

edition of the Standard Industrial Classification (SIC) Code definitions included in industries 01—Agricultural Production—Crops; 02—Agricultural Production—Livestock excluding 027—Animal Specialties; 07—Agricultural Services excluding 074—Veterinary Services, 0752—Animal Speciality Services, and 078—Landscape and Horticultural Services.

*Grantee* shall mean any person, organization or other entity which receives JTPA funds directly from the Department.

*JTPA* shall mean the Job Training Partnership Act.

*Migrant farmworker* shall mean a seasonal farmworker who performs or has performed farmwork during the eligibility determination period (any consecutive 12-month period within the 24-month period preceding application for enrollment) which requires travel such that the worker is unable to return to his/her domicile (permanent place of residence) within the same day.

*Participant* shall mean an individual who is:

- (a) Eligible for participation; and
- (b) Enrolled within 45 days of eligibility determination; and
- (c) Enrolled and receiving employment, training or services (except post-termination services) funded under the Act.

*Planning estimates* shall mean the preliminary allocations announced for the purpose of providing target funding levels for each State.

*Program income* shall mean net income earned from grant or agreement supported activities. Such earnings include, but are not limited to: income from service fees, sale of commodities, usage or rental fees, and royalties on patents or copyrights.

*Poverty level* shall mean the annual income level at, or below which families are considered to live in poverty, as annually determined by HHS.

*Seasonal farmworker* shall mean a person who during the eligibility determination period (any consecutive 12-month period within the 24-month period preceding application for enrollment) was employed at least 25 days in farmwork or earned at least \$400 in farmwork; and who has been primarily employed in farmwork on a seasonal

basis, without a constant year round salary.

*Section 402 programs* shall mean the Migrant and Seasonal Farmworker Program, under section 402 of title IV of the Job Training Partnership Act.

The term *subsidized employment* shall mean employment created in the private or public sector and in private nonprofit agencies financed by the recipient's program funds or by other DOL funded programs, e.g., work experience and tryout employment.

*Supplemental funds* shall mean any funds allocated in excess of that amount announced as a "planning estimate."

*Target area* shall mean a geographic area to be served by a section 402 grantee. Such an area may be a county, multicounty area, a State, or a multistate area.

*Target population* shall mean farmworkers and their dependents who meet the requirements of § 633.107.

*Underemployed persons* shall mean:

- (a) Persons who are working part-time but seeking full-time work; or
- (b) Persons who are working full-time but whose current annualized wage rate (for a family of one), or whose family's current annualized income, is not in excess of:
  - (1) The poverty level, or
  - (2) 70 percent of the lower living standard income level.

*Unemployed individuals* shall mean individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department in defining individuals as unemployed.

**§ 633.105 Allocation of funds.**

(a) *National Account.* (1) Up to 6 percent of the statutory reserves for section 402 activities may be set aside for the National Account to be used for technical assistance and for special projects funded at the discretion of the Department.

(2) Funds from the National Account may be obligated by the Department by means of either contracts or grants to private nonprofit agencies, to private profitmaking organizations, to

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States and local units of government, or public agencies.

(b) *State allocations (allocable funds).*

(1) No less than 94 percent of the funds received for section 402 activities shall be allocated for farmworker programs in individual States in an equitable manner using the best data available as to the farmworker population as determined by the Department. The formula used to determine State allocations will be published in the FEDERAL REGISTER for review and comment, along with the rationale for such formula and proposed allocations, no later than 30 days prior to the publication of the final allocations of available funds in the FEDERAL REGISTER.

(2) *Allocation Exceptions.* (i) The Department reserves the right not to allocate any funds for use in a State whose allocation is less than \$120,000.

(ii) Those funds not allocated will be available for technical assistance and special projects funded at the discretion of the Department.

(iii) Current grantees which are unsuccessful applicants for new grant funds shall be given notice that funds will expire and that a reasonable period will be given to phase out their operations. Such notice will not bind the Department to obligate additional funds. The notification of nonselection shall be the notice of termination of funds and departmental closeout requirements are to be followed.

(3) *Allocation Adjustment.* In situations where the Department determines that the formula allocation will result in severe disruption of funding levels from one year to the next, a hold harmless or other factor to minimize such disruption may be used.

(4) *Funding cycle.* Projects will be funded in accordance with a schedule to be specified by the Department in the FEDERAL REGISTER:

(i) Announcement of State planning estimates and an invitation to submit applications for State(s) or area(s) open for competition as provided in the Solicitation for Grant Application (SGA).

(ii) Deadline for submission of Preapplication for Federal Assistance Forms.

(iii) Deadline for submission of applications.

### § 633.106 Eligibility for allocable funds.

The following organizations and units of government shall be eligible to receive funds under section 402.

(a) A public agency;

(b) A private nonprofit organization authorized by its charter or articles of incorporation to provide employment and training or such other services as are permitted by this subpart.

### § 633.107 Eligibility for participation in section 402 programs.

(a) Eligibility for participation in section 402 programs is limited to those individuals who have, during any consecutive 12-month period within the 24-month period preceding their application for enrollment:

(1) Been a seasonal farmworker or migrant farmworker as defined in § 633.104; and,

(2) Received at least 50 percent of their total earned income or been employed at least 50 percent of their total work time in farmwork; and,

(3) Been identified as a member of a family which receives public assistance or whose annual family income does not exceed the higher of either the poverty level or 70 percent of the lower living standard income level.

(4) Dependents of the above individuals are also eligible.

(b) The 24-month period preceding application for enrollment shall be extended for persons who have been in the armed forces, incarcerated, hospitalized, or physically or mentally disabled. The extended period of time shall be not more than 24 months plus the amount of time the person was in the armed forces, incarcerated, detained at any Federal or State facility, hospitalized, or physically or mentally disabled. Such conditions shall be positively demonstrated by the applicant. This can be done by producing documentary evidence satisfactory to the grantee.

(c) To be eligible for participation, individuals shall meet the requirements of sections 167(a)(5) and 504 of the Act.

(d) A participant in another program or title under JTPA who met the eligibility criteria for section 402 at the