

WORKFORCE DEVELOPMENT

PART III - TERMS AND CONDITIONS (Revised January 29, 2010)

Table of Contents

3.0	STATEMENT OF PURPOSE	1
3.1	DEFINITIONS	1
3.2	LEGAL AUTHORITY	2
3.2.1	Business Licensing/Taxation/Insurance Requirements.....	2
3.3	AWARDING ENTITY	2
3.3.1	Oversight Responsibilities	2
3.3.2	Funding Obligations	3
3.4	RECIPIENTS/SUBRECIPIENTS/SUBGRANTEES	3
3.4.1	Assurances of Compliance.....	3
3.4.2	Time of Performance.....	4
3.4.3	Satisfactory Performance	4
3.5	RECIPIENT/SUBRECIPIENT/SUBGRANTEE FINANCIAL MANAGEMENT SYSTEM AND RESPONSIBILITIES	5
3.5.1	Method of Payment	6
3.5.2	Repayment and Adjustments in Payments	6
3.5.3	Closeouts	7
3.5.4	Cash Depositories	7
3.5.5	Program Income.....	7
3.5.6	Indirect Costs	8
3.5.7	Bonding Requirements for Advance Payments	8
3.5.8	Legal Fees	8
3.5.9	Assignment of Interest.....	9
3.5.10	Meetings, Conferences and Travel Payments	9
3.5.11	Prevention of Fraud and Abuse	10
3.6	PARTICIPANT DATA SYSTEM	10
3.6.1	Participant Information.....	10
3.6.2	Recipient/Subrecipient/Subgrantee Responsibilities.....	11
3.7	PARTICIPANT PAYMENTS, BENEFITS AND WORKING CONDITIONS	11
3.7.1	Payments to Participants.....	11
3.7.2	Benefits and Working Conditions.....	12
3.7.3	Supportive Services	12
3.7.4	Retirement Programs	12
3.7.5	Child Labor.....	13
3.8	REQUIREMENTS FOR RECORDS	13
3.8.1	Substitution of Microfilm	13
3.8.2	Right of Access to Records	13
3.8.3	Fees	14
3.9	PROCUREMENT	14
3.9.1	Methods of Procurement	14
3.9.2	Selection of Service Providers.....	16

3.9.3	Conflict of Interest	16
3.9.4	Nepotism.....	17
3.9.5	Conducting Business Involving Close Personal Friends and Associates	17
3.9.6	Property Management Standards.....	17
3.10	CHANGES AND MODIFICATIONS	18
3.10.1	Amendments	18
3.10.2	Modifications	19
3.11	SUBCONTRACTING AND MONITORING	20
3.11.1	Sub-tier Agreements	20
3.11.2	Monitoring	21
3.12	TERMINATION PROVISIONS	21
3.12.1	Termination for Convenience.....	21
3.12.2	Termination for Cause.....	21
3.13	AUDITS	23
3.13.1	Audits and Inspections	23
3.13.2	Audit Reports	24
3.14	GENERAL ASSURANCES	24
3.14.1	Equal Opportunity.....	24
3.14.2	Veterans Employment	25
3.14.3	Relocation	25
3.14.4	Disputes and Court Action.....	26
3.14.5	Grievance and Hearing Procedures for Non-criminal Complaints at the Local Workforce Investment Area	26
3.14.6	Complaints of Discrimination	26
3.14.7	Complaints & Reports of Criminal Fraud, Waste & Abuse	27
3.14.8	Non-WIA Remedies.....	27
3.15	OTHER STIPULATIONS	27
3.15.1	Other Stipulations Governing this Agreement.....	27
3.15.2	Hold Harmless.....	28
3.15.3	Non-Federal Employees.....	28
3.15.4	Criminal Provisions.....	28
3.15.5	Sectarian Activities	28
3.15.6	Unionization and Political Activity	29
3.15.7	Maintenance of Effort	30
3.15.8	Lobbying	30
3.15.9	Suspension and Debarment	31
3.15.10	Drug Free Workplace Requirements	31

3.0 **STATEMENT OF PURPOSE**

The purpose of this Act is to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention and earnings of participants and increase occupational skill attainment by participants, which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation's economy.

3.1 **DEFINITIONS**

Act – The Workforce Investment Act of 1998

Administrative Entity – The entity (South Carolina Department of Commerce, hereinafter referred to as the Awarding Entity) designated by the Governor to administer the Workforce Investment Plan for the State of South Carolina or the entity designated by the Local Workforce Investment Board to administer the WIA programs.

Agreement – A grant agreement, which includes the WIA Terms and Conditions, between the Awarding Entity and the Grantees/Recipients or between the Grantees/Recipients and Sub-Grantees/Subrecipients.

Direct Grantee – The entity, usually a state or protectorate, that receives WIA funds directly from the federal government.

Local Workforce Investment Areas (LWIA) – The county or counties designated by the Governor to administer the Workforce Investment Act in a designated area.

Recipient – A local area that receives grant funding from the direct grantee.

Subrecipient or Subgrantee – The legal entity to which a subgrant is awarded and which is accountable to the recipient or direct grantee for the use of the funds provided.

Service Provider – A public agency, a private non-profit organization, or a private-for-profit entity that delivers education, training, employment or supportive services to WIA participants.

Vendor – An entity responsible for providing generally required goods or services to be used in the WIA program.

Participant – An individual who has been determined to be eligible to participate in and who is receiving services (except for follow-up services) under a program authorized by WIA title I. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving core, intensive, training or other services provided under WIA title I.

Capital Improvement – Any modification, addition, restoration or other improvement:

- (a) which increases the usefulness, productivity, or serviceable life of an existing building, structure or major item of equipment;
- (b) which is classified for accounting purposes as a "fixed asset"; and
- (c) the cost of which increases the recorded value of the existing building, structure or major item of equipment and is subject to depreciation.

Construction – The erection, installation, assembly or painting of a new structure or major addition, expansion or extension of an existing structure, and the related site preparation, excavation, filling and landscaping, or other land improvements.

GAAP – Accounting rules and procedures established by authoritative bodies of convention that have evolved through custom and common usage (uniform minimum standards and guidelines). The acronym stands for Generally Accepted Accounting Principles.

3.2 LEGAL AUTHORITY

The Awarding Entity, recipients, and subrecipients/subgrantees assure and guarantee that they possess the legal authority pursuant to any proper, appropriate and official motion, resolution or action passed or taken, giving them legal authority to enter into this Agreement; receive the funds authorized by this Agreement; and to perform the services each has obligated itself to perform under this Agreement.

The person or persons signing and executing this Agreement on behalf of the parties hereto, or representing themselves as signing and executing this Agreement on behalf of the parties hereto, do hereby warrant and guarantee that all parties involved have been fully authorized to execute this Agreement and to validate and legally bind the parties hereto to all the terms, performance and provisions herein set forth.

The Awarding Entity shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the recipients, subrecipients/subgrantees or the person signing the Agreement to enter into this Agreement.

3.2.1 Business Licensing/Taxation/Insurance Requirements

The recipients/ subrecipients/subgrantees will comply with all other local, state or federal applicable licensing, taxation and insurance requirements.

3.3 AWARDING ENTITY

3.3.1 Oversight Responsibilities

The Awarding Entity is responsible for the monitoring and evaluation of programs during a grant period.

- The Awarding Entity will provide technical assistance to the recipients/subrecipients/subgrantees in the areas of planning, design, delivery, and management during the course of the program.
- The Awarding Entity will note deficiencies when technical assistance is delivered and will help the recipient/subrecipient/subgrantee correct the deficiencies.
- The Awarding Entity will conduct formal programmatic and financial reviews of the recipient/subrecipient/subgrantee as necessary.
- The Awarding Entity will notify the recipient/subrecipient/subgrantee in writing of any deficiencies noted during formal reviews.
- The Awarding Entity will conduct follow-up visits to review and to assess efforts to correct deficiencies noted during formal reviews.

3.3.2 Funding Obligations

In consideration of full and satisfactory performance hereunder, the Awarding Entity shall be liable to the recipient/subrecipient/subgrantee in an amount equal to the actual costs incurred, not exceeding the face amount of this Agreement, for performances rendered hereunder subject to the following limitations:

- (a) The Awarding Entity shall not be liable to the recipient/subrecipients/ sub-grantees for expenditures made in violation of Part 667 of the Regulations promulgated under the Act, or in violation of any other regulations promulgated under the Act, or otherwise applicable.
- (b) The Awarding Entity shall not be liable to the recipient/subrecipients /sub-grantees for costs incurred or performances rendered unless such costs and performances are in strict accordance with the terms of this Agreement.
- (c) The Awarding Entity's funding obligations under this Agreement are contingent upon receipt of funds from the USDOL/State Workforce Investment Area allocation guidelines governing distribution within the Awarding Entity's total jurisdiction. The Awarding Entity is in no way obligated for any funds not received nor any decrease in funding caused by required allocation formulas.

3.4 RECIPIENTS/SUBRECIPIENTS/SUBGRANTEES

3.4.1 Assurances of Compliance

- 3.4.1.1 It is the responsibility of the recipient/subrecipient/subgrantee to have, or to have access to, copies of the Workforce Investment Act of 1998, the applicable Federal Regulations (to include all CFRs and OMB Circulars) and other pertinent documents referenced in this Agreement and with which compliance is required.
- 3.4.1.2 The recipient/subrecipient/subgrantee shall comply with the requirements of the Act and with Federal Regulations (hereinafter called the Regulations) and any revisions thereof.
- 3.4.1.3.1 The recipient/subrecipient/subgrantee shall operate its programs under this Agreement, and shall otherwise comply with the terms of the Agreement in such a manner as to prevent or correct any breach of the Awarding Entity's agreement with the U.S. Department of Labor.
- 3.4.1.4 The recipient/subrecipient/subgrantee must comply with the following federal regulations and requirements:
 - 1. 29 CFR Part 17, dated 7/1/91 (Executive Order 12372) and any amendments thereto;
 - 2. 35 Federal Regulations 32874 et seq. (1973) or any replacements and subsequent revisions or amendments thereof;
 - 3. OMB Circular A-87 (applies to state and local governments and federally recognized Indian tribal governments);
 - 4. OMB Circular A-21 (applies to public and private institutions of higher education);
 - 5. OMB Circular A-122 (applies to nonprofit organizations including nonreservation Indian organizations but not to educational institutions and hospitals);
 - 6. 48 CFR Part 31 (applies to commercial organizations);
 - 7. 29 CFR Part 95 which codifies OMB A-122;
 - 8. 29 CFR Part 97 which codifies OMB A-87;

9. "Jobs for Veterans Act," Public Law 107-288 and 20 CFR Part 1010 (Priority of Service for Covered Persons, Final Rule)
10. Section 504 of the Rehabilitation Act of 1973, as amended;
11. Section 508 of the Rehabilitation Act of 1973, as amended;
12. Age Discrimination Act of 1975, as amended;
13. Title IX of the Education Amendments of 1972, as amended;
14. Section 167 of the Job Training Partnership Act, as amended;
15. Section 188 of the Workforce Investment Act of 1998;
16. Title II Subpart A of the Americans with Disabilities Act of 1990, as amended;
17. Title VI of the Civil Rights Act of 1964, as amended;
18. Title VII, Civil Rights Act of 1964, as amended, Section 2000e-16, employment by Federal Government;
19. Equal Pay Act of 1963, as amended;
20. 29 CFR Part 37: Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA);
21. Executive Order 13160 Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs;
22. Executive Order 13145 to Prohibit Discrimination in Federal Employment Based on Genetic Information;
23. Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency; and
24. Executive Order 11478 Equal Employment Opportunity in the Federal Government.

3.4.1.5 The recipient/subrecipient/subgrantee shall ensure that all its subrecipients/subgrantees comply with the federal cost principles applicable to the particular organization concerned.

3.4.2 Time of Performance

The activities specified in this Agreement are to be performed in accordance with schedules made as a part of this Agreement. All activities required and described herein shall be completed no later than the ending date of this Agreement, except as determined specifically by the Awarding Entity.

3.4.3 Satisfactory Performance

3.4.3.1 It is understood and agreed by and between the parties of this Agreement that the work is to be done to the satisfaction of the Awarding Entity. The Awarding Entity will interpret all reports and will decide the acceptability and progress of grant work, and will further decide the amount, classification and quality of kinds of work to be performed, and the amounts to be paid under this Agreement. The Awarding Entity will be the sole judge of the validity and the acceptability of claims, if any, made by the recipient/subrecipient/subgrantee, and the Awarding Entity's decision will be final, conclusive and binding on the parties concerned.

3.4.3.2 The recipient/subrecipient/subgrantee agrees that performance satisfactory to the Awarding Entity is essential to the life of this Agreement. Performance below relevant standards, as stated in the Agreement, will constitute non-compliance with the terms of this Agreement. It is the responsibility of the Awarding Entity to notify the recipient/subrecipient/subgrantee when it is not in compliance. It is the responsibility of the recipient/subrecipient/subgrantee to present a plan for corrective action including the date on which results of the corrective action may be expected, or to present just cause for modification of the performance standards.

3.4.3.3 Such plans or modifications shall be prepared and submitted in writing by the recipient/subrecipient/subgrantee to the Awarding Entity. The Awarding Entity may schedule meetings for the purpose of reviewing performance against the terms of this Agreement. All staff of the recipient/subrecipient/subgrantee performing services under this Agreement who are requested by the Awarding Entity to attend meetings shall be required by the recipient/subrecipient/subgrantee to attend such meetings as may be scheduled.

**3.5 RECIPIENT/SUBRECIPIENT/SUBGRANTEE
FINANCIAL MANAGEMENT SYSTEM AND RESPONSIBILITIES**

The recipient/subrecipient/subgrantee shall maintain a financial management system that provides federally required records and reports that are uniform in definition, accessible to authorized federal and state staff, and verifiable for monitoring, reporting, audit, program management, and evaluation purposes. Each system, at each recipient/subrecipient/ subgrantee level, shall provide fiscal control and accounting procedures that are in accordance with GAAP (Generally Accepted Accounting Principles).

The recipient/subrecipient/subgrantee must provide adequate, qualified staff to maintain the financial system and prepare the required reports. Proper internal controls are required to ensure separation of duties.

The recipient/subrecipient/subgrantee shall maintain fiscal records and supporting documentation for all expenditures of funds under this Agreement. Records must provide accurate, current, separate and complete disclosure of the status of funds received under this Agreement for each program activity by cost category including proper charging of costs and proper allocation of costs. The recipient/subrecipient/ subgrantee shall maintain accounts in such a way that they are traceable to source documentation of unit transactions, and shall maintain source documentation for all transactions. Fiscal records must be adequate enough to provide a comparison of actual expenditures with budgeted amounts for each recipient/ subrecipient/subgrantee.

The recipient/subrecipient/subgrantee shall establish and maintain a system by which it monitors its grants to: (1) ensure adequate financial management and compliance with Federal Regulations and the applicable provisions of this Agreement; and (2) ensure that each system is sufficient to:

- permit preparation of required reports;
- permit the tracing of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds;
- permit the tracing of program income, potential stand-in costs and other funds allowable except for funding limitations defined in the Act.

The recipient/subrecipient/subgrantee shall submit a financial report which includes a report of all costs incurred under the Agreement up to and including the last day of the month. These reports will include accruals for cost of goods and services received where payment will be made within the next 30 days. These reports are due by the twentieth (20th) day of the following month, according to the terms set forth in the grant agreement.

The recipient/subrecipient/subgrantee shall notify the Awarding Entity immediately if it files for bankruptcy; is involuntarily placed in bankruptcy or receivership; is sued in any Court; or otherwise becomes insolvent and unable to comply with this Agreement.

The recipient/subrecipient/subgrantee is liable to the Awarding Entity for any money it has received for performance of the provisions of this Agreement if the Awarding Entity has suspended or terminated this Agreement for the reasons enumerated in this Agreement.

Nothing in this Section shall be so construed as to relieve the recipient/subrecipient/subgrantee of the fiscal accountability and responsibility under the applicable OMB Circulars, the Act, Regulations and other U.S. Department of Labor regulations.

3.5.1 Method of Payment

3.5.1.1 Payment to the recipient/subrecipient/subgrantee shall not exceed the total face amount of the Agreement.

3.5.1.2 The recipient/subrecipient/subgrantee shall be reimbursed monthly for actual costs for the prior month and for accrued costs that will be paid within the next 30 days. Payments shall be requested by submitting a "Request for Payment/Fiscal Report".

3.5.1.3 The recipient/subrecipient/subgrantee may request a cash advance; however, an advance payment may not exceed one month's average expenditures. Documentation of how the amount was calculated must be attached with a cash advance request. Each situation will be reviewed to determine the need for a cash advance.

3.5.1.4 Request for funds will not be honored prior to receipt by the Awarding Entity of an Agreement signed by both parties.

3.5.1.5 All documents and policies must be submitted by the recipient/ subrecipient/subgrantee as requested by the Awarding Entity prior to the honoring of Requests for Payment(s).

3.5.2 Repayment and Adjustments in Payments

3.5.2.1 The recipient/subrecipient/subgrantee agrees to be responsible to repay the Awarding Entity any funds received pursuant to the Act that are not spent in strict accordance with the Act and with all applicable Federal Regulations and OMB Circulars.

3.5.2.2 If any funds are expended by the recipient/subrecipient/subgrantee in violation of the Act, the Regulations or Grant Conditions, the Awarding Entity may require necessary adjustments in payments to the recipient/subrecipient/subgrantee on account of such unauthorized or unallowable expenditures. The Awarding Entity may request the return of unexpended funds which have been made available in order to assure that they will be used in accordance with the purpose of the Act or to prevent further unauthorized or unallowable expenditures, and may withhold funds otherwise payable under the Agreement in order to recover any unallowable amounts expended.

3.5.2.3 If no further payments would otherwise be made under the Agreement during the current or subsequent fiscal year, the Awarding Entity may request a repayment of funds used for unauthorized or unallowable expenditures. Repayments shall be made from non-WIA funds within **thirty (30) calendar days** of receipt of such request.

3.5.3 **Closeouts**

3.5.3.1 The recipient/subrecipient/subgrantee will submit a complete Grant Agreement Closeout Report to be received by the Awarding Entity no later than **sixty (60) calendar days** after the expiration of the Agreement. The Awarding Entity will supply the closeout forms and instructions prior to the grant ending date.

3.5.3.2 Amended closeout package(s) will not be accepted after **sixty (60) calendar days** of the expiration of the grant unless adjustments are required as a result of audit findings or other valid reasons. The Awarding Entity must be contacted as soon as possible in the event that a closeout adjustment is deemed necessary after the 60 day deadline.

3.5.3.3 Any funds advanced under this Agreement by the Awarding Entity to the recipient/subrecipient/subgrantee and either unspent or otherwise not properly obligated by the recipient/subrecipient/subgrantee must be returned to the Awarding Entity within **three (3) calendar days** from the date this Agreement terminates.

3.5.4 **Cash Depositories**

3.5.4.1.1 Consistent with the national goal of expanding opportunities for minority business enterprises, each recipient/subrecipient/subgrantee is encouraged to use minority-owned banks (a bank which is owned at least 50 percent by minority group members).

3.5.4.2 Recipients/subrecipients/subgrantees are not required to maintain a separate bank account, but shall separately account for federal funds on deposit.

3.5.5 **Program Income**

3.5.5.1.1 Income under any program administered by a public or private nonprofit entity may be retained by such entity only if such income is used to continue to carry out the program. Income shall include:

- receipts from goods or services (including conferences) provided as a result of activities funded under this title;
- funds provided to a service provider under this title that are in excess of the costs associated with the services provided;
- proceeds from the sale of real property or equipment purchased with WIA grant funds;
- interest income earned from funds received during a grant award.

3.5.5.2 For purposes of this paragraph, each entity receiving financial assistance under this title shall maintain records sufficient to determine the amount of such income received and the purposes for which such income is expended.

3.5.5.3 The addition method, described at 29 CFR 95.24 or 29 CFR 97.25(g)(2) (as appropriate), must be used for program income earned under WIA Title I grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program.

3.5.5.4 The recipient/subrecipient/subgrantee may retain any program income earned by the recipient/subrecipient/subgrantee only if such income is added to the funds committed to

the particular WIA grant under which it was earned and such income is used for WIA purposes and under the terms and conditions applicable to the use of grant funds.

3.5.6 Indirect Costs

The recipient/subrecipient/subgrantee will not be reimbursed for any indirect costs under this Agreement until the recipient/subrecipient/ subgrantee has a current Indirect Cost Agreement executed and approved by a cognizant agency of the United States Government. Written documentation is required for an exemption of approval from the cognizant agency for the Indirect Cost Agreement. Indirect costs submitted for reimbursement must have an executed plan available for review as appropriate during regular monitoring visits.

3.5.7 Bonding Requirements for Advance Payments

3.5.7.1 Every office, director, agent or employee of the recipient/subrecipient/ subgrantee of WIA funds on a cash advance basis who is authorized to act on behalf of the recipient/subrecipient/subgrantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payments for program costs, shall be bonded to provide protection against loss.

3.5.7.2.1 The amount of coverage shall be the lower of the following:

- (1) \$100,000; or
- (2) the highest advance received through check or drawdown during the preceding grant year; or for new recipient/subrecipient/subgrantee, the highest advance through check or drawdown planned for the present grant period.

3.5.7.3 The recipient/subrecipient/subgrantee must obtain a Fidelity Bond that meets the following qualifications:

- (a) The recipient/subrecipient/subgrantee shall be named as the insured.
- (b) The period of coverage shall be no less than one year, with a discovery period of no less than three years subsequent to cancellation or termination of the Bond.
- (c) The Bond evidencing such coverage as required under WIA Agreement shall contain the following endorsement:
 - If the Bond covers advance payments under grants/contracts from more than one agency, a recovery is provided for each government agency.

3.5.7.4 No cancellation, termination, or modification of this Bond shall take effect prior to the expiration of **thirty-five (35) days** after written notice of the cancellation, termination or modification, together with suitable identification of the Bond and named insured has been sent by registered letter to the Awarding Entity at its official address.

3.5.7.5 The recipient/subrecipient/subgrantee shall ensure that its sub-contractors, if any, also maintain Bonds in accordance with this Section.

3.5.8 Legal Fees

3.5.8.1 No funds available for administrative costs under this Agreement (including an administrative cost pool) may be used by the recipient/subrecipient/subgrantee for

payment of legal or other associated services unless and until the Awarding Entity receives and approves the recipient's/subrecipient's/subgrantee's certification containing, at a minimum, the following assurances:

- (a) the payments are reasonable in relation to the fees charged by other recipients/subrecipients/subgrantees providing similar services; and
- (b) the services could not be competently provided through employees of the recipient/subrecipient/subgrantee or other available state or local government employees.

3.5.8.2 In the event the Awarding Entity so requires, the recipient/subrecipient/ subgrantee shall submit supporting documents relevant to the certification in the manner and form the Awarding Entity specifies.

3.5.8.3 Legal expenses for the prosecution of claims against the federal government, including appeals to an Administrative Law Judge, are unallowable.

3.5.8.4 This Section shall not be construed as requiring the Awarding Entity's approval or disapproval of any individual who may be selected as legal counsel, or as the Awarding Entity's approval or disapproval of the use of legal counsel in general. In the event the recipient/subrecipient/ subgrantee elects to employ legal services, such services shall be subject to the provisions of this Agreement.

3.5.9 Assignment of Interest

The recipient/subrecipient/subgrantee must obtain the prior written consent of the Awarding Entity before assigning any interest in this Agreement.

3.5.10 Meetings, Conferences and Travel Payments

3.5.10.1 Recipients of WIA funds are governed by the requirements found in 48 CFR Chap 1, Part 31, 205-46 (a) as referenced in OMB Circular A-87, which state that travel per diem rates and other travel rates are "considered to be reasonable and allowable only to the extent they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulation, prescribed by the General Services Administration (GSA), for travel in the contiguous United States..."

The Awarding Entity shall reimburse the recipient/subrecipient/subgrantee for proper travel and per diem expenses at rates which are in accordance with the recipient's/subrecipient's/subgrantee's approved "local travel policy". The recipient's/subrecipient's/subgrantee's "local travel policy" shall consist of a written statement delineating the rates that the recipient/subrecipient/ subgrantee shall use in computing travel and per diem expenses of its employees. The Awarding Entity shall review the "local travel policy" after submission by the recipient/subrecipient/ subgrantee and shall approve it after the Awarding Entity determines that it is reasonable and otherwise acceptable for the purpose of this Agreement.

3.5.10.2 Travel costs for personnel supported by the grant award are allowable when the travel is specifically related to the operation of programs under the Act. Payment for travel shall be made only as it applies to the scope of the grant, is necessary and reasonable, and follows all local travel policies.

- 3.5.10.3 The recipient/subrecipient/subgrantee must follow local travel policies before it can use funds received under this Agreement to pay for travel and per diem, except travel to areas designated by the Awarding Entity for consultation or training.
- 3.5.10.4 Budgeted expenses for meetings and/or conferences are allowable when their primary purpose is the dissemination of technical information relating to the WIA program and when they are consistent with regular practices and local travel policies followed for other activities of the recipient/subrecipient/subgrantee. Allowable costs under WIA grant awards must be necessary and reasonable for proper and efficient administration of the program; be justifiable; be in accordance with applicable OMB Circulars; and not be a general expense required to carry out the overall responsibilities of state or local government.
- 3.5.10.5 The Awarding Entity may schedule a meeting for the purpose of reviewing performance against the terms of this Agreement. All staff of the recipient/ subrecipient/subgrantee performing services under this Agreement who are requested by the Awarding Entity to attend meetings shall be required to attend such meetings as often as necessary.

3.5.11 Prevention of Fraud and Abuse

- 3.5.11.1 The recipient/subrecipient/subgrantee shall establish, maintain, and utilize internal program management procedures sufficient to provide for the effective management of all activities funded in whole or in part under this Agreement.
- 3.5.11.2 In addition to the requirements imposed elsewhere in this Agreement, the recipient/subrecipient/subgrantee shall ensure that sufficient, auditable, and otherwise adequate records are maintained which support the expenditure of all funds received through this Agreement. Such records shall be sufficient to allow the United States Department of Labor, the State, and the Awarding Entity to audit and monitor the recipient/ subrecipient/subgrantee and shall include the maintenance of a Management Information System.
- 3.5.11.3 No officer, employee or agent of the recipient/subrecipient/subgrantee shall solicit or accept gratuities, favors or anything of monetary value from any supplier or potential supplier of goods or services under the Act.
- 3.5.11.4 The recipient/subrecipient/subgrantee shall spend no funds directly or indirectly for programs pursuant to the Act for payment of a fee for the placement of any persons in a training or employment program under this Act.

3.6 PARTICIPANT DATA SYSTEM

3.6.1 Participant Information

The recipient/subrecipient/subgrantee shall maintain a participant data system that provides a record of participant information as described therein to include:

- (a) a record of each applicant for whom an application has been completed and a formal determination of eligibility or ineligibility made;
- (b) a record of each participant's enrollment sufficient to demonstrate compliance with the eligibility criteria of a particular program, activity and other restrictions imposed by the Act; and

- (c) other information as necessary and/or as outlined in the scope of work to develop and measure the achievement of performance standards and monitor equal opportunity.

3.6.2 Recipient/Subrecipient/Subgrantee Responsibilities

Recipient/subrecipient/subgrantee responsibilities are specified in the Participant Data System Manual for WIA subrecipients/subgrantees. The procedures and forms in this manual are, hereby, incorporated into these terms and conditions. Recipient/subrecipient/subgrantee responsibilities include, but are not limited to:

- (a) preparation and submission of all necessary forms and reports required by the Awarding Entity within the time specified by the Awarding Entity;
- (b) eligibility determination and certification of applicant eligibility, as applicable;
- (c) tracking and ensuring participants' maximum in program activities, program duration and other constraints imposed by the Act;
- (d) submission of such other reports, data and information on the operation and performance of this Agreement as may be required by the Awarding Entity;
- (e) maintaining a system that provides a complete and accurate record of participant's status, characteristics, exit and employment data which shall be used by the Awarding Entity to measure accomplishments or performance in achieving the objectives stated in this Agreement.

All reporting forms authorized and/or procedures developed by the Awarding Entity may be modified at the discretion of the Awarding Entity.

3.7 PARTICIPANT PAYMENTS, BENEFITS AND WORKING CONDITIONS

3.7.1 Payments to Participants

3.7.1.1 **Needs-Related Payments** – Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide needs-related payments to adults and dislocated workers, respectively, who are unemployed and do not qualify for (or have ceased to qualify for) unemployment compensation and trade readjustment allowances for the purpose of enabling such individuals to participate in programs of training services under subsection (d)(4).

The level of a needs-related payment made to a dislocated worker under this paragraph shall not exceed the greater of:

- (1) the applicable level of unemployment compensation;
- (2) the applicable level of trade adjustment assistance; or
- (3) if such worker did not qualify for unemployment compensation or trade readjustment allowances, an amount equal to the poverty level for an equivalent period, which amount shall be adjusted to reflect changes in total family income.

3.7.1.2 **OJT Compensation** - The recipient/subrecipient/subgrantee shall ensure that participants in On-the-Job Training are compensated by the employer at the same rates,

including periodic increases not related to individual performance, as similarly situated employees or trainees. In no event shall compensation be less than the highest of the minimum wage prescribed under the Fair Labor Standards Act of 1938, as amended, or applicable state or local minimum wage laws.

3.7.2 Benefits and Working Conditions

3.7.2.1 Conditions of employment or training will be appropriate and reasonable with regard to the type of work; the geographical region; and proficiency of the participant.

3.7.2.2 Training and related services will be provided to the extent practical, consistent with every participant's fullest capabilities, and lead to unsubsidized employment opportunities which will enable participants to become economically self-sufficient.

3.7.2.3 Each participant in an On-the-Job Training; other work related training; and work-experience shall be assured of Workers' Compensation, including medical and accident, at the same level and to the same extent as others similarly employed who are covered by a Workers' Compensation statute or system.

3.7.2.4 Each participant who is employed in OJT; work-related training; or work-experience where others similarly are employed and are not covered by an applicable Workers' Compensation statute, shall be provided with medical and accident insurance' benefits. Such benefits shall be adequate and comparable to the medical and accident insurance provided under the applicable State Workers' Compensation statute. Subrecipients/subgrantees are not required to provide these participants with income maintenance coverage.

3.7.2.5 Each participant enrolled in other than On-the-Job-Training or work-related activities shall be provided with adequate on-site medical and accident insurance.

3.7.2.6 Each participant prior to entering employment or training shall be informed of the name of his or her employer and of his or her rights and benefits in connection with such employment and training.

3.7.2.7 No participant will be required or permitted to work; be trained, or receive service in buildings or surroundings; or under working conditions that are unsanitary, hazardous or dangerous to his or her health or safety. Participants employed or trained for inherently dangerous occupations shall be assigned to work in accordance with reasonable safety practices. Training will be conducted in a commercial building. Residential buildings are not considered suitable training sites.

3.7.2.8 Unemployment Compensation costs are allowable for staff hired, in accordance with the administrative provisions of the Regulations, and for On-the-Job-Training participants to be covered for Unemployment Compensation purposes.

3.7.3 Supportive Services

Supportive services may be provided to participants through in-kind or cash assistance, or by arrangement with another human service agency, when necessary, to enable an individual to participate in activities authorized under WIA.

3.7.4 Retirement Programs

The Act provides for temporary training and employment; therefore, the inclusion of WIA participants in a retirement program is prohibited.

3.7.5 Child Labor

The recipient/subrecipient/subgrantee will comply with the Hazardous Occupations order issued pursuant to the Fair Labor Standards Act and set forth at **19 CFR Section 570.50 et seq.**, with respect to the employment of youth under eighteen years of age; with the Child Labor Law Standards of **29 CFR Section 570.13 et seq.**, with respect to the employment of youth aged fourteen and fifteen; and all applicable state and local child labor laws. The recipient/subrecipient/subgrantee is responsible for ensuring that its subrecipients/subgrantees, if any, maintain compliance with the laws enumerated in this Section.

3.8 REQUIREMENTS FOR RECORDS

All records required under this Agreement, the Act, Regulations and applicable Circular shall be the responsibility of recipient/subrecipient/ subgrantee. Retention of, and access to, such records shall be provided in accordance with **29 CFR 97.42 and 95.53**.

The recipient/subrecipient/subgrantee shall retain all records including financial, statistical, property, participant records and supporting documentation for **three (3) years** after the recipient/subrecipient/ subgrantee submits to the Awarding Entity its final expenditure report for that funding period. Records for nonexpendable property shall be retained for a period of **three (3) years** after final disposition of the property.

The recipient/subrecipient/subgrantee shall retain records beyond this period if any litigation or audit is begun or if a claim is instituted involving this Agreement covered by the records. In such instances, the recipient/ subrecipient/subgrantee shall retain records until the litigation, audit or claim has been finally resolved.

In the event of the termination of a relationship, the Awarding Entity shall be responsible for the maintenance and retention of the records of a recipient/subrecipient/subgrantee unable to retain them.

A recipient/subrecipient/subgrantee who goes out of business or is unable to retain records as described above will transfer all records above to the Awarding Entity in an orderly manner. Each box will be labeled and in acceptable condition for storage. The Awarding Entity will inventory the contents of each box prior to or upon acceptance.

3.8.1 Substitution of Microfilm

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

3.8.2 Right of Access to Records

3.8.2.1 The Awarding Entity; the U. S. Department of Labor; the Office of the Inspector General; the Comptroller General of the United States; or any of their authorized representatives have the right of timely and reasonable access to all records of the recipient/subrecipient/subgrantee that are pertinent to this Agreement.

3.8.2.2 This right also includes timely and reasonable access to recipient/subrecipient/subgrantee personnel at all levels for the purpose of interview and discussion related to such records.

3.8.2.3 The recipient/subrecipient/subgrantee understands that the right of access is not limited to the required retention period but shall last as long as the records are retained.

3.8.2.4 The recipient/subrecipient/subgrantee may not otherwise divulge registrant/participant information without permission of the registrant/ participant.

3.8.3 Fees

The recipient/subrecipient/subgrantee may charge a fee for processing a request for a record to the extent the cost is sufficient to recover the cost applicable to processing such request.

3.9 PROCUREMENT

Each recipient/subrecipient/subgrantee shall establish and implement procurement standards to ensure fiscal accountability and prevent waste, fraud and abuse in programs funded under the Act.

Each recipient/subrecipient/subgrantee shall have written procedures for procurement transactions. These procedures shall comply at a minimum with Federal and State requirements, and may reflect applicable local laws and regulations, provided that they do not conflict with WIA policy.

Funds awarded under this Agreement shall not be used to duplicate facilities or services available in the area (with or without reimbursement) from federal, state or local sources unless it is demonstrated that the WIA-funded alternative services or facilities would be more effective or more likely to achieve performance goals.

The recipient/subrecipient/subgrantee shall conduct procurement in a manner that provides full and open competition.

3.9.1 Methods of Procurement

3.9.1.1 The recipient/subrecipient/subgrantee shall use one of the following methods of procurement appropriate for each procurement action in accordance with its local procurement policy:

(a) **Small Purchase Procedures:** simple and informal procurement methods for securing services, supplies or other property. This procedure must at a minimum follow the SC Consolidated Procurement Code. Price or rate quotations must be documented from an adequate number of qualified sources.

(b) **Sealed Bids (Formal Advertising):** publicly solicited procurement for which a firm fixed-price contract (lump sum or unit price) or other fixed-price arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bids, is the lowest in price. Bids shall be solicited from three or more responsible bidders. If bids to a solicitation are not received, the recipient/subrecipient/subgrantee may determine the fair market value from three or more Internet vendors and then proceed with the purchase.

(c) **Competitive Proposals:** normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type of contract is awarded. Each competitive proposal process must include a documented methodology for technical evaluations and awarded to responsible offeror whose proposal is most advantageous to the program with price, technical and other factors considered. This

method is generally used when conditions are not appropriate for the use of sealed bids.

(d) **Non-Competitive Proposals (Sole Source):** procurement through solicitation of a proposal from only one source, when that vendor has proprietary goods, or after solicitation of a number of sources, competition is determined inadequate.

3.9.1.2 Each recipient/subrecipient/subgrantee shall minimize the use of sole source procurement to the extent practicable, but in every case, the use of sole source procurement shall be justified and documented and in accordance with its procurement policies. Procurement by non-competitive proposals may be used only when the award of a grant/ contract is infeasible under small purchase procedures, sealed bids, or competitive proposals. All methods should be exhausted before a non-competitive procurement can be determined.

3.9.1.3 The recipient/subrecipient/subgrantee shall perform cost or price analysis in connection with every procurement action, including grant/contract modifications. The methods and degree of analysis depends on the facts surrounding the particular procurement and pricing situation, but at a minimum, the recipient/subrecipient/subgrantee shall make independent estimates before receiving bids or proposals.

3.9.1.4 Procurement under the Act shall not permit excess program income for non-profit and governmental entities or excess profit for private-for-profit entities.

3.9.1.5.1 The "cost plus a percentage of cost" method of procurement is prohibited under this Agreement.

3.9.1.6 The recipient/subrecipient/subgrantee shall conduct and document oversight to ensure compliance with the procurement standards, in accordance with the requirements of the WIA Regulations.

3.9.1.7 Each recipient/subrecipient/subgrantee shall maintain records sufficient to detail the significant history of a procurement. These records shall include:

(1) rationale for the method of procurement;

(2) the selection of contract type; and

(3) contractor selection or rejection and the basis for the grant/contract type.

3.9.1.8 All methods of procurement must include language to ensure that all recipients/subrecipients/subgrantees are fully aware of the Jobs for Veterans requirements and of their obligation to design and deliver services accordingly. Such language may include:

This program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107-288 and 20 CFR Part 1010 (Final Rule) which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority service, a veteran must meet the program's eligibility requirements.

3.9.1.9 The recipient/subrecipient/subgrantee shall comply with all applicable provisions of the Act; regulations; OMB Circulars; and issuances and Instructions from the Awarding Entity in implementing its procurement system.

3.9.2 **Selection of Service Providers through Formal Grant Process**

- 3.9.2.1 Each recipient/subrecipient/subgrantee, to the extent practicable, shall select service providers by using a competitive grant application process.
- 3.9.2.2 Awards are to be made to organizations possessing the ability to perform successfully under the terms and conditions of a proposed subgrant or contract.
- 3.9.2.3 Proper consideration shall be given to community-based organizations, including women's organizations, with knowledge about or experience in non-traditional training for women, which are recognized in the community in which they are to provide services.
- 3.9.2.4 Recipients/subrecipients/subgrantees are encouraged to utilize qualified minority firms where cost and performance of major grant work will not conflict with funding or time schedules.

3.9.3 **Conflict of Interest**

- 3.9.3.1 No employee of the recipient/subrecipient/subgrantee; no member of the recipient/subrecipient/subgrantee governing board or body; and no person who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects his personal monetary interest.
- 3.9.3.2 The recipient/subrecipient/subgrantee agrees that none of its employees or officers has an interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The recipient/subrecipient/subgrantee further agrees that in the performance of this Agreement no person having any such interest shall be employed. The recipient/subrecipient/subgrantee will establish safeguards to prevent its staff members or subcontractors from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others, particularly those with whom they have family, business or other ties. The recipient/subrecipient/ subgrantee will require all subcontractors to comply with this Section as a condition of award.
- 3.9.3.3 As an additional limitation to any imposed by applicable state or local law, no member of any council or board which has a function related to the performance of this Agreement shall cast a vote on any matter which has a direct bearing on services to be provided by that member (or any organization which that member directly represents) or vote on any matter which would financially benefit the member of the organization which the member represents.
- 3.9.3.4 No non-governmental individual, institution or organization shall be paid funds provided under this Act to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor, or in any similar capacity.
- 3.9.3.5 The recipient/subrecipient/subgrantee shall not enter into any agreement in violation of state or local law or ordinance during the course of its performance of this Agreement.

3.9.4 Nepotism

3.9.4.1 No relative by blood, adoption or marriage of any executive or employee of the recipient/subrecipient/subgrantee shall receive favorable treatment for enrollment into services provided by, or employment with, the recipient/subrecipient/subgrantee.

3.9.4.2 The recipient/subrecipient/subgrantee shall also avoid entering into any agreements for services with a relative by blood, adoption or marriage. For the purpose of this Agreement, "relative by blood, adoption or marriage" to the sixth degree shall include: wife, husband, son, daughter, mother, father, brother, sister, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild, grandparents, great-grandparents and cousins within the sixth degree. When it is in the public interest for the recipient/subrecipient/subgrantee to conduct business (only for the purpose of services to be provided) with a relative, the recipient/subrecipient/subgrantee shall obtain approval from the Awarding Entity before entering into an agreement. All correspondence shall be kept on file and available for monitoring and audit reviews.

3.9.4.3 The recipient/subrecipient/subgrantee assures that all subcontractors under this Agreement will comply with the nepotism requirements and shall include these requirements in its contracts that have, or are expected to have, an aggregate value exceeding **\$10,000** within a twelve-month period.

3.9.5 Conducting Business Involving Close Personal Friends and Associates

Executives and employees of the recipient/subrecipient/subgrantee will be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates in administering the Agreement, and will exercise due diligence to avoid this influence.

3.9.6 Property Management Standards

3.9.6.1 Real property, equipment, supplies and intangible property acquired or produced by States and governmental recipient/subrecipient/subgrantee, with WIA funds, shall be governed by the definitions and property requirements at **29 CFR Part 97**, except that prior approval by the Department of Labor to acquire property is waived. Non-governmental recipients/subrecipients/subgrantees shall be governed by the definitions and property management standards of **OMB Circular A-110**, as codified by administrative regulations of the Department of Labor in **29 CFR Part 95**, except that prior approval by the Department of Labor to acquire property is waived.

3.9.6.2 The recipient/subrecipient/subgrantee shall follow and comply with procurement and property management procedures issued by the Awarding Entity and any future amendments, in addition to the minimum standards of its own procurement system, in the acquisition of equipment, property, supplies, maintenance, and repairs when using funds provided by the Workforce Investment Act of 1998.

3.9.6.3 The recipient/subrecipient/subgrantee shall not purchase, lease, rent, trade, transfer or dispose of any non-expendable personal property without prior approval of the Awarding Entity.

3.9.6.4.1 A recipient/subrecipient/subgrantee shall not acquire equipment with an acquisition/unit cost of \$5,000 or more per unit without the prior, written approval of the Awarding Entity. Approval of the recipient/subrecipient/ subgrantee budget does not constitute prior approval for purchases.

- 3.9.6.5 The recipient/subrecipient/subgrantee shall notify the Awarding Entity immediately of acquisitions with WIA funds. Such notification shall include the location of the property and other related acquisition information required by the Awarding Entity for inventory purposes. Expendable personal property purchased shall be maintained in accordance with the U.S. Department of Labor's One Stop Comprehensive Financial Management Technical Assistance Guide, Chapter II-11.
- 3.9.6.6 Subject to these provisions, the recipient/subrecipient/subgrantee shall not enter a lease-purchase agreement without prior written approval from the Awarding Entity. In the event a lease or lease-purchase agreement is entered into, the first option-to-buy right rests with the Awarding Entity. The Awarding Entity will, at its discretion, exercise option to buy and take title to the item.
- 3.9.6.7 In the event that the recipient/subrecipient/subgrantee is indemnified, reimbursed or otherwise compensated by a third party for any loss, destruction of or damage to the property acquired with funds received under this Agreement, the recipient/subrecipient/subgrantee shall, as directed by the Awarding Entity, use such money to repair, renovate or replace the property; credit such proceeds against the state's liabilities to the recipient/subrecipient/subgrantee; or reimburse the Awarding Entity. In the event of damage or loss of a WIA vehicle, the insurance payments shall be made to the Awarding Entity or entity holding title to the vehicle.
- 3.9.6.8 It is understood and agreed by the parties hereto that title to any non-expendable personal property furnished by the U. S. Department of Labor or the Awarding Entity to the recipient/subrecipient/subgrantee for use in connection with programs under this Agreement shall remain vested in the Awarding Entity. Title to property acquired or produced by a recipient/subrecipient/subgrantee that is a commercial organization shall vest in the Awarding Entity. It is further understood and agreed that title to non-expendable personal property purchased with funds received under this Agreement shall be vested in the Awarding Entity and records of non-expendable property purchased shall be maintained in accordance with the U.S. Department of Labor Property Management and the South Carolina WIA Procurement Standards.
- 3.9.6.9 The recipient/subrecipient/subgrantee may spend funds received under this Agreement within the limits prescribed in the budget of this Agreement, subject to the other provisions of this Section, for the acquisition of or rental or leasing of supplies, equipment and materials for participants; for the rental or leasing of real property; and for equipment ordinarily provided by the employer to regular employees.
- 3.9.6.10 The recipient/subrecipient/subgrantee will maintain an up-to-date inventory of all WIA property in its custody, and implement adequate maintenance procedures to keep the property in good condition.

3.10 CHANGES AND MODIFICATIONS

3.10.1 Amendments

- 3.10.1.1 Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in federal laws, or federal regulations, promulgated pursuant thereto or, by (1) State Instructions; (2) Department of Labor Field Memorandums; (3) Department of Labor WIA Information Series; or (4) Awarding Entity Instructions are automatically incorporated into this Agreement without written amendment hereto, and shall go into effect on the date designated by the law, regulation or instruction.

- 3.10.1.2 If the recipient/subrecipient/subgrantee cannot conform to the changes required by federal laws, or federal regulations promulgated pursuant thereto, or by (1) State Instructions; (2) Department of Labor Field Memorandums; (3) Department of Labor WIA Information Series; or (4) Awarding Entity Instructions, the recipient/subrecipient/subgrantee shall notify the Awarding Entity in writing no later than the effective date of such law or regulation that it cannot conform. The Awarding Entity shall then establish the standards for the termination of the recipient/subrecipient/subgrantee programs and shall terminate the Agreement as soon as practical. The best interest of the participant shall be the primary consideration in establishing the standards for such termination.
- 3.10.1.3 It is understood and agreed by the parties hereto that this Agreement must at all times be in compliance with the Act and Regulations promulgated pursuant to the Act, and that changes, interpretations, and clarifications of the Act and Regulations to be made by the U.S. Department of Labor during the Agreement period will have the effect of qualifying the terms of this Agreement.
- 3.10.2 Modifications**
- 3.10.2.1 Except as provided otherwise herein, any alterations, additions, or deletions to the terms of this Agreement shall be by modification hereto in writing and executed by both parties of this Agreement.
- 3.10.2.2 The recipient/subrecipient/subgrantee may transfer funds within cost categories provided:
- (a) the transfer will not increase the monetary obligations of the Awarding Entity;
 - (b) the transfer will not increase the total amount allocated to any single cost category in the budget;
 - (c) the transfer will not decrease the cumulative number of (1) individuals to be served; (2) the planned enrollment levels in each program activity; or (3) the individuals to be served within significant client groups of the Agreement;
 - (d) the transfer will not significantly change the nature or scope of the program funded under this Agreement. Exception: Any and all changes in personnel, fringe benefits and indirect cost must have prior approval of the Awarding Entity.
- 3.10.2.3 The recipient/subrecipient/subgrantee may transfer funds between line items if the transfer does not change the line item value by more than 10%.
- 3.10.2.4 The recipient/subrecipient/subgrantee may increase the cumulative number of (1) individuals to be served; (2) the planned enrollment levels in each program activity; (3) the planned placement terminations in each program activity; or (4) the individuals to be served within significant client groups as specified in the Agreement, provided that the level of funds does not exceed the cost categories of the Agreement or latest modification.
- 3.10.2.5 The Awarding Entity may at any time, by written order, make changes within the general scope of this Agreement. If any such change causes an increase in the cost of, or time required for, performance of any part of the program under this Agreement, whether changed or not by such order, an equitable adjustment shall be made in the Agreement

amount or completion date, or both, and the Agreement shall be modified in writing accordingly.

- 3.10.2.6 In accordance with these provisions herein, the Awarding Entity will not guarantee a modification to provide additional funds to cover expenditures on the part of the recipient/subrecipient/subgrantee during or after the period of this Agreement.

3.11 SUBCONTRACTING AND MONITORING

3.11.1 Sub-tier Agreements

- 3.11.1.1 The recipient/subrecipient/subgrantee may purchase or subcontract for the services and/or activities specified in the Program Work Statement and Budget of this Agreement only with the prior written approval of such subcontracts and subcontractors by the Awarding Entity, and in accordance with procurement requirements in the U.S. Department of Labor's One Stop Comprehensive Financial Management Technical Assistance Guide, Chapter II-10 and the South Carolina Consolidated Procurement Code, as amended. The recipient/subrecipient/subgrantee, in subcontracting of any of the services and/or activities hereunder expressly understands that in entering such subcontracts, the Awarding Entity is in no way liable to the subcontractor. In order to assure the Awarding Entity of strict performance of this Section, the recipient/subrecipient/subgrantee must submit to the Awarding Entity subcontract Agreements for review upon request.

- 3.11.1.2 In no event shall any provision of this Section specifically be construed as relieving the recipient/subrecipient/subgrantee of the responsibility for ensuring that the performance provided under all subcontracts conforms to the terms and provisions of this Agreement.

- 3.11.1.3 Awarding Entity review under this Section does not constitute adoption, ratification or acceptance of the recipient's/subrecipient's/subgrantee's performance under this Agreement. The Awarding Entity does not waive any right of action which may exist or which may subsequently accrue to the Awarding Entity under this Agreement.

- 3.11.1.4 The recipient/subrecipient/subgrantee will ensure that its subcontractors, if any, do not subcontract for any performance or partial performance of an activity or service provided or to be provided through this Agreement.

- 3.11.1.5 The recipient/subrecipient/subgrantee will not subcontract for any part of its performance under this Agreement where such proposed subcontract would result in a violation of the Agreement; the Regulations promulgated under the Act; the Act itself; or any other applicable federal, state or local laws.

- 3.11.1.6 Grants/Subcontracts must include language to ensure that all recipients/subrecipients/subgrantees are fully aware of the Jobs for Veterans requirements and of their obligation to design and deliver services accordingly. Such language may include:

This program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107-288 and 20 CFR Part 1010 (Final Rule) which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority service, a veteran must meet the program's eligibility requirements.

3.11.2 **Monitoring**

The recipient/subrecipient/subgrantee, unless specifically relieved of this responsibility elsewhere in this Agreement, is required to monitor the program of its subcontractors, if any, to ensure compliance with the Act and the Regulations and the provisions of the sub-agreement. All monitoring visits must be documented by written reports.

3.12 **TERMINATION PROVISIONS**

The performance of work under this Agreement may be terminated by the Awarding Entity, in whole or in part, for either of the following circumstances:

3.12.1 **Termination for Convenience**

3.12.1.1 The performance of work under the Agreement may be terminated, in whole or in part, by the Awarding Entity whenever it determines that such termination or suspension is in the best interest of the Awarding Entity. Termination of work hereunder shall be effected by delivery to the recipient/subrecipient/subgrantee of a Notice of Termination specifying the extent to which performance of work under the Agreement is terminated and the date upon which such termination becomes effective. In no instance shall a termination for convenience be effective in less than **ten (10) working days** after receipt of notice thereof.

3.12.1.2 Following receipt of the Notice of Termination, the recipient/subrecipient/ subgrantee shall cancel outstanding commitments covering the procurement or rental of materials, supplies, equipment and miscellaneous items. In addition, the recipient/subrecipient/subgrantee shall exercise all reasonable diligence to accomplish the cancellation or diversion of outstanding commitments covering personal services that extend beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such cancelled commitments, the recipient/subrecipient/subgrantee agrees to:

- (a) settle all outstanding liabilities and all claims arising out of such cancellation of commitments; or ratify all such settlements; and
- (b) assign to the Awarding Entity, at the time and to the extent directed by the Awarding Entity, all of the rights, title, and interest of the recipient/subrecipient/subgrantee under the orders and subcontracts so terminated. The Awarding Entity shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

3.12.2 **Termination for Cause**

3.12.2.1 The Awarding Entity may terminate this Agreement when it has determined that the recipient/subrecipient/subgrantee has failed to provide any of the services specified or comply with any of the provisions contained in this Agreement. If the recipient/subrecipient/subgrantee fails to perform in whole or in part, or fails to make sufficient progress so as to endanger performance, the Awarding Entity will notify the recipient/subrecipient/subgrantee of such unsatisfactory performance in writing. The recipient/subrecipient/subgrantee has **ten (10) working days** in which to respond with a plan agreeable to the Awarding Entity for correction of the deficiencies. If the recipient/subrecipient/subgrantee does not respond within the appointed time, or does not respond with appropriate plans, the Awarding Entity may serve a termination notice on the recipient/subrecipient/subgrantee, which will become effective within **thirty (30) calendar days** after receipt. In the event of such termination, the Awarding Entity shall

be liable for payment only for services rendered prior to the effective date of the termination, provided that such services performed are in accordance with the provisions of this Agreement.

3.12.2.2 The recipient/subrecipient/subgrantee shall have the right to appeal any such determination made by the Awarding Entity to the Local Workforce Investment Board (LWIB) within **thirty (30) calendar days**.

- When the recipient/subrecipient/subgrantee has failed to submit his appeal within **thirty (30) calendar days** from the date of the termination notice and has failed to request extension of such time, he shall have no such right of appeal.
- In the case of state grants, the appeal will be made to the State Workforce Investment Board. The same time parameters and conditions apply as those for the LWIB.

3.12.2.3 Upon termination of the Agreement, in any case where the Awarding Entity has made a determination of the amount due the recipient/ subrecipient/subgrantee, the Awarding Entity shall pay the recipient/ subrecipient/subgrantee according to the following:

- (a) if there is no right of appeal hereunder or if no timely appeal has been made, the amount so determined by the Awarding Entity; or
- (b) if an appeal has been made, the amount finally determined on such appeal.

3.12.2.4 In arriving at the amount due the recipient/subrecipient/subgrantee under this clause, there shall be deducted:

- (a) all unliquidated advance or other payments on account made to the recipient/subrecipient/subgrantee applicable to the terminated portion of this Agreements;
- (b) any claim which the Awarding Entity may have against the recipient/subrecipient/subgrantee in connection with this Agreement; and
- (c) the negotiated price for, or the proceeds from the sale of any materials, supplies or other items acquired by the subrecipient/ subgrantee, or sold, pursuant to the provisions of this clause and/or otherwise covered by or credited to the Awarding Entity.

3.12.2.5 If the termination hereunder is partial, prior to the settlement of the terminated portion of this Agreement, the recipient/subrecipient/ subgrantee may file with the Awarding Entity a request in writing for an equitable adjustment to the price or prices specified in the Agreement relating to the continued portion.

3.12.2.6 Upon termination of this Agreement for any reason, the recipient/subrecipient/subgrantee shall return to the Awarding Entity, within **thirty (30) calendar days** after receipt of a written request, all property furnished to the recipient/subrecipient/subgrantee by the U.S. Department of Labor or the Awarding Entity and all records pertaining to this Agreement and its programs. The recipient/subrecipient/subgrantee shall return such property and records in the manner prescribed by the Awarding Entity. Between the date of termination of the Agreement and the date of return of the property and records, the recipient/subrecipient/ subgrantee shall protect such property and records from damage, loss or destruction.

3.12.2.7 Otherwise, the recipient/subrecipient/subgrantee shall preserve records relating to this Agreement as provided in Section 3.8, Requirements for Records.

3.12.2.8 In cases of fraud or illegal activities, the Awarding Entity has the right to initiate the process to seize the WIA numbered bank account or any other account which contains WIA funds up to the amount to be returned.

3.13 AUDITS

3.13.1 Audits and Inspections

3.13.1.1 At any time during normal business hours and as often as the U.S. Department of Labor, U.S. Comptroller General, State Auditor of South Carolina or Awarding Entity may deem necessary, the recipient/ subrecipient/subgrantee shall make available for examination all of its records with respect to all matters covered by this Agreement. These agencies have the authority to audit, examine, and make copies of excerpts or transcripts from records, including all grants, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement:

- (a) the Awarding Entity shall have the authority to examine the books and records used by the recipient/subrecipient/subgrantee in accounting for expenses incurred under this Agreement. Should these books and records not meet the minimum standards of the accepted accounting practices of the Awarding Entity, the Awarding Entity reserves the right to withhold any or all of its funding to the recipient/subrecipient/subgrantee until such time as they do meet these standards;
- (b) the Awarding Entity shall have the authority to examine all forms and documents used including, but not limited to, purchase requisitions, purchase orders, supply requisitions, invoices, journal vouchers, travel vouchers, payroll checks and other checks used by the recipient/ subrecipient/subgrantee until such time as they do meet these standards;
- (c) the Awarding Entity may require the recipient/subrecipient/subgrantee to use any or all of its accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement;
- (d) the Awarding Entity reserves the right to dispatch auditors of its choosing to any site where any phase of the program is being conducted, controlled or advanced in any way, tangible or intangible. Such sites may include the home office, and branch office or other locations of the recipient/subrecipient/subgrantee if such sites or the activities performed thereon have any relationship to the program covered by this Agreement;
- (e) the Awarding Entity shall have the authority to make physical inspections and to require such physical safeguarding devices as locks, alarms, safes, fire extinguishers, sprinkler systems, etc., to safeguard property and/or equipment authorized by this Agreement; and
- (f) subject to the discretion of the Awarding Entity, certain authorized members of the Awarding Entity shall have the right to be present at any and all of the recipient's/subrecipient's/subgrantee's staff meetings, Board of Director's meetings, Advisory Committee meetings and Advisory Board meetings if an item to be discussed is an item of this Agreement.

3.13.1.2 When a fiscal or special audit determines that the recipient/subrecipient/ subgrantee has expended funds which are questioned under the criteria set forth herein, the recipient/subrecipient/ subgrantee shall be notified and given the opportunity to justify questioned expenditures prior to the Awarding Entity's final determination of the disallowed costs, in accordance with the procedures established under WIA.

3.13.1.3 The recipient/subrecipient/subgrantee is liable to repay such amounts from funds other than funds received under this Act, upon a determination that the improper expenditure of funds was due to willful disregard of the requirements of this Act, gross negligence or failure to observe accepted standards of administration.

3.13.2 Audit Reports

In accordance with OMB Circular A-133, the recipient/subrecipient/ subgrantee must submit all finalized audit reports to the Awarding Entity within **thirty (30) calendar days** of receipt.

3.14 GENERAL ASSURANCES

In administering programs under WIA, the recipient/subrecipient/ subgrantee assures and certifies that it will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (**P.L. 91.646**) which requires fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.

3.14.1 Equal Opportunity

3.14.1.1 The recipient/subrecipient/subgrantee is prohibited from discriminating on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in programs funded under WIA, as amended, in admission or access to, opportunity or treatment in, or employment in the administration of or in connection with, any WIA-funded program or activity.

3.14.1.2 As a condition to the award of financial assistance from the Department of Labor Title I under WIA, the grant applicant assures, with respect to operation of this WIA-funded program or activity, that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the bases of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United State or participation in any WIA Title I-financially assisted program or activity;
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- Section 508 of the Rehabilitation Act of 1973, as
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

3.14.1.3 The grant applicant also assures that it will comply with 29 CFR Part 37: Implementation of the Nondiscrimination and Equal Opportunity Provisions of WIA and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

3.14.1.4 **Affirmative Action (Executive Order 11249, as amended by Executive Order 11375, and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended)**

Executive Order 11246 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.

Institutions or agencies with federal grants or contracts of **\$50,000 or more and 50 or more employees** are required to develop a written Affirmative Action Plan to overcome the effects of past discrimination and to facilitate optimal utilization of qualified women and minorities throughout the workforce. An Affirmative Action Plan must contain a workforce utilization analysis to identify those areas in which women and minorities are under-utilized, a review of all employment policies and practices to identify and to eliminate any sources of discrimination, and a statement of numerical goals and timetables for the correction of any under-utilization identified. Although the grant or contract may involve only one unit within the institution or agency, the Affirmative Action Plan must cover all employees throughout the institution.

Section 504 of the **Rehabilitation Act of 1973**, as amended, prohibits discrimination based on disability. **Section 503** of the Rehabilitation Act of 1973 prohibits discrimination and requires employers with federal contracts or subcontracts that exceed **\$10,000** to take affirmative action to hire, retain, and promote qualified individuals with disabilities.

The recipient/subrecipient/subgrantee will not discriminate against any employee or applicant for employment or training because of physical or mental disability in regard to any position for which the employee or applicant for employment is otherwise qualified. The recipient/ subrecipient/subgrantee shall establish an Affirmative Action Plan for outreach to, and training, placement and advancement of, individuals with disabilities in employment and training programs under the Act.

3.14.2 Veterans Employment

It is required that programs supported under section 168 of WIA are coordinated, to the maximum extent feasible, with related programs and activities conducted under Title 38 of the United States Code.

3.14.3 Relocation

3.14.3.1 No funds provided under this title shall be used, or proposed for use, to encourage or induce the relocation of a business or part of a business if such relocation would result in a loss of employment for any employee of such business at the original location and such original location is within the United States.

3.14.3.2 No funds provided under this title for an employment and training activity shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any business or part of a business that has relocated, until the date that is 120 days after the date on which such business commences operations at the new location, if the relocation of such business or part of a business results in a loss of employment for any employee of such business at the original location and such original location is within the United States.

3.14.4 Disputes and Court Action

The recipient/subrecipient/subgrantee, employees of the recipient/subrecipient/subgrantee or anyone acting on behalf of the recipient/subrecipient/subgrantee, and/or participants in any of the recipient's/subrecipient's/subgrantee's program, shall not intimidate, threaten, coerce, or discriminate against any individual or organization because the individual or organization has filed a complaint; intends to file a complaint or instituted a proceeding under the Act; testified or is about to testify; assisted or participated in any manner in an investigation, proceeding, or hearing under the Act.

3.14.5 Grievance and Hearing Procedures for Noncriminal Complaints at the Local Workforce Investment Area (LWIA) (20 CFR 667.600)

3.14.5.1 Each LWIA under the Act shall establish and maintain a grievance procedure for grievances or complaints about its programs and activities from registrants, applicants, participants, subrecipients/subgrantees, and other interested parties affected by the LWIA including one-stop partners and service providers. Procedures must provide for informal resolution and a hearing. Hearings on any grievance or complaint shall be conducted and a decision shall be issued within **60 calendar days** of the filing of the grievance or complaint. Complaints arising from actions taken by the subrecipients/subgrantees with respect to investigations or monitoring reports shall be resolved in accordance with 667.500.

3.14.5.2 The LWIA hearing procedure shall include written notice of the date, time and place of the hearing; an opportunity to present evidence; a written decision and a notice of appeal rights.

3.14.5.3 The LWIA and subrecipients/subgrantees shall assure that employers, including private-for-profit employers of participants under the Act, have a grievance procedure available to the participants engaged in OJT, apprenticeships, and internships relating to the terms and conditions of employment.

3.14.5.4 Employers may operate their own grievance system or may utilize the grievance system established by the state, the LWIA or recipient/ subrecipient/subgrantee except in a case where the employer is required to use a certain grievance procedure under a covered collective bargaining agreement. Then those procedures should be followed for the handling of WIA complaints under this section. Employers shall inform participants of the grievance procedures they are to follow when the participant begins employment.

3.14.5.5 An employee grievance system shall provide for, upon request by the complainant, a review of an employer's decision by the LWIA and the State if necessary.

3.14.6 Complaints of Discrimination

Complaints of discrimination pursuant to **Section 188 of the Act** shall be handled under **29 CFR Part 37**.

3.14.7 Complaints and Reports of Criminal Fraud, Waste and Abuse

Information and complaints involving criminal fraud, waste, abuse or other criminal activity shall be reported through the US Department of Labor's Incident Reporting System, directly and immediately to the US Department of Labor Office of Inspector General, Office of Investigations, 200 Constitution Avenue, NW, Room S-5514, Washington, DC 20210, or to the Regional Inspector General for Investigations, with a copy simultaneously provided to the US Department of Labor, Employment and Training Administration. The Hotline Number is **1-800-347-3756**.

3.14.8 Non-WIA Remedies

Whenever any person, organization, or agency believes that a recipient/subrecipient/subgrantee has engaged in conduct that violates the Act and that such conduct also violates a federal statute other than WIA, or a state or local law; that person, organization, or agency may, with respect to the non-WIA cause of action, institute a civil action or pursue other remedies authorized under such other federal, state or local law against the recipient/subrecipient/subgrantee, without first exhausting the remedies herein. Nothing in the Act or WIA Regulations shall: (1) allow any person or organization to file a suit which alleges a violation of WIA or Regulations promulgated thereunder without first exhausting the administrative remedies described herein; or (2) be construed to create a private right-of action with respect to alleged violations of WIA or the Regulations promulgated thereunder.

Any dispute between the Awarding Entity and the recipient/subrecipient/ subgrantee concerning the terms or provisions of this Agreement which constitutes a question of fact, and which is not disposed of by agreement, shall be decided by the Awarding Entity who shall send a written copy of its decision to the recipient/subrecipient/subgrantee. The decision shall be final and conclusive unless within **thirty (30) calendar days** from the date postmarked, the recipient/subrecipient/subgrantee furnishes the Awarding Entity with a written appeal. The decisions of the Awarding Entity with a written appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the recipient/subrecipient/subgrantee shall be supported by substantial evidence. In connection with any appeal proceeding under this clause, the recipient/subrecipient/subgrantee shall be afforded the opportunity to be heard and to offer evidence in support of its appeal. Pending final determination of a dispute, the recipient/subrecipient/ subgrantee shall proceed diligently with the performance of the Agreement and in accordance with the Awarding Entity's decision.

The recipient/subrecipient/subgrantee shall notify the Awarding Entity in writing of any actions or suits filed and of any claims made against the Awarding Entity, the recipient/subrecipient/subgrantee or any of the parties involved in the implementation, administration and operation of the programs funded through this Agreement.

3.15 OTHER STIPULATIONS

3.15.1 Other Stipulations Governing this Agreement

All powers not explicitly vested in the recipient/subrecipient/subgrantee by the terms of this Agreement remain with the Awarding Entity.

The Awarding Entity will not be obligated or liable hereunder to any party other than the recipient/subrecipient/subgrantee.

Funds received under WIA may be expended only for purposes permitted under the provisions of the Act.

Funds made available through one Agreement or Title may not be used to support costs properly chargeable to another Agreement or Title.

3.15.2 Hold Harmless

The recipient/subrecipient/subgrantee shall hold and save the Awarding Entity, its officers, agents and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any suits or damages sustained by any person or property resulting in whole or in part from the negligent performance or omission of any employee, agent or representative of the recipient/subrecipient/subgrantee.

3.15.3 Non-Federal Employees

It is understood and agreed by the parties hereto that no staff member of the recipient/subrecipient/subgrantee or participant receiving funds under this Agreement shall be deemed a federal employee for any purpose or subject to provision of law relating to federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and federal employment benefits, except where specifically provided to the contrary in the Regulations promulgated under the Act.

3.15.4 Criminal Provisions

3.15.4.1 Whoever, being an officer, director, agent or employee of, or connected in any capacity with any agency receiving financial assistance under the Workforce Investment Act, knowingly hires an ineligible individual or individuals, embezzles, willfully misapplies, steals, or obtains by fraud any of the monies, funds, assets, or property which are subject of an Agreement of assistance pursuant to such Act shall be fined not more than **\$10,000** or imprisoned for not more than **two (2) years**, or both; but if the amount so embezzled, misapplied, stolen or obtained by fraud does not exceed **\$100**, such persons shall be fined not more than **\$1,000** or imprisoned not more than **one (1) year**, or both.

3.15.4.2 Whoever by threat of procuring dismissal of any person from employment or of refusal to employ or refusal to renew an Agreement of employment in connection with an Agreement under the Workforce Investment Act, induces any person to give up any money or thing of any value to any person (including such Awarding Entity) shall be fined not more than **\$1,000** or imprisoned not more than **one (1) year**, or both.

3.15.4.3 Any person, whoever, willfully obstructs or impedes or endeavors to obstruct or impede, an investigation or inquiry under the Workforce Investment Act or the Regulations thereunder, shall be punished by a fine of not more than **\$5,000**, or by imprisonment for not more than **one (1) year**, or both.

3.15.5 Sectarian Activities (Section 188 of WIA, Paragraph 667.266 of WIA Regulations and 29 CFR 37.6(f)(1))

3.15.5.1 The recipient/subrecipient/subgrantee agrees to comply with all provisions of **Section 188 of the Act** and shall require all sub-contractors to maintain compliance with this Section.

3.15.5.2 Funds received under WIA may not be used to directly support religious instruction, worship, prayer, proselytizing, or other inherently religious practices. Except as described below, the recipient/subrecipient/ subgrantee must not employ WIA participants to carry out the construction or maintenance of any part of any facility that is used, or is to be used for religious instruction or as a place of religious worship.

A recipient/subrecipient/subgrantee may employ WIA participants to carry out the maintenance of a facility that is not primarily or inherently devoted to religious instruction or religious worship if the organization operating the program is part of a program or activity providing services to the participant.

3.15.5.3 WIA funds may be used to employ or train participants in religious activities. **29 CFR 37.6(f)(1)**, as amended, permits participants to be employed or trained in religious activities when “indirect” financial assistance is used. Assistance through an Individual Training Account is considered indirect assistance.

3.15.5.4 WIA Funds may not be used to support the dissemination of anti-religious activities, whether directly against any particular religion or religious practice in general.

3.15.6 Unionization and Political Activity

3.15.6.1 Union

(a) No funds under this Agreement shall be used in any way to either promote or oppose unionization.

(b) No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided unless such training involves individuals employed under a collective bargaining agreement which contains a Union Security Provision.

(c) No participant in work experience may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage.

(d) No person shall be referred to or placed in an on-the-job training position affected by a labor dispute involving a work stoppage and no payments may be made to employers for the training and employment of participants in on-the-job training during the period of work stoppage.

3.15.6.2 Political Activity

(a) The recipient/subrecipient/subgrantee may not select, reject or promote a participant or employee based on that individual's political affiliation or beliefs. The selection or advancement of employees as a reward for political services or patronage is partisan in nature; is discrimination based on political belief or affiliation; and is prohibited. There shall be no referrals for WIA jobs, nor selection of participants or service providers, based on political affiliation.

(b) No program-under the Act may involve political activities, including but not limited to:

(1) participant or employee participation in partisan or non-partisan political activities in which such participant or employee represents himself/herself as a spokesperson for the WIA program;

- (2) participant or employee participation in partisan or non-partisan political activities during hours for which the participant or employee is paid with WIA funds;
 - (3) employing or out-stationing participants in the office of a member of Congress or state or local legislator or any staff of a legislative committee; or
 - (4) employing or out-stationing participants in the immediate offices of any chief elected executive official, chief executive officers, or officers of a state or unit of general local government.
- (c) Neither the program nor the funds provided therefor, nor the personnel employed in the administration of the program shall be in any way or to any extent, engaged in the conduct of political activities in contravention of **Chapter 15 of Title 5, United States Code**, known as the "**Hatch Act**".
- (d) No funds provided under this Agreement may be used in any way to attempt to influence in any manner a member of Congress or to favor or oppose any legislation or appropriation by Congress, or for lobbying with state or local legislatures.

3.15.7 Maintenance of Effort

The recipient/subrecipient/subgrantee shall comply with **Section 181 of the Act and Section 195 of the Act** and shall ensure that all programs under the Act:

- (a) result in an increase in employment and training opportunities over those which would otherwise be available;
- (b) do not result in the displacement of currently employed workers, including partial displacement, such as reduction in hours of non-over-time work, wages or unemployment benefits;
- (c) do not impair existing contracts for services or result in the substitution of federal funds for other funds in connection with work that would otherwise be performed, including services normally provided by temporary, part-time or seasonal workers or through contracting such services out; or
- (d) result in the creation of jobs that are in addition to those that would be funded in the absence of assistance under the Act.

3.15.8 Lobbying

3.15.8.1 No federal appropriated funds have been paid or will be paid by or on behalf of the recipient/subrecipient/subgrantee to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

3.15.8.2 If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative

agreement, the recipient/subrecipient/subgrantee shall complete and submit a **Standard Form-LLL, "Disclosure of Lobbying Activities"**, in accordance with its instructions.

3.15.9 Suspension and Debarment

The recipient/subrecipient/subgrantee of WIA funds certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Agreement by any federal department or agency.

3.15.10 Drug-Free Workplace Requirements

The recipient/subrecipient/subgrantee will provide a drug-free work-place by:

- (a) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the recipient's/subrecipient's/ subgrantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) establishing a drug-free awareness program to inform employees about:
 - (1) the dangers of drug abuse in the workplace;
 - (2) the recipient's/subrecipient's/subgrantee's policy of maintaining a drug-free workplace;
 - (3) any available drug counseling, rehabilitation and employee assistance programs; and
 - (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (c) making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by paragraph (a);
- (d) notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Agreement, the employee will:
 - (1) abide by the terms of the statement; and
 - (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than **five (5) calendar days** after such conviction.
- (e) notifying the agency within **ten (10) calendar days** after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction;
- (f) taking one of the following actions within **thirty (30) calendar days** of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) taking appropriate personnel action against such an employee, up to and including termination; or

- (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency.
- (g) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).