

Introduction

Unlike the appendices for the first three modules, this General Appendix does not directly track to individual data elements in the GPMS. Instead, it includes topics that have broad applicability and that generally do not fit comfortably into any of the first three appendices. These topics are listed in eight sections and are numbered consecutively in each section. In a few instances, topics from the other appendices are repeated here in order to make the discussion more comprehensive.

Like the other appendices, this appendix has a version number and a date on the bottom of each page. The hard copy version of the appendix that users may have been given may not contain the most up-to-date version of the topics. However, the version on the CoP will always be the most recent, and users are encouraged to check that site regularly. Additions and clarifications to the appendix may also be posted on the CoP as they occur.

In addition to the Table of Contents, the PDF versions of the modules and appendices have a search function that allows users to search for key words. The search function will bring you to each instance of the search terms in the appendix. This is probably the easiest and quickest way to find topics.

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I. ADMINISTRATION AND BUDGETING

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1. SCSEP as required American Job Center partner

- The SCSEP regulations state that all grantees are required partners and do not make distinctions between state and national grantees. Grantees are bound by all applicable WIOA regulations and must provide access to services through the American Job Centers. Failure to coordinate with the American Job Centers can be a violation of the grant agreement for a SCSEP grantee.
- The MOU is the vehicle for negotiating the exact roles of the partners. Where there are multiple grantees in a jurisdiction, it is permissible to negotiate a single MOU that allows for a division of labor as long as the basic requirements of the regulations are met by all grantees. One way to do this is for the SCSEP grantees in an area to negotiate their own sub-agreement governing how they will jointly meet their American Job Center responsibilities and how they will manage the negotiation of the MOU with the American Job Center. The key is that there must be a negotiation, not a unilateral decision by the American Job Center or the SCSEP grantee.

2. Maintenance of effort; assigning participants to host agencies that have had layoffs

- SCSEP participants cannot be used to replace workers who are on layoff. Section 502(b)(1)(G) of the Older Americans Act specifically provides that each project funded under the act “will not employ or continue to employ any eligible individual to perform work the same or substantially the same as that performed by any other person who is on layoff.” The same requirement is contained in the SCSEP regulations. The statute also provides that SCSEP funds may “not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed.” Therefore, you cannot assign SCSEP participants to a host agency if they will be doing work substantially similar to that performed by regular employees who have been laid off.

II. RECORD KEEPING AND ACCESS TO CASE FILES

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1. Modifying OMB-approved data collection forms

- Once the GPMS data collection forms have been approved by OMB, you are free to modify the forms to add data elements, but if you do so, you must remove all of the OMB information and the SCSEP form numbers from those modified forms. OMB and SCSEP have authorized only the collection of the data on the approved forms.
- If you modify the forms, you must retain all of the data elements on the official versions. To facilitate data entry, you may wish to keep the elements in the same order as the data application. You could also use the official forms and collect the additional information on a separate form.

2. Electronic recordkeeping and signatures

- The Government Paperwork Elimination Act (GPEA) encourages the use of electronic records and signatures and prohibits federal agencies from denying legal validity to them. SCSEP has long permitted electronic records in place of hard copy records. Grantees must collect the required data contained on the hard copy forms and in the GPMS, must comply with the certification requirements for eligibility and performance information, and must follow all required SCSEP procedures and practices for entering the information into the GPMS. However, they are permitted to use either hard copy or electronic records and signatures to do so.
- Since copies of documentation are acceptable (except when there is reasonable doubt as to their authenticity), grantees may produce these copies mechanically, by copier, or electronically, by scanner.
- When a grantee uses electronic forms and signatures, it must describe in writing the process used to enter the data and the required signatures. The explanation must specifically detail how and where in the case file records someone doing data validation can determine that the required signatures and dates are valid. This information must be updated and provided to validators for each annual Data Validation cycle. Grantees should keep such policies on file and should document that all staff were trained in their use.
- Grantees using electronic records should submit a draft of this process information to DOL for review.

3. Retention of case files, financial records and other documentation

- All required documentation, both fiscal and programmatic (including records pertaining to grievances), must be retained for three program years after the end of the program year in which the document was generated. For participants who enter unsubsidized employment after exiting the program, this means three program years after the end of the program year in which all follow-up activity is ended.
- If you are required to have a signed IEP or waiver form in the file, you must retain it for the specified retention period. If you are missing documentation, you must take reasonable steps to recreate it or you risk audit/monitoring problems. If you do recreate documents, you should also make case notes to document what you have done.

II. RECORD KEEPING AND ACCESS TO CASE FILES

4. Safeguarding sensitive information

- The assurances in all SCSEP grants require grantees to certify that participant records are securely stored and access is limited to appropriate staff to safeguard personally identifying information. In addition, grantees must certify that medical records are securely stored separate from all other participant information and access is limited to authorized staff for authorized purposes. (See Topic 6 below)
- One way to safeguard sensitive information, like case notes about a participant's criminal background, is to treat it the same way as you treat medical records: Put it in the separate secured file to which access is strictly limited.

5. Responsibility of sub-grantees in maintaining participant case files; grantee access to files

- You need not maintain all case notes in hard copy; electronic case notes are acceptable. A case manager must take detailed notes that include the date and her/his name. You will also have to retain hard or electronic copies of any documents requiring signature and any documents that are not included in the GPMS.
- It is critical that the case notes contain solid information and be attributable to someone for accountability. Sub-grantees should clearly understand that they must provide access to this electronic information to the grantee and to national office monitors. Furthermore, sub-grantees should be informed in their sub-contract agreements of their legal obligation to turn over their complete electronic records to the grantee at the time that they cease to be involved in the program or when the grantee otherwise requires them.
- The grantee is legally responsible for ensuring complete and accurate data collection and for the maintenance of all required documentation. As a practical matter, the local site with the most contact with the client should maintain the primary case file with all the documentation. This will typically be the sub-grantee or the sub-sub-grantee. However, there should be agreements in place so that the sub-grantees know these files will be validated and that both the grantee and DOL have the right to view the information in the files wherever they are maintained. The procedures for ensuring that information and documentation are properly collected, stored, and made accessible should be set forth in the grant application.

6. Storage and confidentiality of and access to medical records and disability-related information

- Medical and disability-related information (or information related to a status such as “severely disabled” or “frail” that might reveal a disability) must be stored in individual separate files -- apart from all other information about an applicant or participant -- and treated as a “confidential medical record.” The information must be stored securely, with limited access, and must be available only to persons with a permitted need to know. Confidentiality applies to all disability or medical information, including information related to reasonable accommodation requests. Access to medical and disability-related records, and knowledge that a particular individual is a person with a disability, must be strictly limited, as described below.
- Knowledge of disability status may be provided only to the following individuals and only when necessary:

II. RECORD KEEPING AND ACCESS TO CASE FILES

- sub-grantee staff who need to know that a participant is entitled to priority of service or a waiver of the durational limitation; or who need to make a decision about financial eligibility based on status as a family of one
- sub-grantee staff who need to know about the accommodation the participant will be provided
- first aid and safety personnel, if the condition might require emergency treatment or if the participant may need particular assistance in an emergency evacuation
- grantee staff or federal project officers who are doing monitoring or data validation
- government officials investigating compliance with EO requirements
- The circumstances under which staff may be permitted access to an individual's underlying medical- or disability-related documents are even more limited. For example, access to medical documentation that a participant is entitled to status as a family of one, priority of service, or extension of the durational limit should be limited to those grantee or sub-grantee staff who need to document the basis for such decisions. In addition, first aid personnel may need access to underlying documentation related to a participant's medical condition in an emergency.
- As a general rule, staff persons making assignments to a host agency should not have knowledge of a participant's disability status unless the participant has requested an accommodation for the process of assignment, or unless the host agency has an affirmative action or similar plan intended to benefit individuals with disabilities and the participant has informed grantee staff that s/he is interested in taking advantage of such programs.
- The case worker may ask all applicants whether they can perform the essential functions of a host agency assignment or a job "with or without reasonable accommodation."
- Host agencies may not be informed that a participant has a disability unless:
 - The applicant has made an independent decision to disclose the disability.
 - The applicant has directed the sub-grantee staff to make the disclosure on behalf of the applicant.
 - The request was initiated by the participant and not by the sub-grantee staff.

7. Participant's access to case file

- In general, a participant should be entitled to a copy of everything in his or her case file unless there is some specific exemption that attaches to a document, like attorney-client privilege. Case notes would not qualify unless they fall under some specific exemption from disclosure. The argument for full access is even stronger when there is legal action, like a grievance, pending or threatened. A participant cannot assert his or her rights without having access to everything in the file.
- State FOIA or open records laws may determine what the participant is entitled to see as a matter of state law if the sub-grantee or grantee is a state agency or is otherwise covered by the state law; nothing in SCSEP imposes any additional exemptions from disclosure under state law with regard to what a participant may see from his or her own file. (Federal FOIA only applies to federal agencies, not private or state agencies that receive federal funds.) State FOIA or open records laws, which all states have, set forth the minimum that state agencies must disclose. Grantees should determine from their state FOIA or open records agency or from their own attorney what, if any, requirements are

II. RECORD KEEPING AND ACCESS TO CASE FILES

imposed on them by state law. Regardless of state law, however, all grantees, should, as a matter of SCSEP policy, allow a participant complete access to his or her own file unless there is a compelling reason for non-disclosure that is permitted by applicable FOIA or open records laws.

- State FOIA or open records laws may also determine what charges can be imposed for copying. No charge should be imposed for viewing the file. Again, as a matter of SCSEP policy, grantees should not charge for copying, especially in a grievance situation, unless the file is so voluminous that special arrangements must be made to do the copying. By definition, SCSEP participants requesting a copy of their file are low income; that is grounds for waiving any fee that might otherwise be chargeable.
- Grantees should inform participants in the grantee's privacy policy, its participant handbook, or other appropriate document of their right to inspect and copy their records.

8. Special documentation rules during disasters

- If, due to a disaster, applicants have no means of producing supporting documentation of their income, special rules for income documentation apply. In addition, several forms of disaster or refugee payments received by natural disaster victims are excludable income:
 - For disaster victims who have lost their documentation, grantees may accept self-attestation of age and income in new applications for 90 days while the applicants obtain new documentation.
 - Disaster victims are considered residents of the states in which they apply for SCSEP.
 - Current participants may also self-attest to age and income for recertification purposes.
 - GPMS records may be used to establish enrollment status and documentation of age and income.
 - Participants whose host agencies are no longer available may be assigned to emergency relief work with non-profit organizations such as the Red Cross.
 - Evacuees may be enrolled in temporary positions until they can be transitioned to permanent positions or returned to their home communities.
 - Under existing rules, grantees may employ a wide variety of supportive services to assist hurricane victims.
- Income from any employment and training program is disregarded for purposes of SCSEP eligibility. The disregard specifically includes employment in NEG temporary jobs and DUA benefits. Other forms of disaster or relocation assistance will be determined by DOL on a case-by-case basis.

III. WAITING LIST

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1. Responsibility to applicants on waiting list

- An applicant is entitled to remain on the waiting list as long as he or she is still interested in an assignment and meets the eligibility requirements. However, it is not fair to the applicant or helpful to the program to let applicants languish on the waiting list for an excessive period. You should generally be in touch with waiting list applicants every three months to find out if they are still interested in the program and are still eligible, and to give them an update on when they might be enrolled. If there is no reasonable prospect of an opening, the participant might decide to withdraw or explore some other program. The choice remains with the applicant. No matter how unlikely the prospect of enrollment, you cannot force someone off the waiting list.
- The continuing confirmation of the eligibility of applicants on the waiting list should be done informally and for the benefit of the applicant. An eligibility determination is good for 12 months, barring a substantial change in circumstance. (See Topic V.1.b, Recertification within 12 months; substantial change in circumstance, and Topic II.2.b, Lookback dates for determining income of applicants, in the appendix to Module I. Furthermore, an applicant who is over-income at some point while on the waiting list may not be over-income when an opening is available. However, if an applicant has become over-income and is approaching 12 months since the eligibility determination, an applicant is entitled to know that any assignment would be short-lived and that the first recertification would result in termination from the program. Given that information, the applicant might decide to withdraw from the waiting list.
- Although you are normally not required to redo or update the eligibility on the Eligibility page, you should update the rest of the intake items, especially the barriers to employment, because you will need that information for making an appropriate assignment and because the priorities of service must reflect the participant's situation at the time of enrollment.
- If there has been a change in any of the characteristics that are subject to data validation, you will need appropriate documentation. Since the intake fields are filled out by the case worker, you should not need the participant to initial or sign anything. If you do want the participant to update any forms you use, you can have the participant re-date and re-sign the forms and initial any changes from the original as long as a validator or monitor can easily tell what has occurred. If there is any ambiguity, it is better to complete a second form and keep both forms in the file.

2. Removing applicants from the waiting list for administrative reasons

- Applicants on the waiting list are not participants and thus cannot have true exits. However, in Related Actions or the Activity dropdown in Cases, you can close the record when someone withdraws an application or withdraws from the waiting list. This is the only field you can use in these circumstances.
- Unless you have a written policy governing removal from the waiting list, removing someone for administrative reasons may be problematic. An applicant has an absolute right to apply to the program. The rules require you to place on the waiting list any eligible applicant who is not assigned to a host agency within two weeks of being

III. WAITING LIST

determined eligible. Therefore, an applicant you remove from the list would presumably be able to insist on filing a new application and being put back on the waiting list. (See Topic 1 above, Responsibility to Applicants on Waiting List.) You should enter a case note in the comments field explaining the reason for removing the applicant from the waiting list, especially if the administrative reason involves fault on the part of the applicant, e.g., falsifying the eligibility information.

- You should generally provide 30 days' written notice before removing someone from the waiting list on your own initiative. Obviously, no notice is required when the applicant informs you that he or she is no longer interested in the program.

IV.EMPLOYMENT STATUS OF PARTICIPANTS

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1. Are participants employees of the sub-grantee?

- Whether participants are considered employees at all and, if so, whether they are employees of the sub-grantee or the host agency, is a matter of state law. The Department considers participants to be trainees rather than employees, and the regulations provide that participants are not federal employee. However, the regulations do not take a position on whether participants might be considered employees of some other entity. Grantees must consult with the appropriate state authorities, such as the attorney general or the state Department of Labor.

2. Are participants covered by the Family Medical Leave Act (FMLA?)

- Whether participants are covered by the FMLA or any other state or federal worker-protection or labor law depends on whether they are considered employees of either the sub-grantee or host agency. The SCSEP statute and regulations state that participants are not federal employees; however, whether they are state employees depends on state law. See Topic 1, above. In most states, participants in an employment and training program are not considered employees, but in a few states participants are considered employees.
- Grantees are required by the SCSEP regulations to check with the appropriate state authorities, such as the Attorney General or state Department of Labor, to determine how SCSEP participants are treated in their state. This is a matter that can have very serious consequences if the grantee does not comply with state law.

3. Employer mandate under the Affordable Care Act

- The employer shared responsibility provisions in the Affordable Care Act apply only to employers that have 50 or more full-time employees in the preceding year.
- Under the ACA, “a full-time employee is, for a calendar month, an employee employed on average at least 30 hours of service per week, or 130 hours of service per month.” The Internal Revenue Service determines whether individuals are employees for purposes of the ACA. A summary of employer responsibilities and links to additional information is accessible at <https://www.irs.gov/affordable-care-act/employers/employer-shared-responsibility-provisions>. Grantees should contact IRS directly if they need more information about their status under the employer mandate.
- HHS has an excellent web site for people seeking healthcare and for the organizations helping them at <http://healthcare.gov>.

V. PAYMENT OF WAGES AND BENEFITS/EFFECT OF SCSEP WAGES

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1. Payment of minimum wage or higher

- Section 641.565(a) of the SCSEP regulations requires that grantees pay at least the minimum wage applicable under the Fair Labor Standards Act of 1938; the state or local minimum wage for the most nearly comparable covered employment; or the prevailing rate of pay for persons employed in similar public occupations by the same employer, whichever is higher. Grantees must implement wage changes whenever the applicable minimum wage increases; they cannot wait until the start of the new quarter or new program year. These wages are floors and apply to orientation, required training, and community service work.
- You are permitted to pay a wage above any of these rates. However, the national office discourages projects from paying more than the minimum wage to any participants, including participant staff, because doing so reduces the number of participants you can serve.

2. Payment of higher wages to participants assigned to project office

- There is no rule governing the wages of participants assigned to the project office. The regulation requires you to pay all participants the higher of the applicable minimum wage or the prevailing wage. You may pay applicants more than this required amount, but you are strongly discouraged from doing so. The more you pay participants above the minimum, the fewer participants you can serve. If you do pay more than the minimum, you should do so pursuant to a policy, so you are not accused of acting arbitrarily or discriminatorily.
- DOL also strongly discourages paying higher wages to participants assigned to the project office. Grantees and sub-grantees sometimes pay participants more than they would receive at other host agencies in order to keep the participants working for them. This practice may create a disincentive for the participants to seek unsubsidized employment and thus may be doing the participants a disservice. It also deprives other eligible seniors of the opportunity to participate in SCSEP.
- There are other problems as well. This practice is often seen as unfairly rewarding a small class of participants and may create morale issues for other participants. In addition, participants assigned to the project office must be rotated to other jobs within the project office or to other host agencies as required by their IEP, like all other participants. When they are rotated, they usually lose their employment premium. This can have a negative effect on the participants' morale.
- It is not permissible to put participants directly on the project payroll for a few additional hours each week as a way to supplement their pay. That constitutes part-time employment, which is not permitted for participants while they are in community service.

3. Provision of fringe benefits

- Section 502(c)(6)(A)(i) of Title V sets forth the required and allowable fringe benefits. These benefits include workers' compensation, unemployment compensation if required by state law, physical exams, certain federal holidays, and necessary sick leave.

V. PAYMENT OF WAGES AND BENEFITS/EFFECT OF SCSEP WAGES

- Grantees may not use grant funds to provide pension benefits, annual leave, accumulated sick leave, or bonuses.

4. Are participants entitled to unemployment compensation benefits?

- Section 641.565(b)(4) of the SCSEP regulations provides that grantees may not pay the cost of unemployment insurance for participants unless required by law. Federal law, Section 3309(b)(5) of FUTA, excludes from mandatory UI coverage any service “as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof, by an individual receiving such work relief or work training.” SCSEP qualifies for this exemption. However, states are free to extend coverage to such programs, and a few states do so. If your state is among them, the regulation permits you to use SCSEP funds to meet your UI tax obligation.
- There are two separate issues regarding UI benefits for participants. Former participants who are collecting UI benefits may or may not be receiving benefits based upon their participation in SCSEP. Depending upon when they last worked in covered employment and when they were enrolled in SCSEP, their UI benefits may be based on their prior employment and not on their SCSEP participation. Current participants collecting UI are probably collecting on the basis of prior employment, not current SCSEP enrollment. Federal law provides that a UI claimant who is otherwise eligible for benefits cannot be denied benefits because he or she is currently enrolled in a job training program. UI benefits are also excluded income for purposes of SCSEP eligibility determinations.
- Contact your state UI agency to learn what the law is in your state and which wage credits were used to establish UI claims for SCSEP participants. If the wage credits came from prior employment, you have no tax liability. If the wage credits came from SCSEP participation, then you should discuss with the UI officials whether there is a basis under state law for exempting participants from coverage because they are trainees under a job training program and not employees. (You might also confer with other state and national sub-grantees in your state. UI determinations are sometimes inconsistent, especially for issues that seldom occur. Another sub-grantee may have gotten a different result.) You have the right to appeal any adverse determination. If you are ultimately unsuccessful, you should discuss with the UI officials the options you have as a non-profit organization to minimize your tax burden.
- You can use this link to find the UI agency for your state:
<https://www.dol.gov/general/topic/unemployment-insurance> . Additional information can be found at
<https://www.careeronestop.org/LocalHelp/UnemploymentBenefits/unemployment-benefits.aspx>
- NOTE: If participants had recent, ongoing work (as opposed to sporadic, short-term, or seasonal work) in an employment relationship prior to applying for SCSEP, they may well have been job-ready. Job-ready applicants are not eligible for SCSEP and should be referred to the American Job Center. If job-ready participants were inadvertently enrolled, their IEPs should reflect the goal of unsubsidized employment as soon as possible.

V. PAYMENT OF WAGES AND BENEFITS/EFFECT OF SCSEP WAGES

5. How do SCSEP wages affect unemployment compensation benefits

- Many state unemployment laws permit an unemployment compensation recipient to work part-time and receive a reduced unemployment compensation benefit. Unemployment laws also permit a participant to be enrolled in an approved training program without jeopardizing his or her unemployment compensation benefits.
- UI recipients are required to report all earnings to the unemployment compensation department. Failure to do so may be considered fraud and will certainly result in an overpayment if state law requires a reduction in UI benefits based on SCSEP wages. All participants receiving UI benefits should be told to report their SCSEP participation and wages to the unemployment compensation department at the time of enrollment.
- You need to check with the state unemployment department to see what rules they are applying and whether they understand that SCSEP participants are trainees and should not be considered employed.

6. Effect of SCSEP wages on Supplemental Nutrition Assistance Program (SNAP), federal housing programs, Medicaid and other programs

- Section 509 of the Older Americans Act precludes SCSEP wages from affecting eligibility only for federal housing programs (See TEGL 17-13 and the HUD regulations at 24 CFR sections 960.225) and SNAP (formerly Food Stamps). How SCSEP wages are treated for all other state and federal programs depends upon the rules of the specific programs.
- It does not appear that there is anything in the federal Medicaid rules that would specifically provide for the exemption of SCSEP wages. Medicaid is a federal-state partnership in which the states have a fair amount of discretion in setting income and asset limits for different classes of beneficiaries. To determine what income your state counts for Medicaid eligibility purposes, you should contact your state social services agency. There are very generous rules for the Medicaid beneficiaries with a disability who are working. There are also programs in many states under which an individual can earn an amount over the normal limits and “buy in” to Medicaid for a small amount to maintain their Medicaid benefits, including personal assistance services for the home and workplace. All SCSEP participants with a disability should be made aware of these Medicaid programs and informed of the assistance available in their state.

7. Payment of wages for training and job search activity

- The regulations provide that you must pay participants the minimum wage for orientation, training, and community service work. Job search activity alone, however, is not considered training. You may pay participants for engaging in job search activity, such as participation in a job club, but you are not required to do so unless the job search activity is provided in conjunction with required training. Of course, you may only provide SCSEP services, such as training or job search assistance, to participants assigned to host agencies.
- If you do pay wages for job search activities, you must record these hours in field 15.2 or 15.3 of the wages screen so the hours can be properly reported.

V. PAYMENT OF WAGES AND BENEFITS/EFFECT OF SCSEP WAGES

8. Garnishment of SCSEP wages

- Nothing in the Older Americans Act prevents the garnishment of SCSEP wages. Grantees will have to look at the law under which a judgment was obtained against the participant (or at state law generally) to determine the extent to which SCSEP wages can be garnished in a particular state.

VI. RE-ENROLLMENT

VI. RE-ENROLLMENT

1. Re-enrollment

- Grantees should make sure that their policies address the issue of re-enrollment, specifically under what circumstances a participant may be re-enrolled and what is the effect of re-enrollment on durational limits for program participation.
- You can choose to re-enroll a participant who exited for any reason, provided the participant is not job-ready and meets the other eligibility requirements. However, if the participant was terminated from the prior enrollment for cause, you should generally not provide re-enrollment unless there has been a substantial change in circumstances.
- Re-enrollment is not limited to 90 days of exit. It does require a new application and a new participant intake. A participant seeking to re-enroll is subject to the priorities of service in effect at the time. If there are no available slots or the re-enrolling participant is lower in priority than other applicants, you can place the re-enrolling participant on the waiting list. To initiate a re-enrollment, just do a participant search as you would for a first enrollment and select the participant's name when it is displayed in the search results.

2. Entering re-enrollments in the data system

- Re-enrollment requires the completion of a new intake and the creation of a new record in the database. The GPMS uses the participant's Participant ID number and application date to distinguish the original enrollment from the re-enrollment. To create a re-enrollment, users select an existing participant and create a new enrollment for that participant.
- When you create a new enrollment for an individual already in the database, only the basic participant information (name, date of birth, and Social Security number) will be carried over from the prior enrollment. You will enter all other information for this enrollment, and it will be stored in the database separate from the original information.

3. Re-enrolling a participant who quit unsubsidized employment

- If the participant quit a job, you should consider that in deciding whether to take the participant back into the program. If the participant quit with good cause, e.g., was unsuited for the work or had a health problem, worked for less than 30 days, and asked to come back within 90 days of exit, the right of return would apply. You would also be justified in exercising your discretion to re-enroll an applicant who sought to return after 90 days. Before taking the participant back into the program, you should determine whether another placement would be appropriate. If the participant quit a job because he or she lacked sufficient skill but was otherwise job-ready, you should try to find a more suitable job.
- On the other hand, if the participant quit under conditions that would have amounted to a failure to comply with the IEP, e.g., the job was suitable but the participant really did not want to work in any job, you might not let him or her exercise the right of return, or you could take the participant back only if he or she agreed to cooperate in the future and you could treat the quit as a failure to accept a job referral under the IEP. You do not have to permit the participant to re-enroll. Re-enrollment is discretionary, and a participant who

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has been terminated for cause or has demonstrated an unwillingness to abide by the program's rules may not be entitled to a second enrollment.

- Furthermore, if the participant has worked a sufficient time to demonstrate that he or she is job-ready, the participant would no longer be eligible for re-enrollment. Job-ready applicants, including former participants, must be referred to the American Job Center.

4. Re-enrolling an applicant who previously withdrew from the waiting list

- You must take an application from anyone who wishes to apply. You must apply the priorities of service in deciding whom to enroll when you do not have sufficient positions available for all applicants. You do not have to enroll applicants who cannot benefit from the program or who have failed to cooperate. However, an applicant's withdrawing from the waiting list and then reapplying would not ordinarily be grounds to refuse to serve an otherwise qualified applicant, especially if you have an opening or the applicant meets a priority or preference.

5. Re-enrollment when there is no available slot

- If a former participant is eligible and you decide to re-enroll the individual but do not have an opening, you should complete the participant form, determine the individual eligible, and then place the individual on the waiting list until a position is available.
- An individual seeking re-enrollment is subject to the priorities of service like any other applicant.

VII. TRANSFERS

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1. Transfer of participant vs. re-enrollment

- Transfers of participants between grantees are usually done for the convenience of the participants or to avoid disruption of service when a grantee has insufficient funds to support all filled positions. Transfers of participants only (as opposed to the movement of positions, Topic 3 below) require approval from SCSEP Help; they do not require the approval of the state grantee where the positions are located.
- Transfers of participants between grantees must be done by agreement of two grantees, not the unilateral action of a participant, and must be consistent with SCSEP policy. When a participant has been transferred, the participant retains the status that he or she had at the transferring (donor) project. The participant does not have to be recertified (as long as the last eligibility check was within the last 12 months), nor is the participant subject to priority of service at the new project. A participant can always terminate from one project and seek to re-enroll in another project. However, such unilateral action requires re-enrollment; that means a new application with an eligibility determination and application of the priorities in effect at the new project at the time of application.
- Typically, when a participant moves from the area, the participant terminates from the first project and seeks to re-enroll in the new project. However, nothing prevents the project that the participant is leaving from contacting the new project and seeing if a transfer is possible. The new project may not be able to accept the transfer if it does not have any positions available. Furthermore, it is not obligated to accept the transfer, and it may not be willing to accept the transfer if it has higher priority applicants on its waiting list.
- When there has been a transfer (as opposed to an exit and a re-enrollment), the donor project does not have a true exit and thus does not have an outcome that is reflected in its performance measures. The true exit occurs when the participant leaves the new (recipient) project.

2. Transfer of participant vs. change of sub-grantee

- The change of a sub-grantee – whether for an entire project or for a single participant – is neither a transfer nor a re-enrollment. A transfer can only occur between grantees. A change of sub-grantee occurs within a single grantee. The GPMS contains a utility for changing entities – either transferring participants from one grantee to another or changing sub-grantees within a grantee. This utility is used to change the sub-grantee for a single participant or multiple participants. The grantee administrator enters the codes of the donor and recipient sub-grantees into the utility. The GPMS then moves the affected enrollment records from the donor sub-grantee to the recipient sub-grantee.
- For changes of sub-grantee during a program year, all QPRs after the date of the change in sub-grantee will treat participants who have been moved to a new sub-grantee as though they have always been enrolled with the recipient sub-grantee. Although this may lead to some inaccuracy in the performance measures of the new sub-grantee for the balance of the program year, the QPR for the grantee, which is all that is used for official monitoring of performance, will be accurate. As long as everyone understands that the

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QPR for the new sub-grantee includes performance by the old sub-grantee, the new sub-grantee should not be unfairly evaluated.

3. Transfer of participant vs. movement of positions

- The movement of authorized positions between grantees is done for a variety of purposes; e.g., to complete a new competitive process for national grantees; to achieve equitable distribution (ED) or change ED based on recent Census data; to avoid disruption of service; to simplify administration when one host agency has participants from multiple projects; or to swap positions in the same or different states to improve efficiency. The movement of positions (as opposed to the transfer of a participant without the movement of positions) requires the approval of the state grantee where the positions are located, the FPO, and the national office.

4. Performance measures credit: transfer vs. re-enrollment

- In the case of a transfer, there is no true exit from the donor grantee so there is no effect on the performance measures. The recipient grantee will be credited with the employment outcomes when there is a true exit from the recipient grantee. Those outcomes can be either positive or negative.
- In the case of an exit from one grantee and subsequent re-enrollment with another grantee, each grantee gets its own credit. If the participant exited from one grantee for personal reasons and did not start a placement, the original grantee would have a negative outcome on the employment outcome measures. If the participant subsequently re-enrolled with a different grantee, only the new grantee will receive credit for the employment outcomes when the participant leaves the second program.

5. Repeated transfer by sub-grantee of same participant between grantees

- A sub-grantee that works for two different grantees cannot routinely transfer a participant between the two grants. This is not allowed as a general practice because it distorts the performance measures. It results in a sub-grantee receiving credit for serving two participants, and two grantees receiving credit for serving the same participant, when no additional services have usually been provided.
- In special circumstances, such as to avoid a premature exit when a grantee has unexpectedly run out of money at the end of the program year, participants may be moved to another grant. The movement of a participant from one grant to another is a transfer. It can only be done with the approval of both grantees. It cannot be done unilaterally by the grantee and must be limited to legitimate and unforeseen circumstances. The FPO and the national office must be notified whenever a transfer is being initiated because of a lack of funds.

6. Minimum time of enrollment before transfer

- There is no minimum time requirement for transfers. The only requirement is that the transfer be done by agreement of the affected grantees, and, of course, that the transfer must be for a legitimate reason. (See Topic 5 above.)

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7. Transfer and right of first refusal

- If a participant is transferred at the initiative of the grantee, e.g., for administrative reasons such as a lack of funding, the participant is entitled to the “right of first refusal.” This means the right to remain in the current host agency assignment under the same working conditions for 90 days after the date of transfer. In addition, the participant will fall under the IDL policy of either the donor grantee or the recipient grantee, whichever is more favorable to the participant.

VIII. DURATIONAL LIMITS

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1. Types of durational limits

- SCSEP has two distinct durational limits: average project duration (APD) for grantees; and individual durational limits (IDL) for participants.
- Grantees are limited to an average project duration of 27 months for all participants in the aggregate. Each spring, as part of the grant application, grantees may seek an extension of the 27-month average duration to 36 months for the coming program year. (Grantees may also seek an extension during the program year if circumstances warrant it.) This 27-month average project duration does not apply to any individual participant.
- Regardless of durational limits, a grantee may not enroll job-ready participants. If a participant has been in another grantee's project for a long time, the participant may be job-ready. In that case, the participant may not be enrolled by the new grantee but must be referred to the American Job Center.
- Separate and apart from the average grantee durational limit, individual participants have a lifetime durational limit of 48 months with any and all projects and any and all grants, including ARRA, regular SCSEP grants, and additional grant funds. Grantees may seek an extension of the 48-month duration for individual participants.
- The Waiver of Durational Limit (WDL) Report in the GPMS is designed to help grantees manage individual durational limits, and the QPR displays the average project duration for each grantee and sub-grantee.
- Grantees are required to have an individual durational limit (IDL) policy that adopts one of three possible durational limits for individual participants: 48 months with no possibility of an extension; 48 months with the possibility of an extension for participants who have any one of the 8 waiver factors; and 48 months with the possibility of an extension under certain conditions, e.g., the participant must have certain specified waiver factors or the participant may only receive one 12-month extension. Durational limits less than 48 months are not permitted.
- Participants must be informed of the durational policy (including the possibility of an extension, if applicable under the grantee's policy) at the time of enrollment and annually thereafter. Participants who are approaching their durational limit and are unlikely to find unsubsidized employment prior to exit must be provided with transition services. The transition plan must be reflected in the participant's IEP. See field 10.3 of the Participant Required Action section of Module II for information on extensions of the individual duration limit.
- Both limits are calculated from July 1, 2007, or the date of enrollment, whichever is later. They include any and all enrollments in any SCSEP grant and with any grantee. The calculation excludes time on an approved break in participation. The individual durational limit date (DLD) for someone who has no approved breaks in participation or other complications, including prior enrollments, will be the day before the date of initial assignment plus 4 years. So, if the initial assignment date was June 1, 2023, the DLD would be May 31, 2027. (Participants enrolled between March 1, 2020, and February 28, 2021, had a durational limit of 60 months due to the COVID-19 pandemic.) Guidance on the durational limits is available on the Community of Practice.

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2. Extension of individual participant duration

- A grantee must determine through its durational limit policy whether participants are entitled to an extension and, if so, under what conditions. Grantees are required to include their durational limit policies in their annual grant applications; they are also permitted to request a modification of their policies during the program year. Any change in policy that is less favorable to participants can only be effective at least 120 days after DOL has approved it, and the grantee must inform all affected participants of the change. A grantee can adopt a policy of allowing no extensions, only one extension or a limited number of 12-month extensions, or infinite extensions. A grantee can permit an extension for any one of the statutory waiver factors or may allow only certain waiver factors to be considered.
- There is no particular approach required for notifying participants of the possibility of an extension of your durational policy. However, it is good practice to state the nature of any extension in your durational policy – that it is good for only 12 months (but may be renewed if the policy so provides and the participant qualifies), that participants must continue to meet all the other eligibility requirements, and that the grantee is not obligated to offer an extension the following year – which you must give to each participant. You can have participants sign an acknowledgement of the policy when you give it to them. It is also helpful to reiterate these caveats in the letter informing an individual participant that the extension has been granted.
- DOL has issued numerous administrative guidances and training resources on durational limits and the extension process, including in the TEGs for the annual grant application.

3. Managing average project duration

- The SCSEP Community of Practice has a webinar that discuss both the Individual Durational Limit (IDL) and Average Project Duration (APD): “SCSEP Durational Limits: What Do They Mean for Grantees and Participants.” There is also a two-page summary of the two limits on the Community of Practice: “Durational Time Limits for SCSEP.”
- Every new participant you enroll starts with one day of duration and serves to reduce your APD. The key to managing APD is maintaining a robust and efficient customer flow. To do that, you need to manage exits effectively, which, in turn, will lead to an increase in your employment outcome measures. You should fill all vacancies, you should also examine the time it takes you to fill a vacancy, and you should maintain a healthy waiting list of applicants who can be assigned as soon as a vacancy occurs. If your APD is too high, you should also consider changing your IDL policy to Option 1 if it is Option 2 or 3. Finally, you should ensure that all participants who are on leaves of absence are put on approved break in the GPMS; this stops the clock for both IDL and APD.

4. Paying participants who work beyond their durational limit date

- The SCSEP statute and regulations require that grantees/sub-grantees pay participants for all work performed at the host agency. Grantees are required to have systems in place to ensure that all participants who are approaching their durational limit are identified in a timely manner and are properly granted an extension, if eligible, or are properly exited. The GPMS has tools that were designed specifically for this purpose. If the grantee/sub-grantee, through its own negligence, failed to exit the participant on time, or, through

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miscommunication with the host agency, allowed the participant to work at her community service assignment after she was exited, you are required to pay wages for the time actually worked. If the host agency was negligent or acted in violation of its agreement with you, you may have recourse against the host agency, but that is a matter between you and the host agency.

- Although the payment of participant wages is an allowable cost, grantees are not supposed to incur costs for serving individuals who are no longer eligible. Therefore, depending on the circumstances, the additional wages that you pay to participants who have exceeded their durational limit may constitute disallowed costs.

5. OJE or other paid training after durational limit date

- Older Worker Bulletin 04-04, which governs training provided to participants, states that only eligible SCSEP participants may receive an OJE. Participants must remain assigned to a host agency while the training takes place. An OJE may not extend beyond, or be initiated after, the actual exit or the durational limit date, whichever is sooner. The same is true for other forms of paid training. An exception is allowed where the participant has qualified for an extension of the durational limit under the grantee's policy and the extension is entered into the GPMS on or after the durational limit date.