

Employment and Training Administration, Labor

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termination shall be subject to the applicable appeal rights and procedures described in § 641.324.

§ 641.317 Status of enrollees.

Enrollees who are employed in any project funded under the OAA are not deemed to be Federal employees as a result of such employment. [Section 504(a) of the OAA.]

§ 641.318 Over-enrollment.

Should attrition or funding adjustments prevent a portion of project funds from being fully utilized, the grantee may use those funds during the period of the agreement to over-enroll additional eligible individuals. The number over-enrolled may not exceed 20 percent of the total number of authorized positions established under the grant agreement without the written approval of the Department. Payments to or on behalf of enrollees in such positions shall not exceed the amount of the unused funds available. Each individual enrolled in such a position shall be informed in writing that the assignment is temporary in nature and may be terminated. The grantee shall first seek to maintain full enrollment in authorized positions and shall seek to schedule all enrollments and terminations to avoid excessive terminations at the end of the grant period.

§ 6541.319 [Reserved]

§ 641.320 Political patronage.

(a) No grantee may select, reject, promote, or terminate an individual based on that individual's political affiliations or beliefs. The selection or advancement of enrollees as a reward for political services, or as a form of political patronage, is prohibited.

(b) There shall be no selection of subgrantees or host agencies based on political affiliation.

§ 641.321 Political activities.

(a) *General.* No project under title V of the OAA or this part may involve political activities.

(1) No enrollee or staff person may be permitted to engage in partisan or nonpartisan political activities during hours for which they are paid with SCSEP funds.

(2) No enrollee or staff person, at any time, may be permitted to engage in partisan political activities in which such enrollee or staff person represents himself or herself as a spokesperson of the SCSEP program.

(3) No enrollee may be employed or out-stationed in the office of a Member of Congress, a State or local legislator, or on any staff of a legislative committee.

(4) No enrollee may be employed or out-stationed in the immediate office of any elected chief executive officer(s) of a State or unit of general government, except that:

(i) Units of local government may serve as host-agencies for enrollees in such positions, provided that such assignments are nonpolitical; and

(ii) Where assignments are technically in such offices, such assignments actually are program activities not in any way involved in political functions.

(5) No enrollee may be assigned to perform political activities in the offices of other elected officials. However, placement of enrollees in such nonpolitical assignments within the offices of such elected officials is permissible, provided that grantees develop safeguards to ensure that enrollees placed in these assignments are not involved in political activities. These safeguards shall be described in the grant agreement and shall be subject to review and monitoring by the grantee and the Department.

(b) *Hatch Act.* (1) State and local employees governed by 5 U.S.C. chapter 15 shall comply with the Hatch Act provisions as interpreted and applied by the Office of the Special Counsel.

(2) Each project subject to 5 U.S.C. chapter 15 shall display a notice and shall make available to each person associated with such project a written explanation, clarifying the law with respect to allowable and unallowable political activities under 5 U.S.C. chapter 15 which are applicable to the project and each category of individuals associated with such project. This notice, which shall have the approval of the Department, shall contain the telephone number and address of the DOL Inspector General. [Section 502(b)(1)(P) of the OAA.] Enforcement of the Hatch

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Act shall be as provided at 5 U.S.C. chapter 15.

§ 641.322 Unionization.

No funds provided under title V of the OAA or this part may be used in any way to assist, promote, or deter union organizing.

§ 641.323 Nepotism.

(a) No grantee or subgrantee may hire, and no host agency may be a work site for a person who works in an administrative capacity, staff position, or community service position funded under title V of the OAA or this part if a member of that person's immediate family is engaged in a decision-making capacity (whether compensated or not) for that project, subproject, grantee, subgrantee or host agency. This provision may be waived by the Department at work sites on Native American reservations and rural areas provided that adequate justification can be documented, such as that no other persons are eligible for participation.

(b) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, that requirement shall be followed.

(c) For purposes of this section:

(1) *Immediate family* means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, and grandchild.

(2) *Engaged in an administrative capacity* includes those persons who, in the administration of projects, or host agencies, have responsibility for, or authority over those with responsibility for, the selection of enrollees from among eligible applicants.

§ 641.324 Enrollee and applicant complaint resolution.

(a) Each grantee shall establish and describe in the grant agreement procedures for resolving complaints, other than those described by paragraph (c) of this section, arising between the grantee and an enrollee.

(b) Allegations of violations of federal law, other than those described in paragraph (c) of this section, which

cannot be resolved within 60 days as a result of the grantee's procedures, may be filed with the Chief, Division of Older Worker Programs, Employment and Training Administration, U.S. Department of Labor, Washington, DC 20210.

(c) Grantees that do not receive any funds under the JTPA shall process complaints of discrimination in accordance with 29 CFR parts 31 and 32. Grantees that receive any funds under JTPA shall process complaints of discrimination in accordance with 29 CFR part 34.

(d) Except for complaints described in paragraphs (b) and (c) of this section, the Department shall limit its review to determining whether the grantee's appeal procedures were followed.

§ 641.325 Maintenance of effort.

(a) Employment of an enrollee funded under title V of the OAA or this part shall be only in addition to budgeted employment which would otherwise be funded by the grantee, subgrantee and the host agency(ies) without assistance under the OAA. [Section 502(b)(1)(F) of the OAA.]

(b) Each project funded under title V of the OAA or this part:

(1) Should result in an increase in employment opportunities in addition to those which would otherwise be available;

(2) Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

(3) Shall not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;

(4) Shall not substitute project jobs for existing federally-assisted jobs; and

(5) Shall not employ or continue to employ any enrollee to perform work which is the same or substantially the same as that performed by any other person who is on layoff. [Section 502(b)(1)(G) of the OAA.]

§ 641.326 Experimental private sector training projects.

(a) The Department may authorize a grantee to develop an experimental job