

performance of a national grantee in every State in which it has projects. The Department will monitor national grantee performance in a State every Program Year. Grantees will submit such information as part of their national performance information. The Department will also conduct a review of any national grantee's project performance in a State upon request of the Governor, as required under section 514(e)(4) of the OAA.

What Sanctions Will the Department Impose if a State Grantee Fails To Meet Negotiated Levels of Performance? (§ 641.790)

Proposed § 641.790 outlines the requirements for imposing sanctions on States that fail to meet negotiated levels of performance, as required by section 514(f) of the OAA. The Department will determine if a State has met its performance measures no later than 120 days after the end of a Program Year. In the first year of failure, the Department will provide technical assistance and require the State to submit a corrective action plan no later than 160 days after the end of the Program Year. After a second consecutive year of failure, the Department will require the State to conduct a competition to award 25 percent of the funds available to the State to another eligible organization. The Department reserves the right to specify the locations of the positions that will be subject to competition. After a third consecutive year of failure, the State must compete its entire SCSEP award. Any eligible entity, except the entity that caused the failure, may compete for such funds, including other agencies of the State, or public and private nonprofit organizations.

Will There Be Incentives for Exceeding Performance Measures? (§ 641.795)

Proposed § 641.795 addresses incentives for grantees that exceed their performance measures. It clarifies that the Department is committed to providing incentives to grantees that exceed performance when possible. These incentives may take the form of a non-financial incentive, which will be addressed in administrative guidance, or it may be in the form of an incentive grant. The Department is authorized under section 515(c)(1) of the OAA to award incentive grants from recaptured unexpended funds at the end of the Program Year, among other permissible uses of such funds. The Department may exercise this authority at its discretion.

Subpart H—Administrative Requirements

Subpart H covers the administrative requirements that apply to all SCSEP grantees. Throughout this subpart, the regulations refer to “recipient” and “subrecipient” rather than to the terms “grantee” and “subgrantee,” which are generally used elsewhere in this Part to refer to the same types of entities. The terms “recipient” and “subrecipient” are used in this subpart in order to be consistent with the style of the Government-wide requirements from which these provisions were derived. Grantees and recipients receive grant awards directly from the Department. Subgrantees and subrecipients receive financial assistance subawards from grantees and other recipients of direct awards from the Department, or higher tier subgrantees or subrecipients.

What Uniform Administrative Requirements Apply to the Use of SCSEP Funds? (§ 641.800)

Section 503(f)(2) of the OAA is a new provision requiring title V grantees to comply with the uniform allowable cost principles and administrative requirements applicable to most Federal financial assistance programs. The former regulations included similar requirements. This subpart includes requirements relating to lobbying as well as subjects covered by the Department's regulatory administrative requirements at 29 CFR 95.2(bb) and 29 CFR 97.25(b). Recipients also must ensure that their subrecipients follow these uniform requirements.

What Is Program Income? (§ 641.803)

This section describes program income as income earned or generated by the recipient or subrecipient during the grant period that is generated by an allowable activity under the grant. The term “grant period” as used here is consistent with the Department's regulations at 29 CFR parts 95 and 97. Grantees are accountable for program income earned or generated during the grant period, which may exceed the period of availability of the funds used to generate the income (*see* § 641.812). This regulation also identifies license fees and royalties as program income. This requirement is a permissible modification under 29 CFR 95.24(e) and 29 CFR 97.25(e). As provided in § 641.806, any organization that continues to receive SCSEP grant funds is required to use program income earned or generated after the Program Year for program purposes.

How Must SCSEP Program Income Be Used? (§ 641.806)

The program income provisions of the proposed rule clarify the application of the Department's uniform administrative requirements to SCSEP activities by indicating what types of income earned or generated by recipients and subrecipients are considered program income, how the costs of producing program income are to be treated, and by directing recipients to follow the addition method described in 29 CFR 95.24 and 29 CFR 97.25 and add program income to Federal and non-Federal resources provided for SCSEP activities. More specifically, paragraph (b) requires all recipients/grantees with a continuous relationship with the Department—that is organizations that continue to be funded with SCSEP funds for succeeding grant periods—to use such income for SCSEP purposes in the Program Year it is received. Paragraph (c) requires all recipients/grantees that do not continue to receive a SCSEP grant after the grant period to remit all program income earned or generated to the Department. These sections are permissible modifications under 29 CFR 95.24 and 29 CFR 97.25. The purpose of this requirement is to leverage Federal funds for the benefit of the program, which will enhance the services provided to SCSEP participants. This requirement would also apply to income earned or generated through copyrighted material or other intellectual property as provided in § 641.803.

What Non-Federal Share (Matching) Requirements Apply to the Use of SCSEP Funds? (§ 641.809)

The regulations underscore the 10 percent non-Federal share requirement in section 502(c) of the OAA, which applies even to other Federal agencies that may receive SCSEP funds, unless such entity has a statutory exemption from the requirement. Section 502(c)(1) allows the Department to pay all of the costs of only those projects that are emergency or disaster projects, or located in an economically depressed area. Additionally, the amendments to the OAA did not alter the Department's authority in section 502(e) of the OAA, to pay for all of the costs of private employment projects. Therefore, the Department expects to continue the present practice of using this authority for section 502(e) projects, when applicable. Also, proposed § 641.809(d) defines the non-Federal share as cash or in-kind. It further provides that if a recipient (grantee) plans to obtain its non-Federal share from a subgrantee or