

time of enrollment into such other program or title may be transferred into, or enrolled concurrently, in the section 402 program. A section 402 participant who met the eligibility criteria for another program or title under JTPA at the time of enrollment into the section 402 program may also be transferred into or enrolled concurrently in such other program or title.

(e) The grantee shall establish the necessary procedures for identifying and selecting participants and for eligibility determination and verification.

(f) The provisions of section 181(k) of the Act are applicable to section 402 programs.

**Subpart B—Grant Planning and Application Procedures**

**§ 633.201 Grant planning and application procedures in general.**

Precondition for grant application: The Department will not consider an application for funding from any applicant in cases where it is established that:

- (a) The agency's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful; or
- (b) Fraud or criminal activity has been proven to exist within the organization.

**§ 633.202 Announcement of State planning estimates and invitation to submit a grant application.**

(a) *Announcements.* The Department, through a notice in the FEDERAL REGISTER, will announce State Planning estimates of section 402 funds and will publish an SGA for all areas open to competition. The SGA will contain all information needed by an applicant to apply for funding; i.e., general program description, rating criteria, and dates for submission of applications.

(b) *Intention to apply.* Any eligible applicant intending to apply for funds shall submit a Preapplication for Federal Assistance to DOL by a specified date as announced in the FEDERAL REGISTER.

(c) Applications for statewide programs are encouraged; however, the Department reserves the right to

award grant funds to less than state-wide areas.

(d) Executive Order 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 30 CFR part 46 generally apply to this program. Pursuant to these requirements, in States which have established a consultation process expressly covering this program, applications shall be provided to the State for comment. Since States may also participate as competitors for this program, applications shall be submitted to the State upon the deadline for submission to the Department, instead of the usual 30-day period for review.

**§ 633.203 Review of funding request.**

The SGA will identify all review standards including:

- (a) An understanding of the problems of migrant and seasonal farmworkers;
- (b) A familiarity with the area to be served;
- (c) A previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers.
- (d) General administrative and financial management capability.
- (e) Prior performance with respect to financial management, audit and program outcomes.

**§ 633.204 Responsibility review.**

(a) Prior to final selection as a potential grantee the Department will conduct a review of the available records to determine whether or not the organization has failed any responsibility test. This review is intended to establish overall responsibility to administer Federal funds. With the exceptions of paragraphs (a)(1) and (a)(3) of this section, the failure to meet any one of the tests would not establish that the organization is irresponsible unless the failure is substantial or persistent. The responsibility tests are as follows:

- (1) The agency's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or failure to comply with an approved repayment plan.

(2) Serious administrative deficiencies identified in final findings and determinations—such as failure to maintain a financial management system as required by Federal regulations.

(3) Established fraud or criminal activity within the organization.

(4) Wilful obstruction of the audit process.

(5) Substantial failure to provide services to applicants as agreed to in a current or recent grant or to meet performance standard requirements as provided at § 633.321 of this subpart.

(6) Failure to correct deficiencies brought to the grantees' attention in writing as a result of monitoring activities, reviews, assessments, etc.

(7) Failure to return a grant closeout package or outstanding advances within 90 days of expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun.

(8) Failure to submit required reports.

(9) Failure to properly report and dispose of government property as instructed by DOL.

(10) Failure to have maintained cost controls resulting in excess cash on hand.

(11) Failure to procure or arrange for audit coverage for any two year period when required by DOL.

(12) Failure to audit a subrecipient within the required period when applicable.

(13) Final disallowed costs in excess of five percent of the grant or contract award.

(14) Failure to establish a mechanism to resolve subrecipient's audit within established time frames.

(b) This responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section will not be selected as potential grantees irrespective of their standing in the competition.

**§ 633.205 Notification of selection.**

(a) Respondents to the SGA which are selected as potential grantees shall be so notified by the Department. The notification shall invite each potential

grantee to negotiate the final terms and conditions of the grant, shall establish a reasonable time and place for the negotiation, and shall indicate the State or area to be covered by the grant. Funds may be awarded for two program years.

(b) In the event that no grant applications are received for a specific State or area or that those received are deemed to be unacceptable, or where a grant agreement is not successfully negotiated, the Department may give the Governor first right to submit an acceptable application pursuant to § 633.201. Should the Governor not accept the offer within fifteen days, the Department may then (1) designate another organization or organizations, (2) reopen the area for competitive bidding, or (3) use the funds for national-account activities.

(c) An applicant whose grant application is not selected by the Department to receive section 402 funds shall be notified in writing.

(d) Applicants who submit grant applications which have been rejected may not resubmit a new grant application for the State(s) or area(s) in which they are interested in providing services until the area(s) is announced by the Department as reopened for competition.

(e) Any applicant whose grant application is denied in whole or in part by the Department may request an administrative review as provided in part 636, with respect to whether there is a basis in the record to support the Department's decision. This appeal will not in any way interfere with the Department's designation and funding of another organization to service the area in question during the appeal period. The available remedy under such an appeal will be the right to be designated in the future rather than a retroactive or immediately effective selection status. Therefore, in the event the ALJ rules that the organization should have been selected and the organization continues to meet the requirements of this part, the Department will select and fund the organization within 90 days of the ALJ's decision unless the end of the 90-day period is within 6 months of the end of the funding period. Any organization selected and/or