

§ 641.770 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance in any State it serves?

(a) Each national grantee must be assessed on the performance of the projects it operates within any State. Such an assessment may lead to a finding that the national grantee has failed to meet negotiated levels of performance for its projects in a particular State. A national grantee's failure to meet performance measures in a State may be mitigated by justifying the failure, such as the size of the project or taking into consideration the adjustments permitted under section 513(a)(2)(B) of the OAA. (OAA sec. 514(e)(3)(A)).

(b) If the Department determines that there has been a failure to meet negotiated levels of performance, the Department will require a corrective action plan and may take other appropriate actions, including transfer of the responsibility for the project to other grantees or providing technical assistance. (OAA sec. 514(e)(3)(B)).

(c) The Department will take corrective action if there is a second consecutive Program Year of failure by a national grantee operating within a particular State. Such corrective action may include transfer of, or a competition for, all or a portion of the operation of the national grantee in the State to another entity. Entities that were the subject of this corrective action will not be eligible to receive the funds of the transfer or to compete. (OAA sec. 514(e)(3)(C)).

(d) If there is a third consecutive Program Year of failure, the Department will conduct a competition for all of the funds available to a national grantee for operations within a particular State. Entities that are the subject of this corrective action will not be eligible to participate in the competition. (OAA sec. 514(e)(3)(D)).

§ 641.780 When will the Department assess the performance of a national grantee in a State?

(a) The Department will assess the performance of a national grantee in a State annually.

(b) The Department may also initiate the assessment of a national grantee's performance in a State if:

(1) The Department receives information indicating that a grantee is having difficulty implementing a particular performance indicator; or

(2) The Governor of a State requests the Department to review the performance of a particular national grantee serving in the State. (OAA sec. 514(e)(4)).

§ 641.790 What sanctions will the Department impose if a State grantee fails to meet negotiated levels of performance?

(a) The Department will annually assess the performance of State grantees no later than 120 days after the end of a Program Year to determine if the State has failed to meet its negotiated levels of performance. (OAA sec. 514(f)(1)).

(b) A State failing to meet its negotiated levels of performance must submit a corrective action plan not later than 160 days after the end of the Program Year in which the failure occurred. The plan must detail the steps the State will take to improve performance. The Department will also provide technical assistance. (OAA sec. 514(f)(2) and (f)(3)).

(c) If a State fails to meet its negotiated levels of performance after two consecutive years, then the State must conduct a competition to award an amount equal to 25 percent of its allotted funds for the following year. The Department reserves the right to specify the locations of the positions that will be subject to competition.

(d) In the event that a State fails to meet its negotiated levels of performance after three consecutive years, then the State must conduct a competition to award an amount equal to 100 percent of its allotted funds for the following year.

(e) Entities that operated any portion of the State's program that contributed to the failure will not be eligible to participate in the competitions.

§ 641.795 Will there be incentives for exceeding performance measures?

Yes, the Department will address non-financial incentives in its administrative issuances. The Department is authorized by section 515(c)(1) of the OAA to use recaptured funds to provide incentive grants. The Department will issue administrative guidance detailing how incentive grants will be awarded.

Subpart H—Administrative Requirements

§ 641.800 What uniform administrative requirements apply to the use of SCSEP funds?

(a) SCSEP recipients and subrecipients must follow the uniform administrative requirements and allowable cost requirements that apply to their type of organization. (OAA sec. 503(f)(2)).

(b) *Governments.* State, local, and Indian tribal government organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State

and Local Governments," codified at 29 CFR part 97. The allowable cost requirements for governmental recipients and subrecipients are in OMB Circular A-87.

(c) *Nonprofit and commercial organizations.* Institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A-110, codified at 29 CFR part 95. The allowable cost requirements for recipients and subrecipients subject to 29 CFR part 95 are cited in 29 CFR 95.27 (Allowable costs).

§ 641.803 What is program income?

Program income, as described in 29 CFR 97.25 (governments) and 29 CFR 95.2(bb) (nonprofit and commercial organizations), is income earned by the recipient or subrecipient during the grant period that is directly generated by an allowable activity supported by grant funds or earned as a result of the award of grant funds. Program income includes income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. (See 29 CFR 95.24(e) and 29 CFR 97.25(e)). Costs of generating SCSEP program income may be deducted from gross income received by SCSEP recipients and subrecipients to determine SCSEP program income earned or generated provided these costs have not been charged to the SCSEP program.

§ 641.806 How must SCSEP program income be used?

(a) SCSEP recipients that earn or generate program income during the grant period must add the program income to the Federal and non-Federal funds committed to the SCSEP program and use it for the program, as provided in 29 CFR 95.24(a) or 29 CFR 97.25(g)(2), as applicable.

(b) Recipients that continue to receive a SCSEP grant from the Department must spend program income earned or generated from SCSEP funded activities after the end of the grant period for SCSEP purposes in the Program Year it was received.

(c) Recipients that do not continue to receive a SCSEP grant from the Department must remit program income earned or generated during the grant period from SCSEP funded activities to the Department after the end of the grant period.