

Employment and Training Administration, Labor

§ 631.3

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Subpart A—General Provisions

§ 631.1 Scope and purpose.

This part implements Title III of the Act. Title III programs seek to establish an early readjustment capacity for workers and firms in each State; to provide comprehensive coverage to workers regardless of the cause of dislocation; to provide early referral from the unemployment insurance system to adjustment services as an integral part of the adjustment process; to foster labor, management and community partnerships with government in addressing worker dislocation; to emphasize retraining and reemployment services rather than income support; to create an on-going substate capacity to deliver adjustment services; to tailor services to meet the needs of individuals; to improve accountability by establishing a system of mandated performance standards; to improve financial management by monitoring expenditures and reallocating available funds; and to provide the flexibility to target funds to the most critical dislocation problems.

§ 631.2 Definitions.

In addition to the definitions contained in sections 4, 301, and 303(e) of the Act and Part 626 of this chapter, the following definitions apply to programs under Title III of the Act and this part:

Substantial layoff (for participant eligibility) means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30 day period for:

(a)(1) At least 33 percent of the employees (excluding employees regularly working less than 20 hours per week); and

(2) At least 50 employees (excluding employees regularly working less than 20 hours per week); or

(b) At least 500 employees (excluding employees regularly working less than 20 hours per week).

Substantial layoff (for rapid response assistance) means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30 day period for at least 50 employees (excluding employees regularly working less than 20 hours per week) (section 314(b)(4)).

§ 631.3 Participant eligibility.

(a) Eligible dislocated workers, as defined in section 301 of the Act, may participate in programs under this part. For the purposes of determining eligibility under section 301(a)(1)(A) of the Act, the term “eligible for” unemployment compensation includes any individual whose wages from employment would be considered in determining eligibility for unemployment compensation under Federal or State unemployment compensation laws.

(b)(1) Except as provided in paragraph (b)(3) of this section, workers who have not received an individual notice of termination but who are employed at a facility for which the employer has made a public announcement of planned closure shall be considered eligible dislocated workers with respect to the provision of basic readjustment services specifically identified in section 314(c) of the Act with the exception of supportive services and relocation assistance.

(2) Individuals identified in paragraph (b)(1) of this section shall be eligible to receive all services authorized in sections 314 of the Act after a date which is 180 days prior to the scheduled closure date of the facility, subject to the provisions of § 631.20 of this part and other applicable provisions regarding receipt of supportive services.

(3) Paragraphs (b)(1) and (b)(2) of this section shall not apply to individuals who are likely to remain employed with the employer or to retire instead of seeking new employment.

(4) For the purposes of paragraph (b)(1) of this section, the Governor shall establish criteria for defining *public announcement*. Such criteria shall include provisions that the public announcement shall be made by the employer and shall indicate a planned closure date for the facility (section 314(h)).

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(c) Eligible dislocated workers include individuals who were self-employed (including farmers and ranchers) and are unemployed:

(1) Because of natural disasters, subject to the provisions of paragraph (e) of this section; or

(2) As a result of general economic conditions in the community in which they reside.

(d) For the purposes of paragraph (c) of this section, categories of economic conditions resulting in the dislocation of a self-employed individual may include, but are not limited to:

(1) Failure of one or more businesses to which the self-employed individual supplied a substantial proportion of products or services;

(2) Failure of one or more businesses from which the self-employed individual obtained a substantial proportion of products or services;

(3) Substantial layoff(s) from, or permanent closure(s) of, one or more plants or facilities that support a significant portion of the State or local economy.

(e) The Governor is authorized to establish procedures to determine the eligibility to participate in programs under this part of the following categories of individuals:

(1) Self-employed farmers, ranchers, professionals, independent tradespeople and other business persons formerly self-employed but presently unemployed.

(2) Self-employed individuals designated in paragraph (d)(1) of this section who are in the process of going out of business, if the Governor determines that the farm, ranch, or business operations are likely to terminate.

(3) Family members and farm or ranch hands of individuals identified under paragraphs (d)(1) and (2) of this section, to the extent that their contribution to the farm, ranch, or business meets minimum requirements as established by the Governor.

(f) The Governor is authorized to establish procedures to identify individuals permanently dislocated from their occupations or fields of work, including self-employment, because of natural disasters. For the purposes of this paragraph (f), categories of natural disasters include, but are not limited to,

any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, or explosion.

(g) The State may provide services to displaced homemakers (as defined in section 4 of the Act) under this part only if the Governor determines that such services may be provided without adversely affecting the delivery of such services to eligible dislocated workers (section 311(b)(4)).

(h) An eligible dislocated worker issued a certificate of continuing eligibility, as provided in § 631.53 of this part, shall remain eligible for assistance under this part for the period specified in the certificate, not to exceed 104 weeks. The 45-day enrollment provisions described in subpart B of part 627 of this chapter shall be waived for eligible individuals who possess a valid certificate under this paragraph and it is not required that a new application be taken prior to participation.

(i) An eligible dislocated worker who does not possess a valid certificate shall remain eligible if such individual:

(1) Remains unemployed, or

(2) Accepts temporary employment for the purpose of income maintenance prior to and/or during participation in a training program under this part with the intention of ending such temporary employment at the completion of the training and entry into permanent unsubsidized employment as a result of the training. Such temporary employment must be with an employer other than that from which the individual was dislocated. This provision applies to eligible individuals both prior to and subsequent to enrollment.

(j) The Governor shall ensure that rapid response and basic readjustment services under Title III of JTPA are made available to workers who, under the NAFTA Worker Security Act (Pub. L. 103-182), are members of a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) for which the Governor has made a finding that (1) the sales or production, or both, of such firm or subdivision have decreased absolutely, and (2) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or

subdivision have increased; or (3) there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles which are produced by the firm or subdivision.

§ 631.4 Approved training rule.

An eligible dislocated worker who is participating in any retraining activity, except on-the-job training, under Title III of the Act or this part shall be deemed to be in training with the approval of the State agency for purposes of section 3304(a)(8) of the Internal Revenue Code of 1986. Participation in the approved training shall not disqualify the individual from receipt of unemployment benefits to which the individual is otherwise entitled (section 314(f)(2)).

Subpart B—Additional Title III Administrative Standards and Procedures

§ 631.11 Allotment and obligation of funds by the Secretary.

(a) Funds shall be allotted among the various States in accordance with section 302(b)(1) of the Act, subject to paragraph (b) of this section.

(b) Funds shall be allotted among the various States in accordance with section 302(b)(2)(A) and (B) of the Act as soon as satisfactory data are available under section 462(e) of the Act.

(c) Allotments for the Commonwealth of the Northern Mariana Islands and other territories and possessions of the United States shall be made by the Secretary in accordance with the provisions of section 302(e) of the Act.

§ 631.12 Reallotment of funds by the Secretary.

(a) Based upon reports submitted by States pursuant to § 631.15 of this part, the Secretary shall make determinations regarding total expenditures of funds within the State with reference to the amount required to be reallotted pursuant to section 303(b) of the Act. For purposes of this paragraph (a)—

(1) The funds to be reallotted will be an amount equal to the sum of:

(i) Unexpended funds in excess of 20 percent of the prior program year's formula allotment to the State, and

(ii) All unexpended funds from the formula allotment for the program year preceding the prior program year.

(2)(i) The current program year is the year in which the determination is made; and

(ii) The prior program year is the year immediately preceding the current program year.

(3) Unexpended funds shall mean the remainder of the total funds made available by formula that were available to the State for the prior program year minus total accrued expenditures at the end of the prior program year.

(4) Reallotted funds will be made available from current year allotments made available by formula.

(b) Based upon the most current and satisfactory data available, the Secretary shall identify eligible States, pursuant to the definitions in section 303(e) of the Act.

(c) The Secretary shall recapture funds from States identified in paragraph (a) of this section and reallot and reobligate such funds by a Notice of Obligation (NOO) adjustment to current year funds to eligible States as identified in paragraph (b) of this section, as set forth in section 303(a), (b), and (c) of the Act.

(d) Reallotted funds shall be subject to allocation pursuant to § 631.32 of this part, and to the cost limitations at § 631.14 of this part.

§ 631.13 Classification of costs at State and substate levels.

(a)(1) Allowable costs under Title III shall be planned, controlled, and charged by either the State or the substate grantee against the following cost categories: rapid response services, basic readjustment services, retraining services, needs-related payments and supportive services, and administration. Costs shall be reported to the Secretary of Labor in accordance with the reporting requirements established pursuant to § 631.15 of this part.

(2) All costs shall be allocable to a particular cost category to the extent that benefits are received by such category; and no costs shall be chargeable to a cost category except to the extent that benefits are received by such category.