriate to try to enumerate them all, or to specify certain groups. No change has been made to the Final rule.

One commenter wanted us to ensure that CBO's, whose eligibility is discussed in § 663.505(b)(2)(v), are not left out as eligible training providers simply because they are not ''automatically'' eligible under WIA section 122(b)(1).

Response: Since most CBO's and their programs are not HEA-eligible, they will have to provide program performance and cost information in initial applications and their programs will have to be determined eligible by the Local Board. However, we anticipate that many CBO programs will be able to meet performance requirements both initially and subsequently, and thus will be included on local and State lists. As noted earlier, we strongly encourage States and Local Boards to provide outreach and technical assistance to providers such as CBO's, to ensure that there is a wide array of providers and programs that can both accommodate WIA participants' diverse training needs and career interests and meet accountability requirements. Community-based organizations, recognized at § 663.590 as being able to apply and be determined eligible, have proven able in many communities to meet these skill needs and career interests while increasing participants' earnings and employment. We encourage CBO's to take part in the consultation process required under §§ 663.515(c) and 663.535(a). Under these provisions Governors must solicit and take into consideration the recommendations of training service providers and interested members of the public on both initial and subsequent eligibility procedures. We believe that the regulations adequately protect the interests of CBO's, thus, no change has been made to the Final rule.

Section 663.508—Definition of a Program of Training Services—A number of commenters felt that the definition of a program of training services in § 663.508 should be clarified. The commenters suggested that a course or sequence of courses leading to a ''competency or skill recognized by employers'' and ''a training regimen that provides individuals with additional skills or competencies generally recognized by employers'' were similar, but vague. Commenters wondered if one definition applied to services for the unemployed while the other applied to such services for the employed, and what the word ''generally'' was intended to convey. One commenter recommended that the definition require that competencies and training regimen be identified and approved prior to training, and several commenters suggested that the competencies approved by labor organizations or labor-management committees should be acceptable. Another commenter suggested that the regulation clarify that the competencies and skills could include increased literacy or increased English language abilities.

Response: The definition of a program of training services was intended to ensure that individuals using ITA's have access to a broad array of training options, and that no arbitrary limits would be established as the length, nature, location or outcomes of the training, unless required under other parts of the Act or regulations (such as requirements for on-the-job training and customized training at §§ 663.700–663.720). We did not intend to differentiate between training programs for the employed or unemployed. Section 663.508 has been revised to clarify that a program of training services can consist of one or more courses or a training regimen, and that either of these can lead to a formal credential (such as a degree or certificate) or to the acquisition of skills and competencies recognized by employers for a specific job or occupation, as well as general skills and competencies necessary for a broad range of occupations, or job readiness. Section 663.508 has also been changed to indicate that the skills and competencies should be recognized by employers and identified in advance. Such competencies may include literacy or English language abilities. We encourage Local Boards and Governors to develop application requirements that solicit information on the skills and competencies to be taught and how

these are ''recognized'' by employers, labor-management committees, or labor organizations, particularly when programs do not offer a formal credential. We also encourage Governors and Local Boards to create policies and procedures for initial and subsequent eligibility (and data reporting) to accommodate situations in which WIA participants' training plans do not require a full ''program,'' but rather only part of a program or courses from different programs.

Section 663.510—State and Local Roles in Managing the Eligible Provider Process—One commenter asked that § 663.510 be modified to ensure that the public is provided access to the provider list and performance information, that the lists are provided upon request, and that satellite and affiliate offices of the One-Stop system also receive the list.

Response: Under § 663.555, the State list and consumer reports containing performance information must be made available throughout the One-stop system as a core service to the general public, to WIA participants, and to participants whose training is supported by other One-Stop partners. We strongly encourage States and local One-Stop systems to assure that the list is available in all satellite and affiliate offices. In addition, under 29 CFR 37.9, the provider list and performance information must be made available in alternate formats to individuals with disabilities. Since the regulations already accommodate the commenter's request, no change has been made to the Final rule.

A number of comments criticized § 663.510 for failing to address States' and Local Boards' responsibility to ensure that available training options include nontraditional occupational training for women, small business development and other programs targeting particular populations or industrial sectors for which there may be high demand. Commenters asked that the Final Rule include language requiring States and localities to ensure that the eligibility determination process assures the availability of non-traditional training options for women. One commenter wanted the regulations to require States and Local Boards to conduct outreach to CBO's that provide services to disadvantaged populations to help them apply for certification and contracts.

Response: As noted earlier, in order to support informed customer choice by WIA participants with diverse skill needs and career interests, Local Boards and Governors should make every effort to ensure there is a broad range of programs and providers identified on State and local lists. We strongly encourage States and Local Boards to conduct outreach and technical assistance to various types of providers in order to enhance the likelihood that customers will have access to a broad range of programs and providers. Since the State and Local Boards are accountable for their own performance, they must ensure that programs other than HEA and NAA programs included on the initial lists and all programs included on subsequent lists have met minimally acceptable levels of performance. Although we strongly encourage States and Local Boards to take affirmative steps to make sure that programs offering non-traditional training and programs offered by CBO's are included on their eligible provider lists, ultimately, the programs must meet State and local performance requirement to be included. We cannot require States and Local Boards to include programs that do not meet their legitimate performance standards. Thus, no change has been made to the Final rule.

One commenter requested that the regulations clarify that cost and performance information is required for *all* providers, as indicated, in the commenter's view, by the requirement at § 663.510(c)(3) that the designated State agency disseminate the State list ''accompanied by performance and cost information related to each provider * * *''

Response: The commenter is partially correct. For *subsequent* eligibility, performance and cost information is required of *all* programs. For *initial* eligibility of *non-HEA and non-NAA programs and providers,* § 663.515(c)(3)(ii) requires Local Boards to use the Governor's procedures for determining eligibility and those procedures must require that appropriate portions of cost and performance information be provided. For *initial* eligibility of *HEA and NAA programs and providers,* § 663.515(b) provides that the application contents are determined by Local Boards, which are not required to request performance and cost information. Local Boards are not precluded from requesting such information, but the Act does not permit performance levels to be used in determining initial eligibility of HEA and NAA programs. No change has been made to the Final rule.

One commenter was concerned that, as local lists are combined to form a State list, as discussed in § 663.510, some programs and providers could be included for which a Local Board would not want to allow customers to use title I training funds. The commenter further recommended that the regulations give final authority to Local Boards to choose what programs and providers to include on a local list.

Response: We recognize that Local Boards may have legitimate concerns about the quality or integrity of a program or provider. Such concerns may arise if a program from another area's performance is unknown or lower than the levels set by the Local Board for subsequent eligibility, if there have been, or continue to be, problems known to the Local Board related to training program inputs (such as curriculum, instruction, or equipment) or if the provider has not complied with administrative or financial requirements. These problems may exist for programs and providers included by other Local Boards or by the Local Board itself. However, the Board must permit eligible participants to choose from providers on the State list which *must* include: (1) HEA and NAA programs which submit complete applications for initial eligibility in accordance with the Local Board's requirements, (2) non-HEA, non-NAA programs which meet the criteria in the Governor's procedures, and (3) programs placed on the list by another Local Board and approved by the State agency.

The Act, at section 122(e)(4)(b), requires that individuals eligible to receive training have the opportunity to select any eligible provider from any local area that is included on the State list. Local Boards are required to make this list available to the local One-Stop system. We believe that, to maximize customer choice, Local Boards must ensure that participants are informed about the State and local lists, encouraged to use them, and informed of their right to choose any programs on the list. For individuals determined eligible for training services, there are only three conditions a Local Board can impose on participants using ITA's: the training must be in an occupation for which there is demand, the individual must have the qualifications to succeed in the program, and the selection occurs after consultation with a case manager. Since Local Boards must allow title I funds to be used in the programs selected by training participants if these three conditions are met, Local Boards should ensure that the participants select the provider that best suits their individual needs especially when the provider is not located in the local area. Local Boards are encouraged to consider:

- *Enhancing the quality of information on programs and providers.*

High quality information can aid customers in making informed judgments and steering clear of questionable programs or providers. We encourage Local Boards to make recommendations on the types of information to be collected as part of the Governor's procedures for initial eligibility for non-HEA, non-NAA programs and providers and to ensure that their own applications for HEA and NAA programs and providers solicit the needed types of information and to obtain appropriate information to determine subsequent eligibility. Extensive supplementary information on providers and programs can also be included on the local list under § 663.575 and Local Boards and case managers can present additional information during the decision-making process, or encourage WIA customers themselves to acquire additional information on programs and providers under consideration. Local Boards can also coordinate with one another on the types of information required in initial applications and in supplementary information, to assure that there are high levels of information on programs in all local areas.

• *Providing quality guidance and continuing case management.* Individuals eligible for training services select a program after consultation with a case manager. States and Local Boards can take steps to ensure that case managers: encourage individuals to fully utilize the information available in the local or State list and in the consumer reports; provide additional information beyond the lists and consumer reports; assist individuals in doing their own research on programs or providers; and help individuals identify specific options and systematically compare them. If an individual does chose a questionable program, case managers can monitor the individual's progress and the training program's performance, in order to identify and take action to avoid potential problems.

• *Creating procedures to assure high performance.* State and Local Boards can create procedures to hold questionable providers accountable for performance. For example, procedures could permit ITA's to be paid incrementally upon completion of specific milestones.

Because the Act encourages broad customer choice, we do not think it appropriate to change the regulations. State and Local Boards have the flexibility to help individuals to make the best choice for their circumstances.

A commenter wanted § 663.510 to ensure that Local Boards have the flexibility to set policy on providers and programs that reflects local conditions and that the State cannot add its own providers to the State list.

Response: WIA section 122(e)(2) makes it clear that, in compiling the State list, the State has authority to include only providers and programs submitted as part of local lists. The State has no authority to include additional providers and programs. However, Local Boards have only limited authority to determine which programs or providers are included or excluded from the local list. Rather, the Local Board must, for initial eligibility, include all HEA and NAA programs and providers for which complete applications are submitted and include non-HEA and non-NAA programs which meet the Governor's criteria, which are not required to, but may, permit adjustments to performance levels for local conditions. For subsequent eligibility, all programs must meet minimum acceptable performance levels specified in the Governor's procedures and adjusted according to the Governor's procedures for local factors and the characteristics of the population served by the providers. Local Boards have the flexibility to require higher, but not lower, levels of performance. We encourage Local Boards to actively participate in the development of the procedures for determining initial and subsequent eligibility.

We recognize that, during both initial and subsequent eligibility, there may be programs which a Local Board believes are valuable in meeting local workforce needs that do not meet performance levels (or other criteria) and, therefore, cannot be included on the local list. To avoid this situation, we encourage local Boards to make their recommendations on the Governor's initial eligibility procedures, an opportunity which Governors are required to make available to Local Boards under § 663.515(c)(1)(I). As discussed earlier, in order to ensure access to a broad array of programs that can meet customer's diverse skill needs, career interests, and preferences, we also encourage Local Boards, to provide outreach and technical assistance to providers.

We recognize that, in other instances, a Local Board may reluctantly have to include programs or providers which it believes are questionable on the local list. To avoid individuals selecting questionable programs or providers or to prevent any problems if they are selected, we encourage Local Boards to explore the approaches suggested above, for enhancing the quality of information, providing high quality case management and guidance, and creating procedures to enhance performance. Since the regulation accurately reflects the statutory requirements, no change has been made to the Final rule.

One commenter was concerned that the Preamble and § 663.510(b) were inconsistent in discussing the need for setting performance levels for initial eligibility.

Response: It was unclear what the commenter found inconsistent. The Governor determines the initial eligibility procedures, including appropriate of levels of performance, for non-HEA and non-NAA programs and sets minimum acceptable levels for all programs for subsequent eligibility (though such levels can be increased by the Local Board). These provisions are included in §§ 663.515 and 663.535.

Another commenter stated that the process for determining eligible providers, as described in § 663.510, should be as transparent as possible, and allow qualified providers to become eligible while setting sufficient thresholds to limit participation of unqualified providers.

Response: We believe that the Act and regulations provide States and Local Boards with the opportunity to set up systems that will be transparent and achieve the goals suggested by the commenter. No change has been made to the Final rule.

Some commenters questioned whether §§ 663.510(c)(2) and 663.515(d) give too much authority to designated State agency by authorizing it to *verify* performance information on providers' programs submitted by the Local Board. One commenter felt that the regulations exceed the language of the Act, which only requires that the State determine if performance levels are met. Another commenter suggested that the regulations should not shift this responsibility onto States and that, if States have this responsibility, we should provide support and technical assistance in carrying out verification. The commenter also suggested that the Act appears to require a duplicative function by Local Boards and the designated State agency in determining if performance levels are met.

Response: We agree that the Act, in section 122(e)(2), specifies that the State *determines* if performance levels are met for programs submitted on local lists. However, we believe that the role of the State agency in verifying performance information is implicit in the statutory scheme, based on the State agency's authority to enforce provisions of section 122(f)(1) on the intentional submission of inaccurate performance information (which can only be determined as inaccurate if there is a

way to verify the information submitted) and on the requirement that providers submit *verifiable* program-specific information. We have changed the language in § 663.510(c)(2) to clarify that the State agency must determine if programs meet performance levels, and, in so doing, may verify the accuracy the performance information submitted. We have also revised § 663.515(d) to clarify that the designated State agency determines if the performance levels are met for programs Local Boards submit as part of their local list. In addition, since State agency consultation with the Local Board is required under section 122(f)(1) and verifiable information is required to be submitted to the Local Board, we believe that the Act also provides implicit authority to Local Boards to verify performance information and to report suspected inaccuracies to the State agency. We have added language in a new paragraph 663.510(e)(4) to clarify that Local Boards may perform verification of performance information, under the Governor's procedures. Technical assistance on verification and other aspects of implementing WIA section 122 is being planned.

We agree that the roles of the State agency and Local Boards may overlap in determining if programs meet performance levels and in verifying performance information, and we encourage States and Local Boards to work toward eliminating needless duplication. The Act does not, however, authorize the State to review Local Boards' determinations of programs that do not meet the performance levels and are, therefore, neither included on local lists nor forwarded to the State. No change has been made to this aspect of the Final rule.

Section 663.515—Initial Eligibility Process—One commenter suggested that initial eligibility criteria for institutions offering degree programs be accreditation or approval by the appropriate authority and, for institutions that offer certificate programs, appropriate licensing by the State.

Response: In determining initial eligibility, Local Boards have the option to request information about accreditation and approval from HEA-eligible and NAA-registered programs and providers as part of the application and to include such information on the local list. However, we do not believe that Act provides authority for *any* approval criteria for HEA and NAA programs and their providers, as long as completed applications are submitted and the program or provider meets the eligibility criteria of WIA section 122(a)(2)(A) and (B). We note that to be eligible under HEA title IV, providers must be accredited, and, if a public institution, approved by appropriate State authorities. For non-HEA and non-NAA programs and their providers, the Governor's procedures could require that State licensing, or any other applicable criteria, be used for both approval or information purposes. No change has been made to the Final rule.

We encourage State WIA systems to work with State public education, and licensing authorities to harmonize, coordinate, or strengthen requirements for all types of programs and providers, since the strictness and consistency of approval, licensing and accreditation for providers and programs varies widely between—and even within—States. Similarly, requirements for certificate programs, offered at both HEA-eligible and non-HEA-eligible providers, vary widely in terms of length, content, and rigor.

Another commenter asked that §§ 663.515 and 663.535 require the Governor to allow sufficient time for labor organizations and businesses to provide comments on initial and subsequent eligibility procedures and suggested a minimum of 30 days. The commenter also wanted the regulations to require that State and local labor federations be part of the consultation process.

Response: We view the comment and consultation provisions in this section, as throughout the Act, as cornerstones of the new system envisioned in the Act. To assure there is adequate time for comments, while permitting as much State flexibility as possible, we have added language at §§ 663.515(c)(1)(iii) and 663.535(a)(3) to require Governors to establish and adhere to a specific time period for the consultation and comment process during the development of procedures for initial and subsequent eligibility. We strongly encourage Governors to take affirmative steps to include State and local labor federations in the comment and consultation process, but we do not think additional changes to the Final rule are warranted. Under the rule as written, Governors are required to solicit and take into consideration the recommendations of providers of training services, which may, in some areas, include labor federations involved in providing apprenticeship or other training, and must provide an opportunity for representatives of labor organizations to submit comments on the procedures.

A commenter suggested that Governor's procedures for initial eligibility require evidence that training providers have consulted with labor organizations who represent workers having the skills in which training is proposed.

Response: While such an activity may be desirable, the Act does not provide authority to require Governors to include such a provision in their initial eligibility procedures. The contents of applications for initial and subsequent approval are left to the Governor's discretion, after appropriate consultation. We encourage Governors to consider such consultation requirements for initial eligibility, in order to assure that programs are of high-quality and match current skill requirements. We also encourage both Governors and Local Boards to consider including information items in initial eligibility procedures and applications that will help consumers identify if programs have been subject to review and approval by appropriate labor and industry organizations. No change has been made to the Final rule.

One commenter was concerned that the 30 days, permitted in section 122(e) of the Act, for the State agency to determine if programs submitted by Local Boards meet the performance criteria for initial and subsequent eligibility, was insufficient. The commenter recommended that State agencies be given 90 days.

Response: We recognize that until State data collection and records linkages systems are in place, States will have difficulty in meeting the timing requirement for verifying information and for determining if performance levels are met. Since the law specifies that the State agency has only 30 days, the State may not be able to determine if such levels are met on all programs' performance and the State may have to develop a prioritizing or sampling system. However, we also recognize that in a number of circumstances, timing problems will persist even once such data systems are in place, since there are time lags in accessing UI quarterly records for verifying program performance information. We have added language in § 663.530 to provide that, in the limited circumstance when insufficient data is available, initial eligibility may be extended for a period of up to six additional months, if the Governor's procedures provide for such an extension.

A number of commenters expressed suspicion that initial eligibility procedures, by providing complete discretion to Governors and Local Boards, would result in programs being determined eligible on the basis of arbitrary performance and cost thresholds, and thus lead to ''creaming''

of programs and participants. Commenters expressed concern that the regulations do not define an ''appropriate portion of performance and cost information'' and ''appropriate levels of performance'' and asked that we define these terms and offer examples of how States and Local Boards could set up initial eligibility procedures to assure a diverse provider system. Commenters suggested several other remedies: requiring or allowing use of adjustment or weighting factors for the local area and participant characteristics; encouraging use of data from outside the JTPA system to ensure a wide array of performance information; requiring Governors to set aside technical assistance funds to help small, nonprofit CBO's with application and data collection activities; requiring information on growth occupations and growing sectors in the area; and requiring that CBO's be listed as examples of interested members of the public to whom opportunities to comment should be provided.

Response: We believe that the Act provides broad discretion to Governors to determine initial and subsequent eligibility procedures. Since we want to provide as much flexibility to States as possible, we have not defined what constitute ''appropriate portions of performance and cost information'' or ''appropriate levels of performance.'' However, we are concerned that all procedures and practices be fair and not arbitrary, and that they be based on research, information from past experience, and sound management approaches. We are also concerned about practices that result in ''creaming'' of participants or lead to a lack of training options that meet the diverse skill needs and career interests of WIA participants. We plan to develop technical assistance on development of initial and subsequent eligibility criteria.

As noted earlier, we strongly encourage outreach and technical assistance by States and Local Boards to providers in order to assure that WIA participants have access to a broad range of programs. Also, we strongly encourage CBO's to take advantage of the public comment and consultation required to be provided by the Governor in the development of procedures for initial eligibility for non-HEA, non-NAA programs and subsequent eligibility for all programs. No change has been made to the Final rule.

One commenter requested clarification on how both initial and subsequent eligibility under WIA fits with requirements of State and national systems for accreditation, approval, and performance information. Several commenters recommended that the WIA system for collecting and disseminating performance information be used in other systems.

Response: The Act recognizes the value of at least two other national recognition systems, in the requirements for HEA and NAA programs for initial eligibility. We encourage all One-Stop partners at the State and local level to harmonize and coordinate performance requirements and to enhance systems for certification, licensure, and accreditation. We encourage all partners to avoid the creation of, or resolve, duplicative or conflicting requirements regarding programs, institutions, and data on individuals. We also support the creation of unified data collection systems that can reduce administrative burden while permitting information to be generated to meet reporting requirements under many programs. We believe that WIA's requirements will strengthen accountability and customer choice by supplementing existing systems established through State and federal higher education requirements and State licensing agencies. Information disseminated on individual training programs' performance under WIA will be a significant addition to the accountability systems currently in place, and will provide the general public, program administrators and front-line staff access to information that, in most parts of the Nation, has never before been available. We encourage Governors and Local Boards to consider ways to make use of performance and cost information already available through these other systems. We do not think, however, that WIA section 122 gives the authority to mandate this kind of coordination; thus, no change has been made to the Final rule.

Section 663.530—Time Limit for Initial Eligibility—A number of commenters expressed approval of the clear expression of how long initial eligibility may last and supported the swift transition to subsequent eligibility when all providers would be subject to the performance requirements. One commenter, however, was concerned that the requirement in § 663.530 that initial eligibility be only 12 to 18 months will create problems for institutions eligible under the Higher Education Act that will not be able to compile information in time for subsequent eligibility determination.

Response: We agree that, in certain circumstances, providers will have difficulty in collecting all the performance information required; similarly, the designated State agency may have difficulty verifying the information, particularly because of the lag time in using UI quarterly records. However, because of the critical importance of performance information for consumer choice and accountability, initial eligibility should be extended only in very limited circumstances, such as for new programs for which no data under the methodology the Governor selects would be available within 12 to 18 months. In other circumstances, Governors' procedures could permit an extension of initial eligibility of up to six months, when insufficient data is available. In such cases, it may be a good idea to partially assess performance by using the information that is available even if it is only partial information (such data on all students that recently left a program even if no WIA client information is yet available) or by using survey-based information until UI records can be used for verification. We have added language to § 663.530 to permit Governor's procedures to extend initial eligibility in limited circumstances.

Section 663.535—Subsequent Eligibility—One commenter wanted § 663.535 to be revised to clarify that the State agency can verify information on performance and cost effectiveness for subsequent eligibility.

Response: As discussed above, we have changed § 663.510 to clarify that the State, as well as the Local Board, may verify performance information in the process of determining if performance levels at initial and subsequent eligibility are met. The Act authorizes the State agency to determine if the performance levels are met for programs submitted by the Local Boards. The State does not have a role in reviewing performance of programs *not* approved by the Local Board and not included on local lists. However, there is nothing to preclude Local Boards from delegating to the State agency the authority to perform all initial determinations of eligibility of non-HEA and non-NAA programs, and subsequent eligibility determination for all programs, although responsibility for this process still remains with the Local Board. The Act does not explicitly authorize the State agency to determine ''cost-effectiveness,'' but rather requires that the information on the costs of the training services be required in applications for initial eligibility of non-HEA and non-NAA and for all programs for subsequent eligibility. Although States and Local Boards may choose to use the available cost and performance information to determine the cost-effectiveness of training programs, the decision to do so is a matter of State or

local discretion. We have made no additional change to the final regulations.

Several commenters were concerned that provider requirements at § 663.535 will not take into account the characteristics of the population served and the difficulties in serving these populations.

Response: These concerns are addressed in our response to similar comments on adjustments to performance levels in the discussion of § 663.540.

Section 663.540—Types of Performance and Cost Information Required and Extraordinary Costs of Collecting Performance Information—One commenter was concerned that federal requirements on confidentiality of student records possibly presents a major problem for developing information on students not funded with ITA's.

Response: We recognize that regulations and administrative guidance for the Federal Educational Rights and Privacy Act (FERPA) under 20 U.S.C. § 1232g, as issued by the U.S. Department of Education, may need to address the issue of how States can assure that performance information on all students in eligible programs can be developed, particularly when UI quarterly records must be used, as required under section 122 of WIA. We are working with the U.S. Department of Education to identify how State WIA systems, State education systems, and educational institutions can comply with FERPA and also generate the information required under WIA and plan to issue joint guidance that will assist States in complying with FERPA. No change has been made to the Final rule.

One commenter recommended that the law and regulations be changed so that information on all participants in a program, which may be difficult to obtain, is not required.

Response: We believe that eliminating this information would vitiate one of the key elements needed for maximizing customer choice. As the commenter recognizes, the Act requires performance information on all students in a program. State WIA systems are encouraged to work with State public education and licensing authorities to harmonize, coordinate, or strengthen information requirements in all systems. No change has been made to the Final rule.

One commenter recommended that Governors be allowed to require additional verifiable performance information describing the demographics of the populations served in a training program, including age, race, national origin, English proficiency, sex, and disability. The commenter further recommended that all such information be included in the consumer reports system.

Response: 29 CFR 37.37(b)(2) requires recipients, including training providers, to ''record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee.'' Governors should consider the merits of including such information in the consumer reports system. No change has been made to the Final rule.

Several commenters wanted the regulations to require Governors and Local Boards to demonstrate how local area factors and population characteristics are considered in determining performance levels for subsequent eligibility as well as requiring that Governors and Local Boards to demonstrate that the most disadvantaged are being served.

Response: Under § 663.535(f), the Governor's procedures already must ensure that Local Boards takes such factors into consideration. As we have said above, Governors and Local Boards should assure that all WIA participants who may have multiple barriers to employment have access to programs that can effectively serve their needs. No change has been made to the Final Rule.

A number of commenters noted that § 663.540 does not define what constitute ''extraordinary costs'' and that differences of opinion on this matter should be an allowable basis to appeal denial or termination of eligibility. Some commenters recommended that training providers be given explicit authority to present to their Local Board and Governor evidence of extraordinary costs and that a response should be required within a reasonable period of time. They further suggested that, if additional resources or cost-effective data collection methods were not provided, the provider would be exempted from submitting the performance information. One commenter recommended that providers which, after presenting evidence of extraordinary costs involved in providing performance information, receive neither additional resources nor cost-effective information-collection methods, should be exempted from submitting information on their programs' performance and that such programs should remain eligible. By contrast, one commenter wanted to assure there were limits on the amount of funds Governors must offer to training providers who need additional funds to collect performance information.

Response: The Act requires Governors to provide additional resources or cost-effective methods of data collection when providers experience extraordinary costs in providing required information, under section 122(d)(1)(A)(ii), on program participants who receive assistance under the adult or dislocated worker programs, or in providing additional information under section 122(d)(2). In order to assure that Governors provide such assistance, § 663.540(c) has been revised to require that the Governor establish procedures by which such costs can be determined. While Governors must define the methodology to be used in determining such costs and either provide the funds or procedures to help defray or lower these costs when they are determined to be extraordinary, we have not mandated that the Governor or Local Board is required to defray all of the provider's extraordinary costs. Reasonable parties may differ over whether information costs are extraordinary and whether the State has undertaken reasonable means to defray or lower such costs. States and local areas will have to devise a system under which disputes regarding extraordinary costs can be reasonably resolved. For example, a Local Board may base its initial decision on the basic information required, while attempting to reach agreement on the costs of the additional information. If a provider is denied eligibility because it has not provided the required information, section 663.565(b)(4) provides an opportunity for review of that decision.

Section 663.555—Dissemination of the State List—Several commenters want the state list of eligible training providers to be made available to the public and not just individuals.

Response: Section 663.555 already provides that the list and consumer reports are required to be widely disseminated and made available as a core service throughout the One-Stop delivery systems in the State. We believe that the One-Stop system is the appropriate way to ensure wide access of the list, so no change has been made to the Final rule.

Section 663.565—Loss of Eligibility and the Appeals Procedures—A number of commenters recommended there be a time limit required for prompt resolution of appeals and suggested 60 days as the limit.

Response: States must develop procedures that assure prompt resolution of appeals. Unlike other provisions in WIA, for example, section 181(c), which establish time limits for

the resolution of grievances or appeals, section 122(g) does not establish a time limit on the appeal; it leaves the details of the procedure to the Governor. We do not think we can mandate a time limit where Congress has chosen to give the Governor the discretion to fashion an appeal procedure. We do, however, strongly encourage States to establish and adhere to time limits for such appeals and to make those time limits consistent with the time limits in their other WIA appeal procedures. No change has been made to the Final rule.

One commenter noted that the criteria for termination of eligibility do not address situations in which institutions lose their license to operate, when they or their programs lose accreditation, or State educational agency approval, and when providers violate State or local laws.

Response: The criteria for initial eligibility for non-HEA and non-NAA programs are determined in the Governor's procedures and may cover a number of different situations, such as when programs are in violation of State and local laws or have lost their license to operate. WIA section 122 does not mandate the detailed criteria to be used in determining eligibility for providers and programs, but rather permits Governors and Local Boards to set application information requirements and determine that the information is complete. For example, information on the status of a program or provider as eligible under HEA, registered under NAA, and on accreditation or compliance with various State and local laws could be required and included on the State or local list). The only criteria in WIA for termination of subsequent eligibility are limited to: not meeting performance levels, intentionally submitting inaccurate information, and noncompliance with the Act and its regulations. If a State or Local Board asks for information about accreditation status or compliance with laws and the provider submits inaccurate information, it may be subject to termination under § 663.565(b)(3). Because WIA is silent about what happens if a provider's license accreditation status change during the period between initial and subsequent eligibility determinations or between annual subsequent eligibility determinations, we want to clarify that Governors may set procedures for resubmission of initial applications or other information in cases where the status of a provider or its program has changed.

The same commenter noted that § 663.565(b)(1) requires that Local Boards must remove programs that do not meet performance levels from the local list, while, under § 663.565(b)(2), States only may remove such programs from the State list, which could result in incompatible State and local lists and in Local Boards being sued by providers.

Response: The Local Board has the authority and the obligation, under WIA section 122(c)(6)(A) and (e)(1), to deny initial eligibility and subsequent eligibility if programs and providers fail to meet performance levels. Since, under WIA section 122(c)(6)(B), Local Boards may set higher performance standards for providers or programs to be included on their local list, it is possible that one local area may remove a program or provider while another places them on its local list. In that case, the State Agency must decide whether or not to remove the program or provider from the State list. The possibility of being sued by providers exists at both the local and the State levels, depending on which level is involved in denying or terminating eligibility. No change has been made to the Final rule.

Sections 663.570 and 663.575—The Consumer Reports System and Additional Local Information—A number of commenters asked that the regulations require consumer reports to include information about wage trends and projections, occupations that provide high wages, in addition to information on growth occupations, or those in growing sectors of the economy.

Response: We agree that such information is valuable to individuals in determining which occupations and training to pursue. Section 663.570 encourages States and Local Boards to make program specific information on wage trends and projections available in the consumer reports. Section 663.575 permits Local Boards to supplement the information on the State list with information on training linked to occupations in demand in the local areas. This kind of information is readily available since information on job vacancies, occupations in demand, and the earnings and skill requirements of such occupations is required as a core service available to the general public and to all WIA clients under § 663.240(b)(5). No change has been made to the Final rule.

Several commenters asked that ''program entrance requirements'' be added to the list of information that can be included in consumer reports in § 663.570 and further suggested that information be required to be presented ''in user-friendly format and language, taking into consideration the literacy levels, languages and developmental stages of the communities to be served.'' In addition, a few commenters asked that the regulations mention that information about nontraditional occupational training and placement of women in nontraditional jobs be specifically identified as appropriate information related to the objectives of the Act.

Response: We agree that program entrance requirements and the use of a user-friendly format and language are highly valuable to assist adults or dislocated workers to fully understand the options available in choosing a program of training services. States and Local Boards should assure that as much information as possible is accessible to anticipated users of ITA's and key populations who use such information as part of the core services available in the local One-Stop system. It is up to States and Local Boards to determine the types of information to be required; we do not believe it is appropriate to specify required information in the regulations. In making such determinations, we encourage States and Local Boards to consider whether to highlight information on specific types of programs, such as nontraditional occupational training for women. No change has been made to the Final rule.

Section 663.585—Providers Outside the Local Area and Reciprocal Agreements with Other States—One commenter asked that we add language to § 663.585 on portability of apprenticeship skill credentials, to assure that individuals registered in an apprenticeship program in one State would be deemed registered in an accredited program in other States.

Response: WIA does not address recognition of individuals' registration status by apprenticeship programs in different States. Rather, the Act permits reciprocal agreements among States so that individuals with ITA's can use providers in other States. If such an agreement had been made, the ability of individuals to participate in other States' programs would depend on whether those programs were included on the State list and the program's own policies regarding recognition of skill attainments and credentials from other programs. Questions of the portability of credentials in the apprenticeship system are the province of the Bureau of Apprenticeship and Training. No change has been made to the Final rule.

Section 663.590—Community-Based Organizations—One commenter expressed gratitude that the regulations clarify that CBO's can be determined