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# Recent Developments in the Job Corps Program: Frequently Asked Questions

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September 2, 2015

**Congressional Research Service**
7-5700
www.crs.gov
R43611

# Summary

The Job Corps program is a job training and academic program for youth ages 16 to 24 who are low-income and have a barrier to employment, such as having dropped out of high school. It is administered by the Employment and Training Administration's (ETA's) Office of Job Corps in the U.S. Department of Labor (DOL). Job Corps seeks to provide disadvantaged youth with the skills needed to obtain and hold jobs, enter the Armed Forces, or enroll in advanced training or higher education. The program was established under the Economic Opportunity Act of 1964 (P.L. 88-452), and was most recently reauthorized under the Workforce Innovation and Opportunity Act (WIOA, P.L. 113-128) through FY2020. Most of the provisions of the law went into effect on July 1, 2015. The FY2015 appropriation for Job Corps was $1.69 billion.

This Frequently Asked Questions (FAQ) report provides an overview of recent developments in the program, including a gap in program funding, a proposal to close a limited number of centers, and changes in procurement practices for the operation of Job Corps centers.

**Gap in Program Funding:** Congress appropriates funding for Job Corps under three accounts: Administration; Operations; and Construction, Rehabilitation, and Acquisition (CRA). Appropriations for the program have been approximately $1.6 billion to $1.7 billion in each year since FY2007. Of the three accounts, Operations is the largest, with funding ranging from $1.46 billion to $1.58 billion annually. Job Corps operates on a program year (PY) basis, which runs from July 1 through the following June 30. In both PY2011 and PY2012, the operations account experienced a funding shortfall. Congress authorized the transfer of funds from the CRA account and other ETA accounts to close funding gaps of $46.3 million in PY2011 and $67.4 million in PY2012 to the Operations account. In addition, ETA implemented cost-saving measures such as suspending enrollment of new students for nearly three months in PY2012. A May 2013 DOL Office of Inspector General (OIG) performance audit examined the reasons for the shortfall in PY2011, and found that several factors contributed. These factors included not planning for costs associated with three new Job Corps centers, and lack of consistent monitoring of costs throughout the program year. The OIG has since determined that ETA has implemented all of the needed corrective actions that were identified in the report.

**Job Corps Center Closure:** As part of the budget request for FY2013, DOL proposed to close a small number of Job Corps centers. This proposal was also included in the FY2014 and FY2015 budget requests. The congressional justification for FY2015 cited that some centers are "chronically low-performing" based on students' educational and employment outcomes and have been among the lowest-ranked centers in multiple years. In January 2013 and July 2014, DOL published a proposed methodology and a revised methodology, respectively, for selecting centers for closure. The methodologies included the following three primary criteria: performance rating, the extent to which centers operate at full capacity in regard to student enrollment, and the condition of facilities at each center. The notices specified that some centers would be exempt from closure, such as those that are the only center in a state. In August 2014, DOL published its final methodology, which was the same as the revised methodology, and proposed to close the Treasure Lake Job Corps center in Oklahoma. In October 2014, DOL issued a final decision to close the center. All students left the Treasure Lake Job Corps Civilian Conservation Center by February 28, 2015. Students who had not completed the program transferred to other nearby centers that offered the career and technical training the students had chosen.

**Job Corps Contracting and "Rule of Two:"** DOL uses cost-reimbursement contracts for the operation of Job Corps centers. With a cost-reimbursement contract, the government generally assumes the risk of increases in performance costs because it agrees to repay the contractor for allowable, reasonable, and allocable costs of performing certain work, up to a total cost specified

in the contract. The term "Rule of Two" is commonly used as shorthand in discussing federal laws governing "set-asides" for small businesses. A set-aside is a competition in which only small businesses may participate, and in recent years ETA has set aside Job Corps center contracts when the Rule of Two is satisfied. This shift in DOL's procurement practices has prompted challenges from several incumbent large businesses that operate Job Corps centers, which would be ineligible for any set-aside contracts. In litigation, these contractors have generally alleged that DOL is prohibited from setting aside contracts for the operation of Job Corps centers because WIA specifies that DOL "shall select on a competitive basis" entities to operate centers. To date, however, federal courts have uniformly rejected this argument on the grounds that federal contracting law characterizes small business set-asides as "competitive procedures."

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# Introduction

The Job Corps program is administered by the Office of Job Corps (OJC) in the Department of Labor's (DOL's) Employment and Training Administration (ETA). The program consists primarily of 124 residential centers throughout the country that provide employment and academic training to disadvantaged youth ages 16 to 24.[1] Of the 124 centers, 27 are known as civilian conservation centers (CCCs), which are operated by the U.S. Forest Service, an agency within the U.S. Department of Agriculture (USDA). DOL transfers funding for these centers to USDA under an interagency agreement. Job Corps has been most recently authorized by the Workforce Innovation and Opportunity Act (P.L. 113-128) through FY2020. The law's provisions generally went into effect on July 1, 2015.[2] Funding for Job Corps in FY2014 is $1.69 billion.[3]

The purpose of Job Corps is to provide disadvantaged youth with the skills needed to obtain and hold jobs, enter the Armed Forces, or enroll in advanced training or higher education. Job Corps participants must be ages 16 through 24, low-income, and facing one or more of the following barriers to education and employment: (1) basic skills deficient; (2) being a school dropout; (3) homeless, a runaway, a foster child, or aged out of foster care; (4) a parent; (5) individuals who require additional education, career and technical education or training, or workforce preparation skills to be able to obtain and retain employment that leads to economic self-sufficiency; or (6) victims of a severe form of trafficking, as defined by the Trafficking Victims Protection Act.[4] In addition to receiving academic and employment training, young people also engage in social and other services to promote their overall well-being. The program has enrolled approximately 32,000 to 43,000 participants annually in recent years.[5] Job Corps centers are mostly operated for DOL by private companies through selective competitive contracting processes.

This Frequently Asked Questions (FAQ) report provides responses to questions about three recent developments in the program:

- gap in funding,
- a proposal to close centers (unrelated to the funding gap), and
- Job Corps contracting practices.

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[1] These centers operate in all states, the District of Columbia, and Puerto Rico. Two new Job Corps centers, Wind River Job Corps Centers (WY) and the Manchester Job Corps Center (NH), began operating on July 1, 2015. The Treasure Lake Job Corps Center (OK) closed in May 2015.

[2] For further information about changes to Job Corps under WIOA, see CRS Report R40929, *Vulnerable Youth: Employment and Job Training Programs*, by Adrienne L. Fernandes-Alcantara. Other program requirements are found at 20 C.F.R. §670 (Job Corps) and DOL, ETA, Office of Job Corps, *Policy and Requirements Handbook*, http://www.jobcorps.gov/libraries/pdf/prh.sflb. See also, U.S. Department of Labor, Employment and Training Administration, "Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking," PUT 80 *Federal Register* 20689–21150, April 16, 2015; and U.S. Department of Labor, Employment and Training Administration and U.S. Department of Education, "Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Notice of Proposed Rulemaking," PUT 80 *Federal Register* 20573—20687, April 16, 2015.

[3] U.S. Congress, House Committee on Rules, 113th Cong., 2nd sess., Committee Print 113-32 to the Senate Amendment to the Consolidated Appropriations Act, 2014 (H.R. 3547), which was enacted as P.L. 113-76.

[4] A veteran is eligible if he or she meets the eligibility criteria; however, the income requirement does not apply if the veteran's income earned in the military (within the six-month period prior to applying for the program) exceeds the income limit.

[5] DOL, ETA, Job Corps, "Who Job Corps Serves," http://www.jobcorps.gov/Libraries/pdf/who_job_corps_serves.sflb.

For further background about the Job Corps program and the program requirements under WIOA, see CRS Report R40929, Vulnerable Youth: Employment and Job Training Programs.

# Gap in Funding

## How Is Funding Appropriated for Job Corps, and What Are the Program's Recent Funding Levels?

Congress appropriates funding for Job Corps under three accounts—Administration; Operations; and Construction, Rehabilitation, and Acquisition (CRA). Administration funding provides for the salary, travel, and training for staff in the Job Corps national office and six regional offices. Operations funds are used to operate Job Corps centers, including academic and career training, student stipends, and center staff salary, among other items. This account also provides funding for outreach and admissions activities to recruit new students and career transition services to assist students leaving the program. CRA funding provides for the rehabilitation of current facilities; modernization of classroom and training buildings; repair (including emergency repairs) of building deficiencies to address life, safety, and health; the construction of new buildings when further repair is not cost effective; and, as directed by Congress, the acquisition of sites and construction of buildings for new centers.

**Table 1** includes Job Corps appropriations, with applicable rescissions, for FY2007 through FY2015. Appropriations increased over this period, from $1.61 billion in FY2007 to $1.70 billion in FY2015, an increase of 5.0%; however, appropriations were reduced in four years (FY2008 and FY2011 through FY2013) from the previous year's appropriation. Of the three accounts, Operations is the largest, with funding ranging from $1.46 billion to $1.58 billion annually (and $35 million under the American Recovery and Reinvestment Act [ARRA, P.L. 111-5]).[6] The CRA account received an annual appropriation of $80 million to $115 million (except that it received $212 million under ARRA). Finally, the appropriation for Administration was approximately $28 million to $32 million in each year over the period (and $2.5 million appropriated under ARRA).

**Table 1. Final Appropriations for Job Corps, FY2007-FY2015, and Funding Under the American Recovery and Reinvestment Act (ARRA, P.L. 111-5)**

(Dollars in thousands)

| Fiscal Year | Administration | Operations | CRA | Total |
|---|---|---|---|---|
| FY2007 | $28,579 | $1,470,357 | $107,920 | $1,606,855 |
| FY2008 | 28,079 | 1,459,408 | 110,947 | 1,598,434 |
| FY2009 | 28,662 | 1,540,276 | 115,000 | 1,683,938 |
| ARRA (FY2009 & FY210) | 2,500 | 35,854 | 211,646 | 250,000 |
| FY2010 | 29,190 | 1,574,015 | 105,000 | 1,708,205 |
| FY2011 | 29,132 | 1,570,049 | 104,801 | 1,706,171 |
| FY2012 | 29,077 | 1,569,078 | 104,792 | 1,702,946 |

[6] ARRA provided additional funding to job training and employment programs, including Job Corps. Funding was available for FY2009 and FY2010.

| Fiscal Year | Administration | Operations | CRA | Total |
|---|---|---|---|---|
| FY2013 | 27,556 | 1,487,006 | 99,310 | 1,613,872 |
| FY2014 | 30,147 | 1,578,008 | 80,000 | 1,688,155 |
| FY2015 | 32,330 | 1,580,825 | 75,000 | 1,688,155 |

**Source:** Compiled by CRS based on DOL, ETA, *FY2015 Congressional Budget Justification: Job Corps*, FY2009-FY2015; *Operating Plan*, FY2011-FY2014; and Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235).

**Notes:** Includes applicable rescissions, and for FY2013, sequestration pursuant to the Budget Control Act of 2011 (P.L. 112-25), as amended by the American Taxpayer Relief Act of 2012 (P.L. 112-240). Administration funds are available on a fiscal year basis (October 1 to September 30) and Operations and CRA funds are available on a program year basis (July 1 to June 30).

## When Did Job Corps Have a Gap in Funding and How Large was the Shortfall?

Job Corps operates on a program year basis, which starts on July 1 and ends the following June 30. The program had a funding gap in its Operations account in both Program Year 2011 (July 1, 2011-June 30, 2012) and Program Year 2012 (July 1, 2012-June 30, 2013). The shortfall in PY2011 was $46.3 million and the shortfall in PY2012 was $67.4 million. The program did not have a shortfall in PY2013 (July 1, 2013-June 30, 2014) or PY2014 (July 1, 2014-June 30, 2015).

DOL took steps to close the funding gap through both transfer of funds and implementing cost-saving measures. A Government Accountability Office (GAO) report from January 2015 discusses the factors DOL considered when determining the extent to which it would use these mechanisms to address the financial challenges in the program.[7] The report also describes how DOL engaged stakeholders in discussions about use of selected cost-saving measures.

### PY2011

As part of the FY2011 appropriations law (P.L. 112-10), Congress appropriated $1.7 billion, including $1.6 billion to the Operations account. The law authorized DOL to transfer up to 25% of appropriated funds from the CRA account to "meet the operational needs of such centers or to achieve administrative efficiencies."[8] According to DOL, the Office of Job Corps first anticipated in July 2011 that the Operations account faced a shortfall, and it would need to use a "substantial portion" of the authority in P.L. 112-10 to transfer funds from the CRA account.[9] By April 2012, ETA recognized that the entire authorized amount (i.e., $26.2 million = 25% of CRA appropriations) would need to be transferred. On June 4, 2012, the Office of Management and

[7] U.S. Government Accountability Office, *Job Corps: Assessment of Internal Guidance Could Improve Communications with Contractors*, GAO-15-93, January 2015, pp. 12-14. (Hereinafter, U.S. GAO, *Job Corps: Assessment of Internal Guidance Could Improve Communications with Contractors*.)

[8] U.S. House of Representatives, H.Rept. 112-331, *Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2012 Conference Report to Accompany* H.R. 2055, committee print, 112th Cong., 1st sess., December 15, 2011. CRS reviewed appropriation laws for FY1999 through FY2015. During this period, Congress has authorized DOL to transfer funds in each of FY2011 through FY2015 from the CRA account or other accounts specifically to the Operations or Administration accounts.

[9] Letter from Brian V. Kennedy, DOL Assistant Secretary for Congressional and Intergovernmental Affairs, to The Honorable Tom Harkin and The Honorable Richard Shelby, United States Senate, July 20, 2012. (Hereinafter Letter from Brian V. Kennedy, DOL Assistant Secretary for Congressional and Intergovernmental Affairs, July 20, 2012.) Available upon request.

Budget (OMB) approved the transfer of $26.2 million from the CRA account to the Operations account.

Despite reductions in spending by centers and contractors, the Operations account continued to have a shortfall. DOL then received authorization from OMB to transfer up to $5.4 million from the ETA/Training and Employment Services (TES) and ETA/State Unemployment Insurance and Employment Service Operations (SUIESO) accounts to the Operations accounts.[10] DOL ultimately transferred $2.2 million from the Dislocated Worker National Reserve account in the TES appropriation. In total, DOL transferred $28.4 million to the Operations account to shore up its funding for PY2011. The cost-saving measures DOL put into place (discussed later in this section) equaled another $17.9 million. Together, the transfers and cost-saving measures recovered $46.3 million. At the end of PY2011, $7.7 million remained in the Operations account. ETA had obligated the funds to contracts but contractors had not spent the funds by the end of the program year. **Table 2** summarizes this information below.

**Table 2. Efforts to Close Funding Gap for PY2011 in the Job Corps Operations Account**

| Efforts to Close Funding Gap | Amount Saved |
|---|---|
| Transferred Funds[a] | $28.4 million |
| Cost-Saving Measures (Spending Cuts) | $17.9 million |
| *Total Amount Used to Cover Funding Gap* | *$46.3 million* |
| Unexpended Funds at End of Program Year | $7.7 million |

**Source:** U.S. Government Accountability Office, *Job Corps: Assessment of Internal Guidance Could Improve Communications with Contractors*, GAO-15-93, January 2015; and CRS, based on correspondence with DOL, Office of Congressional and Intergovernmental Affairs, April 30, 2014 and August 18, 2015.

a. Of this amount, $26.2 million was transferred from the Job Corps Construction, Rehabilitation, and Acquisition (CRA) account to the Operations account and $2.2 million was transferred from Dislocated Worker National Reserve Account in ETA/Training and Employment Services (TES).

## PY2012

Job Corps also experienced a shortfall in the Operations account during FY2012. The final FY2013 appropriations law (P.L. 113-6) authorized DOL to transfer up to $30 million of unobligated funds—from previous appropriations laws or P.L. 113-6, as of March 26, 2013 (the date of the law's enactment)—to the Operations account from other ETA accounts. Notably, these funds could be used to fund operations in program year (PY) 2012 (which ended June 30, 2013) and possibly PY2013 (which ends June 30, 2014). The law required that of any amount transferred, a minimum of $10 million must be transferred to support PY2012 operations within 30 days of enactment of the law. It further required that within 15 days of the transfer, DOL was to submit a report to the appropriations committees including (1) the source of the transferred funds; (2) Job Corps programs, projects, or activities for which funds will be used; (3) a detailed

[10] DOL's authority to transfer funds from the TES and SUIESO accounts is derived from the FY2011 appropriations law (P.L. 112-10), which, as a continuing resolution, incorporated provisions from the FY2010 appropriations law (P.L. 111-117). Section 102 of P.L. 111-117 authorized the transfer of up to 1% of any discretionary funds for the DOL between a program, project, or activity, but "no such program, project, or activity shall be increased by more than 3 percent by any such transfer."

explanation of the need for the transfer; and (4) cost-saving measures implemented in PY2012 and PY2013, as well as the savings gained by implementing each initiative.

On May 7, 2013, DOL submitted letters to the Committees on Appropriations to indicate that $10 million was transferred from the ETA Training and Employment Services (TES) account to the Job Corps Operations account for PY2012.[11] Specifically, the funds used were from the Dislocated Worker National Reserve Pilots and Demonstration funding. The letter also included information that responded to the other requirements in the appropriations law. The cost-saving measures (discussed later in this section) achieved $57.4 million in savings.[12] Combined with the transferred amount of $10 million, the Operations account recovered $67.4 million for PY2012. At the end of PY2012, $3.2 million remained in unexpended operations funds. See **Table 3**.

**Table 3.Efforts to Close Funding Gap for PY2012 in the Job Corps Operations Account**

| Efforts to Close Funding Gap | Amount Saved |
|---|---|
| Transferred Funds | $10.0 million |
| Cost-Saving Measures (Spending Cuts) | $57.4 million |
| *Total Amount Used to Cover Funding Gap* | *$67.4 million* |
| Unexpended Funds at End of Program Year | $3.2 million |

**Source:** CRS, based on correspondence with DOL, Office of Congressional and Intergovernmental Affairs, August 18, 2015.

## What Caused the Gap in Funding?

In May 2013, the DOL Office of Inspector General (OIG) released a performance audit report that discussed the cause of the PY2011 shortfall and addressed whether DOL management had implemented adequate internal controls over Job Corps funds and expenditures during the first five months of PY2012 (July 1, 2012 through November 30, 2012).[13]

### PY2011

The report found that the PY2011 shortfall was due to

- initial planning for costs that did not account for increased expenditures for three new centers;
- untimely communication about projected costs that exceeded appropriations for the program;

[11] Letter from Seth Harris, DOL Acting Secretary to The Honorable Barbara Mikulski and The Honorable Richard Shelby, United States Senate, and The Honorable Harold Rogers and The Honorable Nita M. Lowey, U.S. House of Representatives, May 7, 2013.

[12] U.S. GAO, *Job Corps: Assessment of Internal Guidance Could Improve Communications with Contractors*. and CRS, based on correspondence with DOL, Office of Congressional and Intergovernmental Affairs, August 18, 2015.

[13] DOL, Office of Inspector General, Office of Audit, *The U.S. Department of Labor's Employment and Training Administration Needs to Strengthen Controls Over Job Corps Funds*, Report No. 22-13-015-03-370, May 31, 2013, http://www.oig.dol.gov/public/reports/oa/2013/22-13-015-03-370.pdf. (Hereinafter DOL, Office of Inspector General, Office of Audit, *The U.S. Department of Labor's Employment and Training Administration Needs to Strengthen Controls Over Job Corps Funds*.)

- inaccurate accounting for projected obligations; and
- lack of consistent monitoring of costs throughout the program year.

According to the report, ETA developed two initial spending plans for the program at the beginning of PY2011, one of which projected spending for Operations to be $1.61 billion. This projected level was higher than the Operations appropriations by approximately $38 million. A second spending plan provided projected Operations costs within the appropriated amounts; however, ETA could not confirm for the DOL OIG whether either plan was the initial PY2011 Operations spending plan. The report also explained that as the year progressed, projected Operations costs (under either spending plan) increased over the appropriation level primarily because ETA did not account for $18 million of estimated costs for three Job Corps centers. In April 2012, an ETA budget analyst communicated to ETA management (which then communicated to DOL management) that there were not enough funds available to cover Operations for the last quarter of PY2011 (April 2012 through June 2012). In response, DOL transferred $28.4 million and implemented cost-saving measures in June 2012, as discussed previously. The OIG report found that ETA ultimately did not develop and implement policies that required the agency to retain all records of the initial PY2011 spending plan.

### PY2012

Separately, the OIG report examined whether DOL management implemented controls over Job Corps funds and expenditures, including contracting activities, for the first five months of PY2012. The report discussed concerns about program management across four issue areas: (1) policies, procedures, and communication of information; (2) budget execution; (3) data supporting spending projections and monitoring; and (4) monitoring of projected to actual costs. The report found deficiencies with internal controls in each of these areas. **Table 4** summarizes these findings.

**Table 4. Summary of Findings from DOL OIG Report on Program Management Issues in PY2012**

| Issue Area | Findings |
|---|---|
| Policies, procedures, and communication of information | (1) ETA lacks procedures requiring that financial and program risks are communicated to appropriate personnel. According to the DOL OIG, this may result in appropriate personnel not being aware of such risks, and corrective actions may not be implemented in a timely manner.<br>(2) ETA lacks procedures to address unique aspects of Job Corps activities, such as monitoring over the six regional offices. In addition, existing procedures are outdated and do not accurately reflect current processes or responsibilities with regard to Job Corps funds management, contracting, and expenditure activities.<br>(3) ETA does not have assessments to address whether the agency has adequate personnel with the appropriate skills sets to effectively manage the Job Corps program. |
| Budget Execution | (4) ETA did not develop the initial PY2012 Operations spending plan using key assumptions that may have assisted them with accurately managing Job Corps funds.<br>(5) ETA does not maintain documentation to demonstrate that proper analysis is completed to show that the amount of funds apportioned to the program on a quarterly basis was based on projected operational needs. According to the DOL OIG, this could cause funds for Operations to not be appropriately and efficiently allocated throughout the year. |

| Issue Area | Findings |
|---|---|
| Data supporting spending projections and monitoring | (6) ETA established policies for developing cost models in 1986, and did not have procedures in place to monitor and update this policy so that it would incorporate more current guidance and assumptions for the Job Corps program since 1986. According to the DOL OIG, this could result in outdated cost estimates that are not adequate for assessing whether contract award amounts are acceptable.<br>(7) DOL does not dedicate resources to routinely reconcile data in three information systems. According to the DOL OIG, this may lead to incomplete and inaccurate information that is used to make program and financial decisions.<br>(8) ETA lacks policies and procedures to specify the timeframe for processing vouchers that are submitted by Job Corps contractors for payment of reimbursable costs. According to the DOL OIG, this could lead ETA to record expenditures in the improper period, and could lead to cash flow issues for contractors. |
| Monitoring of projected to actual costs | (9) ETA did not monitor total projected Job Corps contract costs against actual contract costs over the period analyzed (July 1, 2012, through September 30, 2012) in PY2012. ETA also did not implement required procedures to evaluate variance of planned to actual contract costs if the variance exceeds a certain threshold. According to the DOL OIG, this could lead to ETA not properly analyzing spending trends and therefore not implementing corrective actions in a timely manner.<br>(10) ETA lacks procedures that require contractors to explain variation between actual and planned expenses in their cost reports. In addition, established procedures do not address how contracting officers should address cost variance that exceeds an established threshold and how their actions should be documented. |

**Source:** CRS, based on DOL, Office of Inspector General, Office of Audit, *The U.S. Department of Labor's Employment and Training Administration Needs to Strengthen Controls Over Job Corps Funds,* Report No. 22-13-015-03-370, May 31, 2013.

## What Cost-Saving Measures Did DOL Adopt to Close the Gap in Funding?

DOL put into place both short-term and long-term cost-saving measures to prevent further shortfalls in the Operations account in both PY2011 and PY2012.[14] A 2015 GAO report includes a compilation of all the cost-saving measures.[15]

A small number of changes were effective in June 2012, the final month of PY2011, and applied primarily to PY2011 spending.[16] The changes in PY2011 included (1) modifying contracts to temporarily cut spending in non-mission critical areas such as administrative expenses, purchasing, and staff travel; (2) adjustment of the start of the summer break by three days so it commenced in PY2012, and therefore PY2012 funds were used to transport students home; (3) temporarily suspending student enrollment in June 2012; (4) enrolling new students after the summer break, thereby beginning these new enrollments in PY2012. DOL explained that the

[14] Information about the cost-saving measures was communicated to congressional staff via listserv email notices from DOL's Office of Congressional and Intergovernmental Affairs, congressional briefings, and in letters. Letters were from Seth Harris, DOL Acting Secretary to The Honorable Barbara Mikulski and The Honorable Richard Shelby, United States Senate, and The Honorable Harold Rogers and The Honorable Nita M. Lowey, U.S. House of Representatives, May 7, 2013; and Letters from Brian V. Kennedy, DOL Assistant Secretary for Congressional and Intergovernmental Affairs, to Senators Tom Harkin and Richard Shelby, July 20, 2012.

[15] U.S. GAO, *Job Corps: Assessment of Internal Guidance Could Improve Communications with Contractors*, pp. 8-11 and Appendix II.

[16] Letter from Brian V. Kennedy, DOL Assistant Secretary for Congressional and Intergovernmental Affairs, to Senators Tom Harkin and Richard Shelby, July 20, 2012.

adjustment to the start of the summer break and delayed enrollment of new students eliminated transportation costs at the end of PY2011. These cost-saving measures achieved $17.9 million in savings.[17]

The remaining cost-saving measures were implemented in PY2012, and apply either to a portion of the program year or indefinitely. For example, such changes included (1) suspending all new enrollments except for selected populations, from January 28 through April 22, 2013; (2) implementing a new policy that winter and summer breaks no longer qualify for paid leave; (3) revising the structure and payment amounts for clothing allowances to students; and (4) revising and updating policies on health and wellness; among other changes. As discussed previously, these and other cost-saving measures achieved $57.4 million in savings.[18]

## How Has the Students' Experience Been Affected by the Gap in Funding?

DOL first became aware of the gap in funding in April 2012, which was in the final quarter of PY2011. As previously discussed, DOL suspended student enrollment in the last month of PY2011 and for approximately four months in PY2012. **Table 5** includes the number of students who attended a Job Corps center (i.e., "on board") in each of PY2008 through PY2014. The table shows that the number of students on board over the course of each year from PY2007 through PY2011 was approximately 41,000 to 43,000. The numbers decreased in subsequent years, except that the number of students in PY2014 was higher than in PY2013. In most years, the share of students enrolled was 94% to 98% of total capacity (or "average on-board strength," OBS) for the program; however, capacity was 89% in PY2013 and 93% in PY2014.

DOL restructured contracts with center operators to reduce budgets that reflected lower levels of on-board strength. All centers had reductions in planned OBS. According to DOL, "[r]educing OBS was a critical step in ensuring that Job Corps' total financial and budgetary commitments aligned with the appropriation."[19]

**Table 5. Student "On Board," Program Years 2007-PY2014**

"On Board" refers to students who attended a Job Corps center

| Measure | PY2008 | PY2009 | PY2010 | PY2011 | PY2012 | PY2013 | PY2014 |
|---|---|---|---|---|---|---|---|
| Students Attended (On-Board Strength) | 41,853 (96% of capacity) | 43,201 (99% of capacity) | 42,793 (98% of capacity) | 42,982 (97% of capacity) | 37,609 (84% of capacity) | 31,746 (89% of capacity) | 35,371 (93% of capacity) |

**Source:** CRS, based on DOL, ETA, Office of Job Corps, *Quarterly Highlights Report*, Fourth Quarter of Program Year 2007-2012, http://www.jobcorps.gov/AboutJobCorps/performance_planning.aspx; and DOL, ETA, *FY2015 Congressional Budget Justification: Job Corps*, p. JC-22; and CRS correspondence with DOL, ETA, November 13, 2014 and August 18, 2015.

**Note:** OBS refers to the extent to which a center operates at full capacity in terms of student enrollment. For example, if a center achieved 100% OBS in a given program year, the center operated at full capacity.

17 Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, April 30, 2014.

18 U.S. GAO, *Job Corps: Assessment of Internal Guidance Could Improve Communications with Contractors*.

19 DOL, ETA, *FY2015 Congressional Budget Justification: Job Corps*, p. JC-21.

The January 2015 GAO report also discusses related concerns for students who were in the program during the enrollment freeze. For example, students were prohibited from participating in advanced training (which is offered for students who want to progress beyond their usual training). The GAO report also noted that another cost-saving measure—reducing biweekly stipends for newly enrolled students (from $50 to $35 every two weeks)—made it more difficult for students to purchase necessities such as toiletries and clothing. In addition, as a result of increasing the student-teacher ratio through staff cuts, students reported that they were in overcrowded classrooms and lost experienced staff with whom they had built strong relationships.[20]

## Was There a Funding Gap in PY2013 and PY2014?

There was not a gap in funding for PY2013 (July 1, 2013-June 30, 2014) and PY2014 (July 1, 2014-June 30, 2015). According to the FY2015 DOL budget justification, expenditures by contractors in PY2012 were less than the amounts obligated to the contracts due to the cost-saving measures and lower student enrollment than expected after the enrollment suspension was lifted in April 2012. As a result, some funds remained available for obligation on those contracts at the end of PY2012. The budget justification explained that just over $40 million was reallocated PY2013. According to DOL, these funds were allocated to increase student enrollment and revising the Job Corps Policy and Requirements Handbook (PRH).[21]

## What Steps Did DOL Take to Improve Financial Oversight Within the Program?

In response to the OIG's work on the funding shortfall in the Job Corps program, ETA provided information about the action it took beginning in PY2011 to correct financial and other issues that contributed to the shortfall. According to ETA, the Secretary of Labor instituted a managerial oversight process that involved routine meetings among a DOL oversight committee—made up of ETA executive management and representatives from the Office of the Chief Financial Officer (OCFO), the Office of the Assistant Secretary for Administration and Management (OASAM), the Office of the Solicitor (SOL), and other departmental offices[22]—to address budget, contracting, and operational issues. The oversight committee instituted improvements that included increasing coordination between the Office of Job Corps, ETA, and the oversight committee; created a weekly process beginning in May 2012 to generate and review analyses of cost-saving measures and/or cost-saving projections; initiated and reviewed the development of a cost-prediction model for use in budgeting and cost saving; and conducted and published a skill assessment for all DOL financial personnel in December 2012, among other activities.

[20] U.S. GAO, *Job Corps: Assessment of Internal Guidance Could Improve Communications with Contractors,* pp. 23-25.

[21] Ibid. Funds were also used to modernize equipment and technology at centers and to provide support for closing out contracts.

[22] The OCFO is responsible for the financial leadership of DOL and its primary duty is to uphold strong financial management and accountability. The OASAM provides the infrastructure and support that enables DOL to perform its mission, including providing leadership and support for budget and finance and information technology. SOL's mission is to meet the legal service demands of the entire department.

In August 2012, DOL consolidated the financial management functions of ETA and the ETA Office of Contracts Management (OCM)[23] into a new Office of Financial Administration (OFA) within ETA. OFA was created to strengthen internal controls over the program, including controls to monitor planned versus actual costs. It took over the Job Corps budget and accounting roles and responsibilities that had previously been carried out by the Office of Job Corps. OFA also assumed responsibility from the Office of Job Corps of approving spending plans for operations and construction funds. OFA works with OCM staff to ensure that Job Corps more timely and accurately accounts for costs incurred in its cost-reimbursement contracts. In addition, OFA works with personnel in the OJC regional offices to monitor costs.[24]

Further, ETA took corrective action on each of the following six recommendations made in the OIG report to improve oversight of Job Corps:

- establish criteria and thresholds for detecting potential financial and program risks to be routinely documented and communicated;
- develop and implement formal procedures or enhance existing policies and procedures in various areas;
- conduct a formal assessment of human capital resource needs for processes and internal controls over Job Corps funds;
- periodically review and update the policy for independent government cost estimates used in Job Corps center contracting activities;
- formally reconcile data on a routine basis; and
- evaluate the cost-benefit of creating system interfaces for three information systems used primarily in supporting Job Corps operations.

As part of the Senate report (S.Rept. 113-71) to accompany the Labor-Health and Human Services-Education appropriations bill for FY2014 (S. 1284), Congress directed DOL to provide a report on the department's progress in implementing the OIG recommendations.[25] DOL provided this report to Congress in September 2014, noting that the department has instituted several initiatives to strengthen and coordinate existing controls to ensure that obligations stay within budget and to track contractor expenditures.[26]

In addition, the explanatory statement to accompany the FY2015 appropriations law (H.R. 83, signed into law as P.L. 113-235) directed DOL to provide semi-annual updates to the House and Senate Committees on Appropriations on implementation of the recommendations in the OIG report.[27] Further, the Workforce Innovation and Opportunity Act (WIOA) calls for similar

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[23] The ETA Office of Contract Management was created in 2010. It awards contracts, and works with contract officials in the Office of Job Corps regional offices throughout the presolicitation to proposals phases of each contract.

[24] DOL, Office of Inspector General, Office of Audit, *The U.S. Department of Labor's Employment and Training Administration Needs to Strengthen Controls Over Job Corps Funds*.

[25] U.S. Congress, Senate Committee on Appropriations, *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2014*, 113th Cong., 1st sess., July 11, 2013, 113-71. The report directed DOL to provide the report to Congress by December 31, 2013; however, the final FY2014 appropriations law (P.L. 113-76) was enacted on January 17, 2014.

[26] DOL, *Progress on Implementing the Recommendation in Inspector General Report, The U.S. Department of Labor's Employment and Training Administration Needs to Strengthen Controls Over Job Corps Funds*, September 3, 2014.

[27] "Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83," *Congressional Record*, daily edition, vol. 161, part 2 (December 11, 2014), p. H9827. The Explanatory statement also directs DOL to provide semiannual updates that respond to a separate OIG report, in April 2014, on oversight of student travel funds. See, (continued...)

reporting. In February 2015, DOL submitted a report to Congress to address financial reporting requirements for the period covering July 1, 2014, through December 31, 2014. The report noted that DOL continues to make "significant progress to resolve and close" the OIG recommendations, and anticipated that all of the recommendations would be classified as closed by the middle of calendar year 2015.[28] In March 2015, the OIG's office informed ETA it had completed all the needed corrective actions specified in the report, and closed the recommendations.[29]

Separately, DOL is taking other measures to improve financial management, including creating a workgroup to facilitate communication about financial management challenges between national officials and contractors. The group is also examining challenges and potential solutions related to tracking funds across the program year and contract year.[30]

DOL has also moved forward with increasing the number of enrolled students that can be accommodated within the appropriations levels. On February 21, 2014, DOL conducted a conference call to invite comments from operators and other Job Corps stakeholders on its proposal to allocate additional student slots to high-performing Job Corps centers. On May 6, 2014, DOL announced that it would use PY2010 through PY2012 Center Report Card data to determine which centers are high-performing and to allocate slots among these centers.[31] The Center Report Card data ranks each center based on factors primarily related to student outcomes.[32] DOL subsequently increased student slots at 65 centers based on their performance.[33] Among the 65 centers, a high-performing career technical training (CTT) program, or trade, was expanded. Such CTT programs include electrical, computer technician, and weatherization, among others. Increases at the centers were implemented via modifications to center contracts and (for centers operated by USDA) memoranda.[34] In February 2015, DOL submitted a report to

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Office of Inspector General, Office of Audit, *Job Corps Needs to Improve Controls Over Student Travel Funds*, Report No. 26-14-001-03-370, April 29, 2014.

[28] DOL, ETA, *Report to Applicable Committees on the Department of Labor, Employment and Training Administration, Office of Job Corps' Oversight and Financial Reporting*, February 2015. (Hereinafter, DOL, ETA, *Report to Applicable Committees on the Department of Labor, Employment and Training Administration, Office of Job Corps' Oversight and Financial Reporting*.)

[29] Memorandum from Elliot P. Lewis, Department of Labor Assistant Inspector General for Audit, to Portia Wu, Department of Labor Assistant Secretary for Employment and Training, March 24, 2015.

[30] U.S. GAO, *Job Corps: Assessment of Internal Guidance Could Improve Communications with Contractors*, p 26.

[31] DOL ETA, *Job Corps Program Instruction No. 13-32, Increasing New Students/On-board Strength (OBS) Capacity*, May 6, 2014.

[32] The explanatory statement to accompany the FY2015 appropriations law (H.R. 83, signed into law as P.L. 113-235) states that in light of additional funding that remained in PY2012, Congress "places a high priority on maximizing student enrollment within the appropriation provided, and directs the Secretary to provide a report on the policies and procedures in place to address this priority within 60 days of enactment of this act. "Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83," Congressional Record, daily edition, vol. 161, part 2 (December 11, 2014), p. H9827.

[33] For further information about performance management, see DOL, ETA, Office of Job Corps, "Job Corps Performance Management System Overview Guide," http://www.jobcorps.gov/Libraries/pdf/jc_performance_management_system_overview_guide.sflb. (Hereinafter DOL, ETA, Office of Job Corps, "Job Corps Performance Management System Overview Guide.") Performance data are not available for the Denison (Iowa) and Pinellas (Florida) centers because they are part of the "Centers for Excellence," which exempted them from the performance rankings.

[34] Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, May 5, 2014.

Congress that discussed its efforts at increasing student slots at the centers.[35] According to DOL, there are no plans to increase enrollment "unless additional budget resources are realized."[36]

Separately, DOL is in the process of reviewing the Job Corps Policy and Requirements Handbook (PRH) to identify potential areas for additional cost savings and improve management of the program. [37] The PRH includes extensive guidance on the various requirements of the program. DOL identified earlier cost-saving measures by assessing whether PRH requirements were necessary or could be modified to reduce cost. In response to the FY2014 appropriations language, DOL submitted a report to Congress to describe its progress on reviewing and updating the PRH.[38] The report explained that DOL is engaging stakeholders to make changes to the PRH, and plans to meet several objectives through the revision process. Such objectives include enhancing the delivery of job-based training to students; promoting stronger connections with employers to determine hiring needs and designing programs to be responsive to those needs; and providing work-based learning opportunities, among others.

## To What Extent Do WIA and WIOA Address Financial Oversight?

WIA did not require reporting on financial oversight measures specifically for Job Corps; however, the Workforce Innovation and Opportunity Act (WIOA) requires DOL, beginning with PY2015 (July 1, 2015-June 30, 2016), to prepare and submit reports to Congress that include (1) information about implementing financial oversight measures suggested in the 2013 DOL IG report about oversight of Job Corps funding, a (2) description of any budgetary shortfalls in the period covered by the report, and (3) a description and an explanation for approving contract expenditures that are in excess of the amount specified under a contract. The reports must be submitted to Congress every six months, beginning on the date of the enactment of the act for a three-year period and annually for the two-year period that follows. WIOA further requires DOL to submit an additional report to Congress if the program has a budget shortfall, including an explanation of how the shortfall will be addressed. The report must be submitted within 90 days after the shortfall is identified.[39]

In February 2015, DOL submitted a report to Congress to address the three requirements under WIOA for the period covering July 1, 2014, through December 31, 2014 (though the WIOA provisions went into effect on July 1, 2015). The report noted that DOL continues to make "significant progress to resolve and close" the OIG recommendations, and anticipated that all of the recommendations will be classified as closed by the middle of calendar year 2015. (As mentioned, the OIG's office informed ETA in March 2015 that the office had completed all the corrective actions recommended in the report.[40]) The report also explained that there were no

[35] DOL, ETA, *FY2015 Report of the Department of Labor to the Appropriations Committee on Job Corps On-Board Strength*, February 20, 2015.

[36] Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, August 18, 2015.

[37] Ibid.

[38] DOL, ETA, *FY2015 Congressional Budget Justification: Job Corps*, pp. JC-9 and JC-21. S.Rept. 113-71 to accompany the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2014 (S. 1284) directed DOL to prepare the report. S.Rept. 113-71 noted that the Senate Appropriations Committee supports DOL's efforts to revise the PRH and encouraged DOL to seek input from all stakeholders in Job Corps. See DOL, ETA, *Report to House and Senate Appropriations Committees on the Efforts of the Department of Labor to Improve and Update the Policy and Requirements Handbook for the Job Corps*, no date.

[39] Section 161(a) of WIOA.

[40] Memorandum from Elliot P. Lewis, Department of Labor Assistant Inspector General for Audit, to Portia Wu, Department of Labor Assistant Secretary for Employment and Training, March 24, 2015.

budgetary shortfalls during the reporting period and PY2013. Further, ETA did not approve any contract expenditure in excess of the amount specified under the contract for the reporting period.[41]

# Closure Proposal

## Why Did DOL Propose to Close Some Job Corps Centers?

DOL first proposed to close a small number of Job Corps centers as part of the budget request for FY2013. This proposal was also included in the FY2014 and FY2015 budget requests. The congressional justification for FY2015 cited that some centers are "chronically low-performing" based on their educational and employment outcomes and have been among the lowest ranked centers in multiple years despite DOL interventions. The justifications went on to say that "it should no longer continue to expend resources on the small number of chronically low-performing centers that have repeatedly failed to provide participants with the highest quality of Job Corps programming."[42]

## How Does DOL Currently Monitor Center Performance, and Under Which Circumstances Can DOL Close a Center Due to Performance?

Job Corps currently manages center performance based on requirements established pursuant to WIA. The new performance system under WIOA is to go into effect at the beginning of PY2016 (July 1, 2016).

Section 159(c) and Section 159(d) of WIA require Job Corps to establish more than 20 core performance and related metrics.[43] These measures cover a range of outcomes, including whether a participant entered employment, average wage, and retention in postsecondary education or employment, among others. In addition, DOL implemented an additional 33 performance metrics to assess the program's performance. These measures were developed from DOL policy and the Government Performance and Results Act (GPRA), which established requirements in statute for most agencies to set performance goals, measure performance, and report the information to Congress for potential use.[44]

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[41] DOL, ETA, *Report to Applicable Committees on the Department of Labor, Employment and Training Administration, Office of Job Corps' Oversight and Financial Reporting*.)

[42] DOL, ETA, *FY2015 Congressional Budget Justification: Job Corps*, pp. JC-17 and JC-22.

[43] Under WIOA, Job Corps will have both similar and new performance measurements. WIOA directs DOL to establish expected levels of performance for the program and individual centers that relate to each of the six primary indicators of performance that were established for youth programs (Youth Activities. YouthBuild, and Job Corps) under Title I of the law. Specifically, these indicators pertain to (1) entry into education, training, or unsubsidized employment (during both the (a) second quarter and (b) fourth quarter after exiting the program); (2) median earnings; (3) obtaining a recognized postsecondary credential or secondary school diploma or its equivalent; (4) participation in an education or training program that leads to a credential or employment; and (5) program effectiveness in serving employers. WIOA further specifies performance measures for the outreach and admissions (OA) staff and career transition services (CTS) providers. For further information, see CRS Report R40929, *Vulnerable Youth: Employment and Job Training Programs,* by Adrienne L. Fernandes-Alcantara.

[44] DOL, ETA, Office of Job Corps, "Performance Management System Overview Guide." A September 2011 report by the DOL Office of the Inspector General raised concerns about how Job Corps has implemented its performance (continued...)

Section 159(f)(2) of both WIA and WIOA specify that a Job Corps center failing to meet expected performance levels (as specified in the law) can be placed under a performance improvement plan (PIP). PIPs are documented plans that outline deficiencies in program performance, corrective actions, and targets for improvement. Under the law, the plan must encompass certain actions taken by DOL, including providing technical assistance to the centers; changing the career and technical education offered at the center; changing the management staff of the center; replacing the operator of the center; reducing the capacity of the center; relocating the center; or closing the center. Section 159(f) also enables DOL to establish a PIP when a Job Corps center fails to meet additional criteria established by the Secretary. These discretionary PIPs must include the actions described above.

Some civilian conservation centers operated by USDA's Forest Service are under PIPs.[45] Only Corrective Action Plans (CAPs) had been used with other centers. CAPs address specific aspects of operations, such as career technical training. DOL has explained that these centers have not been placed under PIPs because DOL can replace low-performing operators via the contracting process.[46] As mentioned above, the PIP process also allows for a center to be closed.[47]

Section 159(g) of WIA and Section 159(j) of WIOA require certain action by the Secretary of Labor prior to the closure of any Job Corps center. The Secretary must ensure (1) that the proposed decision to close the center is announced in advance to the general public through publication in the *Federal Register* or other appropriate means; (2) that a reasonable comment period, not to exceed 30 days, is established for interested individuals to submit written comments to the Secretary; and (3) that the Member of Congress who represents the district in which a center is located is notified within a reasonable period of time in advance of any final decision to close the center.

## What Steps Has DOL Taken to Close Centers?

On August 14, 2012, DOL held a webinar with the Job Corps community to solicit input on factors for closing centers. According to DOL, more than 100 Job Corps stakeholders participated in the session and provided suggestions on the criteria that should be used. The suggestions focused on performance, geographic location, local economic impact, contract budgets, facilities, and the time period for evaluating chronic low performance.

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metrics. The report specifies that the Office of Job Corps reported inaccurate results for some metrics; did not establish results and/or targets for other metrics; did not publicly publish required results; and miscalculated the cost of each program participant. See DOL, Office of the Inspector General, *Job Corps Needs to Improve Reliability of Performance Metrics and Results*, Report No. 26-11-004-03-370.

[45] As of August 2015, five civilian conservation centers (CCCs), operated by USDA, were on PIPs. Section 147(c)(2) of WIA enabled (and Section 159(f)(4) of WIOA enables) the Secretary to select an entity to operate a CCC on a competitive basis, if the center fails to meet national performance standards established by the Secretary; however, DOL has not used this authority to convert a USDA center into a contract center. Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, August 18, 2015.

[46] DOL may take such action under its contract authority. Most Job Corps center contracts are structured with a two-year base period and three one-year options, exercised at the government's discretion. DOL has the authority to not exercise an option, or may, through the competitive procurement process, select a different operator upon the expiration of the five-year contract. It may also cancel or terminate the contract prior to its expiration. Terminations can be partial, affecting only certain requirements under the contract, or total.

[47] DOL, ETA, *FY2015 Congressional Budget Justification: Job Corps*, p. JC-17.

On January 10, 2013, DOL published a request for comment in the *Federal Register* on its methodology for selecting "a small number of chronically low-performing centers" for closure.[48] The comment period ended on February 11, 2013. DOL received 18 comments about the closure proposal. On June 30, 2014, DOL published a request for comments in the *Federal Register* about a revised methodology for selecting Job Corps centers for closure. The revised methodology was in response to the comments DOL received to the original proposal.[49] The deadline for submitting comments to the revised proposal was July 21, 2014. DOL received 11 comments about the revised methodology. On August 27, 2014, DOL published a third request for comments about the closure proposal. In the notice, DOL noted that it will not make changes to the revised methodology. Further, it went on to say that based on this methodology, the Treasure Lake Job Corps Center in Indiahoma, OK, was selected for closure. DOL requested public comment on the selection of this center for closure.[50] On October 9, 2014, DOL issued a final notice to close the Treasure Lake Center.[51] All students left the Treasure Lake Job Corps Civilian Conservation Center on February 28, 2015. Students who had not completed the program were transferred mostly to nearby centers that offered the career and technical education programs the students had chosen.[52]

Both of the first two notices explained that the proposal to close centers was part of DOL's "ambitious reform agenda" to improve the performance of centers, including federal oversight of operations and performance outcomes for all centers. The notices further explained DOL's performance oversight procedures that had been in place:

Job Corps has intensified and reinforced federal oversight of operations and performance outcomes for all centers. Federal program managers supervise centers through monitoring visits, desk audits, and Contractor Performance Assessment Reports during each contractor's performance period. Job Corps regional offices also conduct the Regional Office Center Assessments. Through these oversight activities, Job Corps federal program managers develop Performance Improvement Plans (PIPs) for entire centers that need improvement, or Corrective Action Plans (CAPs) to address specific aspects of operations, such as career technical training. Both PIPs and CAPs are used for continued monitoring and implemented for USDA and contract centers respectively. These oversight actions have strengthened collaboration between Job Corps, contractors, and the USDA to rectify deficiencies, and improve policy compliance and performance outcomes. Job Corps regional offices also conduct the Regional Office Center Assessments.[53]

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[48] DOL, "Methodology for Selecting Job Corps Centers for Closure; Comments Request," 78 *Federal Register* 2284, January 10, 2013.

[49] DOL, "Revised Methodology for Selecting Job Corps Centers for Closure; Comments Request," 79 *Federal Register* 36823, June 30, 2014.

[50] DOL, "Final Methodology for Selecting a Job Corps Center for Closure and Center Selected for Closure; Comments Request," 79 *Federal Register* 51198, August 27, 2014.

[51] DOL, "Final Notice of Job Corps Center for Closure," 79 *Federal Register* 61099, October 9, 2014.

[52] Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, August 18, 2015.

[53] According to DOL, federal staff conduct a desk audit of each Job Corps center monthly. This includes a review of management and financial reports in all areas of program operations. Desk audits identify trends in student outcomes and center performance, contractor finances, outreach and recruitment efforts, and placement services to graduates. These audits may prompt federal staff to conduct additional monitoring and oversight in targeted areas, including follow-up site visits, as needed. Each Job Corps center also receives a Contractor Performance Assessment Rating (CPAR) annually. CPARs provide the government's "official" rating of a contractor's performance in operation of a Job Corps center. In response, contractors provide corrective action plans to address low-rated areas of operations. CPARs are the official score used to rate a contractor's past performance when evaluating proposals for new (continued...)

While cost was not cited in the closure notices as a driving factor for proposing the closures, the notices stated that "current budgetary constraints make it even more critical to ensure the program's resources are deployed in a way that maximizes results to students and taxpayers." The FY2015 budget justifications for the program included similar statements. The justifications asserted that DOL "should no longer continue to expend resources on the small number of chronically low-performing centers that have repeatedly failed to provide participants with the highest quality of Job Corps programming."[54] According to the justifications, DOL anticipated that the student slots at the centers that are closed would be reallocated to centers that perform well; and that any savings would be reinvested into the program primarily to serve the most students possible and to enhance education programs.

In its January 10, 2013, *Federal Register* notice, DOL included a methodology for selecting centers for closure. DOL maintained much of the same methodology in the June 30, 2014, notice; however, it proposed a few revisions. The methodology under both the original and revised methodologies included the following three primary criteria:

- Performance rating (Outcome Measurement System [OMS] Center Report Card): This refers to the overall performance of the center, based on the Center Report Card. The Center Report Card ranks each center based on three sets of factors primarily related to student outcomes.[55] According to DOL, the Center Report Card was the guiding factor in selecting centers for closure because it allows for comparison of performance among centers. This factor accounted for the large majority of a center's score under both proposals.
- On-board strength (OBS): This refers to an efficiency rating that demonstrates the extent to which a center operates at full capacity in terms of student enrollment. According to DOL, OBS is already measured as part of efforts to assess center performance.
- Facility condition (FCI): This refers to the condition of residential and learning facilities at the centers. According to DOL, the facility condition affects the outcome of the program because it contributes to a safe learning environment.

Under these criteria, DOL used five recent years of data, PY2008 to PY2012, to assess each of these measures. This was compared to PY2007-PY2011 in the original proposal.[56] In addition to the three major criteria, DOL took into account other factors for both proposals. For example, the notices discussed that at least one center would remain in each state, the District of Columbia, and Puerto Rico. At the time, New Hampshire and Wyoming did not have Job Corps centers. DOL

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procurements. Regional Office Center Assessments (ROCA) are the most comprehensive and intensive evaluation tool used by DOL to oversee Job Corps center program operations and initiate corrective action. Every 24 months, a team of federal staff conduct this on-site, week-long compliance assessment, covering all aspects of center operations. Federal staff use the ROCA report and contractor response to identify and prioritize concerns in each specific area, provide technical assistance and recommendations for corrective action, and conduct regular follow-up via monitoring trips and desktop monitoring of center performance. Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, July 10, 2012.

[54] U.S. DOL, ETA, *FY2015 Congressional Budget Justification: Job Corps*, pp. JC-17 and JC-22. The justifications also cited that by the end of FY2014, DOL anticipated that three fewer centers would be in operation (122 centers total).

[55] Ibid.

[56] The PY2013 ended on June 30, 2014 and the revised proposal would not use these data.

anticipates that a center will open in each of these states in 2015.[57] The District of Columbia and 16 states—Alaska, Colorado, Delaware, Hawaii, Idaho, Indiana, Kansas, Minnesota, Nebraska, Nevada, New Jersey, North Dakota, Rhode Island, South Carolina, South Dakota, and Vermont—each have one Job Corps center.[58] In addition, DOL excluded six centers from consideration because data were not available to evaluate each center over the full five-year period: Long Beach in California, Pinellas in Florida, Denison and Ottumwa in Iowa, New Orleans in Louisiana, Gulfport in Mississippi, and Milwaukee in Wisconsin.[59] (Both of Iowa's two centers were excluded from consideration.) Data for Ottumwa and Milwaukee were not reported for much of this period because the centers were opened between PY2009 and PY2011. Further, DOL noted that the Gulfport site was closed in PY2007 through PY2009 because of Hurricane Katrina; the New Orleans center was also closed for the same reason, in PY2007. Denison, Long Beach, and Pinellas were exempt because as pilot sites in the Job Corps' Center for Excellence initiative, they were not required to report performance data for one year (PY2010).[60]

DOL stated in the first two notices that it would consider whether closure of a center would have a disproportionate impact on students in any one state. The final proposal also incorporated additional considerations that were not discussed in the January 2013 notice, such as exempting centers that were in the top half of performance for PY2013, which ended on June 30, 2014.

DOL applied the revised criteria to determine that the Treasure Lake center would be closed.

## Which States Have Centers That Were Subject to Closure Under the Final Proposal?

**Table 6** lists states and jurisdictions with centers that were subject to closure (32 in total) or not subject to closure (18 in total) under the final methodology. It does not account for the two states, New Hampshire and Wyoming, where a center had not yet opened. This classification is based on the number of centers in each state, except that Iowa has two centers and both were exempt from consideration. DOL also stated in the first two *Federal Register* notices that it could have taken into consideration any disproportionate impact that a center closure would have on a certain subpopulation of students. The August 2014 notice, announcing the proposed closure of the Treasure Lake center, noted that DOL expected to maintain the overall level of enrolled students in the program. In addition, students at the Treasure Lake center would have the opportunity to either complete their training and graduate while the center remains open or transfer to high-performing centers if additional time is needed to complete their training.

[57] CRS correspondence with DOL, ETA, December 5, 2014.

[58] Based on CRS review of DOL, ETA, "Job Corps Locations," http://www.jobcorps.gov/centers.aspx.

[59] Both Iowa and Wisconsin each have two centers, and the other states have more than two centers.

[60] This initiative introduced a new Standards-Based Education & Training Model, and the three centers initially involved—Denison, Long Beach, and Pinellas—were exempt from reporting certain data. Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, March 19, 2013.

**Table 6.Status of States and Jurisdictions Under Job Corps Closure Proposal**

| States and Jurisdictions With Centers That Were Subject to Closure (32) | States and Jurisdictions With Centers That Were Not Subject to Closure (20) |
|---|---|
| Alabama, Arkansas, Arizona, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. | Alaska, Colorado, Delaware, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kansas, Minnesota, Nebraska, Nevada, New Jersey, North Dakota, Rhode Island, South Carolina, South Dakota, and Vermont. |

**Source:** Congressional Research Service (CRS).

**Notes:** DOL sought to ensure that at least one center remained in each state, the District of Columbia, and Puerto Rico. The categorization in this table is based primarily on the number of centers in each state. States that were exempt from closure have no centers or one center; however, Iowa has two centers and both were exempt from consideration because data were not available over the five-year period under which DOL would evaluate program performance, on-board strength, and facility conditions. States that were not exempt from closure include any state with two or more centers, except Iowa. The table does not account for the two states, New Hampshire and Wyoming, where a center had not yet opened.

## What Are the Center Scores Under the Final Methodology?

DOL provided CRS with the overall rating for each of the three primary closure criteria—performance, on-board strength (OBS), and facilities condition index (FCI)—in each of PY2008 through PY2012. The scores were normalized for performance and OBS for each of the five program years. As described in DOL correspondence with CRS, normalized in this case means that the center with the highest score over 100 is assigned a value of 100 and all other scores are divided by the highest number, so that no score exceeds 100.[61] DOL developed a ranking of the centers by assigning weights in each of the five years (i.e., PY2007 = 10%, PY2008 = 15%, etc.) and normalizing those weights on a 100-point scale. The scores for each of the criteria were then weighted (i.e., performance = 70%; OBS = 20%; FCI = 10%) on a 100-point scale. Total scores range from 74.2% to 98.1%, and several centers had similar scores. Further, nearly 50 centers had scores that are 88.0% or greater, suggesting that performance is fairly even across centers.

The explanatory statement to accompany the FY2015 appropriations law (H.R. 83, signed into law as P.L. 113-235), enacted on December 17, 2014, directs DOL to submit in its fiscal year 2015 operating plan a detailed and comprehensive estimate of all costs and savings related to the closure of the Treasure Lake Center. This estimate had to be submitted in coordination with the USDA, which operates the center via the U.S. Forest Service.[62] DOL submitted the estimate, including savings and costs, associated with the closure in February 2015.[63]

[61] Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, June 30, 2014.

[62] "Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83," *Congressional Record*, daily edition, vol. 161, part 2 (December 11, 2014), p. H9827.

[63] DOL, ETA, Report Required by the Congressional Appropriations Committees for Fiscal Year 2015, February 15, 2015.

# Job Corps Contracting and Rule of Two

## How Are Job Corps Contracts Awarded?

Section 147(a)(1)(A) of WIOA directs the DOL Secretary to enter into an agreement with a "Federal, State, or local agency, an area career and technical education school, a residential career and technical education school, or a private organization" to operate each Job Corps center. Section 147(a)(2) directs the DOL Secretary to select "on a competitive basis" an entity to operate a center, and must consider multiple other factors in selecting a center operator. WIA included these same provisions.

In addition, Section 147(b) of WIOA specifies that operators of centers considered high-performing may compete in any competitive selection process carried out for an award to operate the center. This would enable them to compete in any procurement that is underway, including any procurements that have been set aside for a small business.[64] The law addresses the conditions that centers must meet to be considered high-performing.[65]

Job Corps centers are currently operated by a variety of entities. Of the 124 centers, 27 are civilian conservation centers. The remaining 97 centers are operated by private organizations through competitive contracting processes. Of these private organizations, 18 are operated by small businesses; 2 are operated by Native American tribes; 2 are operated by not-for-profit organizations; and 75 are operated by other entities whose revenue exceed the threshold to be considered "a small business."[66]

**What is a Small Business?**

The Small Business Act defines a small business as one that is "independently owned and operated"; is "not dominant in its field of operation"; and meets any size standards established by the Administrator of the Small Business Administration (SBA). The Administrator has established standards which specify firm size by North American Industrial Classification System (NAICS) code. Job Corps is classified under a NAICS code for other technical and trade schools, and limits annual receipts (averaged over three years) to $38.5 million.

15 U.S.C. §632(a)(1)-(2); 13 C.F.R. §§121.101-121.201.

Unlike many other employment and job training programs, which are awarded via competitive grant or formula, DOL uses cost-reimbursement contracts for the operation of Job Corps centers.[67] With a cost-reimbursement contract, the government generally assumes the risk of increases in performance costs because it agrees to repay the contractor for allowable, reasonable,

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[65] For further information, see CRS Memorandum *Job Corps: Analysis of High Performance Provisions Under the Workforce Innovation and Opportunity Act (*P.L. 113-128*)*, by Adrienne L. Fernandes-Alcantara. Available upon request.

[66] Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, on January 8, 2015.

[67] U.S. DOL, ETA, *FY2015 Congressional Budget Justification: Job Corps*, p. JC-16.

and allocable costs of performing certain work, up to a total cost specified in the contract. Additionally, under certain types of cost-reimbursement contracts, the contractor may be entitled to profit in the form of fixed fees or incentive or award fees.[68] Job Corps cost-reimbursement contracts are awarded with fixed and incentive fees. The fees are intended to encourage better-than-average performance in student training and employment goals.[69]

## What Is the Rule of Two?

The term "Rule of Two" is commonly used as shorthand in discussing federal laws governing "set-asides" for small businesses. A set-aside is a competition in which only small businesses may generally participate.[70] Various laws contemplate set-asides whenever the contracting officer reasonably expects that (1) offers will be obtained from at least two responsible[71] small businesses, and (2) the award can be made at fair market price.[72] These two preconditions for set-asides are generally known as the Rule of Two because of the reference to offers from at least two small businesses.

The executive branch initially articulated the Rule of Two as a means of implementing Section 15(a) of the Small Business Act of 1958.[73] Regulations implementing Section 15(a) as to the procurements of civilian agencies initially provided for set-asides whenever offers were expected from a "sufficient number of small business concerns so that awards will be made at reasonable prices."[74] However, defense agencies later adopted regulations that, among other things, called for set-asides whenever offers were expected from at least two small businesses.[75] The latter language was incorporated in the Federal Acquisition Regulation (FAR) when the FAR was promulgated in 1983. Congress also later included the Rule of Two in statutes authorizing set-asides for particular types of small businesses (i.e., disadvantaged, woman-owned, service-disabled veteran-owned, Historically Underutilized Business Zone (HUBZone)).[76]

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[68] See CRS Report R41168, *Contract Types: Legal Overview*, by Kate M. Manuel.

[69] Ibid.

[70] For more on small business set-asides generally, see CRS Report R42981, *Set-Asides for Small Businesses: Legal Requirements and Issues*, by Kate M. Manuel and Erika K. Lunder.

[71] The word *responsible* is a term of art when used in reference to federal contractors, indicating that the contractor has adequate financial resources to perform, or the ability to obtain them; is able to comply with the required or proposed delivery or performance schedule; and has a satisfactory performance record, among other things. See 48 C.F.R. §9.104-1. However, agencies do not have to make an actual determination of responsibility with respect to prospective small business offerors when determining whether the Rule of Two is satisfied. Rather, they need only make an "informed business judgment" that there are at least two small businesses expected to submit offers which are capable of performing. See, for example, Six3 Sys., Inc., B-404885.2 (October 20, 2011) ("[I]n making set-aside decisions, agencies need not make either actual determinations of responsibility or decisions tantamount to determinations of responsibility with regard to prospective offerors; they need only make an informed business judgment that there are small businesses expected to submit offers that are capable of performing.").

[72] The Federal Acquisition Regulation (FAR) defines *fair market price*, for purposes of small business programs, as "a price based on reasonable costs under normal competitive conditions and not on lowest possible cost," and prescribes two different methods of assessing it. One method used with set-asides for small disadvantaged businesses participating in the "8(a) Program" ("8(a) firms") and the other, with set-asides for non-8(a) firms. 48 C.F.R. §19.001 (fair market price); 48 C.F.R. §19.202-6(b) (set-asides for 8(a) firms); 48 C.F.R. §19.202-6(a) (set-asides for non-8(a) firms).

[73] P.L. 85-536, §15, 72 Stat. 395 (July 18, 1958) (codified, as amended, at 15 U.S.C. §644(a)).

[74] 41 C.F.R. §1-1 706-5(a) (1962) (procurements of civilian agencies).

[75] See *Examining the Rule of Two: Hearings before the Subcommittee on Procurement, Innovation, and Minority Enterprise Development of the Committee on Small Business, House of Representatives*, 100th Cong., 1st sess., May 7 & 13, 1987, at 37-38.

[76] It should also be noted that, while §19.502-2(b) of the FAR (discussed below) requires agencies to set aside contracts (continued...)

Another provision of the Small Business Act—Section 15(g)—establishes goals for the percentage of federal contract and subcontract dollars awarded to small businesses generally, as well as to particular types of small businesses.[77] These goals generally serve to ensure that small businesses receive a "fair proportion" of federal contracts, and setting aside contracts for small businesses is one way an agency can meet its goals. However, the goals are focused on the agency (or components thereof) as a whole, while set-aside determinations are made as to individual contracts.

## How Does the Rule of Two Apply to Job Corps Procurements?

The current version of the original Rule of Two regulation—codified in Section 19.502-2(b) of the FAR—provides that "[t]he contracting officer shall set aside any acquisition over $150,000 for small business participation when there is a reasonable expectation that (1) [o]ffers will be obtained from at least two responsible small business[es] ...; and (2) [a]ward will be made at fair market prices."[78] Because this provision uses the word "shall," it has been construed as mandatory, meaning that procurements subject to Section 19.502-2(b) of the FAR must be set aside for small businesses if the Rule of Two is satisfied.[79]

The FAR generally governs the procurements of executive branch agencies, including DOL. There is nothing in the FAR that would suggest that either DOL or procurements for the operation of Job Corps centers are exempt from Section 19.502-2(b). However, DOL historically did not use set-asides when procuring the operation of Job Corps centers, and reportedly only began implementing the Rule of Two in such procurements in the latter part of 2011.[80]

Following this change in DOL practice, in July 2014 Congress enacted legislation that would apparently permit other-than-small businesses to participate in certain set-asides for Job Corps center operations. This legislation provides that "[i]f an entity meets the requirements described in paragraph (2) [regarding "high-performing centers"] as applied to a particular Job Corps center, such entity shall be allowed to compete in any competitive selection process carried out for an award to operate such center."[81] The statute does not define what is meant by "competitive selection process" for purposes of this provision. However, small business set-asides were

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for small businesses generally if the Rule of Two is satisfied, the FAR gives set-asides for specific types of small businesses precedence over set-asides for small businesses generally. See 48 C.F.R. §19.203(a) & (c). In other words, agencies must at least "consider" using a set-aside for HUBZone, disadvantaged, woman-owned, or service-disabled veteran-owned small businesses *prior to* using a set-aside for small businesses generally. However, assuming none of these other types of set-asides is used, a set-aside for small businesses generally is required if the Rule of Two is satisfied.

[77] 15 U.S.C. §644(g)(1)-(2).

[78] 48 C.F.R. §19.502-2(b).

[79] See, for example, DNO Inc., B-406256, B-406256.2 (March 22, 2012) ("Contracting officers generally are required to set aside for small business all procurements exceeding $150,000 if there is a reasonable expectation of receiving fair market price offers from at least two responsible small business concerns."); Metasoft, LLC, B-402800 (July 23, 2010) ("Under FAR sect. 19.502-2(b), a procurement with an anticipated dollar value of more than [$150,000] must be set aside for exclusive small business participation when there is a reasonable expectation that offers will be received from at least two responsible small business concerns and that award will be made at a fair market price.").

[80] Based on CRS correspondence with DOL, Office of Congressional and Intergovernmental Affairs, February 4, 2015.

[81] Section 147(b)(1) of WIOA.

characterized as "competitive procedures" in earlier litigation regarding the permissibility of set-asides for the operation of Job Corps centers, as discussed below.[82]

## What Recent Litigation Involves DOL Set-Asides for Small Businesses?[83]

The change in DOL's procurement practices in 2011 prompted challenges from several incumbent "large businesses," which are generally ineligible for any set-aside contracts. In litigation, these contractors have generally alleged that, notwithstanding Section 19.502-2(b) of the FAR, DOL was prohibited from setting aside contracts for the operation of Job Corps centers. They pointed out that the Workforce Investment Act, which then imposed certain requirements upon Job Corps procurements, stated that, "[e]xcept as provided in subsections (c) and (d) of Section 303 of the Federal Property and Administrative Services Act [(FPASA)]," the Secretary of Labor "shall select on a competitive basis" entities to operate centers.[84] According to the challengers, this language meant that contracts for center operations could not be set aside because set-asides do not involve selections on a "competitive basis," and are not authorized by Subsections 303(c) and (d) of FPASA.[85]

However, reviewing federal courts have uniformly rejected this argument on the grounds that FPASA, as amended by the Competition in Contracting Act (CICA), characterizes small business set-asides as "competitive procedures."[86] Thus, according to the courts, even if set-asides do not constitute "full and open competition" under CICA, they qualify as selections on a "competitive basis" for purposes of WIA because they are "competitive procedures." While WIOA was not in effect at the time of these rulings, WIOA also requires DOL to select center operators on a "competitive basis."[87]

The courts also rejected protesters' arguments that set-asides of procurements for the operation of specific Job Corps centers were impermissible because DOL did not determine whether a "fair proportion" of its contracts had been awarded to small businesses prior to using a small business set-aside. According to the protesters, prior to determining whether the Rule of Two is satisfied, the procuring activity must first determine, pursuant to Section 15(a) of the Small Business Act, that a set-aside is necessary to maintain a "'fair proportion' of small-business participation in any industry."[88] The reviewing courts disagreed, however, finding that the "fair proportion determination" required by Section 15(a) is "not made in the context of individual contracts, but is reflected in high level policy judgments made on an ongoing and iterative basis by the

[82] See sources cited, infra, note 74.

[83] See also CRS Legal Sidebar WSLG738, *Appeals Court Finds Set-Asides for Small Businesses Not Barred by Workforce Investment Act*, by Kate M. Manuel.

[84] 29 U.S.C. §2887(a)(2)(A). While the FAR typically governs the procurement of goods and services by executive branch agencies, it would generally not supersede any procurement-related requirements specifically imposed on an agency by statute. See generally CRS Report R42826, *The Federal Acquisition Regulation (FAR): Answers to Frequently Asked Questions*, by Kate M. Manuel et al.

[85] Instead, small business set-asides are authorized by Subsections 303(a) and (b) of FPASA.

[86] Adams & Assocs., Inc. v. United States, 109 Fed. Cl. 340 (2013), aff'd, 741 F.3d 102 (Fed. Cir. 2013); Res-Care, Inc. v. United States, 107 Fed. Cl. 136 (2012), aff'd, 735 F.3d 1384 (Fed. Cir. 2013); Mgmt. & Training Corp. v. United States, 115 Fed. Cl. 26 (2014); Mgmt. & Training Corp. v. United States, No. 12-561C, 2012 U.S. Claims LEXIS 1580 (November 29, 2012).

[87] Senate debate, *Congressional Record*, vol. 155, part 198 (December 22, 2009), p. S13735.

[88] *Adams & Assocs.*, 109 Fed. Cl. at 352.

President and the heads of agencies."[89] The courts further noted that the Rule of Two itself is one means by which the executive branch has chosen to satisfy the obligation to award a "fair proportion" of contracts to small businesses,[90] and that agencies effectively comply with the requirements of Section 15(a) by complying with the Rule of Two.

It should be noted, however, that in at least one decision, the court explicitly referenced material in the administrative record showing "a pattern of set-asides [for the operation of Job Corps centers] made in reliance on expressions of interest from a relatively limited pool of small businesses."[91] Assuming that there is a small number of potential small businesses that can compete for Job Corps contracts, it would appear that, at some point in the future, DOL might be able to conduct only unrestricted competitions for the operation of a Job Corps center. This is because offers might no longer be reasonably expected from at least two small businesses. Individual small businesses are effectively limited in the number of centers they may operate (and other work they may perform) because they cease to qualify as "small" if their annual receipts (averaged over three years) exceed $38.5 million.[92]

The litigation regarding whether set-asides are barred by WIA appears to have come to an end, with no new cases reportedly being filed or decided since 2014. However, more recently, one Job Corp contractor has alleged that DOL's practices in setting aside certain contracts are inconsistent with the joint explanatory agreement to the Consolidated Appropriations Act, 2014 (P.L. 113-76). In relevant part, the explanatory agreement provides that

> When evaluating contract renewals or re-bids, due consideration should be provided to the federal investment already made in high-performing incumbent contractors as part of a full, fair, and open competitive process. As part of this process, the Department of Labor (DOL) should consider documented past performances of student outcomes and cost-effective administration as important factors in Job Corps procurements.[93]

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## Acknowledgments

The section on Job Corps contracting is based on work completed by the author and Kate Manuel, Legislative Attorney.

[89] Ibid., at 353.

[90] Ibid.

[91] Ibid., at 357.

[92] 13 C.F.R. §121.201 (size standard for operators of Job Corps centers).

[93] Explanatory Statement, Division H as included in Congressional Record, Book I, January 15, 2014, p. H475.