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**MAINE DEPARTMENT OF LABOR  
POLICY AND PROCEDURES**

<b>ISSUANCE DATE:</b>	<b>November 1, 2009</b>
<b>POLICY NUMBER:</b>	<b>06-08</b>
<b>RECISSION:</b>	

**To:** Local Board Directors

**From:** **Melanie Arsenault**, Director  
Bureau of Employment Services

**CC:** CareerCenter Distribution  
Service Provider Directors  
BRS Director  
BES Commerce Center-Augusta  
SESC Financial Staff

**SUBJECT:** Workforce Investment Act Sanctions Policy

**BACKGROUND**

This notice transmits policy regarding the State's approach to oversight of the Workforce Investment Act (WIA) Title I services. It is the Maine Department of Labor (MDOL), Bureau of Employment Service's (BES) intent to be fully supportive of the local delivery system. Technical assistance, clarification, and the reasonable corrective action opportunities will be offered before any administrative sanctions are applied to performance related issues.

This policy provides guidance concerning those instances where sanctions may become necessary. The policy applies to programs funded under WIA Title I Youth, Adult and Dislocated Worker (including National Emergency Grants)

This MDOL/BES policy is based on sanctions-related sections of WIA 20 CFR Part 652, Subpart D, § 666.420(a)(b), and Subpart G, §667.700 to 667.740.

**POLICY**

WIA 20 CFR Sec. 667.705 states that the Governor is responsible for all funds granted to the State under WIA Title I Youth, Adult and Dislocated Worker. In turn, the Governor

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holds Chief Local Elected Officials (CLEOs) responsible for all WIA funds they receive, including the proper expenditure, accounting, and reporting of such funds. The law and its accompanying regulations also hold the Governor responsible for monitoring sub recipient compliance with WIA, pertinent rules, and other applicable federal and State laws and policies.

The requirements BES uses for managing program grants are contained in:

- A. All federal and state statutes and regulations relevant to the specific programs,
- B. BES policies, directives, and instructions including the WIA Tracking manual, Procurement policies, applicable OMB Circulars,
- C. Local Plan Instructions, the WIA State Planning Guidelines (which includes the State Plans for WIA Title I Youth, Adult and Dislocated Worker Funds and Wagner-Peyser), etc; and,
- D. The grant or contract (including the narrative or plan and the grant/contract agreement - boilerplate, budget, and attachments) or interagency agreement.

## OVERSIGHT AND PREVENTION

### Oversight Activities

BES oversight processes involve the following:

1. Undertake periodic review and monitoring of its grantees' activities for compliance with WIA, federal regulations, and State policies and procedures.
2. Identify and notify grantees of problem areas discovered during review and monitoring and outline action required, including time schedules.
3. Continue to monitor implementation of corrective actions for resulting improvements in the deficient area(s). Where corrective action is on going (e.g., debt collection for miss expenditure of funds), no further action or sanction would be imposed unless corrective action was not completed or had failed.
4. The State may waive the imposition of certain sanctions if it determines there has been adequate grantee action to:
  - a. Establish and adhere to an appropriate system for the award and monitoring of contracts with sub-grantees, which contains acceptable standards for ensuring accountability.
  - b. Enter into a written contract with such sub-grantee that establishes clear goals and obligations in unambiguous terms.
  - c. Act with due diligence to monitor the implementation of the sub grantee contract, including carrying out the appropriate monitoring activities including audits at reasonable intervals.
  - d. Take prompt and appropriate corrective action upon becoming aware of any evidence of a violation of WIA, federal regulations, and State policies and procedures by such grantee.

## B. Preventive Efforts

BES intends to fully support the local service delivery system. To that end, a recommendation that sanctions be applied will be an absolute last resort. Technical assistance, clarification, and reasonable corrective action opportunities will be offered first. There may be instances where technical assistance would not be appropriate and where progressive action may begin without technical assistance. There may also be instances where a violation has not yet occurred, but the grantee will be notified of the potential problem so that corrective action may be taken on the recipient's own volition.

1. If a Local Workforce Investment Board (LWIB) fails to meet contract performance measures (WIA Section 666.310) in any program year, BES may require that, within a specified period of time, the LWIB:
  - (A) Complete a performance improvement plan,
  - (B) Modify its local plan, or
  - (C) Take other action designed to improve the LWIB's performance.
2. An LWIB's failure to complete the corrective measures described in the performance improvement plan within the specified time limits may result in the BES imposing sanctions described under this policy including withholding WIA payments to the LWIB.

## SANCTIONS

### Sanctions for Program Non-Performance

If an LWIB fails to meet the 17 contract performance measures for activities in WIA Title I, (youth adult employment and training activities or dislocated worker employment and training activities) for one or more of the same measures for two consecutive WIA program years in a two-year period, BES may make a recommendation to the Maine Jobs Council (MJC) that the LWIB develop a correction action plan. The recommendation from the MJC may include a reorganization plan for the workforce area through which the Governor may:

1. Restructure the LWIB, including decertification of the current LWIB and appointment and certification of a new LWIB,
2. Prohibit the use of particular service providers, including state agencies, and WIA service providers,
3. Merge the workforce area into one or more other workforce areas, or
4. Take such other actions as determined appropriate.

### Sanctions for Fiscal and One-Stop Operation Non-Performance

1. Each workforce area, including the LWIB, CLEO, and service providers receiving WIA funds, shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity

receiving funds as promulgated in circulars or rules of the Office of Management and Budget's Uniform Grant Management Standards.

2. Each workforce area, including the LWIB, CLEO, and service providers receiving WIA funds, must comply with Title I of WIA, as well as all other federal and state laws and regulations.
3. Failure of an LWIB to ensure the establishment and operation of a one-stop service delivery network (CareerCenter) as required by WIA §121, and articulated in the Memorandum of Understanding developed between the LWIB and BES, may result in the imposition of sanctions and BES withholding of payment for any WIA administrative expenses until the LWIB can demonstrate to the satisfaction of BES that all of the required elements of a local CareerCenter are operational.
4. If BES finds that an LWIB has not taken the required corrective action in the time specified, BES may make a recommendation to the Maine Job Council (MJC) that they:
  - a. Issue a notice of intent to revoke all or part of the local plan,
  - b. Issue a notice of intent to cease immediately reimbursement of local program costs,
  - c. Select an alternate entity to administer WIA for the LWIB involved,
  - d. Restructure the LWIB including decertification of the current LWIB and appointment and certification of a new LWIB,
  - e. Prohibit the LWIB from using particular service providers, including state agencies, and one-stop providers,
  - f. Merge the workforce area into one or more other workforce areas, or
  - g. Make such other changes as deemed necessary to secure compliance.

#### 5. Repayment

The CLEOs shall be liable for repayment to BES from nonfederal funds for WIA expenditures in the workforce area that are found by BES not to have been expended in accordance with the WIA.

BES reserves the right to mandate that program funds to include incentive awards (or a portion thereof) be used for technical assistance in accordance with a BES approved corrective action plan to correct compliance problems when certain sanctionable activities have taken place. BES may also defer granting the incentive award until deficiencies are addressed and improved. The maximum time that the incentive award may be deferred is one year from the end of the program year for which the incentive award is granted (in other words, if the incentive award is for PY'08 performance, the grantee would have until the end of PY'09 to correct the problem(s) and claim the incentive

award). If the deficiencies are not corrected within the allowable timeframe, award of the deferred incentive is forfeited.

## SANCTIONS NOTIFICATION PROCESS

Before the imposition of any sanctions, BES will transmit a letter to the LWIB indicating the violation. The letter will address the possible sanctions if the violation or problem is not remedied, appropriate clarifications are not submitted and adhered to, or the appropriate needed corrective action has not yet been undertaken. The letter may include a request for a meeting between the relevant parties and BES to review the violation(s) and discuss appropriate corrective and other actions and will also include timelines for instituting corrective action. This meeting should take place within 15 working days after receipt of the letter as indicated by certified mail.

If this meeting or the grantee's response and corrective action plan fails to resolve the difficulty, BES will notify the grantee and relevant parties (with copies to the LWIB Chair) of its intent to impose a specific sanction. If the grantee is a fiscal agent rather than the CLEO, a copy shall also be sent to the CLEO. The parties involved shall receive such notification at least ten (10) working days before the scheduled imposition of sanctions, as evidenced by certified mail. The letter will also reiterate the violation, the corrective action needed, and the appeal process.

If satisfactory evidence of needed corrective action initiation is presented to BES within this ten working day period, BES may postpone the initiation of sanctions until either the completion of the action within the BES approved timelines or attainment of the State deadline without completion of the action. In the former case, the implementation of the sanctions may be lifted; in the latter, it will be imposed.

## APPEAL PROCESS

Appeals may be made to the BES Director within ten working days after receipt of notification of pending sanctions. Such an appeal, however, will not forestall the initiation of sanctions (unless the Director extends the deadline).

If satisfactory evidence of needed corrective action initiation is presented to BES within this ten working day period, BES may postpone the initiation of sanctions until either the completion of the action within the BES approved timelines or attainment of the State deadline without completion of the action. In the former case, the implementation of the sanctions may be lifted; in the latter, it will be imposed.

Under WIA Sec. 667.650 the procedures that apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area are as follows:

- A. A local area which has been found in substantial violation of WIA title I, and has received notice from the Governor that either all or part of the local plan will be

revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIA section 184(b). The sanctions do not become effective until:

1. The time for appeal has expired; or
  2. The Secretary has issued a decision.
- B. A local area, which has failed to meet local performance measures for two consecutive years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal such sanctions to the Secretary under WIA section 136(h)(1)(B).
- C. Appeals made under paragraph (a) or (b) of this section must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.
- D. The Secretary may consider any comments submitted in response by the Governor.
- E. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (b) of this section within 30 days after receipt of the appeal.

**DIRECT INQUIRES TO:**

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**EFFECTIVE DATE:**

July 1, 2005

**REISSUE DATE:**

November 1, 2009