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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

RIN 1205-AB60

Senior Community Service Employment Program; Final Rule, Additional Indicator on Volunteer Work

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) issues this final rule to implement an additional indicator for volunteer work in the Senior Community Service Employment Program (SCSEP). Specifically, this rule amends our regulations regarding Performance Accountability for title V of the Older Americans Act (OAA) and corresponding definitions. These regulations provide administrative and programmatic guidance and requirements for the implementation of the SCSEP.

DATES: Effective date: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**]. The information collection requirements contained in this rule have been submitted to OMB for approval; however, that approval is pending. Upon OMB concluding its review, the Department will publish a subsequent notice to announce OMB's action on the request and when the information collections will take effect.

FOR FURTHER INFORMATION CONTACT: Judith Gilbert, Team Leader, Division of National Programs, Tools and Technical Assistance, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-4209, Washington, D.C., 20210; telephone (202) 693-3046 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

The preamble to this Final Rule is organized as follows:

- I. Background – provides a brief description of the development of the final rule.
- II. Summary of the Comments – provides an overview of the comments received.
- III. Section-by-Section Review – summarizes and discusses changes to the SCSEP regulations.
- IV. Administrative Information – sets forth the applicable regulatory requirements.

I. Background

The SCSEP, authorized by title V of the OAA, is the only Federally-sponsored employment and training program targeted specifically to low-income older individuals who want to enter or re-enter the workforce. Participants must be unemployed and 55 years of age or older and have incomes at no more than 125 percent of the Federal poverty level. The program offers participants training at community service assignments in public and non-profit agencies. The dual goals of the program are to promote useful opportunities in community service activities and to also move SCSEP participants into unsubsidized employment, where appropriate, so that they can achieve economic self-sufficiency. The Older Americans Act Amendments of 2006, Pub. L. 109-365 (2006 OAA), amended the statute authorizing the SCSEP and necessitated changes to the SCSEP regulations in 20 CFR Part 641. A final rule promulgating such changes was published on September 1, 2010. 75 FR 53786. Previously, an interim final rule (IFR) on performance measures was published on June 29, 2007, and a notice of proposed rulemaking (NPRM) was published on August 14, 2008. This statute requires the Department to issue definitions of any indicator of performance through regulation. OAA § 513(b)(3).

As established in the SCSEP Final Rule published September 1, 2010, there are eight performance measures, of which six are core indicators and two are additional indicators. 20 CFR 641.700(b) and (c). The OAA requires the grantees and the Secretary of Labor to “reach agreement on the expected level of performance” for the six core indicators, but has no such requirement for the additional indicators. OAA §

513(a)(2)(C).

In comments on the SCSEP IFR of June 29, 2007, and the SCSEP NPRM of August 14, 2008, several commenters expressed concern that the proposed measures were not appropriate to the SCSEP because they placed an undue emphasis on employment outcomes and did not adequately reflect the importance of community service. Grantees who commented said that they felt the SCSEP performance measurement system did not adequately value community service and that there was too much emphasis on employment outcomes.

Although in the SCSEP Final Rule published on September 1, 2010, we declined “at this time” to adopt any additional indicators beyond those required by statute, after due consideration, the Department has decided that the benefits of adopting an additional indicator of volunteer work outweigh the additional burden of collecting the data for the indicator. Under its authority in OAA § 513(b)(2)(C) to add additional indicators of performance, the Department solicited comments on an additional performance indicator for volunteer work by publishing the SCSEP NPRM on an Additional Indicator for Volunteer Work, on November 23, 2010. 75 FR 71514. The additional indicator outlined in the NPRM proposes volunteer work as a way to provide additional information and emphasis on the community service goal of SCSEP. The summary of the comments from that NPRM follows.

II. Summary of the Comments

We received 113 comments on the NPRM from State and local governmental entities, non-profit organizations that host or help to place participants, academic

professionals in the field of gerontology and several private citizens. Overall, comments on the NPRM were extremely supportive of the NPRM, stating that the NPRM clearly supports Congressional intent as reflected in the statement of purpose and the dual goals of SCSEP.

The main reason cited by most commenters for supporting the additional indicator was the large and rapidly growing body of research about the important benefits of volunteer work for the elderly and the positive impact their volunteer work has on the larger community. Specifically, several commenters, including a director of a multi-year research project on older adult civic engagement, cited a report from the Corporation for National and Community Service, "...‘The Health Benefits of Volunteering: A Review of Recent Research,’ [which] documents that those who volunteer have lower mortality rates, greater functional ability, and lower rates of depression later in life than those who do not volunteer.” Commenters also noted that volunteerism is more likely to occur where people are invited to volunteer, or where volunteer options are presented to them, therefore improving the pool of trained, active volunteers in communities across the country. Finally, according to the comments, "...[R]esearch consistently shows that older volunteers in particular benefit greatly from improved physical well-being, enhanced self-esteem, and a greater sense of personal accomplishment.” This assertion is supported by the research cited above.¹

Three comments were submitted that opposed the proposed additional indicator. These commenters voiced strong opposition to the additional indicator, suggesting that the focus of SCSEP should be on the unsubsidized employment goal alone, rather than a

¹ See generally, *The Health Benefits of Volunteering, A Review of Recent Research*, The Corporation for National and Community Service, 2007, available at: http://www.nationalservice.gov/about/role_impact/performance_research.asp#HBR.

shared emphasis with community service. These commenters also were concerned that volunteerism would discourage employers from hiring participants when they could continue to volunteer. However, the purpose of this regulation is not to create an either/or situation, where we encourage volunteer work over employment or vice versa. Rather, the point is to ask grantees and/or sub-grantees to make a good faith effort to account for any participants who choose to volunteer post-SCSEP entry, regardless of whether they also have found unsubsidized employment. The information culled from this additional indicator will provide further information on both the impact of the SCSEP on the individual SCSEP participants, and the impact of the SCSEP on local communities through an increase in volunteerism by both current and former SCSEP participants.

Finally, a few other commenters were concerned about whether “a measure of volunteerism as a program outcome may be misinterpreted by policy makers” because other “successful programs administered by the Corporation for National and Community Service are being operated at a considerably lower unit cost.” Essentially, these commenters are concerned that the SCSEP budget will suffer because, in their view, the reason for existing support from lawmakers is based entirely on SCSEP’s “outstanding record of placing the hardest to serve older workers in employment and providing paid community service opportunities to those enrolled.” The Department understands this concern and agrees that an important connection exists between SCSEP’s outstanding record of placement and its continued funding by Congress. However, as discussed above, the OAA laid out dual goals for the SCSEP: unsubsidized employment and community service. It is appropriate to consider the success of the program in achieving

both of these goals. Consequently, the Department believes that this volunteerism indicator will reinforce the value of the community service aspect of SCSEP.

The Department acknowledged in the September 1, 2010 Final Rule that unsubsidized employment is not a suitable or appropriate outcome for every SCSEP participant, and that while our participants are low-income and in need of financial support, being employed may not be an appropriate or achievable outcome for every individual participant. Rather, because community service is an equally important goal of SCSEP, as envisioned by Congress in the OAA, the Department is following Congress' lead by collecting information about how participation in SCSEP community service leads to continued service to the community after participants exit SCSEP. DOL finds this information valuable not only for those individuals for whom unsubsidized employment post-SCSEP is not an appropriate or achievable outcome, but also for those who do obtain unsubsidized employment. We are not collecting information only for those who volunteer after exit without having a job; rather, we are collecting information regardless of whether the participant also has found unsubsidized employment.

We discuss the more specific substantive comments received on the NPRM in Section III below. Section III does not include discussion of those provisions that were not the subject of a comment, or that were not revised for technical reasons. We have adopted such provisions as proposed, without further discussion.

III. Section-by-Section Review

In this section, we discuss the comments on specific provisions of the proposed regulation, our responses to them and any changes to the regulations that we made as a

result of the comments.

Subpart A - Purpose and Definitions

What definitions apply to this subpart? (§ 641.140)

Section 641.140 of the SCSEP regulations provides definitions for the SCSEP, including definitions relevant to the SCSEP performance measures and indicators. The NPRM proposed to amend the definitions in § 641.140 to accommodate a new additional indicator in § 641.710. The NPRM proposed to add “entry into volunteer work” to the definition of “additional indicators.” The existing regulations provide that the only additional indicators are the two required by the statute: (1) retention in unsubsidized employment for 1 year; and (2) the satisfaction of participants, employers and their host agencies with their experiences and the services provided. The term “additional indicators” now would include three indicators.

This Final Rule amends the proposed rule to add a new definition of “volunteer work” to § 641.140 for clarity and uniformity, so that all grantees understand and use the same definition, all seniors are treated the same, and all data we receive are comparable from grantee to grantee. The original language of this definition in the NPRM referred only to “a public agency of a State, local government or intergovernmental agency, or for a charity or similar nonprofit organization.” One commenter suggested that we add specific language recognizing that volunteer work can occur in faith- or community-based organizations, since they also provide significant community service opportunities. We agree. Although the proposed definition was not intended to exclude volunteer work with faith- or community-based organizations, for the sake of clarity we have amended

the definition to include faith- or community-based organizations as among those entities for which volunteer work may be performed.

Upon further reflection, for data collection purposes, we also have broadened the language of the definition to make clear that it includes informal volunteer work that an individual performs on his or her own and not through an organization. An example would be a woman who invites neighborhood girls to her home after school for sewing classes. This type of informal volunteering is fairly common and is as likely to have positive effects on those who volunteer as is a volunteer activity conducted through non-profit organizations. This informal volunteer work does not include service performed for a member of the individual's own family or of the individual's own household since the self-interest of the individual makes it impossible to determine whether it is being performed with the intent to help others, which is the essence of volunteer work. Because the circumstances under which participants may enter into informal volunteer activities may vary widely, we will not count such activities in the performance indicator. But we are interested in capturing the positive impact on participants who enter into informal volunteer activities, so we will collect information about such volunteer activities. Therefore, these type of informal volunteer activities will not be included in the calculation of the "entry into volunteer indicator" under § 641.140. The Department will collect and share information about the informal volunteer work for information purposes only.

In another change, we have deleted the portion of the definition that reads: "[v]olunteer work does not include work a former participant performs that is similar or identical to work the former participant performed for compensation for the

organization.” From a reading of the comments, it is apparent that this language was confusing, and detracted from our primary goal of creating a definition of “volunteer” that is consonant with that concept as it is applied under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq., a statute that is administered and enforced by the Department’s Wage and Hour Division. SCSEP has always prohibited participants from volunteering at the host agency at which they are performing their community service assignment. This deletion is meant to clarify that this prohibition does not extend to volunteering at the host agency after exit from the program, nor does it prohibit a former SCSEP participant from using the skills learned in a SCSEP placement when later volunteering for another organization.

The definition, as revised, now reads that volunteer work means “(1) for purposes of § 641.140 of this part, activities or work that former participants perform for a public agency of a State, local government or intergovernmental agency, or for a charity or not-for-profit organization, including faith-based or community-based organizations, for civic, charitable, or humanitarian reasons, and without promise, expectation, or receipt of compensation; (2) for informational reporting purposes, volunteer work also can include similar activities that a former participant performs on his or her own that are not conducted through a formal organization or agency as long as those activities are not performed for a member of the former participant’s family or of the individual’s own household. These types of volunteer activities will not be included in the calculation of the “entry into volunteer work” indicator under § 641.140.” This definition closely follows the concept of a volunteer as it is used under the FLSA, which recognizes the generosity and public benefit of volunteering. Encouraging volunteerism, however, must

be balanced with the fundamental purpose of the FLSA, which is to prevent covered employers from gaining an unfair competitive advantage through payment of substandard wages. See Tony and Susan Alamo Found. v. Sec'y of Labor, 471 U.S. 290, 296 (1985).

Grantees, sub-grantees and host agencies should be aware that the FLSA, and in particular its definitions of “employee” and “employ,” has been interpreted quite broadly to effectuate its remedial purposes. See, e.g., Alamo Found., 471 U.S. at 299. For example, the Department has consistently stated that individuals cannot volunteer for for-profit entities, or volunteer in the business and commercial activities of a non-profit organization when those activities are covered by the FLSA. Likewise, so-called volunteer work that an individual performs for a former employer will be closely scrutinized to determine whether an employment relationship exists, particularly if the individual is performing the same services for which he or she was previously employed. See, e.g., 29 CFR 553.103.

We recognize that the new indicator for entered volunteer work is based on self-report by former participants and that grantees are not in a position to monitor the conditions in the nonprofit organizations in which former participants perform volunteer work. However, grantees, sub-grantees, and nonprofit organizations should consult with their nearest Wage and Hour Division office if they have questions about whether activities performed by current or former SCSEP participants constitute employment under the FLSA.

Additional information on the FLSA definitions of “employer,” “employee,” and “employ” is available in the Wage and Hour’s Field Operations Handbook Chapter 10 (http://www.dol.gov/whd/FOH/FOH_Ch10.pdf). For information on finding local Wage

and Hour Division offices, please visit: <http://www.dol.gov/whd>.

Subpart G - Performance Accountability

What performance measures/indicators apply to SCSEP grantees? (§ 641.700)

20 CFR 641.700 separates SCSEP indicators into two categories: core and additional. The NPRM proposed to amend § 641.700(a) to add a new additional indicator. Additional indicators are not subject to goal-setting and therefore are not subject to corrective action. However, the statute does mandate that the Department annually publish each grantee's performance on additional indicators. In addition, the NPRM also proposed to amend paragraph (c)(3), which currently only lists the additional indicators of employment retention and customer satisfaction, to reflect that the Secretary has designated entry into volunteer work as an additional indicator.

DOL intends for the new indicator of "entered volunteer work" to parallel the "entered employment" measure, which grantees have been reporting since 2004. SCSEP grantees can capture much of the information required for this indicator at the time of exit and need only confirm the participant's engagement in volunteer work at any time during the quarter after the exit quarter, in the same way as grantees have long captured the data for entered employment at the first follow-up after exit. We note that during this brief follow-up with former participants, grantees may also learn if the participants have obtained unsubsidized employment, of which the grantee was not previously aware, and for which placement the grantee also may obtain entered employment credit. Like the entered employment measure, which excludes participants who were employed at the time of enrollment, the new indicator excludes those who are engaged in volunteer work

at the time of entry into the SCSEP. However, as is true with the entered employment measure, grantees will collect data on several aspects of the volunteer work, including whether the participant had been performing volunteer work at the time of entry into the SCSEP or during the community service assignment, and information about the type of volunteer work performed after exit, the setting in which it is performed, and the number of hours of volunteer work per week. DOL will collect data on these characteristics in the SCSEP data collection system so they can be used for analysis and additional reporting, but DOL will not use the data to measure the performance of the grantee. The actual measure itself will report only on the percent of participants who were not volunteering at the time of enrollment but are volunteering after exit.

Several commenters suggested that the regulatory text be changed to delete “entry into” and substitute with “new or continued participation in” volunteer work. A number of commenters appeared to mistakenly interpret the exclusion of individuals already volunteering from the indicator as an exclusion from SCSEP eligibility and suggested we remove the restriction that participants cannot be engaged in volunteer activity upon enrollment in SCSEP. One commenter raised concerns about who might be excluded from the broad definition, asking, “Would everyone who volunteered at the time of entry into SCSEP be excluded regardless of type/extent of volunteerism?” Another commenter said that “[s]ince I have observed many seniors who volunteer while also doing paid work, I would recommend that you consider not imposing the restriction that SCSEP enrollees not be engaged in volunteering work before leaving the program.”

In response to these comments, we are explaining in this preamble that the new indicator will have no impact on eligibility and explaining why the indicator does not

count those who were volunteering before enrollment. As stated earlier, DOL will collect data about those individuals who were volunteering before SCSEP entry and will also share this data when it reports the additional indicator of entry into volunteer work, which does not include those who were volunteering prior to entry. The exclusion of participants who were doing volunteer work at the time of enrollment applies only to determining who is in the pool of participants counted in the additional indicator of entry into volunteer work. It has nothing to do with eligibility for SCSEP. The purpose of the new indicator is to determine what effect SCSEP participation has on former participants' desire to remain active and continue their community service through volunteer work. There is little value in collecting a simple count of SCSEP participants who volunteer after exit unless we know what their status was before enrollment. Without that information, we are merely reporting something about the individuals who enrolled, while not necessarily revealing the impact of SCSEP. Specifically, if we do not narrow the pool of participants to exclude those participants doing volunteer work already when they enrolled in SCSEP, then we are unable to correlate their volunteerism after SCSEP with their participation in SCSEP.

The Department proposed this additional indicator to identify volunteer work initiated after enrollment so that we can define the impact that SCSEP has on the lives of participants, not only during but also after exit from the program. Therefore, individuals who reported having volunteered upon enrollment are not included in any way in the calculation of the volunteer work indicator. For these reasons, we do not want to include these individuals in the additional indicator.

Some commenters who objected to the language about "entry into" volunteer

work also misunderstood the purpose and effect of the new indicator. Grantees are required by the SCSEP Final Rule published on September 1, 2010 to assist participants in finding unsubsidized employment if that goal is feasible for them. The core measure of entered employment provides an additional incentive for grantees to provide this assistance and to claim credit for unsubsidized placements whenever possible. However, if unsubsidized employment is not feasible, or if participants are due to exit without having secured unsubsidized employment, grantees are obligated to assist participants in achieving other forms of self-sufficiency, which includes opportunities to continue or start volunteer work after the SCSEP participation ends. This volunteer service is not necessarily an alternative to employment; indeed, it may occur concurrently with unsubsidized employment. The new indicator merely captures volunteer service where it exists and reports it as an additional program outcome.

How are the performance indicators defined? (§ 641.710)

The NPRM proposed to establish the new additional indicator in § 641.710 by adding a new paragraph to (b)(3), which defines the “entry into volunteer work” measure. This Final Rule adopts the additional indicator as proposed. As set forth above, DOL intends for the new indicator to parallel the existing core measure of entered employment, which SCSEP has been reporting since 2004. The denominator for the new indicator consists of all participants who exit during a quarter, and the numerator consists of all those participants who are engaged in any volunteer work in the quarter after they exited. The indicator entirely excludes participants who were engaged in volunteer work at the time of entry into the SCSEP: such participants are neither in the denominator nor in the

numerator. As explained above, DOL will collect and report the data for such individuals separately and not as an additional program outcome.

In order to provide context for the new indicator and to make it more useful, grantees will enter into the SCSEP data system information on the characteristics of the volunteer work (as they currently do for the characteristics of unsubsidized employment), including the number of hours per week and whether participants were engaged in volunteer work at the time of entry into the SCSEP or during their community service assignment, so that it will be possible to determine which participants are newly engaged in volunteer work after exiting as a result of participating in the SCSEP and which are continuing to do volunteer work. Later in this preamble, the Paperwork Reduction Act (PRA) section sets forth the data elements that DOL will capture in conjunction with this new indicator.

Several commenters suggested that volunteer work should be on the list of excluded exits for the Common Measures, described in Training and Employment Guidance Letter (TEGL) No. 17-05, so that it is not considered a negative exit but rather a neutral outcome, and so that it would keep documentation and follow-up required of sponsors to a minimum. Since the additional indicator supplements entered employment and is not an alternative to it, making volunteer service an additional exclusion under the Common Measures TEGL is not necessary. Whether an exiter who engages in volunteer work after exit qualifies for an exclusion under the TEGL is determined by the reason for the exit, not by how the participant chooses to spend her time after exit. The TEGL addresses only the core measure of entered employment and has nothing to do with the additional indicators.

Other commenters said volunteer service should be measured in ways that parallel the other additional indicators, rather than the core indicators. For example, one commenter recommended that “[v]olunteering should be measured in a manner parallel to... ‘customer satisfaction’ or ‘retention in unsubsidized employment for 1 year’ and should not parallel the measurement of a core indicator such as ‘entered employment.’” One commenter expressed concern “that in an attempt to ‘parallel’ the entered employment measure, resulting data collection requirements will be unnecessarily burdensome when implemented.” Another commenter suggested “a more simplistic process that allows grantees to track participants 30 days after exit” and that the Department should “provide additional guidance on documenting such exits in SPARQ” before publishing this Final Rule, as well as reduce paperwork “by allowing grantees to utilize the same documentation for the ‘entered employment’ performance measure as acceptable documentation for [v]olunteerism.” Further, another commenter recommended that the indicator should include “quantifying community satisfaction with the SCSEP volunteer and the number of hours that are donated to the community.”

We understand the commenters’ concerns, but those who suggest that we should follow the approach of the additional indicators rather than the core indicators overlook that the customer satisfaction measures employ a well defined and universally used definition (the American Customer Satisfaction Index, the ACSI) and that the indicator for retention at one year employs a definition that closely follows the common measures. Because grantees are familiar with the entered employment indicator as a useful and meaningful way to capture information about SCSEP participants, we believe that paralleling that indicator to capture the rate of volunteer work is the most effective means

to evaluate both the impact of SCSEP on continuing service to the community and enhanced quality of life for participants.

As one commenter suggested, the additional data collection that will accompany the new indicator will enable the Department to report the number of volunteer hours performed post-exit along with an estimate of their monetary value to the organizations and communities in which the service is performed, by multiplying the hours by the standard monetary value of volunteer work. Since the participant customer satisfaction survey already includes exiters in its sample, it may also be feasible to add a few additional questions to this survey in order to determine the satisfaction of exiters with their volunteer work and the impact of this volunteer work on their quality of life. We agree that such data would increase the value and usefulness of the indicator because DOL would be able to use this information to enhance the various reports and analyses of these issues that it routinely conducts.

Some commenters also were concerned about the entry into volunteer work definition's impact on grantees, not simply of the data collection burden, but also in helping participants seeking post-SCSEP volunteer positions overcome barriers to service. Commenters stated that grantees would need training on volunteerism to better assist older adults, and that without training, "it will be difficult to connect participants to opportunities well-suited and can be discouraging for some. Barriers to volunteerism exist just as they do in the SCSEP such as lack of transportation and location, working for free and not receiving a paycheck, conflicts in scheduling (much like those used for breaks in participation), care giving, costs associated with proper attire, and mismanagement of expectations of assigned tasks." The Department recognizes these

concerns but notes that grantees already have an obligation under the SCSEP Final Rule published on September 1, 2010 to prepare and implement transition plans for participants who are exiting the program without having secured unsubsidized employment. 20 CFR § 641.570(a)(2). As part of the transition plan, grantees are expected to assess the participants' circumstances, including their degree of social engagement, and to assist participants in identifying volunteer activities that meet their needs and interests and that may serve to enhance their physical and emotional well-being. The Department already has provided considerable training and resources to the grantees on how to meet that obligation, and the Department intends to offer additional training and technical assistance as needed. The new additional indicator of entry into volunteer service provides a degree of credit to the grantees for doing this work, but it in no way imposes a new programmatic responsibility on them.

IV. Administrative Information

A. Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605(b) of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Section 601 of the RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small

governmental jurisdictions. Section 601(4) defines a small organization as any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

SCSEP includes 74 grantees, and approximately 970 sub-recipients and sub-sub-recipients. More than 50 of the grantees are States, State agencies, or territories, and are not small entities as defined within the RFA. The vast majority of the rest are non-profit organizations, many of which may be categorized as small entities for RFA purposes.

The Department does not have a precise number of small entities that may be impacted by this rulemaking.

The Department has determined that the economic impact of this Final Rule is not likely to be significant for any of these small entities, because these regulations will result in negligible additional costs to grantees and sub-recipients. This Final Rule involving SCSEP performance measures will have only a minor information collection impact on a number of small entities. DOL has addressed this burden by submitting to the Office of Management and Budget (OMB) a request for approval for changes to three of the four reporting forms before submission of this Final Rule. DOL estimated the increase in paperwork burden to be 1000 hours. The SCSEP is designed so that SCSEP funds cover the vast majority of the costs of implementing this program, including the costs of reporting the volunteer work indicator. We reached a similar conclusion in our review of the August 14, 2008 NPRM. At that time, the Department requested public comments on the potential economic impact that the rule may have on small entities and did not receive any comments on this question. For these reasons, the Department has determined and certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

OMB has also determined that this rule is not a “major rule” for purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA), Pub. L. 104-121 (1996) (codified in scattered sections at 5 U.S.C.). SBREFA requires agencies to take certain actions when a “major rule” is promulgated. 5 U.S.C. 801. SBREFA defines a “major rule” as one that will have an annual effect on the economy of \$100 million or more; that will result in a major increase in costs or prices for, among other things, State or local government agencies; or that will significantly and adversely affect the business climate. 5 U.S.C. 804(2).

This Final Rule will not significantly or adversely affect the business climate. First, the rule will not create a significant impact on the business climate because, as discussed above, SCSEP grantees are governmental jurisdictions and not-for-profit enterprises. Moreover, any secondary impact of the program on the business community would not be adverse. To the contrary, we believe the SCSEP assists the business community by training older Americans to participate in the workforce and benefits the overall community by providing volunteer work opportunities.

The Final Rule will also not result in a major increase in costs or prices for States or local government agencies. The SCSEP has no impact on prices. Finally, this Final Rule will not have an annual effect on the economy of \$100 million or more.

Therefore, because none of the definitions of “major rule” apply in this instance, this Final Rule is not a “major rule” for SBREFA purposes.

B. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

As stated in the SBREFA analysis, this Final Rule will not have an annual effect on the economy of \$100 million or more. However, the rule does raise novel policy issues about implementing an additional performance indicator on volunteer work in the SCSEP. The key policy change reinforces the dual purpose of the SCSEP by counting those who begin performing volunteer work—or who perform volunteer work in lieu of or in addition to unsubsidized employment—after participating in SCSEP. Therefore, the Department has submitted this Final Rule to OMB.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing in the Federal Register a summary of the collection of information and a brief description of the need for and proposed use of the information and requesting public comments. 44 U.S.C. 3507.

Because the 2006 OAA necessitated changes in many of the SCSEP forms used by grantees before the effective date of the Act, in July 2007 the Department submitted to OMB for review and approval, in accordance with PRA § 3507(d), a modification to the

SCSEP information collection requirements. The four-year strategy newly required by the 2006 OAA (see § 641.302) was accounted for in that PRA submission. OMB approved the SCSEP PRA submission (OMB control number 1205-0040) in October 2007 and again (without the added form and burden estimate for the volunteer work indicator) on April 18, 2011, extending the expiration date through April 30, 2014. For more information on this request, please visit: www.reginfo.gov. This Final Rule introduces new information collection requirements and thus requires a PRA submission.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

The Department has submitted the information collection contained in this final rule for review under the PRA to the OMB, as part of a revision to Control Number 1205-0040; however, OMB has not yet completed its review. The Department will publish an additional Notice to announce OMB's action on the request and when the information collection requirements will take effect.

Public Comments:

In the NPRM stage, the Department requested comments on the burdens imposed by information collections contained in this rule. The Department received eleven

comments expressing concern about the burden on grantees and/or sub-grantees to collect information about former participants' volunteer activities post-SCSEP. The Department shares this concern and intends to preserve a balance between the value of information gained from this additional indicator and the burdens of extra data collection. This indicator is an additional indicator, not a core indicator, and thus has no goal-setting, no data validation, and no negative repercussions attached to it for the sponsors involved. This additional indicator is designed so that sponsors can obtain the required information during intake, at exit, and through brief and non-burdensome follow-up efforts with participants after their SCSEP service. While the Department understands that sponsors may not be able to reach every participant after exit from the program, we find that the data obtained through low burden follow-up efforts will provide valuable information to justify the minimal increase in burden.

While much of the information provided to OMB in support of the information collection request appears in this preamble, interested parties may obtain a copy of the full supporting statement by sending a written request to the mail address shown in the "Addresses" section at the beginning of this preamble or by visiting the <http://www.reginfo.gov/public/do/PRAMain> Web site.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4, 2 U.S.C. 1501 et seq.) requires an agency to "prepare a written statement" providing specific information if the rulemaking "is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of \$100 million or more” in any 1 year. Since the Department has determined that this Final Rule does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments, or by the private sector, of more than \$100 million, it has not prepared the written statement under section 1532 of the UMRA.

E. Executive Order 13132

The Department has reviewed this Final Rule in accordance with Executive Order 13132 on federalism, and has determined that the Final Rule does not have “policies that have federalism implications.” As explained at §1(a) of the Executive Order, “Policies that have federalism implications’ refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This rule does not have such “substantial direct effects” because it does not preempt any State law, nor interfere with functions essential to the State’s separate and independent existence, nor impose any form or method of program administration on the States. In addition, this new measure is reasonably related to the purpose of the SCSEP program, which is a grant program that flows directly from the 2006 OAA, in which State participation is voluntary. Therefore, this Final Rule does not constitute a “substantial direct effect” on the States, nor will it alter the relationship, power, or responsibilities between the Federal and State governments; the relationship, power, or responsibilities were already established in the authorizing legislation.

F. Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This Final Rule addresses the SCSEP, a program for older Americans, and has no impact on safety or health risks to children.

G. Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have “tribal implications.” Required actions include consulting with tribal governments before promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having “tribal implications” when they have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has reviewed this Final Rule and concludes that it does not have tribal implications. Although tribes are sub-recipients of national SCSEP grant funds, this rule will not have a substantial direct effect on those tribes because, as outlined in the Regulatory Flexibility section of the preamble, there are only minor additional costs associated with implementing this Final Rule and these are covered by grant funds. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal

Government and tribal governments.

Accordingly, we conclude that this Final Rule does not have tribal implications for the purposes of Executive Order 13175.

H. Environmental Impact Assessment

The Department has reviewed this Final Rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department's NEPA procedures (29 CFR part 11). This Final Rule will not have a significant impact on the quality of the human environment, and thus the Department has not prepared an environmental assessment or an environmental impact statement.

I. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681), requires the Department to assess the impact of this Final Rule on family well-being. An agency that determines that the rule will have a negative affect on families must support the rule with an adequate rationale.

The Department has assessed this Final Rule and determines that it will not have a negative effect on families. Indeed, we believe the SCSEP strengthens families by providing job training and support services to low-income older Americans.

J. Executive Order 12630

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, is not relevant to this Final Rule because the rule does not involve implementation of a policy with takings implications.

K. Executive Order 12988

This Final Rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

L. Executive Order 13211

Executive Order 13211 is not relevant to this Final Rule because the rule will not have a significant adverse effect on the supply, distribution, or use of energy.

M. Plain Language

The Department drafted this rule in plain language.

List of Subjects in 20 CFR Part 641

Aged, Employment, Government contracts, Grant programs - Labor, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR part 641 as follows:

PART 641 -- PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE
EMPLOYMENT PROGRAM

1. The authority citation for part 641 continues to read as follows:

42 U.S.C. 3056 et seq.

2. Amend § 641.140 by revising the definition of “additional indicators” and adding the definition of “volunteer work” to read as follows:

§ 641.140 What definitions apply to this part?

* * * * *

Additional indicators mean retention in unsubsidized employment for 1 year; satisfaction of participants, employers and their host agencies with their experiences and the services provided; entry into volunteer work; and any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance. (OAA § 513(b)(2)).

* * * * *

Volunteer work means:

(1) For purposes of § 641.140 of this part,, activities or work that former participants perform for a public agency of a State, local government or intergovernmental agency, or for a charity or not-for-profit organization, including faith-based or community-based organizations, for civic, charitable, or for humanitarian reasons, and without promise, expectation, or receipt of compensation;

(2) For informational reporting purposes, volunteer work also can include similar activities that a former participant performs on his or her own that are not conducted through a formal organization or agency as long as those activities are not performed for a member of the former participant's family or of the individual's own household. These types of volunteer activities will not be included in the calculation of the "entry into volunteer work" indicator under § 641.140.

* * * * *

3. Amend § 641.700 by adding paragraph (c)(4) to read as follows:

§ 641.700 What performance measures/indicators apply to SCSEP grantees?

* * * * *

(c) * * *

(4) The Secretary has designated entry into volunteer work as an additional indicator.

* * * * *

4. Amend § 641.710 by adding paragraph (b)(3) to read as follows:

§ 641.710 How are the performance indicators defined?

* * * * *

(b) * * *

(3) "Entry into volunteer work" is defined by the formula: Of those not engaged in volunteer work at the time of entry into the SCSEP, the number of such participants who perform volunteer work in the first quarter after the exit quarter, divided by the number of such participants who exit during the quarter.

Signed at Washington, D.C., this 18th day of January, 2012.

Jane Oates

Assistant Secretary for Employment and Training, Labor.

Billing Code: 4510-FN-P

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