

responsible as outlined in 29 CFR 95.14 and 97.12.

The Department will determine whether an applicant for SCSEP funds has met the responsibility requirements before awarding funds.

Are There Responsibility Conditions That Alone Will Disqualify an Applicant? (§ 641.450)

The OAA defines two criteria that will automatically disqualify an applicant. They are: (1) Efforts by the organization to recover debts, after three demand letters have been sent, that are established by final agency action and have been unsuccessful, or that there has been failure to comply with an approved repayment plan; and (2) established fraud or criminal activity of a significant nature within the organization.

As discussed in § 641.440, 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. The Department interprets the second criterion strictly. A plain reading of the statute indicates that whenever there is fraud or criminal activity within an organization of a significant nature, the entity must be deemed non-responsible. Under this interpretation, the entity could be deemed non-responsible even if the act was done by an individual within the organization without the approval or knowledge of the organization. The remaining responsibility tests require a substantial or persistent (for 2 or more years) finding before the applicant is found ineligible.

How Will the Department Examine the Responsibility of Eligible Entities? (§ 641.460)

This proposed regulation addresses how the Department will examine applicants to determine if they are responsible as required by section 514 of the OAA. Section 514(d)(1) specifically requires the Department to review available records to assess an applicant's overall responsibility to administer Federal funds. Additionally, section 514(d)(2) allows the Department to consider any other information relevant to responsibility, including the applicant's history with managing other grant funds.

Under What Circumstances May the Department Reject an Application? (§ 641.465)

Once an application has been submitted, whether competitively or non-competitively, the Department may question any proposed project component if it believes that the component will not serve the purposes of SCSEP. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative. The Department may also reject an application, if in the Grant Officer's opinion, the application does not serve the program well, or if the applicant does not meet the eligibility or responsibility criteria. Where grants are competitively selected, the Department may reject an application that is determined to be less advantageous to the Department than another competitive application, even if the application is out of rank order.

What Happens if an Applicant's Application Is Rejected? (§ 641.470)

This section is reserved for the Department's policy on providing remedies for applicants that are not selected to receive a SCSEP grant and that are successful in appealing the Department's decision.

The Department is particularly interested in receiving comments on this section. The Department is particularly interested in comments on available remedies and the timing of those remedies.

Competitions for SCSEP projects will not necessarily be "one-on-one" competitions. Because applicants may seek to operate projects scattered all over the country, applications may not necessarily compete against each other on a one-on-one basis. An applicant might propose projects in 10 different States, and compete against one of more other applications for each of the 10 projects. An applicant that proposes to serve one area may compete against several applicants, each of which seeks only a portion of that area. In addition, the Department may negotiate a grant award that differs somewhat from the original application. The Department also has an obligation to minimize disruption to existing participants. Finally, the Department's experience is that there is a certain minimum size grant needed to give a grantee a good chance at success within the program's administrative cost limits (which is a grant size of approximately \$6 million or approximately 840 positions), and to adhere to the required level of activities in section 506 of the OAA.

These factors can lead to some complications in fashioning a remedy that will meet the Department's obligations to minimize disruptions and that will ensure that programs are successful. How should a remedy be fashioned that will take these factors into account? For example, how should the remedy be fashioned if an appeal succeeds only in part and the resulting award would be below the minimum standards for a grant or if the result would leave an existing grantee below that standard? How should the remedy take into account the results of negotiations? If, as a result of negotiations, a grantee has acquired additional projects that neither it nor its competitor applied for, should the remedy take that into account? If an appeal is successful, to what extent should the Department be able to negotiate the grant agreement that will result? May the Department propose a different configuration of projects than was applied for in order to minimize disruptions or optimize results for the successful appellant and other existing grantees? If the Department can negotiate with the successful appellant, what happens if the negotiations are not successful? In cases where the applicant to jurisdiction relationship is not one-on-one, complexities of arranging a grant that will both minimize disruption and provide both the successful appellant and the grantee(s) that lose projects with grants that can be successfully operated, should the remedy be limited to recovering the cost of creating a proposal or something else? Are the remedies currently available under the Workforce Investment Act (WIA), Migrant and Seasonal Farmworker Program (*see* 20 CFR 633.205) appropriate for this program and why or why not? What remedy should be available for one-year grants?

Another important issue is the timing of the remedy. How long is an appropriate transition period? What factors associated with the complexity of the transition involved should affect the length of an appropriate transition period? Should a period of time for negotiations be built in? How should the Department remedy an applicant when the decision was rendered in close proximity to the next program year? Should there be a cut off point after which a grant will not be awarded as there is in the WIA Migrant and Seasonal Farmworker Program? What should that cut-off point be?