

Chapter ILHR 820

EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

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ILHR 820.01 Purpose. This chapter is created to establish the rules which shall govern the administration and granting of funds for Wisconsin employment and training programs authorized under title III of the job training partnership act, 29 USC 1651 et seq., as amended by the economic dislocation and worker adjustment assistance act, P.L. 100-418, title VI, subtitle D, s. 6302, 102 stat. 1538; and programs authorized under assistance to dislocated workers, s. 101.27, Stats.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.02 Definitions. Unless otherwise provided in a particular section, the following words and phrases shall have the following meaning:

- (1) "Acquisition cost" means the invoice unit price of an item net of any applicable credits or trade-in allowances but including the costs of modifications, attachments, accessories or auxiliary apparatus necessary to make it usable for the purpose acquired. Ancillary charges shall be accounted for pursuant to the organization's written accounting practices, including but not limited to taxes, duty, protective in-transit insurance, freight and installation.
- (2) "Act" means the job training partnership act of 1982 as amended, 29 USC 1501 et seq.
- (3) "Administration costs" means that portion of necessary and allowable costs which is not directly related to the provision of services to participants or allowable under the other cost categories. Examples include costs associated with personnel in administrative positions, including salaries, fringe benefits, clerical personnel, materials, equipment, space, utilities and travel. Other examples include costs associated with coordination activities which have no direct and immediate effect on participants, including administrative coordination of the federal-state U.C. system and title II of the trade act, 19 USC 2272 et seq., pursuant to 29 USC 1661c (f) and 20. CFR 631.13 (f).
- (4) "AFDC" means aid to families with dependent children.
- (5) "Applicable credits" means those receipts or reduction-of-expenditure transactions which offset or reduce expense items allocable to a cost objective. Examples include purchase discounts, rebates or allowances, recoveries or indemnities on losses and adjustments of overpayments or erroneous charges.
- (6) "Basic readjustment services" means services including but not limited to those authorized under 29 USC 1661c (c). Examples include development of individual readjustment plans for participants; outreach and intake; early readjustment assistance; job or career counseling; testing; orientation; employability assessment, including evaluation; determination of occupational skills; provision of future world-of-work and occupational information; job placement assistance; labor market information; job clubs; job search; job development; supportive services; pre-layoff assistance; relocation assistance; and programs conducted in cooperation with employers and labor organizations to provide early intervention in the event of plant or facility closures.

(7) "Cash contributions" means cash outlay, including money contributed to the grantee by other public agencies and institutions, private organizations and individuals.

(8) "CETA" means the comprehensive employment and training act, 29 USC 801, enacted in 1973 and repealed by JTPA.

(9) "CLEO" means the chief local elected executive officer of a unit of general local government in a SSA.

(10) "Cognizant federal agency" means the federal agency that has been assigned by the OMB to approve the indirect cost proposal of a specific state or local government, school or university or other nonprofit organization.

(11) "Community response team" means a group of agencies that may be involved in designing and implementing a reemployment plan for dislocated workers.

(12) "Contractor" means any person, corporation, partnership, public agency or other entity that enters into a contract with the grantee or the department.

(13) "Cost categories" means the allowable cost objective classifications for expenditures under this chapter and include retraining services defined in sub. (67); basic readjustment services defined in sub. (6); needs-related payments and supportive services defined in subs. (49) and (78); administration defined in sub. (3); and rapid response pursuant to 29 USC 1661c (b).

(14) "Cost objective" means an account or group of accounts established for the accumulation of costs, including but not limited to organizational units, functions, objects or items of expense, specific grants, cost categories or program activities.

(15) "DCR" means the U.S. DOL directorate of civil rights.

(16) "Department" means the Wisconsin department of industry, labor and human relations.

(17) "Department grantee" means an organization or agency receiving a grant directly from the department.

(18) "Direct costs" means any cost which can be identified specifically with one particular cost objective.

(19) "Dislocated worker committee" means a subcommittee of the Wisconsin jobs council.

(20) "DOD" means the Wisconsin department of development.

(21) "DOL" means the U.S. department of labor.

(22) "DWLAP" means the substate dislocated worker local assistance plan submitted to the department in compliance with 29 USC 1661b.

(23) "EDS" means the department's automated data system which is used to track participant eligibility and enrollment under this chapter.

(24) "EDS EDF" means the eligibility determination form issued by the department for certifying participant eligibility in programs funded under this chapter.

(25) "EDS SCTN" means the status change/termination notice form issued by the department for use in tracking participant enrollment in programs funded under this chapter.

(26) "EDWAA" means the economic dislocation and worker adjustment assistance act, P.L. 100-418, title VI, subtitle D, s. 6302, 102 Stat. 1538 which amended title III of the job training partnership act, 29 USC 1651 et seq.

(27) "Equipment" means an article of nonexpendable tangible personal property having a useful life of more than one year and a unit acquisition cost of \$500 or more. An organization may use its own definition if it includes all nonexpendable tangible personal property as defined in sub. (50).

(28) "ERD" means the equal rights division within the department.

(29) "ETA" means the employment and training administration within DOL.

(30) "Expendable personal property" means all tangible personal property other than nonexpendable personal property.

(31) "Facilities" means land or buildings, individually or collectively, or any other tangible capital asset wherever located and whether owned or leased, including leasehold improvements and equipment.

(32) "FAS" means the department's automated financial accounting system for programs funded under this chapter.

(33) "FDIC" means the federal deposit insurance corporation.

(34) "Fixed unit price contract" means a contract in which payment is based wholly on the delivery of services by the contractor.

(35) "FSLIC" means the federal savings and loan insurance corporation.

(36) "Grant" means an agreement between the department and the grantee whereby the department provides funds to carry out specific programs under this chapter.

(37) "Grantee" means an organization or agency receiving a grant either directly or indirectly from the department or another grantee.

(38) "Grantor" means the department or another organization or agency from which the grantee receives its grant.

(39) "Immediate family" means wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent and stepchild. Pursuant to 20 CFR 632.118 (c), for Native American grantees, "immediate family" means wife, husband, son, daughter, mother, father, brother and sister.

(40) "Indirect cost" means any general management cost incurred for a purpose benefiting more than one cost objective.

(41) "Industrywide project" means a special response program targeted to a specific population identified by the dislocated worker committee.

(42) "In-kind contributions" means the value of noncash contributions provided by the grantee or third parties which directly benefit and are specifically identifiable to the program. In-kind contributions may be in the form of charges for real or nonexpendable personal property and the value of goods or services.

(43) "IRS" means the U.S. internal revenue service.

(44) "Joint cost" means any cost which benefits more than one cost objective and which is readily assignable to the cost objectives benefited. Examples of joint costs include the salary of a staff person teaching both a vocational skills and employer-linked training program or the salary of an individual who administers and provides training for a program.

(45) "JTPA" means the job training partnership act of 1982 as amended, 29 USC 1501 et seq.

(46) "Leasehold improvements" means any capital expenditure made for additions or improvements to any tangible real property leased by the grantee.

(47) "LEO" means local elected official.

(48) "Long term unemployed" means any individual who is unemployed at the time of eligibility determination and has been unemployed for 15 or more of the 26 weeks immediately prior to eligibility determination.

(49) "Needs-related payments" means payments made pursuant to 29 USC 1661c (e) by a SSG to an eligible dislocated worker who does not qualify or has ceased to qualify for U.C. in order to enable the worker to participate in training or education programs funded under this chapter.

(50) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and unit acquisition cost of \$500 or more.

(51) "OIG" means the U.S. office of the inspector general.

(52) "OJT" means on the job training.

(53) "OMB" means the U.S. office of management and budget.

(54) "Participant" means any individual who has been determined eligible for participation and started receiving subsidized employment, training or services under a grant following intake, except for an individual who receives only outreach, intake and assessment services or an individual who receives post-termination services.

(55) "Performance based contract" means a type of fixed unit price contract under which costs may be allocated entirely to the retraining services cost category.

(56) "Personal property" means property of any kind except real property. Personal property may include expendable and nonexpendable property and be either tangible or intangible.

(57) "PIC" means the private industry council established for each SDA pursuant to 29 USC 1512.

(58) "PPM" means the department policy, procedures, participant eligibility and data reporting manual for programs funded under this chapter.

(59) "Pre-application" means the format by which to request and receive approval for special response funds authorized under 29 USC 1652 (c) (B) and s. 101.27, Stats.

(60) "Program income" means the net income earned from grant or contract related activities. Program income may be defined as gross revenue to simplify accounting of the funds.

(61) "Program year or PY" means the administrative year under JTPA, effective July 1 through June 30.

(62) "Project costs" means all allowable costs incurred by a grantee and the value of any in-kind contributions made by the grantee or third parties in accomplishing the objectives of the grant during the program period.

(63) "Rapid response" means the assistance authorized under 29 USC 1661c (a) and (b).

(64) "Real property" means land, land improvements, buildings and leasehold improvements but not including movable machinery and equipment.

(65) "Regional project" means a special response program targeted to serve workers dislocated due to a specific plant closing or layoff or to train dislocated workers for a specific business or industry.

(66) "Regulations" means DOL-ETA's implementing regulations for programs under the act, 20 CFR 626 to 638.

(67) "Retraining services" means the direct costs associated with activities authorized under 29 USC 1661c (d). Examples include OJT contracts; occupational skill and other classroom training; basic and remedial education; out-of-area job search; literacy and English for non-English speakers training; relocation;

entrepreneurial training; and other appropriate training activities directly related to appropriate employment opportunities in the SSA.

(68) "RFP" means request for proposals.

(69) "SDA" means service delivery area or the geographic area designated by the governor for administering JTPA funds pursuant to 29 USC 1511.

(70) "Secretary" means the secretary of the department.

(71) "Service provider" means a public agency, private non-profit organization, or private-for-profit entity that delivers educational, training or employment services.

(72) "Special response program" means statewide, regional or industrywide projects funded pursuant to 29 USC 1652 (c) (B) and s. 101.27, Stats.

(73) "SSA" means substate area or the geographic area in a state established pursuant to 29 USC 1661a (a).

(74) "SSG" means substate grantee or the agency or organization selected to administer programs pursuant to 29 USC 1661a (b).

(75) "Statewide project" means a special response program targeted to specific groups of dislocated workers requiring retraining services. Examples include projects that provide greater training duration for individuals in substate programs; trade adjustment assistance to eligible individuals when federal and state funds are not available; training and other services after state rapid response and local expeditious response has occurred and sufficient funds are not available in a SSA; and matching funds for title IV-C veterans grants, 29 USC 1721 et seq.

(76) "Subgrantee" means an organization or agency receiving a grant under this chapter from any grantee.

(77) "Substantial layoff" means any reduction in force at a single employment site that is not the result of a plant closing, and that during any 30-day period, results in an employment loss for at least 33% and 50 of the employees; or at least 500 employees. Only employees regularly working at least 20 hours per week shall be included in the computation.

(78) "Supportive services" means services pursuant to 29 USC 1503 (24) which are necessary to enable an individual who is eligible but cannot afford to participate in a training program under this chapter, and services pursuant to 29 USC 1661c (c) (15) which are necessary to assist a participant to retain employment. Examples include transportation, health care, special services and materials for the handicapped, child care, meals, temporary shelter, financial counseling and other reasonable expenses which may be provided in-kind or through cash assistance.

(79) "U.C." means unemployment compensation.

(80) "Unemployed" means an individual who did not work during the 7 consecutive days prior to application for a program under this chapter, who made specific efforts to find a job within the past 4 weeks prior to application and who was available for work during the 7 consecutive days prior to application, except for temporary illness.

(81) "Unit acquisition cost" means the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired.

(82) "U.S." means the United States.

(83) "VTAE" means Wisconsin vocational, technical and adult education.

(84) "WEOP" means the Wisconsin employment opportunities program.

(85) "WIMS" means the Wisconsin information management system which is automated and used by the department to gain access to the EDS.

(86) "Wisconsin jobs council" means the state job training coordinating council authorized under 29 USC 1532 which is ap-

pointed by the governor to provide advice in planning, coordination, monitoring and related activities and services.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.03 Administration. The department, on behalf of the governor, shall prepare and administer the state plan of services to dislocated workers; select SSAs; solicit and review applications and award funds to department grantees; implement a dislocated worker unit, the special response program, rapid response activities and labor-management committees or community response teams; authorize payments and otherwise implement obligations entailed in grants made under this chapter; monitor the provision of services; evaluate program performance; develop and receive required reports; hear and resolve complaints; and conduct and resolve audits.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.04 Policies and procedures manual. The department shall develop a PPM for policies, procedures, eligibility determination and participant data reporting under this chapter. The PPM shall be provided to all department grantees and available to the general public. The department shall update the manual as necessary and provide the updates to department grantees.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.05 Eligible participants. Any person participating in an employment and training program under this chapter shall be determined eligible pursuant to the PPM and the following eligibility criteria:

(1) **FEDERAL REQUIREMENTS.** Pursuant to 29 USC 1651 (a), eligible dislocated workers means individuals to whom the following apply:

(a) *Unlikely to return.* Individuals who have been terminated or laid off or who have received a notice of termination or layoff from employment, are eligible for or have exhausted their entitlement to U.C. and are unlikely to return to their previous industry or occupation;

(b) *Permanent closure or substantial layoff.* Individuals who have been terminated or have received a notice of termination of employment as a result of any permanent closure of or any substantial layoff at a plant, facility or enterprise;

(c) *Long-term unemployed.* Individuals who are long-term unemployed and have limited opportunities for employment or re-employment in the same or a similar occupation in the area in which the individual resides, including older individuals who may have substantial barriers to employment by reason of age; or

(d) *Self-employed.* Individuals who were self-employed, including farmers and ranchers and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters pursuant to sub. (3).

(2) **STATE REQUIREMENTS.** In addition to sub. (1), any person served shall meet all of the following:

(a) *Period of dislocation.* The person shall be dislocated from his or her place of employment within the last 5 years.

(b) *Age and work history.* A person over 22 years of age shall have at least 2 years continuous or intermittent previous work history. A person 21 years of age or younger shall have at least 4 years of previous work history. Victims of a permanent plant or facility closing or substantial layoff are exempt from all work history requirements.

(c) *Recall date not specific.* The person does not have a specific recall date from the employer.

(3) **DISLOCATION OF SELF-EMPLOYED.** Self-employed individuals or their family members and farm or ranchhands may be eligible as follows:

(a) *Self-employed.* Self-employed individuals may include farmers, ranchers, professionals, independent tradespeople and other businesspersons who were self-employed and are dislocated because of natural disasters pursuant to 20 CFR 631.3 (e) or

as a result of general economic conditions in the community in which they reside pursuant to 20 CFR 631.3 (c) and are one of the following:

1. Unemployed pursuant to 20 CFR 631.3 (d) (1) and s. ILHR 820.02 (80).

2. Going out of business or likely to terminate operations pursuant to 20 CFR 631.3 (d) (2) because a notice of foreclosure has been filed or the intent to foreclose on the business entity is evident; a petition for bankruptcy has been filed or the business has been adjudicated bankrupt; the capital necessary to continue business operations cannot be obtained; or outstanding payments are owed on a loan to finance the business premises.

(b) *Family members and farm or ranchhands of self-employed.* Pursuant to 20 CFR 631.3 (d) (3), family members and farm or ranchhands of self-employed individuals may be eligible to participate in the program to the extent that their contribution to the business operation amounts to a minimum of 30 hours per week.

(4) **OTHER ELIGIBLES.** Additional dislocated workers and non-residents may be eligible to receive services as follows:

(a) *Additional dislocated workers.* Services may be provided to additional dislocated workers as defined in 29 USC 1651 (a) (2) only if it is determined that the services may be provided without adversely affecting the delivery of services to eligible dislocated workers. The department shall determine service levels to additional dislocated workers in the biennial state plan under s. ILHR 820.06.

(b) *Nonresidents.* Pursuant to 29 USC 1661 (b) (1) (B) and (C), services may not be denied to an eligible dislocated worker displaced by a permanent closure or substantial layoff within the state regardless of the state of residence of the worker. Services may be provided to other eligible dislocated workers regardless of the state of residence of the worker.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.06 State plan. In order to receive funds authorized under 29 USC 1652 (b), the department shall submit a biennial state plan to DOL for approval. The state plan shall be prepared pursuant to 29 USC 1661 (a) and (b) and shall be reviewed by the Wisconsin jobs council prior to submittal. It shall describe the services, activities, distribution of funds and performance standards of programs assisted by funds under this chapter. The initial biennial plan shall cover a one-year transition period from July 1, 1989 to June 30, 1990. Modifications to the state plan shall be prepared and submitted pursuant to 29 USC 1661 (d).

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.07 State dislocated worker unit. The department shall establish a dislocated worker unit pursuant to 29 USC 1661 (b) (2) to provide activities which include but are not limited to the administration of the special response program; the development of applications for national reserve funds pursuant to 29 USC 1652 (a) (2); the implementation of rapid response assistance pursuant to 29 USC 1661c (a) and (b); and the formation of labor-management committees pursuant to 29 USC 1651 (b) (1) or community response teams.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.08 Substate programs. Pursuant to 29 USC 1661a (a) and (b) and s. 1661b, the department shall administer the substate programs, including SSA and SSG designation, DWLAP approval and related activities as follows:

(1) **DESIGNATION OF SSAS.** Pursuant to 29 USC 1661a (a), the department shall designate or redesignate SSAs for the delivery of services under this chapter. The department shall initiate the application for PICs and LEOs to request SSA designation. When designating SSAs, the department shall consider the recommendations of the Wisconsin jobs council, the administrative funds

available to support the existing SDA structure and the capacity of the SSA to achieve or exceed performance standards.

(2) **DESIGNATION OF SSGS.** Pursuant to 29 USC 1661a (b), the department shall designate the SSG for each SSA in sub. (1). The SSG shall be designated on a biennial basis pursuant to an agreement among the department, LEOs and PICs of the SSA. Entities eligible for designation as SSGs shall be pursuant to 29 USC 1661a (c).

(3) **SUBSTATE PLAN.** Pursuant to 29 USC 1661b (a), no funds appropriated for any fiscal year may be provided to a SSG unless the department has approved a plan submitted by the SSG describing the manner in which activities shall be conducted within the SSA. The following shall apply to the DWLAP:

(a) *DWLAP requirements.* The SSG shall prepare a SSA plan of services to dislocated workers pursuant to 29 USC 1661b (b) and publication in par. (c). The DWLAP shall be reviewed and submitted to the department by the parties to the SSG agreement in sub. (2).

(b) *Review and approval.* Prior to submittal to the Wisconsin jobs council, the department shall review the DWLAP for compliance with 29 USC 1661b (a) and (b), this chapter, the PPM and applicable laws, rules and regulations. After considering the recommendations of the Wisconsin jobs council, the department shall approve or disapprove the plan pursuant to 29 USC 1661b (c) and shall notify the SSG within 7 working days following the decision.

(c) *Newspaper announcement.* The SSG shall comply with the publication requirements in 29 USC 1515 (a) and publish a newspaper announcement. The newspaper announcement shall include a notice of the SSG's development of the DWLAP, a brief summary of the nature and purpose of the plan, the location where and hours when the complete plan can be reviewed and the telephone number to which questions may be directed.

(5) **SUBSTATE SERVICES.** Pursuant to the agreement in sub. (2), the SSG shall provide employment and training services to dislocated workers within the SSA under the approved DWLAP in sub. (3). The SSG may provide the services directly or through a grant or contract with service providers pursuant to ss. ILHR 820.11 (24), 820.14 and 820.15 (1).

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.09 Special response program. The department shall administer the special response program with funds authorized under 29 USC 1652 (c) (B) and s. 101.27, Stats. The special response program shall target services to industrywide, regional or statewide projects pursuant to s. ILHR 820.02 (41), (65) and (75). Projects shall be selected as follows:

(1) **ELIGIBLE GRANT APPLICANTS.** Entities may be eligible as grant recipients of special response funds as follows:

(a) *Regional projects.* Any public, private nonprofit or private for-profit agency or organization is eligible to apply for funds for regional projects.

(b) *Statewide projects.* Any SSG, job center, job service, VTAE college or labor organization is eligible to apply for funds for statewide projects.

(c) *Industrywide projects.* Eligible applicants for industrywide projects shall be determined by the dislocated worker committee whenever a specific population is designated as eligible for industrywide projects.

(2) **PRE-APPLICATION REQUIREMENTS.** A pre-application pursuant to s. ILHR 820.02 (59) shall be submitted to the department to request special response funds. The pre-application shall include but not be limited to an analysis of area need and economic impact; the proposed target group and training; consultation and coordination activities; and an implementation plan.

(3) **PRE-APPLICATION REVIEW PROCESS.** The department shall review the pre-applications pursuant to the following:

(a) *Initial review.* The department shall initially review pre-applications for completeness and request additional information if needed. Pre-applications which meet the requirements shall be forwarded to the interagency review team.

(b) *Interagency team review.* Pre-applications shall be reviewed bi-weekly by an interagency review team composed of representative from the department, job service, VTAE, DOD, PIC and organized labor. Additional information may be requested. Pre-applications which meet the requirements shall be forwarded to the dislocated worker committee.

(c) *Dislocated worker committee review.* The dislocated worker committee shall review final pre-applications and forward a recommendation to the secretary. Teleconferences or special meetings may be held for projects that need to be expedited.

(d) *Secretary review and approval.* The secretary shall receive and review recommendations from the dislocated worker committee and shall render a final decision on funding.

(e) *Notification of funding decisions.* The department shall notify applicants of funding decisions in writing. The department shall also notify applicants of meetings and teleconferences relating to funding decisions.

(f) *Complaints and appeals.* Following notification of funding, applicants may present an appeal at the next meeting of the dislocated worker committee. The applicant may also utilize the complaint process pursuant to s. ILHR 820.16.

(4) **APPLICATION PROCESS.** After a funding decision has been made, the applicant shall submit a complete application to the department. The department shall provide the application guidelines when notifying the applicant of funding decisions. The application shall include but not be limited to the pre-application, a detailed budget and description of program activities, administrative systems and procedures, consultation and review activities. Applications which meet the requirements shall be approved by the department.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.10 Fund utilization. Funds provided for activities and services under this chapter shall be utilized as follows:

(1) **DISTRIBUTION OF FUNDS WITHIN STATE.** The amount allotted to the state under 29 USC 1652 (a) (1) and s. 101.27, Stats. shall be distributed as follows:

(a) *Federal funds.* Funds allotted to the state under 29 USC 1652 (a) (1) shall be distributed as follows:

1. Fifty percent of the funds shall be distributed to the SSAs on an annual basis for the provision of programs described in the DWLAP pursuant to 29 USC 1652 (d). The funds shall be distributed pursuant to the allocation method in par. (c).

2. Ten percent of the funds may be held in reserve by the department for distribution to SSAs in need pursuant to 29 USC 1652 (c) (2). These funds may not be distributed by the department later than 9 months after the beginning of the program year for which the allotment was made. The funds shall be distributed on the basis of need.

3. Forty percent of the funds shall be reserved by the department for the provision of statewide, regional or industrywide special response projects, rapid response activities and other services pursuant to 29 USC 1652 (c) (1) and s. ILHR 820.03.

(b) *State funds.* Funds authorized under assistance to dislocated workers, s. 101.27, Stats., shall be reserved by the department for the provision of statewide, regional or industrywide special response projects, rapid response activities and other services pursuant to 29 USC 1652 (c) (1) and s. ILHR 820.03.

(c) *Allocation method.* The department shall distribute funds to the SSAs pursuant to an allocation formula authorized under 29 USC 1652 (d). The formula shall be developed by the department utilizing the most appropriate information available as follows:

1. The elements of the allocation formula shall include factors for the state's insured unemployment, long term unemployed, un-

employment concentrations, economic growth, mass layoff, farm hardship and declining industries.

2. The distribution of funds shall be described in the state plan under s. ILHR 820.06 and reviewed by the Wisconsin jobs council prior to approval by the governor.

3. The department shall review the allocation method annually and if appropriate, update it in order for funds to be timely and responsive to the state's current economic conditions and concentrations of dislocated workers.

4. The state plan and related modifications shall be approved by DOL prior to implementation.

(2) **COST LIMITATIONS.** Expenditures under this chapter shall be recorded pursuant to the cost categories in s. ILHR 820.12 (7). Pursuant to 20 CFR 629.39 (h), only pars. (a) 4. and (b) 3. shall apply to the northwest concentrated employment program SSG. The expenditure limitations on funds authorized under EDWAA and s. 101.27, Stats. shall be as follows:

(a) *Substate programs.* Each SSG shall meet the cost category limitations pursuant to 29 USC 1661d and the overall expenditure levels as follows:

1. Not less than 50% of the funds expended may be used for retraining services unless a waiver is granted pursuant to sub. (4).

2. Not more than 25% of the funds expended may be used to provide needs-related payments and other supportive services.

3. Not more than 15% of the funds expended may be used for administration.

4. An expenditure level of 85% of planned expenditures shall be maintained on a quarterly basis or the excess variance may be subject to reallocation by the department pursuant to sub. (3).

(b) *State reserves.* The department shall meet the following expenditure limitations for reserved funds under 29 USC 1652 (c) (1) and s. 101.27, Stats. to provide statewide, regional or industrywide special response projects, rapid response activities and other services pursuant to s. ILHR 820.03:

1. Not more than 25% of the funds expended may be used to provide needs-related payments and other supportive services.

2. Not more than 15% of the funds expended may be used for administration, excluding costs for rapid response assistance pursuant to 29 USC 1661d (c).

3. An expenditure level of 85% of planned expenditures shall be maintained on a quarterly basis or the excess variance may be subject to reallocation by the department pursuant to sub. (3).

(3) **REALLOCATION OF UNUSED FUNDS.** Pursuant to sub. (2) (a) 4. and (b) 3., funds recaptured from SSAs shall be reallocated to other SSAs that meet expenditure requirements. Funds recaptured from special response activities shall be utilized for activities specified in sub. (1) (b). The department shall provide notice of reallocation to grantees pursuant to s. ILHR 820.15 (3) and (7) (a). If funds are recaptured by DOL pursuant to 29 USC 1653, the department shall make funds available through deobligation pursuant to sub. (2) (a) 4. and (b) 3. and s. ILHR 820.15 (3) and (7).

(4) **WAIVER FOR RETRAINING SERVICES.** Pursuant to 29 USC 1661d (a), SSGs may seek a waiver from the department to reduce the level of funds expended for retraining services from 50% to not less than 30%. A waiver may be granted in whole or in part pursuant to the following:

(a) *Request period.* A waiver may be requested at any time.

(b) *Content and conditions of request.* The SSG shall submit the waiver request to the department in writing pursuant to the PPM. The request shall demonstrate that if the waiver is granted, the worker readjustment program shall be consistent with the principle that dislocated workers be prepared for occupations or industries with long-term potential. The waiver request shall include the specified amount of the waiver and documentation that one or more of the following conditions are met:

1. Additional resources from other funding sources are available to cover the cost of training.

2. A large plant closing or mass layoff necessitates a significant amount of basic readjustment services from local funds.

3. The geographic, demographic or economic conditions of the SSA make the cost of providing basic readjustment services disproportionately high and insufficient funds are available. Consideration shall be given but not limited to rural areas, areas where dislocation occurs from large numbers of very small-business employers and areas where dislocations are highly decentralized.

4. The demand for needs-related payments and supportive services exceeds 15 percent of the funds available.

(c) *Newspaper announcement.* The SSG shall comply with the publication requirements in 29 USC 1515 (a) concurrently when submitting the application for a waiver and publish a newspaper announcement. The newspaper announcement shall include a notice of the SSG's intent to request a waiver, a summary of the rationale, the location and hours when the complete waiver request can be reviewed and the telephone number where questions can be directed.

(d) *Department review and approval process.* The department shall review and approve waiver requests as follows:

1. The department shall review the waiver request for compliance with the application process. Any additional information which may be needed shall be requested and provided in writing. Requests which meet requirements shall be forwarded to the dislocated worker committee.

2. The dislocated worker committee shall review the waiver request and forward a recommendation to the secretary.

3. The secretary shall review the recommendations of the dislocated worker committee and render a final decision on the waiver request. Within 30 days of the secretary's decision, the department shall notify the applicant of the decision in writing.

4. The SSG may appeal the decision through the complaint process in s. ILHR 820.16.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.11 Assurances and certifications. This section contains the assurances and certifications for all grants awarded under this chapter. All department grantees shall ensure that they and their subgrantees or contractors comply with the following terms:

(1) **SIGNATORY AUTHORITY.** The grantee shall possess the following legal authority to participate in a grant under this chapter:

(a) *Signatory official.* The grantee shall ensure that the designated signatory official holds the legal authority to accept funds.

(b) *Grantee authority.* A resolution, motion or similar action shall be duly adopted or passed as an official act of the grantee's governing body authorizing participation in the grant and directing the grantee's official representative to act in connection with the grant and provide additional information as required.

(2) **COMPLIANCE STATEMENT.** The grantee shall comply with the state plan, DWLAP, this chapter and all applicable laws, rules, regulations and PPMs relating to programs funded under this chapter.

(3) **NONDISCRIMINATION AND EQUAL OPPORTUNITY.** The grantee may not discriminate and shall follow equal employment opportunity practices in the administration and delivery of program services and benefits to eligible applicants and participants as follows:

(a) *Applicable laws and other requirements.* The grantee shall comply with the PPM, this chapter and all applicable laws, rules and regulations relating to nondiscrimination and equal opportunity, including the civil rights act, 42 USC 1971 et seq.; rehabilitation act, 42 USC 6001 et seq.; age discrimination act, 42 USC 6101 et seq.; U.S. executive order 11375; and Wisconsin fair employment act, ss. 111.31 to 111.395, Stats. These requirements shall include but not be limited to the following:

1. No participant, staff person or administrator may be discriminated against, denied benefits, denied employment or excluded from participation in connection with any program funded under this chapter on the basis of race, color, religion, sex, national origin or ethnic status, age, handicap, marital status, offender status, sexual orientation, political affiliation or belief, arrest or conviction record or refusal to submit to sexual contact or sexual intercourse.

2. Participation in programs funded under this chapter shall be open to citizens and nationals of the U.S., lawfully admitted permanent resident aliens, refugees, parolees and other individuals authorized by the U.S. attorney general to work in the U.S.

3. The grantee shall make appropriate efforts to overcome sex stereotyping, including the encouragement of nontraditional employment for staff and participants funded under this chapter.

4. The grantee shall ensure that reasonable accommodations are made to the known physical or mental limitations of an otherwise eligible applicant, employe or participant unless it can be demonstrated that the accommodations would impose an undue hardship on the operation of the program.

5. Equitable services shall be provided to mandated groups in proportion to their incidence in the eligible population. These groups shall be mandated by the act and the governor's objectives and coordination criteria and include women, minorities, handicapped, older individuals, high school dropouts and AFDC-WEOP eligible registrants. This does not preclude services to nonmandated groups.

6. The grantee shall target employment and training services to those who can benefit from and who are most in need under the program's plan of services and enrollment priorities. Records shall be maintained by the grantee and made available to the department to determine the extent of service to those individuals. Equitable provision of services in enrollment and placement to the program's target groups shall provide substantial indication of service to the most in need but may not constitute the sole source of the determination if complaints arise.

(b) *Notification.* The grantor shall notify each grantee of the terms of nondiscrimination and equal opportunity, including the potential consequences for noncompliance. The grantee shall agree to abide by the terms as a condition of receiving funds.

(c) *Corrective action and sanctions for noncompliance.* The grantor shall attempt to resolve nondiscrimination and equal opportunity violations as follows:

1. The grantor shall notify the alleged violator of violations in writing and require a corrective action plan that establishes the measures to be taken and time frames for resolution; the sanctions to be invoked for refusal to submit or adhere to the plan or for continued violations after corrective action is required; and the appeal and hearing rights pursuant to s. ILHR 820.16.

2. The severity of the sanctions shall reflect the severity of the violation and may result in terminating funds and imposing sanctions pursuant to s. ILHR 820.15 (8) and 29 USC 1574 (e) (2) (A-D). Other sanctions may result from appropriate civil rights or law enforcement agencies or applicable by laws, rules or regulations.

(d) *Compliance reviews.* Pursuant to s. ILHR 820.13 (10), the grantor shall conduct monitoring reviews of each subgrantee to determine compliance with nondiscrimination and equal opportunity. The grantor shall monitor the specified results and time frames of any corrective action plan.

(4) **ADEQUATE AND DOCUMENTED SYSTEMS.** The grantee shall have adequate and documented administrative, personnel, financial and program management systems; including the policies, procedures and controls necessary to ensure effective and efficient use of funds for the delivery of programs under this chapter.

(5) **CONFLICT OF INTEREST.** The grantee and its personnel shall avoid organizational and personal conflict of interest and the appearance of conflict of interest as follows:

(a) *Casting of votes.* Pursuant to 29 USC 1551 (f), no member of any council, board or committee, nor the LEO shall cast a vote on the provision of services by that member or any organization which that member directly represents, or vote on any matter which would provide direct financial benefit to that member.

(b) *Use of position.* The grantee shall prohibit its employes from using their positions for a purpose that is or that gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties.

(c) *Competition for funds.* No grantee who develops the specifications or evaluates or recommends the bids or proposals for a particular procurement may be eligible to compete for the grant or contract.

(d) *Code of standards.* The grantee shall maintain a written code of standards pursuant to sub. (24) (d).

(6) **KICKBACKS.** No officer, employe or agent of the grantee shall solicit or accept gratuities, favors or anything of monetary value from any person in return for preferential treatment.

(7) **COMMINGLING OF FUNDS.** The grantee shall maintain accounting records which adequately identify separate deposits and expenditures for each grant.

(8) **CHARGING OF FEES.** The grantee shall ensure that no individual is charged a fee for being referred to training or placed in employment funded under this chapter.

(9) **NEPOTISM.** The grantee shall prohibit nepotism as follows:

(a) *Hires, promotions and salaries.* No council member, LEO or employe of the grantee shall effectively recommend or decide to hire, promote or establish the salary of another person when the person affected is a member of his or her immediate family.

(b) *Supervision and management.* No council member, LEO or employe of the grantee shall give preferential treatment in the supervision or management of another employe who is a member of his or her immediate family.

(10) **CHILD LABOR.** The grantee shall comply with applicable federal and state child labor laws, rules and regulations.

(11) **POLITICAL PATRONAGE.** The grantee shall prohibit political patronage as follows:

(a) *Rewards.* The grantee may not select, reject or promote a participant or staff person based on the individual's political affiliation or beliefs or as a reward for political services or as a form of political patronage.

(b) *Referrals.* The grantee may not refer participants to programs under this chapter nor select subgrantees based on political patronage or affiliation.

(12) **POLITICAL ACTIVITIES.** Funds under this chapter may not involve partisan or nonpartisan political activities as follows:

(a) *Hours.* No participant may engage in partisan or nonpartisan political activities during hours for which the participant is paid with funds under this chapter.

(b) *Representation.* No participant may engage in partisan or nonpartisan political activities in which she or he represents herself or himself as a spokesperson for a program funded under this chapter.

(c) *Location of employment or outstation.* No participant may be employed or outstationed in the following:

1. The office of a member of congress or a state or local legislator or on any staff of a legislative committee.

2. The immediate offices of any chief elected executive official of a state or a unit of general local government, unless it is clearly documented that the position is entirely nonpolitical.

3. A position involving political activities in the offices of other elected executive officials. Nonpolitical positions shall be

permissible only with documentation of the nonpolitical nature of the position.

(d) *Hatch Act.* Individuals whose employment is funded under this chapter shall comply with the hatch act, 5 USC 1502, whether the individual works for the state, a county, PIC, SSG, nonprofit or nongovernmental organization.

(13) **SECTARIAN ACTIVITIES.** Funds under this chapter may not be used to support religious or anti-religious activities.

(14) **UNION ACTIVITIES.** Funds under this chapter may not be used to promote or oppose unionization. The grantee shall comply with union activities as follows:

(a) *Membership.* No individual shall be required to join a union as a condition for enrollment in training institutions unless the training involves individuals employed under a collective bargaining agreement containing union security provisions.

(b) *Dues or services fees.* Employers may deduct union dues or service fees for participants pursuant to applicable collective bargaining agreements or state laws, rules and regulations.

(c) *Consultation with labor organizations.* The grantee may provide services to a substantial number of members of a labor organization only after full consultation with the labor organization involved. The grantee shall give a labor organization which represents a substantial number of employes who are engaged in work or training an opportunity to comment on training which is proposed.

(d) *Labor disputes and contracts.* The grantee shall comply with labor disputes and contracts as follows:

1. A participant may not be placed in or remain working in any position affected by a labor dispute involving a work stoppage or strike.

2. A program funded under this chapter may not impair existing contracts for services or collective bargaining agreements. Any program which would be inconsistent with the terms of a collective bargaining agreement may only be undertaken with the written concurrence of the labor organization and employer concerned.

(15) **MAINTENANCE OF EFFORT.** The grantee shall prevent maintenance of effort as follows:

(a) *Displacements.* Programs funded under this chapter shall result in an increase in employment and training opportunities over those which would otherwise be available in the area and prohibit displacement as follows:

1. Currently employed workers may not be totally or partially displaced, nor their hours of regular work time, wages or employment benefits reduced.

2. Existing contracts or grants for services may not be impaired, nor federal funds substituted to pay for services that would have been funded by other sources.

(b) *Supplanting funds.* Funds under this chapter shall be used to supplement and not supplant funds that would otherwise be available from nonfederal sources for planning and administering programs.

(c) *Hiring freezes.* A participant may not be hired into or remain working in any position when the same or a substantially equivalent position is vacant due to a hiring freeze.

(d) *Layoffs and recalls.* A participant may not be hired into or remain working in any position when any person who is not funded under this chapter is one of the following:

1. On layoff from the same or a substantially equivalent job in the same organizational unit of the same employer.

2. On layoff or has been bumped and has recall or bumping rights to that position pursuant to a personnel code, practice or collective bargaining agreement of the same employer.

3. For purposes of this paragraph, a layoff is in effect until the expiration of the period required by a recall list, or if no recall list or reemployment rights exist, for a period of one year from the last

layoff or until the next operating year of the department or agency, whichever occurs later.

(e) *Promotions*. No job shall be created in a promotional line to infringe in any way upon the promotional opportunities of currently employed individuals.

(16) **CRIMINAL PROVISIONS**. The grantor shall initiate action to prosecute to the full extent of the law any officer, director, agent or employe of any agency funded under this chapter who commits any of the following acts:

(a) *Ineligible enrollments*. Knowingly hires or enrolls an ineligible individual.

(b) *Misapplication or theft*. Embezzles, willfully misapplies, steals or obtains by fraud any money, funds, assets or property which is the subject of a grant.

(c) *Inducement or threats*. Induces another person to give up money or something of value to a person or grantee by threat of dismissal or refusal to renew a grant.

(d) *Obstruction*. Willfully obstructs or impedes or attempts to obstruct or impede an investigation or inquiry into activities funded under this chapter alleged to be criminal or a violation of this chapter, the PPM and applicable laws, rules and regulations.

(e) *Special consideration*. Directly or indirectly promises any employment, position, compensation, contract, appointment or other benefit involving funds under this chapter as special consideration, favor or reward for any political activity.

(f) *Coercion*. Coerces another individual into making a political contribution by denying or threatening to deny employment or benefits under a grant.

(17) **FRAUD AND ABUSE**. The grantee shall prevent fraud and abuse as follows:

(a) *Management*. The grantee shall establish and use internal program and fiscal management procedures sufficient to prevent program fraud and abuse.

(b) *Records*. The grantee shall ensure that sufficient, auditable and otherwise adequate records and documentation are maintained which support the expenditure of all funds under this chapter. The records shall be sufficient to allow the department, the state of Wisconsin or the federal government to audit and monitor the programs.

(c) *Monitoring*. The grantee shall establish monitoring procedures to periodically review through on-site visits and program data, all program activities, services and administration practices to ensure grant compliance with the PPM, this chapter and other applicable laws, rules and regulations.

(d) *Allegations or complaints*. A grantee who becomes aware of any allegation or complaint about possible fraud, misfeasance, nonfeasance, or malfeasance, misapplication of funds, gross mismanagement and employe or participant misconduct involving programs or operations funded under this chapter shall immediately report the incident pursuant to s. ILHR 820.16, including any act which raises questions concerning possible unlawful activity.

(18) **PUBLIC SERVICE EMPLOYMENT**. Pursuant to 29 USC 1661c (d) (2), no funds under this chapter may be used for public service employment.

(19) **DEBARMENT OR SUSPENSION**. The grantee shall comply with 29 CFR 98.510 and DOL requirements when making or applying for nonmandatory awards of JTPA funds. Applicants for any nonmandatory federal funding shall submit certification relating to debarment and suspension with their application.

(20) **INSURANCE AND BONDING COVERAGE**. The grantee shall have adequate general liability insurance and bonding coverage as follows:

(a) *General liability insurance*. Neither DOL, the state of Wisconsin nor the department may assume any liability with respect to bodily injury, illness or any other damages or losses or with respect to any claims arising out of any activities undertaken under a grant, whether concerning persons or property in the grantee's

organization or third parties. The grantee shall be insured pursuant to activities under the grant.

(b) *Bonding*. The grantee shall provide fidelity bonding coverage for every officer, director, agent or employe authorized to receive or deposit funds under this chapter into program accounts or issue financial documents, checks or other instruments of payment for grant costs. The amount of bonding shall be either \$100,000 or the highest monthly expenditure planned for the present grant year, whichever is lower. The grantee shall immediately notify the department if the bond is cancelled or reduced.

(c) *Injuries covered by worker compensation*. To the extent that Wisconsin's worker compensation law is applicable, worker compensation benefits pursuant to the law shall be available with respect to injuries suffered by participants.

(d) *Injuries not covered by worker compensation*. The grantee shall secure insurance coverage for injuries suffered by participants who are not covered by existing worker compensation. Contributions to a reserve for a self-insurance program are allowable to the extent that the type and extent of coverage, rates and premiums would have been allowed had insurance been purchased to cover the risks.

(21) **GRANTEE LIABILITY**. The grantee shall be liable for claims as follows:

(a) *Hold harmless*. The grantee shall hold the department, the state of Wisconsin and the federal government harmless against any claims, except claims between the grantee and a state agency subrecipient and claims between the department and other Wisconsin state agencies.

(b) *Disallowed costs*. The grantee shall assume liability for any costs disallowed by the department or DOL because of violations of a grant, the PPM, this chapter or other applicable state or federal laws, rules and regulations. The department may withhold payment of the grantee's costs under current or subsequent active grants for violations. Unless waived by the governor, one of the following shall apply when a SSA selects a private nonprofit or for-profit organization as the SSG:

1. Liability shall be underwritten by a unit or units of local government.

2. The organization shall have sufficient nonfederal assets to cover potential liabilities for costs.

(22) **RELOCATION OF ESTABLISHMENTS OR PARTICIPANTS**. The grantee shall comply with the use of funds under this chapter for relocation as follows:

(a) *Establishments*. Funds may not be used for relocating establishments or parts of establishments if the relocation results in an increase of unemployment in the area of the original location or in any other area.

(b) *Participants*. Funds may not be used for relocation assistance to participants unless the grantee has documentation that the individual cannot obtain employment within his or her commuting area and has secured suitable long duration employment or a bona fide job offer in the relocation area.

(23) **PUBLIC NOTICE AND OPEN MEETINGS**. The grantee shall comply with state laws, rules and regulations relating to public notice and open meetings pursuant to ss. 19.81 to 19.98, Stats. as follows:

(a) *Open meetings*. All meetings of the SSGs, PICs or consortia of LEOs, including meetings of their committees or subcommittees, shall be open meetings that are given appropriate public notice of at least 24 hours before the meeting is to begin.

(b) *Closed sessions*. All closed sessions shall require advance notice and be convened first as open meetings. Moving to a closed session shall require a majority vote of the quorum present at the beginning of the meeting with individual votes recorded in the minutes of the meeting. Closed sessions of the SSG, PIC and LEO may be held only under conditions allowed in ss. 19.81 to 19.98, Stats.

(c) *Meetings relating to expenditures.* All SSG, PIC and LEO meetings relating to discussion, deliberation, recommendations or decisions about the expenditure of funds shall be held in open session with public access.

(24) **PROCUREMENT STANDARDS.** Except for par. (b), these standards may not be applied to a grantee who selects itself as a service provider. No procurement may be considered to take place when a grantee selects itself as a service provider, and no competition may be required. The grantee shall comply with 20 CFR 629.34 and the following standards when procuring property, supplies, equipment, consultants, professional and other services, including the program-specific services of service providers:

(a) *Procurement procedures.* The grantee shall establish written procurement procedures which to the maximum extent practical provide for the following:

1. Open and free competition.
2. Consideration of both price and the contractor's potential ability to meet specifications.
3. Avoidance of purchasing unnecessary or duplicative goods or services.
4. Consideration of small businesses and minority owned businesses.
5. Review of each grantee's or contractor's compliance with the terms of the grant or contract.

(b) *Selection of service providers.* When selecting service providers, including when selecting itself as a service provider, the grantee shall comply with 29 USC 1661 (b) 6. and 20 CFR 631.52 (d) and provide the criteria and documentation used to determine the following:

1. Performance goals, quantity of training, costs and the characteristics of participants.
2. Past performance in delivering job training or related activities, fiscal accountability and ability to meet performance standards. In complying with this subdivision, proper consideration shall be given to community based organizations as service providers.
3. Whether alternative service providers or facilities to those already provided by federal, state or local entities selected to provide services would be more effective and more likely to achieve the SSA's performance goals.
4. Whether agencies or organizations other than educational agencies or organizations selected to provide educational services would be more effective or have greater potential to enhance the participant's continued occupational and career growth.
5. The process used to inform the public of the procedures used to select service providers, including public hearings and appeal procedures available to the public and other agencies not selected.

(c) *Cost or pricing data.* This paragraph may not be applied where the department has determined that the price is based on adequate price competition, established catalog or market prices or is set by law, rule or regulation. The following shall apply only where cost or pricing data is required:

1. The grantor shall require subgrantees and contractors to certify that to the best of their knowledge and belief, the cost or pricing data was accurate, complete and current as of submittal and shall be submitted prior to the date of pricing any contract, change order or modification.
2. Records pertinent to the cost or pricing data of any contract, grant or modification shall be maintained by the grantee for three years from the date of final payment and may be audited.

(d) *Code of standards.* Each grantee shall maintain a written code of standards to govern the performance of its officers, employees or agents in contracting or otherwise procuring supplies, equipment or services with funds under this chapter. These standards shall conform to state laws, rules and regulations applicable to public contracts and provide the following:

1. Prevent conflict of interest in sub. (5).
2. Prevent nepotism in sub. (9).
3. Forbid the solicitation or acceptance of gratuities, favors or anything of monetary value from contractors, grantees or potential contractors or grantees.
4. Provide penalties for violation of the code of conduct.

(e) *Noncompetitive negotiation.* Procurement through solicitation of a proposal from only one source may be used only if one of the following conditions exist:

1. The contract is with an individual employer to provide OJT.
2. The grant or contract is for less than \$500.
3. Competition is determined inadequate after solicitation of a number of sources.
4. The item or service required is unique.
5. Time is essential and only one known source can meet the need within the specified time frame.
6. Data are unavailable for competitive procurement.
7. It is necessary that the needed items are manufactured by a certain source in order to be compatible and interchangeable with existing equipment.

(f) *Commercial training packages.* Commercially available training packages may be purchased at off-the-shelf prices and without requiring a breakdown of the cost components of the package only if the packages are purchased competitively and include performance criteria.

(25) **PROPERTY MANAGEMENT STANDARDS.** Personal or real property under this chapter shall be used for purposes authorized and maintained in good condition and safeguarded against loss, theft or damage. The following shall apply to property purchased with funds under this chapter, transferred from programs under CETA or acquired from the federal government:

(a) *Property control.* Units of government, Indian tribes and tax-exempt nonprofit organizations may be eligible to acquire federal surplus property. The grantee shall comply with property acquisition, title and records as follows:

1. Prior written authorization shall be obtained from the department before the purchase or lease-purchase of nonexpendable personal property with a unit acquisition cost of \$1,000 or more.
2. The grantee may assume ownership of expendable and nonexpendable property, except that the department shall retain reversionary rights to nonexpendable property with a unit acquisition cost of \$1000 or more and the copyrighting of any material shall require the prior written approval of the department.
3. The grantee shall establish procedures to adequately safeguard all property. Pursuant to the PPM, the grantee shall maintain a detailed register of all nonexpendable property, and no less than annually, conduct a physical inventory and reconcile the property records to the general ledger.

(b) *Property disposition.* Property disposition may occur when the grantee discontinues program operation, has no further use for it or intends to use it for another purpose, wants to trade it in or recover usable parts or determines it is unusable. The grantee shall comply with the following when disposing of nonexpendable property:

1. The property records shall be up to date and fully document the disposition pursuant to the PPM.
2. The sale of property and equipment shall be the action of last resort. Pursuant to the PPM, the grantee shall first attempt to transfer the property to another grantee.
3. Written authorization from the department shall be required prior to the disposition of nonexpendable personal property with a unit acquisition cost of \$1,000 or more, including property partially purchased by funds under this chapter.
4. Funds received from the sale of property, regardless of the acquisition source and unit cost, shall be program income and sub-

ject to s. ILHR 820.13 (4). The amount of compensation to the department for property purchased partially with department funds shall be computed by applying the percentage of participation in the original cost to the current fair market value.

(26) ACCESS, RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS. The grantee shall maintain and provide access, retention and custody of records under this chapter as follows:

(a) *Access to records.* The grantee shall provide access to records as follows:

1. Records shall be maintained as necessary for the department to ensure that funds are being expended pursuant to the grant and to determine the extent to which the program is in compliance with the DWLAP, state plan, PPM, this chapter and other applicable laws, rules and regulations.

2. The DOL, state of Wisconsin and department, through any authorized representative, shall have the access and right to examine all records, books, papers or documents related to grants, including those of subgrantees and contractors.

3. Cooperation shall be provided in all monitoring, auditing and evaluation activities, including unannounced monitoring visits conducted by the department or DOL.

4. Participant records shall be retained and made available to the public pursuant to applicable laws, rules and regulations relating to open records and freedom of information.

(b) *Retention of records.* The grantee shall retain program records as follows:

1. All records pertinent to each participant's enrollment in programs funded under this chapter, including dates of entry and termination and related eligibility and enrollment reports, until 3 years after the last day of the participant's enrollment in the program plus additional time beyond 3 years until applicable litigation, audit findings or other claims have been resolved.

2. All records pertinent to each grant, including financial and statistical records and supporting documents, until 3 years after the date of submission of the applicable annual report or final expenditure report, plus additional time beyond 3 years until applicable litigation, audit findings or other claims have been resolved. Records for cost or pricing data shall be retained pursuant to sub. (24) (c).

3. All records pertinent to complaints, appeals and resolutions until 3 years after the day the complaint is closed following final settlement of the case or beyond 3 years until applicable litigation, audit findings or other claims have been resolved.

4. All records of nonexpendable personal property acquired under this chapter until 3 years after disposition of the property plus additional time beyond 3 years until applicable litigation, audit findings or other claims have been resolved.

5. All records pertinent to each applicant who is determined ineligible during the BDS EDF process or refused certification, including the reason and other supporting applicant records, for one year after the date of determination or refusal.

(c) *Custody of records.* The department may request transfer of certain records to its custody from recipient organizations if the organization is no longer able to maintain custody of those records. The grantee shall provide the department with 30 days advance notice if it intends to discontinue maintenance of its records before the end of the mandatory retention periods in par. (b).

(27) SOURCE ACKNOWLEDGMENT. The grantee shall acknowledge the funding source on any book, pamphlet, film or other publication produced with funds under this chapter. If the material contains editorial comment, it shall also include a disclaimer by the department. Acknowledgements and disclaimers shall be shown in a prominent place and written pursuant to the PPM.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.12 Cost determination. This section contains the principles of cost determination for all grants awarded under this chapter. Unless restricted or prohibited by law, the department

shall bear its fair share of the costs. Each department grantee may be required to designate an official to serve as the agency representative on matters related to this section. All department grantees shall ensure that they and their subgrantees or contractors shall comply with the following terms:

(1) GENERAL PRINCIPLES AFFECTING ALLOWABILITY OF COSTS. To be allowable, grantee costs shall meet all of the following general criteria:

(a) *Necessary and reasonable.* Be necessary and reasonable for proper and efficient administration of the program and be allocable to a cost objective.

(b) *Authorized or not prohibited.* Be authorized or not prohibited under federal, state or local laws, rules or regulations.

(c) *Limitations or exclusions.* Conform to any limitations or exclusions under this chapter or other governing limitations.

(d) *Uniform policies.* Be consistent with policies and procedures that apply uniformly to other activities of the agency of which the grantee is a part.

(e) *Consistent treatment.* Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(f) *Cost sharing or matching.* Be included as a cost or used to meet cost sharing or matching requirements of other federally financed programs in the current or a prior period only when specifically authorized.

(g) *Net of credits.* Be net of all applicable credits.

(h) *Documented.* Be adequately documented.

(2) ALLOCATION OF JOINT COSTS. Direct costs shall be charged directly to a particular cost objective. Joint costs shall be allocable to cost objectives as follows:

(a) *Benefits received.* A cost is allocable to a particular cost objective based on a reasonable measurement of the benefit received by the cost objective.

(b) *Consistent treatment.* A cost is allocable to a cost objective if it is treated consistently with other costs incurred for the same purpose in like circumstances and all of the following apply:

1. The cost is incurred specifically for the cost objective.

2. The cost benefits both the cost objective and other work and can be distributed in reasonable proportion to the benefits received.

3. The cost is necessary to the overall operation of the organization although a direct relationship to any particular cost objective cannot be shown.

(c) *Avoiding deficiencies and restrictions.* Any cost allocable to a particular cost objective under this chapter may not be shifted to other federal grants to overcome funding deficiencies or to avoid restrictions imposed by laws, rules, regulations or the grant terms.

(3) COST ALLOCATION PLANS. For audit purposes, the allocation method used to distribute joint costs shall be supported by a written cost allocation plan which complies with all of the following:

(a) *Method.* The method used shall be a determination of actual activities. Budget estimates may not be used as support for final charges.

(b) *Documentation.* All costs included in the plan shall be supported by formal accounting records to substantiate the propriety of eventual charges.

(c) *Content.* The allocation plan shall be presented in a single document and shall cover all joint costs, including costs to be allocated to the program under plans of other organizational units. The allocation plan shall include but not be limited to the method and justification for the distribution used, the items of expense and the nature and extent of the service provided.

(4) ADMINISTRATIVE COST POOLS. The grantee may pool administrative funds under this chapter. The pool shall include all of the grantee's administrative funds and costs for programs under

this chapter. For reporting purposes, the pool shall be distributed among the fund sources. The method of distribution used shall be in writing and applied consistently from period to period. Only actual costs shall be charged to the administrative cost pool.

(5) **INDIRECT COST RATES.** Only allowable costs shall be included in the indirect cost pool and total charges may not exceed applicable cost limits. The grantee shall comply with indirect cost rates as follows:

(a) *Approved rates.* For department grantees that already have an indirect cost rate approved by a cognizant federal agency, the department shall review the method and approve a rate which may not result in charges that exceed the rate approved by the cognizant federal agency.

(b) *Establishing rates.* Any department grantee that wants to establish a federally approved indirect cost rate shall apply to the appropriate cognizant federal agency.

(c) *Audit.* The cost of auditing the indirect cost rate is separate from the regular audit and shall be paid by the SSG.

(d) *Subgrantees.* Department grantees shall approve any indirect cost rates or methods for their subgrantees. If the department has already accepted an agency rate or method, the grantee may automatically accept it.

(6) **STANDARDS FOR SELECTED ITEMS OF COST.** The grantee shall comply with the principles for allowing items of cost pursuant to sub. (1), the PPM, DOL and OMB. These principles shall apply to all direct, indirect or joint costs. The department may authorize costs which would otherwise be disallowed if the authorization does not violate any state or federal law, rule or regulation.

(7) **COST CATEGORIES AND PROGRAM ACTIVITIES.** Expenditures under this chapter shall be recorded under the cost categories in s. ILHR 820.02 (13). Pursuant to the PPM, the cost categories may be divided into subcategories of program activities to further delineate participant services and related costs.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.13 Financial, enrollment and other program requirements. This section contains the financial, enrollment, monitoring, reporting and other program specifications for all grants awarded under this chapter. All department grantees shall ensure that they and their subgrantees comply with the following terms:

(1) **STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS.** In accepting funds under this chapter, the grantee shall comply with financial management as follows:

(a) *Written procedures.* The grantee shall establish written procedures documenting their financial management system.

(b) *Systems required.* The grantee's financial management systems shall provide for the following:

1. Effective internal controls that adequately safeguard assets from waste, fraud and abuse and from unauthorized purposes and inefficient use; that promote accuracy and reliability in the accounting records; and that encourage and measure compliance with the PPM, this chapter, and other applicable laws, rules and regulations.

2. Accounting records that adequately identify the source and application of funds and provide the proper supportive source documentation, including awards, authorizations, revenues, expenditures, assets, obligations and unobligated balances.

3. Procedures for determining the reasonableness, allowability and allocability of costs pursuant to s. ILHR 820.12, the PPM and the terms of the grant or contract.

4. Accurate, current and complete disclosure of the financial results of each grant. The grantee shall report expenditures on an accrual basis. No grantee may be required to establish an accrual accounting system. The grantee shall develop the accrual data for reports based on an analysis of available documentation.

5. Comparison of actual expenditures with budget amounts for each grant.

6. Development of financial information that relates to performance and unit cost data.

7. Procedures to reduce excess cash by minimizing the time elapsing between the transfer of funds from the department and the disbursement by the grantee. Excess cash as determined by the department is an average daily cash balance that exceeds \$10,000 or three days expenditures, whichever is greater. If the grantee accumulates excess cash, the department may require corrective action, charge the grantee an interest assessment on funds that are in excess of immediate needs or seek recovery of funds.

8. Deposit of funds under this chapter in interest bearing accounts insured by the FDIC or the FSLIC. Account balances exceeding FDIC or FSLIC coverage shall be collaterally secured.

(c) *Failure to meet standards.* If the grantee's financial management system fails to meet the standards set forth in this subsection, the department shall require corrective action by a specific date. A grantee who fails to take corrective action in the time given is subject to having costs withheld or disallowed.

(2) **INVOICING REQUIREMENTS.** The grantee shall submit requests to receive cash advances or reimbursements to the department pursuant to the PPM.

(3) **FINANCIAL REPORTING REQUIREMENTS.** Expenditures under this chapter shall be recorded pursuant to the cost categories and program activities in s. ILHR 820.12 (7). The grantee shall comply with financial reporting as follows:

(a) *Financial reports.* The grantee shall submit accurate and timely financial reports pursuant to the PPM. The reports shall include but not be limited to statements of accrued expenditures, settlements and closeout reports.

(b) *Late and inaccurate reports.* If required reports, including the close-out package, are not accurate or submitted on a timely basis, the department may withhold payment of the grantee's costs under current or subsequent active grants until the reports are received.

(c) *Closure of books.* After submitting a settlement or closeout package, the grantee shall close the books for the affected grants upon receipt of a positive confirmation letter from the department. Subsequent adjustments shall require prior written approval from the department.

(4) **PROGRAM INCOME.** Program income shall include but not be limited to income from service fees, sale of commodities, usage or rental fees and royalties on patents or copyrights. Program income may also include interest earned on funds under this chapter. The calculation and use of program income shall be subject to audit verification. The grantee shall account for program income pursuant to the PPM and comply with the following:

(a) *Expenditure limitations.* A department grantee with only a fixed-period grant shall spend program income during the grant period in which it was earned. A department grantee with a continuing grant or both a continuing and fixed-period grant may spend program income anytime as long as funding is assured in a continuing grant. No limitations of specific costs may be applied to program income. The grantee shall only cover costs that are otherwise allowable when applying program income to any of the following:

1. To add to the funds committed to the project and use the funds to further eligible program objectives, including but not limited to extending the program period, increasing the number of participants served or improving the quality of the program.

2. To deduct the funds from the total project costs for the purpose of determining the net costs on which the share of costs funded under this chapter will be based.

3. To use the funds to finance matching requirements for a JTPA or related program.

4. To further program objectives under this chapter by funding an additional project which may or may not be related to the project generating the program income.

(b) *Prorating amounts.* Where funds under this chapter are only a portion of a project's funding, program income earned shall be prorated based upon the portion of funding provided.

(5) **DEBT AND DEBT COLLECTION.** The grantee shall comply with the procedures for debt and debt collection as follows:

(a) *Collection procedures.* The SSGs and other grantees shall develop and institute debt collection procedures to aggressively collect debts or seek waivers. The department shall seek waivers from DOL on behalf of the SSG or grantee pursuant to par. (d).

(b) *Establishment of debt.* A debt to the department is established when costs are disallowed in writing by a grant closeout report, a complaint and appeal ruling, an investigation report or an audit resolution findings and determinations letter.

(c) *Collection of debt.* Collection options available to the department include but are not limited to requiring cash repayment; withholding from current grant costs an amount equal to the disallowed costs to offset the debt; reduction of a subsequent grant allocation to the grantee pursuant to 29 USC 1574; or requiring in-lieu-of cash repayment.

(d) *Waiver of sanctions relating to debt.* A waiver of all or a part of the sanctions relating to JTPA debt may be obtained. If DOL determines that the grantee and the state have demonstrated substantial compliance with 29 USC 1574, sanctions against the state may be waived. The state may pass a waiver on to the grantee. All waiver requests shall be processed through the department. No waiver may relieve the debt. A waiver shall only relieve the right of DOL to collect against a debt.

(e) *Other actions.* Pursuant to this chapter and other applicable laws, rules and regulations, nothing shall prevent the SSG from being accountable for the actions of its subrecipient; the SSG from being charged interest on the debt by the department at the current rate earned by the Wisconsin state investment fund beginning 30 days after the debt is established; and from DOL imposing sanctions directly on the grantee.

(6) **AUDIT AND AUDIT RESOLUTION.** The department may conduct audits and investigations pursuant to applicable federal and state laws, rules or regulations as follows:

(a) *Preliminary reviews.* When awarding grants to department grantees for the first time, the department shall conduct preliminary fiscal reviews to determine the adequacy of the organization's accounting system, controls and procedures. These reviews shall be arranged and paid for by the department. The grantee shall conduct similar reviews on first-time subgrantees.

(b) *Audit.* A single, organization-wide financial and compliance audit which includes an audit of participant eligibility shall be performed annually for appropriate grants or program years of all department grantees. The audit shall be conducted pursuant to the single audit act, 42 USC 6001 et seq.; OMB circulars A-110 and A-128; 20 CFR 96; *Government Auditing Standards* and other applicable federal and state laws, rules and regulations. The grantee shall comply with the following:

1. The audit of grantees that are units of local government may be conducted as part of the agency's regular audit.

2. The audit shall be conducted by an independent CPA firm selected through a competitive procurement process. Department grantees may procure their own audit services or be included on the department's RFP for audit services.

3. For grants signed after July 1, 1989, the grantor shall conduct audits on each grantee that has received at least \$25,000. The grantor may audit for-profit grantees.

4. The cost of the audit for department grantees shall be shared. The department shall pay a fixed amount per \$1,000 audited and the department grantee shall pay the balance. The fixed

dollar amount paid by the department shall be at least 50% of the total cost of the audits. Unless otherwise provided by agreement, the audit costs incurred by the grantee shall be assumed by the grantee.

(c) *Audit resolution.* Pursuant to the PPM, the grantee shall comply with procedures for audit resolution. Based on the grantee's response to the final audit report, the department shall issue a statement of findings and determinations, including debts established due to disallowances. The grantee may contest the findings pursuant to s. ILHR 820.16. The grantee shall develop audit resolutions and debt collection procedures applicable to its subgrants.

(7) **PARTICIPANT ELIGIBILITY DETERMINATION AND ENROLLMENT.** Participant eligibility determination is that part of employability assessment which shall be completed prior to enrolling participants in programs funded under this chapter. The grantee shall comply with eligibility determination and enrollment as follows:

(a) *Eligibility determination.* The eligibility of new participants shall be determined by trained staff of the SSG, its designee or another grantee authorized by the department. The grantee's system of eligibility determination shall comply with the following:

1. The required forms shall be completed, including the application form, EDS EDF and as applicable, the certificate of continuing eligibility.

2. Reasonable safeguards against errors and omissions shall be established, including provisions for reimbursement of costs incurred because of erroneous determinations made with insufficient care.

3. Eligibility shall be determined pursuant to s. ILHR 820.05, the PPM, DWLAP and state plan.

4. The applicant information used to determine eligibility shall be current at the time of certification, and the information which serves as the basis for an applicant's eligibility shall be documentable, whether or not the certifying agency chooses to maintain the documentation on file.

(b) *Participant selection.* Only applicants who have been certified eligible shall be selected for participation. When selecting participants, the grantee shall comply with the provisions for non-discrimination and equal employment opportunity and prohibiting fraud and abuse in s. ILHR 820.11 (3) and (17).

(c) *Participant enrollment.* When enrolling an applicant or participant, the grantee shall comply with all applicable enrollment conditions pursuant to the PPM, personnel policies, training or worksite agreements and collective bargaining provisions. No applicant or participant may be enrolled into a program unless the grantee has the following:

1. Proof of eligibility, including a valid EDS EDF and, if applicable, a certificate of continuing eligibility pursuant to expiration dates and conditions in the PPM.

2. A signed letter of intent, grant or contract with the grantor that authorizes the enrollment of eligible applicants or participants.

(d) *Ineligible participants.* The grantee shall immediately remove from its program any person who is found to be ineligible or whose certification is found to be invalid. The department may disallow costs incurred for enrollment of participants who have not been certified or who have been certified but are later found to have been ineligible.

(e) *Certificates of continuing eligibility.* Pursuant to 29 USC 1661e, a SSG may issue a certificate of continuing eligibility to any eligible dislocated worker who has applied for the program. The certificate shall be issued for the purpose of deferring the beginning of retraining or permitting participants to seek out and arrange their own retraining with service providers. The SSG shall comply with the following:

1. Standardized procedures and documents for the certificate of continuing eligibility shall be developed and included in the DWLAP.

2. The conditions, limitations and requirements shall be included on the face of the certificate of continuing eligibility and shall comply with 29 USC 1661e and the PPM.

3. The certificate may not be transferable.

4. Records shall be maintained showing to whom the certificates have been issued, the dates of issuance and the ultimate disposition of the certificates.

(8) PARTICIPANT REPORTING REQUIREMENTS. Enrollment under this chapter shall be recorded pursuant to the cost categories and program activities in s. ILHR 820.12 (7). The grantee shall comply with the following participant enrollment reporting requirements:

(a) *Participant reports.* The grantee shall complete participant reports pursuant to the PPM. The reports shall include but not be limited to the grantee application form; SSG certificate of continuing eligibility; the department EDS EDF and SCTN forms, participant followup and quarterly verification reports; and DOL status reports.

(b) *Data entry.* The SSG, its designee or another grantee authorized by the department shall provide EDS EDF and SCTN data entry of applicant characteristics, eligibility, enrollment, activity status, transfers, data changes and terminations pursuant to procedures and time limits in the PPM.

(c) *Management reports.* The department shall provide EDS-participating grantees with monthly summary management reports specified by the department and with department approval, other specific reports requested by grantees. The grantee shall verify reports generated by EDS.

(d) *Quarterly verification of eligibility.* The grantee authorized to determine eligibility shall conduct an eligibility verification at the end of each three-month period. Pursuant to the PPM, the verification shall be conducted on a sample of participants enrolled during the previous quarter. The participants selected for verification shall be drawn in a valid random sampling.

(e) *Postprogram followup.* The grantee shall comply with postprogram measurement pursuant to 29 USC 1515 (g) and the PPM. The department shall draw a valid random sampling of participants for postprogram followup.

(f) *Participant files.* The grantee shall maintain a participant file pursuant to the PPM. File records shall include written proof of eligibility which shall consist of a signed application and an EDS EDF. Other records shall include each EDS SCTN and related enrollment and termination records.

(g) *Confidentiality.* The grantee shall protect the confidentiality of individual participant records and may not divulge personal information about individual participants except as required for eligibility determination, participant enrollment, quarterly verification and audit or pursuant to s. ILHR 820.11 (26) (a) 4.

(9) NEEDS-RELATED PAYMENTS. The SSG shall establish a standard system for making needs-related payments that consists of a uniform set of procedures which may be operated by one or more service providers in the SSA. The system shall document the following:

(a) *Eligibility.* The criteria and method of certifying eligibility for payment and computing the amount.

(b) *Payment.* Payment only to eligible recipients who are enrolled and participating in training activities pursuant to sub. (11) (d).

(c) *Records and reports.* Record maintenance of the issuance and distribution of payments, written notification to participants when payments are reduced or denied and preparation of required statistical and fiscal reports.

(d) *Overpayments.* The detection and collection of overpayments.

(10) MONITORING. The grantee shall conduct sufficient program, financial and compliance monitoring to ensure the performance of grant or contract terms by subgrantees and training sites. The system of monitoring developed by the grantee shall include the following:

(a) *Measurement criteria.* The establishment of criteria by which to measure its performance and the performance of its subgrantees and contractors to ensure compliance with the grant, DWLAP, state plan, PPM, this chapter and other applicable laws, rules and regulations.

(b) *Systematic reviews.* The systematic review of performance based on established criteria.

(c) *Assessment.* The assessment of findings and identification of any problems.

(d) *Corrective action.* The prompt response to take any necessary corrective actions.

(e) *Use of findings.* The use of findings in subsequent program planning and selection of contractors and subgrantees.

(f) *Records.* The maintenance of adequate records to verify that required monitoring, corrective action and follow-up have occurred.

(11) PROGRAM SPECIFICATIONS. The grantee shall maintain conditions of employment and training which are appropriate and reasonable for the geographic region, type of work and proficiency of the participant. When serving participants under this chapter, the grantee shall comply with the following:

(a) *Orientation.* All participants shall receive an orientation to nontraditional careers during their participation in programs.

(b) *Job seeking.* The grantee shall provide a reasonable amount of time for job seeking to participants who are not assured of placement in unsubsidized employment at the end of their training. The grantee may terminate a participant who receives and refuses a job offer or offer of referral to a suitable job.

(c) *Participant rights in subsidized employment.* The grantee shall comply with the provisions of subsidized employment as follows:

1. Participant wages in activities authorized under this chapter may not be less than the highest of the federal minimum wage as determined by the fair labor standards act, 29 USC 201 et seq.; the state minimum wage; or the prevailing rates of pay for individuals employed in similar occupations by the same employer.

2. Participant OJT wages shall be paid by the employer at the same rate, including periodic increases, as similarly situated employees but not less than the greater of the federal or state minimum wage.

3. All individuals employed in subsidized jobs shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work. This shall include U.C. coverage.

(d) *Participant training payments.* A participant may not receive payments, including needs-related payments, for training activities in which she or he fails to participate without good cause.

(e) *Health and safety standards.* The grantee shall maintain appropriate standards of health and safety in work and training situations. Participants under 18 years of age may not be assigned to work in any occupation found to be hazardous pursuant to the fair labor standards act, 29 USC 201 et seq.

(f) *Notification of participant rights.* Each participant enrolled shall receive a written statement of his or her program rights and responsibilities pursuant to this subsection and the PPM, including but not limited to conditions of employment, training, job duties, benefits and complaint procedures.

(g) *Coordination activities.* Pursuant to 29 USC 1661c (f) and 20. CFR 631.37, the grantee shall coordinate their dislocated worker programs with JTPA-funded youth, adult and veterans

programs, the U.C. system and other programs, including but not limited to job service, trade adjustment assistance, education and training, economic development, social service, veterans administration and appropriate labor and employment programs.

(h) *Training for demand occupations.* Except for basic and remedial education and literacy and English for non-English speakers, retraining services provided with funds available to a SSA shall be limited to those occupations in demand in the area or another area to which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.14 Grants, contracts and other agreements. This section contains the requirements of grants, contracts and other agreements awarded under this chapter. All department grantees shall ensure that they and their subgrantees or contractors comply with the following terms:

(1) **COST-PLUS CONTRACTS.** The cost-plus-a-percentage-of-cost method of contracting whereby the contractor is reimbursed for costs plus a fixed percentage of costs may not be used.

(2) **LESS-THAN-ARMS-LENGTH AGREEMENTS.** The department may allow agreements where one party is able to control or substantially influence the actions of the other. Less-than-arms-length agreements include but are not limited to those between the following:

1. Subunits of a grantee.
2. Grantees under common control through common officers, directors or members.
3. A grantee and a director, trustee, officer or key employe of the grantee or his or her immediate family either directly or through corporations, trusts or similar arrangements in which they hold a controlling interest.

(3) **WORKSITE AGREEMENTS.** Each participant and worksite supervisor engaged in any subsidized employment activities, except for OJT, shall have an official worksite agreement prepared in writing by the grantee and agreed upon and signed by both the participant and supervisor. The grantee shall prepare the worksite agreement pursuant to the PPM and shall provide an individual, signed copy to each participant and supervisor for each position.

(4) **OJT CONTRACTS.** Each participant and employer engaged in any OJT activities shall have an official OJT agreement prepared in writing by the grantee and agreed upon and signed by both the grantee and employer. The grantee shall prepare the OJT contract pursuant to the PPM and shall provide a signed copy to each employer.

(5) **FIXED UNIT PRICE, PERFORMANCE BASED CONTRACTS.** Payments made under a fixed unit price, performance based contract shall comply with 20 CFR 629.38 (e) (2), DOL requirements, the PPM and this chapter. Fixed unit price contracts shall comply with pars. (g) and (h) whether or not they satisfy the requirements of performance based contracts. The SSG shall develop written policies for fixed unit price, performance based contracts to incorporate and comply with the following:

(a) *Payments allocable entirely to retraining.* Payments made under a fixed unit price, performance based contract may be charged entirely to the retraining cost category if the agreement meets all of the following:

1. Is for training.
2. Is fixed unit price.
3. Stipulates that full payment for the full unit price shall be made only upon completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at not less than the wage specified in the agreement.

(b) *Core training.* The provision of core training activities shall be the primary purpose of contracts written under 20 CFR 629.38 (e) (2) and charged 100% to the retraining cost category.

Excluding out-of-area job search and relocation, core training shall consist of the retraining services in s. ILHR 820.02 (67).

(c) *Services and conditions.* A grantee that establishes a fixed unit price, performance based contract shall comply with pars. (a) and (b) and all of the following:

1. Service to at-risk populations shall be encouraged. Target groups and accommodations to enhance service to at-risk populations shall be clearly identified.

2. Placement shall be at or above the entry level wage for the occupational target.

3. Payments made for participants who leave the program before entering or completing core training shall be considered cash advances. Cash advances may be used to offset earned benchmark payments or shall be returned to the grantor. Payments made for participants who have completed core training may be considered earned benchmark payments. If 80% of the core training is completed when a participant is placed, payments may be considered earned benchmark payments.

4. At least 25% of the total contract amount shall be withheld until full performance is achieved.

5. A level of performance shall be established which includes consideration of contractor risk. Contracts which do not meet the established level of performance shall be determined to have failed. All costs associated with a failed contract shall be allocated to the appropriate cost categories.

6. Use of intermediary administrative entities shall be reserved for OJT or specialized client services contracted on a fee payment or cost reimbursement basis.

(d) *Program income.* Public or private nonprofit contractor revenues in excess of costs which are earned under performance based contracts shall be considered program income and accounted for pursuant to s. ILHR 820.13 (4).

(e) *Arms-length agreements.* Agreements pursuant to this subsection shall be made at arms length. Contracts between nonprofit and for-profit organizations shall require the prior written approval of the department. Relationships pursuant to sub. (2) preclude arms-length agreements.

(f) *Allocating costs.* Payments made under a fixed unit price contract which does not satisfy pars. (a), (b) and (c) shall be allocated to the applicable cost categories based on actual costs incurred. Contractors shall maintain records documenting actual costs.

(g) *Contract adjustments.* Payments under fixed unit price contracts may be adjusted pursuant to only the contingencies specified in the contract.

(h) *Circumventing requirements.* Fixed unit price contracts may not be written in order to circumvent otherwise applicable laws, rules and regulations.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.15 Grant, contract and agreement changes.

This section contains the requirements of changes to grants, contracts and other agreements awarded under this chapter. All department grantees shall ensure that they and their subgrantees or contractors comply with the following terms:

(1) **ASSIGNMENT, SUBLET, SUBCONTRACT, DELEGATION OR TERMINATION.** The grantee shall comply with subgrants as follows:

(a) *Accountability.* The grantee shall remain accountable for the use of funds in any subgrants it awards.

(b) *Written and signed.* Any subgrant shall be embodied in a written document signed by the grantee and the subgrantee.

(c) *Compliance requirements.* The grantee shall require its subgrantees to comply with the PPM.

(d) *Monitoring and staff training.* The grantee shall establish appropriate training and monitoring procedures for ensuring each subgrantee's compliance with the grant, PPM, this chapter and other applicable laws, rules and regulations.

(e) *Modifications.* The grantee shall develop procedures for modifying and terminating subgrants.

(2) **GRANT FUNDING CHANGES:** The department may unilaterally change the funding in the DWLAP or grant of a SSG or other department grantee as follows:

(a) *Obligation of funds to SSGs.* The department may unilaterally obligate the following funds to a SSG grant:

1. Funds recaptured from SSGs which did not meet expenditure requirements pursuant to s. ILHR 820.10 (2) (a) 4.

2. Funds reallocated from other states which are allocated to SSGs by formula and on the basis of need pursuant to 29 USC 1653.

3. Funds allocated on the basis of need pursuant to s. ILHR 820.10 (1) (a) 2. or special response funds pursuant to s. ILHR 820.10 (1).

(b) *Deobligation of funds.* The department may unilaterally deobligate funds from a SSG or any other department grantee if expenditures are not maintained pursuant to s. ILHR 820.10 (2) (a) 4. and (b) 3. All funds in excess of the allowable 15% underexpenditure may be deobligated on a quarterly basis.

(3) **DWLAP UNILATERAL CHANGE.** The department shall notify the SSG of unilateral DWLAP obligations or deobligations in writing. Within 30 days of the notification date, the SSG shall submit a DWLAP unilateral change to the department pursuant to the PPM. The SSG shall comply with sub. (5) concurrently with submittal. The department shall approve or otherwise act on the change within 30 days after the date submitted. The department may accept or refuse a unilateral change and shall notify the SSG accordingly.

(4) **SSG-INITIATED DWLAP CHANGE.** Whenever actions initiated by the SSG result in an alteration of the DWLAP, the SSG shall request approval from the department to modify, update or change the DWLAP pursuant to the PPM. The department may designate the alteration. Only one SSG-initiated modification or update may be processed per program year quarter. The following are the requirements:

(a) *Modification.* A request for a modification shall be submitted to the department at least 30 days prior to the beginning of the month in which the revision is to be effective. The SSG shall comply with sub. (5) at least 80 days prior to the proposed effective date of the modification. A DWLAP modification shall be required if a change results in one of the following:

1. A 25% or more difference in funding.
2. A 30% or more difference in the planned enrollments or terminations.
3. A 30% or more difference in the planned enrollments by program activity.
4. A significant difference in the program plan and master plan.

(b) *Update.* A request for an update shall be submitted to the department at least 30 days prior to the beginning of the month in which the revision is to be effective. The SSG shall comply with the publication requirements in sub. (5) concurrently with submittal. A DWLAP update shall be required if a change results in one of the following:

1. A difference of at least 15% in funding.
2. A difference of at least 15% in the planned enrollments or terminations.
3. A difference of at least 15% in planned enrollments by program activity.

(c) *Change.* A request for a change in the DWLAP which is less than an update shall be provided to the department at least 30 days prior to the date on which the change is to be effective. No change which is less than an update and consistent with this chapter may be subject to sub. (5).

(d) *Approval.* The department shall approve or disapprove a request for a DWLAP modification, update or change pursuant to 29 USC 1661b (c) and the PPM and notify the SSG within 7 working days following the decision. The department may accept or refuse proposed alterations and shall notify the SSG accordingly.

(5) **NEWSPAPER ANNOUNCEMENT.** The SSG shall comply with 29 USC 1515 (a) and publish a newspaper announcement. The newspaper announcement shall include a notice of the change to the SSG's DWLAP, a brief summary of the nature and purpose of the proposed change, the location and hours when the complete change can be reviewed and the telephone number to which questions may be directed.

(6) **THE OFFICIAL DWLAP GRANT.** The SSG DWLAP approved and maintained by the department, including all unilateral, update, modification or other changes shall be the official DWLAP. Only the official DWLAP shall be considered for purposes of audit, compliance or performance review activities.

(7) **OTHER DEPARTMENT GRANT CHANGES.** Revisions to department grantee grants, other than DWLAPs, may be the result of unilateral deobligations or other modifications and shall be made pursuant to the PPM as follows:

(a) *Unilateral change.* The department shall notify the department grantee of unilateral deobligations in writing. Within 30 days of the notification date, the department grantee shall submit the unilateral change to the department. The department shall approve or otherwise act on the change within 30 days after the date submitted. The department may accept or refuse a change and shall notify the department grantee accordingly.

(b) *Modification.* The department grantee shall submit a modification request to the department prior to the effective date of the revisions. The department shall approve or otherwise act on the request within 30 days after the date submitted. The department may accept or refuse a request and shall notify the department grantee accordingly.

(c) *The official department grant.* The grant approved and maintained by the department, including all unilateral changes and other modifications shall be the official grant. Only the official grant shall be considered for purposes of audit, compliance or performance review activities.

(8) **TERMINATION OF FUNDS OR GRANTS.** The department grantee shall comply with the termination of funds or grants under this chapter as follows:

(a) *Termination of funds to SSGs.* A grant to a SSG may be terminated or suspended in whole or in part when the department determines one of the following:

1. It is necessary to protect the integrity of the grants or to ensure the legal operation of the program.
2. The SSG has inadequate financial management systems or failed to correct the deficiencies.
3. The SSG has violated the laws, rules or regulations governing the funds and corrective action has not been taken.
4. Funds under this chapter are not available or the direction of DOL or other fund sources requires it.
5. Both parties agree to partial or complete termination.

(b) *Revocation and by-pass authority.* The department may revoke or direct the expenditure of funds in the SSA as follows:

1. The department may revoke approval of all or part of the DWLAP pursuant to 29 USC 1574 (b) (1) which may include terminating or suspending financial assistance in whole or in part.

2. If the SSG fails to submit a DWLAP or submits a plan that is not approved, the department may direct the expenditure of funds in the SSA pursuant to 29 USC 1661b (c).

3. If the SSG fails to expend funds allocated pursuant to plan, the department may direct the expenditure of funds pursuant to the DWLAP and 29 USC 1661b (d).

(c) *Termination of funds to other department grantees.* A grant to a department grantee other than a SSG may be terminated or suspended in whole or in part when the department determines one of the following:

1. Both parties agree to partial or complete termination.
2. The department grantee or its subgrantee has violated the grant terms, PPM, or applicable laws, rules or regulations.
3. The quality of program administration falls below acceptable industry standards.
4. The department grantee is not in compliance with the grant goals and objectives and a modification request has not been submitted or approved.
5. The department grantee refuses to accept additional conditions imposed pursuant to its legal obligations.
6. Funds are not available.

(d) *Notification.* After a decision to terminate, the department shall provide the grantee with prompt written notice of the action to be taken, reasons and effective date. An option for a hearing within 30 days shall be provided and adverse decisions may be appealed pursuant to s. ILHR 820.16. If the termination is initiated by a grantee, the grantee shall notify the department at least 90 days prior to the intended date.

(e) *Protection of funds.* The department may take whatever action is necessary, including legal action, to ensure the proper operation of department programs and protect the integrity of the funds or reclaim misspent funds.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

ILHR 820.16 Complaints and appeals. This section contains the following procedures which the department, grantees, employees, applicants and participants shall use to resolve formal complaints which allege violations under this chapter and other applicable federal or state laws, rules and regulations:

(1) **GENERAL REQUIREMENTS.** The department and grantee shall establish and maintain written complaint and appeal procedures pursuant to the PPM, this chapter and other applicable federal and state laws, rules and regulations as follows:

(a) *Content.* The procedures shall be described in training plans and funding applications pursuant to requirements and shall ensure the following:

1. Participants shall be made aware of their rights relating to complaints, appeals and hearings.
2. Subgrantees shall maintain procedures consistent with this section.
3. Any employer who hires a participant funded under this chapter shall maintain complaint and appeal procedures which include the employer's terms and conditions of employment pursuant to 20 CFR 629.53, including collective bargaining agreements.

4. The resolution of complaints shall provide the elements of due process, including notice of the specific allegations and responses; reasonable timing; an impartial decision-maker; the right to representation; the right to present evidence in writing and through witnesses; the right to question others who present evidence; and a decision made strictly on the recorded evidence.

(b) *Record retention.* The records relating to complaints and appeals shall be maintained pursuant to s. ILHR 820.11 (26) (b) 3.

(c) *Complaint forms.* The department shall provide the complaint information form to be used for filing formal complaints when the department is the respondent. Subject to compliance with this section, the grantee may modify the form for its own use.

(d) *Technical assistance.* Pursuant to the PPM, the department and grantee shall provide information to parties about complaint and appeal procedures; monitor the progress of cases; prepare applicable reports; assist appropriate enforcement agencies in the in-

vestigation and resolution of fraud and abuse allegations; and provide related technical assistance.

(2) **FILING A COMPLAINT.** The respondent shall provide the complainant with the complaint filing procedures and applicable forms. The complainant may have a formal complaint notarized. The following shall apply to the filing and acceptance of a complaint:

(a) *Filing date.* The complaint shall be filed within one year after the alleged violation takes place.

(b) *Acceptance.* The respondent shall accept a complaint pursuant to the complainant's compliance with par. (a) and submittal of a written complaint which is in sufficient detail to determine the following:

1. The full name, telephone number and address of the persons or organizations making the complaint.
2. The full name and address of the respondents against whom the complaint is made.
3. A clear and concise statement of the facts constituting the alleged violation, including pertinent dates.
4. The provisions of the laws, rules, regulations, PPM, grant and other agreements under this chapter believed to have been violated.
5. Whether the complaint has been cross-filed with any other jurisdiction and proceedings have commenced or been concluded, including dates, authorities and other pertinent information.

(3) **COMPLAINTS ALLEGING DISCRIMINATION.** The following are the requirements for complaints alleging discrimination:

(a) *Discrimination not based on handicap.* Complaints alleging a violation of 29 USC 1577 relating to discrimination, except discrimination based on a handicap, shall be filed directly with DOL-DCR within 180 days after the alleged discrimination takes place.

(b) *Discrimination based on handicap.* Complaints alleging a violation of 29 USC 1577 relating to discrimination based on a handicapping condition shall exhaust local procedures before being filed with DOL-DCR. Complaints forwarded to DOL-DCR shall be filed within 180 days after the alleged discrimination takes place.

(c) *Discrimination based on state fair employment statutes.* Complaints alleging a violation of state laws, rules or regulations relating to discrimination shall be filed with the ERD within 300 days after the alleged discrimination takes place. Complaints filed with DOL-DCR may be filed at the same time with the ERD.

(4) **COMPLAINTS ALLEGING NONCRIMINAL VIOLATIONS OTHER THAN DISCRIMINATION.** Pursuant to 20 CFR 629.52, the following are the requirements for complaints alleging noncriminal violations other than discrimination:

(a) *Grantee as respondent.* When a grantee is the respondent to a complaint relating to the administration, implementation and operation of programs, the following shall apply:

1. The grantee shall review the complaint pursuant to sub. (2) (b) and notify the complainant in writing of acceptance or the reason for rejection.

2. The grantee shall conduct a hearing within 30 calendar days of the acceptance date and issue a decision to the complainant within 60 calendar days of the acceptance date.

3. After receiving an adverse decision or no decision within 60 calendar days, the complainant may file an appeal requesting a review by the department on behalf of the governor. The appeal shall be filed with the department within 10 calendar days after the decision was received or due.

4. The department shall conduct the state review and the secretary shall issue a final decision within 30 calendar days after the appeal was filed.

(b) *Department as respondent.* When the department is the respondent to complaints and appeals relating to the administration,

implementation and operation of programs, the following shall apply:

1. The division of employment and training policy shall review the complaint pursuant to sub. (2) (b) and notify the complainant in writing of acceptance or the reason for rejection.

2. The division of employment and training policy shall appoint a hearing examiner and conduct a hearing within 30 calendar days of the acceptance date and issue a decision to the complainant within 60 calendar days of the acceptance date.

3. After receiving an adverse decision or no decision within 60 calendar days, the complainant may file an appeal requesting an independent state review. The appeal shall be filed with the department within 10 calendar days after the decision was received or due.

4. The secretary shall designate a review officer to conduct the independent state review. The review officer shall review the case and issue a recommended decision to the department within 30 calendar days after the appeal was filed.

5. The secretary shall issue a final decision within 30 calendar days after the appeal was filed. The secretary may accept, reject or modify the review officer's recommendation.

(5) COMPLAINTS ALLEGING INCIDENTS OF FRAUD AND ABUSE VIOLATIONS OF JTPA. The following are the requirements for reporting alleged incidents of fraud and abuse:

(a) *Notification of requirements.* The SSG shall notify the LEO and PIC members, employees, subrecipients, all participants

and the general public of the reporting requirements of incidents of fraud and abuse.

(b) *Reporting incidents.* An individual who becomes aware of any allegation or complaint about possible fraud, misfeasance, nonfeasance, or malfeasance, misapplication of funds, gross mismanagement, employe or participant misconduct involving program operations or any act which raises questions concerning possible unlawful activity shall immediately report the incident as follows:

1. Staff of department grantees shall file an incident report with the department. Staff of other grantees or members of the public shall file an incident report with the grantor or the department. Complainants may file an incident report directly with OIG if they feel their position may be compromised.

2. The identity of an individual who provides information may not be disclosed unless the individual consents or the OIG determines that disclosure is unavoidable during the course of an investigation.

3. The DOL shall prohibit reprisal against any employe who discloses information about wrongdoing or makes a valid complaint.

(6) HEARINGS. The department shall schedule and conduct hearings pursuant to sub. (4) and the PPM. The grantee may use the department's procedures or follow their own if they are based on the elements of due process in sub. (1) (a) 4.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.