

is capable of administering multi-State programs. An organization does not have to operate in more than one State, but must have the capacity to administer multi-State programs. This requirement allows the Department to negotiate with successful applicants to ensure that positions that did not receive a proposal continue to be served in an effort to minimize disruptions to participants. This requirement also aligns with the current practice of awarding SCSEP funds to organizations that are "national" in scope and further distinguishes these grants from grants to States. As such, State and local public agencies are not permitted to serve as national grantees.

Section 514(e)(3) of the OAA lists the eligible entities that can apply for national grant funds in a State, but as a result of poor performance. Under section 514(e)(3), States, nonprofit organizations, and public agencies are eligible for a transfer or competition of funds when a national grantee in a State fails to meet its performance measures. This list of eligible entities is discussed further at § 641.760 of Subpart G (performance measures).

In the case of grants to States, the Department is required to allocate SCSEP funds to each State under section 506(e) of the OAA. However, it is often an agency of the State, such as the State agency on aging, that operates SCSEP projects for the State. The Department will continue the practice of allocating funds to each State or the State's designee (such as the State agency on aging). Other entities, such as, political subdivisions, a combination of political subdivisions, or a national grantee operating in the State may operate SCSEP projects on the State's behalf if State policy permits; however, these entities may only apply independently for the State's funds as a result of a competition under section 514(f) of the OAA. The Department believes that this list of eligible applicants is a common sense approach to managing the State portion of the SCSEP funds. It also aligns with current State practice of selecting an agency, local government, or national grantee operating in the State as agents or subgrantees to administer its SCSEP projects. However, as discussed in § 641.881, the Department will not negotiate with or directly fund such entities. The State remains responsible for receiving the grant and for selecting an agent or subgrantee to operate the grant in accordance with its own procurement procedures.

How Does an Eligible Entity Apply? (§ 641.410)

Proposed § 641.410 directs interested applicants, including States, to follow instructions in administrative issuances to apply for a SCSEP grant. The Department decided not to include more specific information in this section because the parameters for applying for a SCSEP grant may change from Program Year to Program Year. Also, the instructions for State applications may vary from the application instructions for national grants.

Proposed paragraph (b) of this section reiterates the statutory requirement that applicants for national grants, with the exception of organizations applying to serve older American Indians, must submit a copy of their applications to the Governor of each State where a project is proposed prior to submission to the Department. This provision is intended to allow the Governor to make recommendations on position distributions in the State only and not on the quality of an application or whether the Department should fund a particular applicant. In the case of a full and open competition, Governors may elect to only review the applications of successful applicants to reduce the burden on the States and applicants.

Organizations proposing to serve older American Indians do not have to meet this requirement because they are exempt from State planning under section 503(a)(8) of the OAA. The Department encourages such entities to submit applications to the Governors in the State(s) they propose to serve so that the Governors may better plan the activities in their State.

Paragraph (c) of this section allows the States to apply for State grant funds as a part of its WIA State Unified Plan.

What Factors Will the Department Consider in Selecting Grantees? (§ 641.420)

This section describes the selection criteria to be used on a program-wide basis for the selection of all SCSEP grantees, whether selected competitively or on a noncompetitive basis. This proposed rule identifies the eligibility and responsibility requirements in section 514 of the OAA. The selection criteria must also be used to replace any grantee that fails to meet the performance measures listed in section 513 of the OAA and when new or additional grantees are funded.

What Are the Eligibility Criteria That Each Applicant Must Meet? (§ 641.430)

The eligibility criteria listed in this proposed section reflect the statutory

language at section 514(c) of the OAA dealing with eligibility criteria, which must be reviewed each time an applicant applies for SCSEP funds. The OAA codified the provisions of the previous regulations. Proposed § 641.430(e) clarifies the statutory language to include the One-Stop center in the coordination requirement so that applicants understand that such coordination is mandated. The OAA, at section 514(c)(7), permit the Department to add additional criteria as appropriate to minimize disruptions to current participants. The Department has added proposed § 641.430(g)—a requirement to minimize disruptions. The Department must conduct an eligibility review each time an applicant applies for SCSEP funds.

What Are the Responsibility Conditions That an Applicant Must Meet? (§ 641.440)

This section contains the responsibility review provisions codified in section 514(d) of the OAA. These provisions were published in the previous regulations. The responsibility review provisions in this section address such matters as debt recovery deficiencies, significant fraud or criminal activity, serious administrative deficiencies such as failure to maintain a financial management system, maintaining excess cash or having deficient internal controls, willful obstruction of auditing or monitoring or failure to correct deficiencies, failure to provide services to applicants or to meet applicable performance measures, failure to return outstanding cash advances, failure to submit required reports, failure to ensure subgrantee compliance with applicable audit requirements, and final disallowed costs in excess of five percent of the grant or contract award.

The Department understands that Congress' intent was to make the SCSEP program more performance-oriented and to assure that the SCSEP was well managed. Consistent with that intent, the Department intends to enforce the responsibility tests more strictly than it has in the past.

The Department is interpreting the first criterion to mean that if an applicant fails to make payments on a debt owed to the Department, whether incurred on its own or through subgrantees or subcontractors, after the grantee has received three demand letters from the Department, it will no longer be eligible to receive SCSEP funds. This interpretation is consistent with the former SCSEP regulations, as well as the Department's requirements for finding any grantee or contractor