

under a JTPA subgrant to a commercial organization.

(2) *Property acquired by commercial subrecipients.* Title to property acquired or produced by a subrecipient that is a commercial organization shall vest in the awarding agency, provided such agency is a governmental entity or nongovernmental organization that is not a commercial organization. Property so acquired or produced shall be considered to be acquired or produced by the awarding agency and paragraph (a) or (b) of this section, as appropriate, shall apply to that property. If the awarding agency is also a commercial organization, title shall vest in the higher level, non-commercial awarding agency that made the subaward to the commercial subrecipient.

(3) *Approval for acquisition.* A subrecipient that is a commercial organization shall not acquire property subject to this section without the prior approval of the awarding agency.

(d) *Notification to the Secretary of real property acquisitions.* Recipients shall notify the Secretary immediately upon acquisition of real property with JTPA funds, including acquisitions by subrecipients. Such notification shall include the location of the real property and the Federal share percentage.

(e) *Property procured before July 1, 1993.* (1) Personal or real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act must be used for purposes authorized by the Act. Subject to the Secretary's rights to such property, the Governor shall maintain accountability for property in accordance with State procedures and the records retention requirements of § 627.460 of this part.

(2) The JTPA program must be reimbursed the fair market value of any unneeded property retained by the Governor for use in a non-JTPA program. The proceeds from the sale of any property or transfer of property to a non-JTPA program must be used for purposes authorized under the Act.

**§ 627.470 Performance standards.**

(a) *General.* The Secretary shall prescribe performance standards for adult programs under title II-A, for youth programs under title II-C, for dis-

located worker programs under title III, and for older worker programs under section 204(d) of the Act. Any performance standards developed for employment competencies shall be based on such factors as entry level skills and other hiring requirements.

(b) Pursuant to instructions and time lines issued by the Secretary, the Governor shall:

(1) Collect the data necessary to set performance standards pursuant to section 106 of the Act; and

(2) Maintain records and submit reports required by sections 106(j)(3), 165(a)(3), (c)(1), and (d) and 121(b)(6) of the Act.

(c) *Title II performance standards.* (1) The Governor shall establish SDA performance standards for title II within the parameters set by the Secretary pursuant to sections 106(b) and (d) of the Act and apply the standards in accordance with section 202(c)(1)(B) of the Act.

(2) The Governor shall establish incentive award policies pursuant to section 106(b)(7) of the Act, except for programs operated under section 204(d) of the Act. Pursuant to section 106(b)(8) of the Act, Governors may not consider standards relating gross program expenditures to performance measures in making such incentive awards.

(3) The Governor shall provide technical assistance to SDA's failing to meet performance standards established by the Secretary for a given program year (section 106(j)(2)).

(4)(i) If an SDA fails to meet a prescribed number of the Secretary's performance standards for 2 consecutive years, the Governor shall notify the Secretary and the service delivery area of the continued failure and impose a reorganization plan (section 106(j)(4)).

(ii) The number of standards deemed to constitute failure shall be specified by the Secretary biennially and shall be based on an appropriate proportion of the total number established by the Secretary for that performance cycle. In determining failure, the specified proportion shall be applied separately to each year of the two year cycle.

(iii) A reorganization plan shall not be imposed for a failure to meet performance standards other than those established by the Secretary.

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(iv) A reorganization plan shall be considered to be imposed when, at a minimum:

(A) The problem or deficiency is identified,

(B) The problem is communicated to the SDA, and

(C) The SDA is provided an initial statement of the actions or steps required and the timeframe within which they are to be initiated. A final statement of required steps and actions is to be issued within 30 days.

(d)(1) If the Governor does not impose a reorganization plan, required by paragraph (c)(4) of this section, within 90 days of notifying the Grant Officer of an SDA's continued failure to meet performance standards, the Grant Officer shall develop and impose such a plan (section 106(j)(5)).

(2) Before imposing a reorganization plan, the Grant Officer shall notify the Governor and SDA in writing of the intent to impose the plan and provide both parties the opportunity to submit comments within 30 days of receipt of the Grant Officer's notice.

(e) An SDA subject to a reorganization plan under paragraphs (c)(4) or (d) of this section may, within 30 days of receiving notice of such action, appeal to the Secretary to revise or rescind the reorganization plan under the procedures set forth at §627.471 of this subpart, Reorganization plan appeals (section 106(j)(6)(A)).

(f) *Secretarial action to recapture or withhold funds.* (1) The Grant Officer shall recapture or withhold an amount not to exceed one-fifth of the State administration set-aside allocated under sections 202(c)(1)(A) and 262(c)(1)(A) of the Act when:

(i) The Governor has failed to impose a reorganization plan under paragraph (c)(4) of this section, for the purposes of providing technical assistance under a reorganization plan imposed by the Secretary (section 106(j)(5)(B)); or

(ii) The Secretary determines in an appeal provided for at paragraph (e) of this section, and set forth at §627.471 of this subpart, that the Governor has not provided appropriate technical assistance as required at section 106(j)(2) (section 106(j)(6)(B)).

(2)(i) A Governor of a State that is subject to recapture or withholding

under paragraph (f)(1) of this section may, within 30 days of receipt of such notice, appeal such recapture or withholding to the Secretary.

(ii) The Secretary may consider any comments submitted by the Governor and shall make a decision within 45 days after the appeal is received.

(g) *Title III performance standards.* (1) The Governor shall establish SSG performance standards for programs under title III within the parameters set annually by the Secretary pursuant to section 106(c) and (d) of the Act.

(2) Any performance standard for programs under title III shall make appropriate allowances for the difference in cost resulting from serving workers receiving needs-related payments authorized under §631.20 of this chapter (section 106(c)(2)).

(3) The Secretary annually shall certify compliance, if the program is in compliance, with the title III performance standards established pursuant to paragraph (a) of section 322(a)(4) of the Act.

(4) The Governor shall not establish standards for the operation of programs under title III that are inconsistent with the performance standards established by the Secretary under provisions of section 106(c) of the Act (section 311(b)(8)).

(5) When an SSG fails to meet performance standards for 2 consecutive years, the Governor may institute procedures pursuant to the Governor's bypass authority in accordance with §631.38(b) of this chapter or require redesignation of the substate grantee in accordance with §631.35 of this chapter, as appropriate.

**§627.471 Reorganization plan appeals.**

(a) A reorganization plan imposed by the Governor, as provided for at §§627.470(c)(4) or 627.477(b)(2) of this part, or by the Secretary, as provided for at §627.470(d) of this part, may be appealed directly to the Secretary without prior exhaustion of local remedies.

(b)(1) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, ATTENTION: ASET. A copy of the appeal shall be provided simultaneously to the Governor.