

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 641**

RIN 1205-AB60

**Senior Community Service
Employment Program; Notice of
Proposed Rulemaking, Additional
Indicator on Volunteer Work****AGENCY:** Employment and Training
Administration, Labor.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) issues this notice of proposed rulemaking (NPRM) to seek feedback on a potential additional performance measure for volunteer work in the Senior Community Service Employment Program (SCSEP). Specifically, this rule proposes to amend regulations concerning performance accountability under title V of the Older American Act and corresponding definitions. These regulations provide administrative and programmatic guidance and requirements for the implementation of the SCSEP.

DATES: Interested persons are invited to submit comments on this proposed rule. To ensure consideration, comments must be received on or before January 24, 2011.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB60, by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

Mail and hand delivery/courier: Written comments, disk, and CD-ROM submissions may be mailed to Thomas M. Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5641, Washington, DC 20210.

Instructions: Label all submissions with "RIN 1205-AB60."

Please submit your comments by only one method. Please be advised that the Department will post all comments received that relate to the proposed additional indicator on <http://www.regulations.gov> without making any change to the comments or redacting any information. The <http://www.regulations.gov> Web site is the Federal e-rulemaking portal and all comments posted there are available

and accessible to the public. Therefore, the Department recommends that commenters remove personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments as such information may become easily available to the public via the <http://www.regulations.gov> Web site. It is the responsibility of the commenter to safeguard their personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on <http://www.regulations.gov>.

Docket: All comments on this proposed rule will be available on the <http://www.regulations.gov> Web site and can be found using RIN 1205-AB60. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the rule in an alternative format, contact the Office of Policy Development and Research at (202) 693-3700 (this is not a toll-free number). You may also contact this office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5641, Washington, DC 20210; telephone (202) 693-3700 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The preamble to this proposed rule is organized as follows:

- I. Background—provides a brief description of the development of the proposed rule.
- II. Section-by-Section Review—summarizes and discusses proposed changes to the SCSEP regulations.
- III. Administrative Information—sets forth the applicable regulatory requirements.

I. Background

The SCSEP, authorized by title V of the OAA, is the only Federally-sponsored employment and training program targeted specifically to low-

income older individuals who want to enter or re-enter the workforce. Participants must be unemployed, 55 years of age or older, and have incomes no more than 125 percent of the Federal poverty level. The program offers participants training at community service assignments in public and non-profit agencies. The dual goals of the program are to promote useful opportunities in community service activities and to also move SCSEP participants into unsubsidized employment, where appropriate, so that they can achieve economic self-sufficiency. The Older Americans Act Amendments of 2006, Public Law 109-365 (2006 OAA), amended the statute authorizing the SCSEP and necessitated changes to the SCSEP regulations in 20 CFR Part 641. A final rule promulgating such changes was published on September 1, 2010 (75 FR 53786). The statute requires the Department to issue definitions of any indicator of performance through regulation. OAA section 513(b)(3).

The SCSEP performance measures have evolved over time. Program-specific measures to monitor the performance of each SCSEP grantee were first codified in the 2000 Amendments to the OAA. The 2006 OAA Amendments expanded these performance measures. The Department then refined the 2006 statutory measures in its regulations published June 29, 2007 (SCSEP IFR) and September 1, 2010 (SCSEP FR), and codified at 20 CFR Part 641 Subpart G. As established in these regulations, there are six core indicators of performance: (1) Hours (in the aggregate) of community service employment; (2) entry into unsubsidized employment; (3) retention in unsubsidized employment for six months; (4) earnings; (5) the number of eligible individuals served; and (6) the number of most-in-need individuals served (the number of participating individuals described in 20 CFR 641.700(b)). Additional indicators of performance include: (1) Retention in unsubsidized employment for 1 year; (2) satisfaction of the participants, employers, and their host agencies with their experiences and the services provided; and (3) any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance. 20 CFR 641.700(c).

In comments on the SCSEP IFR of June 29, 2007, and the NPRM of August 14, 2008, several commenters expressed concern that the proposed measures were not appropriate to the SCSEP because they placed an undue emphasis

on employment outcomes and did not adequately reflect the importance of community service. When adopting the SCSEP Final Rule on September 1, 2010, we stated that the proposed measures were required by law in the 2006 amendments to the OAA and that the measures, taken as a whole, continued to maintain the balance between community service and employment outcomes that had been established by the 2000 amendments to the OAA. As we noted in the final rule, “[p]roviding an opportunity for low-income older adults in need of job training to work at community service organizations that need operational support is a ‘win-win’ situation.”

We recognize that SCSEP participants provide valuable service to their communities. We believe that SCSEP promotes volunteer work, which benefits both the community and the participants who perform the work. Although in the SCSEP Final Rule we declined “at this time” to adopt any additional measures beyond those required by statute, we believe that the benefits of adopting an additional measure of volunteer work outweigh the minor additional burden of collecting the data for the measure. Specifically, grantees stated during the SCSEP Final Rule notice and comment period that they felt the SCSEP measurement system did not adequately value community service and that there was too much emphasis on employment outcomes. While the measures are evenly balanced between enrollment and employment measures, only one specifically measures community service. Although we share the sense of the Congress that community service and volunteer work are very important, the Secretary only has authority to create additional measures, not core measures. The Secretary is using that authority to respond to the comments and add an outcome measure for SCSEP that looks at volunteer work as a way to balance the mandated outcome measures for employment.

Under its authority in OAA section 513(b)(2)(C) to add additional indicators of performance, the Department is soliciting comments on an additional performance indicator for volunteer work. The Proposed Rule adds a new additional indicator to measure the number of exiting participants who enter volunteer work. The new measure recognizes that SCSEP promotes volunteer work, which benefits both the community and the participants who perform the work. We intend that the new measure will provide balance to the employment focus of the existing performance measures, which was an

area of concern to commenters on the Final Rule, and will provide positive outcomes for participants who may not be employed but still build on the skills obtained in SCSEP to provide a benefit to their community. In our opinion, these reasons provide an adequate rationale for establishing the new indicator, which under section 513(b)(2)(C) of the Older Americans Act, may be established when the Secretary determines that an indicator is appropriate to evaluate services and performance.

For the Interim Final Rule, we published a **Federal Register** Notice seeking public input into the performance regulations because we did not have time to publish a proposed and Final Rule without causing disruption to program operations. With the performance regulations in place, we have chosen to consult with grantees, host agencies and the public on the new volunteer work indicator by seeking public comment through a proposed rule, to be followed by a final rule. To establish this new additional indicator, we propose to change the substantive provisions on performance in subpart G and revise or add definitions in subpart A. The regulatory text, related definitions, and further rationale are provided below.

II. Section-by-Section Review

Subpart A—Purpose and Definitions

What definitions apply to this subpart? (§ 641.140)

Section 641.140 of the SCSEP regulations provides definitions for the SCSEP, including those definitions relevant to the SCSEP performance measures. This NPRM proposes to amend the definitions in § 641.140 to accommodate the new additional performance measure in § 641.710. The first amendment adds “entry into volunteer work” to the definition of “additional indicators.” The final rule provides that the only additional indicators are the two statutorily required measures: (1) Retention in unsubsidized employment for 1 year; and (2) the satisfaction of participants, employers and their host agencies with their experiences and the services provided. As proposed, the term “additional indicators” will include three measures.

Second, we propose to add a new definition of “volunteer work” to § 641.140 for clarity and uniformity, so that all grantees understand and use the same definition, all seniors are treated the same, and so that the data we receive is comparable from grantee to grantee. The definition states that

volunteer work is the equivalent of “activities or work that former participants perform for a public agency of a State, local government or intergovernmental agency, or for a charity or similar non-profit organization, for civic, charitable, or for humanitarian reasons, and without expectation of compensation.” It also clarifies that “[v]olunteer work does not include work a former participant performs that is similar or identical to work the former participant performed for compensation for the organization.”

This definition closely follows the principles of the Fair Labor Standards Act (FLSA), which is administered and enforced by the Department’s Wage and Hour Division. The FLSA recognizes the generosity and public benefit of volunteering. Encouraging volunteerism, however, must be balanced with the fundamental purpose of the FLSA, which is to prevent covered employers from gaining an unfair competitive advantage through payment of substandard wages. *See Tony and Susan Alamo Found v. Sec’y of Labor*, 471 U.S. 290, 299 (1985). The Department has held consistently that individuals cannot volunteer in the business and commercial activities of a non-profit organization when those activities are covered by the FLSA. Therefore, volunteer work also may not include work a former participant performs that is similar or identical to work the former participant performed for compensation for the organization.

SCSEP and its regulations, at 20 CFR 641.844, provide that SCSEP placements must result in an increase in employment opportunities in addition to those otherwise available; must not displace currently employed workers (including partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits); must not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and must not employ or continue to employ any eligible individual to perform the same work or substantially the same work as that performed by any other individual who is on layoff. In addition, attention must be paid that volunteer activities of former SCSEP participants do not unfavorably impact current employees and do not impair existing contracts for services, similar to the protections for paid placements.

Although non-profit organizations typically are not covered enterprises under the FLSA because they lack a business purpose, activities of such organizations that compete in the

market with retail businesses, are considered covered enterprises. See 29 CFR 779.214; WHD Opinion Letter FLSA 2002-9 (Oct. 7, 2002). Even if the business activities of a non-profit organization do not meet the FLSA's thresholds for enterprise coverage (for example, because their annual dollar volume of sales or business done is less than \$500,000), employees who work on such business activities may still be individually covered by the FLSA.

We believe that the use of the FLSA standard for volunteers is consistent with the community service values that underlie SCSEP, and with the Secretary's goal of ensuring employees are paid required minimum wages and overtime.

Subpart G—Performance Accountability

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

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

DOL intends for the new measure of "entered volunteer work" to parallel the traditional "entered employment" measure, which grantees have been recording since 2004. SCSEP grantees can capture much of the information required for this measure at the time of exit and need only confirm the participant's engagement in volunteer work at any time during the quarter after the exit quarter, as grantees have long captured the data for entered employment at the first follow-up after exit. Like the entered employment measure, which excludes participants who were employed at the time of enrollment, the new measure excludes those who were engaged in volunteer work before enrollment. However, as is true with the entered employment measure, DOL would collect data on several aspects of the volunteer work, including whether the participant had been performing volunteer work at the time of entry into the SCSEP, and information about the type of volunteer work performed after exit, the setting in

which it is performed, and the number of hours of volunteer work per week. DOL would collect data on these characteristics in the SCSEP data collection system that could be used for analysis and additional reporting, but DOL would not use the data to measure the performance of the grantee.

How are the performance indicators defined? (§ 641.710)

This NPRM establishes the new additional indicator in § 641.710 by adding a new paragraph to (b)(3), which defines the "entered volunteer work" measure. As set forth above, DOL intends for the new measure to parallel the existing core measure of entered employment, which SCSEP has been reporting since 2004. The denominator for the new measure consists of all participants who exit during a quarter, and the numerator consists of all those participants who are engaged in any volunteer work in the quarter after the exit quarter. Participants who were engaged in volunteer work at the time of entry into the SCSEP are excluded from the measure.

Grantees will enter into the SCSEP data system information on the characteristics of the volunteer work (as they currently do for the characteristics of unsubsidized employment), including whether participants were engaged in volunteer work at the time of entry into the SCSEP, so that it will be possible to determine which participants are newly engaged in volunteer work after exiting as a result of participating in the SCSEP. Later in this preamble, the accompanying Paperwork Reduction Act section sets forth the data elements that DOL will capture in conjunction with this new measure.

III. Administrative Information

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

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605(b) of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Section 601 of the RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. Section 601(4) defines a small organization as any not-for-profit

enterprise that is independently owned and operated and not dominant in its field.

SCSEP includes approximately 970 grantees, sub-recipients, and sub-sub-recipients. Of these, more than 50 are States, State agencies, or territories and are not small entities as defined by the RFA. The vast majority of the rest are non-profit organizations, many of which may be categorized as small entities for RFA purposes. The Department does not have a precise number of small entities that may be impacted by this rulemaking.

The Department has determined that the economic impact of this NPRM is not likely to be significant for any of these small entities, because these regulations will not result in any additional costs to grantees and sub-recipients. This new NPRM involving SCSEP performance measures will have only a minor information collection impact on a number of small entities. At the proper time, DOL will address this burden by submitting to OMB a request for a non-substantive change of the reporting forms. The SCSEP is designed so that SCSEP funds cover the vast majority of the costs of implementing this program. We reached a similar conclusion in our review of the August 14, 2008 NPRM. At that time, the Department requested public comments on the potential economic impact that the rule may have on small entities and did not receive any comments on this section. For these reasons, the Department has determined and certifies that this NPRM will not have a significant economic impact on a substantial number of small entities.

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

This NPRM will not significantly or adversely affect the business climate. First, the rule will not create a significant impact on the business climate at all because, as discussed above, SCSEP grantees are governmental jurisdictions and not-for-profit enterprises. Moreover, any secondary impact of the program on the business

community would not be adverse. To the contrary, the SCSEP assists the business community by training older Americans to participate in the workforce and benefits the overall community by providing volunteer work opportunities.

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

Therefore, because none of the definitions of “major rule” apply in this instance, we determine that this NPRM is not a “major rule” for SBREFA purposes.

B. Executive Order 12866

Executive Order 12866 requires that for each “significant regulatory action” taken by the Department, the Department conduct an assessment of the regulatory action and provide OMB with the regulation and the requisite assessment prior to publishing the regulation. A significant regulatory action is defined to include an action that will have an annual effect on the economy of \$100 million or more, or an action that raises a novel legal or policy issue.

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

C. Paperwork Reduction Act

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

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

the SCSEP information collection requirements. The four-year strategy newly required by the 2006 OAA (*see* § 641.302) was accounted for in that PRA submission. The SCSEP PRA submission was assigned OMB control number 1205–0040 and was approved by OMB in October 2007. The approval expires October 31, 2010. This NPRM introduces new information collection requirements and thus will require a new PRA submission. The Department estimates that the added public reporting burden for this collection of information will be minor. The required information will be gathered during regularly scheduled follow-up contacts that gather information about the common performance measures. DOL will submit, at the proper time, a paperwork submission request for a non-substantive change of the reporting forms.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4, 2 U.S.C. 1501 *et seq.*) requires an agency to “prepare a written statement” providing specific information if the proposed rulemaking “is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more” in any 1 year. Since the Department has determined that this proposed rule does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments, or by the private sector, of more than \$100 million, it has not prepared the written statement under section 1532 of the UMRA.

E. Executive Order 13132

The Department has reviewed this NPRM in accordance with Executive Order 13132 on federalism, and has determined that the NPRM does not have “policies that have federalism implications.” As explained at § 1(a) of the Executive Order, “Policies that have federalism implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This rule does not have such “substantial direct effects” because it does not preempt any State law, nor interfere with functions essential to the State’s separate and

independent existence, nor impose any form or method of program administration on the States. In addition, this new measure is reasonably related to the purpose of the SCSEP program; a grant program that flows directly from the 2006 OAA, in which State participation is voluntary. Therefore, the rule does not constitute a “substantial direct effect” on the States, nor will it alter the relationship, power, or responsibilities between the Federal and State governments. The relationship, power, or responsibilities were already established in the authorizing legislation.

F. Executive Order 13045

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

G. Executive Order 13175

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

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

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

H. Environmental Impact Assessment

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

I. Assessment of Federal Regulations and Policies on Families

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

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

J. Executive Order 12630

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

K. Executive Order 12988

This NPRM has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal

court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

L. Executive Order 13211

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

M. Plain Language

The Department drafted this rule in plain language.

List of Subjects in 20 CFR Part 641

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

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

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

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

Authority: 42 U.S.C. 3056 et seq.

2. Section 641.140 is amended by revising the definition of "additional indicators" and adding the definition of "volunteer work" to read as follows:

§ 641.140 What definitions apply to this part?

* * * * *

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

* * * * *

Volunteer work means activities or work that former participants perform for a public agency of a State, local government or intergovernmental agency, or for a charity or similar non-profit organization, for civic, charitable, or for humanitarian reasons, and without expectation of compensation. Volunteer work does not include work a former participant performs that is similar or identical to work the former participant performed for compensation for the organization.

* * * * *

3. Section 641.700 is amended by adding paragraph (c)(4) to read as follows:

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

* * * * *

(c) * * *

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

* * * * *

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

§ 641.710 How are the performance indicators defined?

* * * * *

(b) * * *

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

Signed at Washington, DC, this 16th day of November 2010.

Jane Oates,

Assistant Secretary for Employment and Training, U.S. Department of Labor.

[FR Doc. 2010-29424 Filed 11-22-10; 8:45 am]

BILLING CODE 4510-FN-P