

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 9 WORKFORCE INVESTMENT ACT (WIA) SANCTIONS AND CORRECTIVE ACTIONS
AND LIABILITY

11.2.9.1 ISSUING AGENCY: New Mexico Department of Labor.
[11.2.9.1 NMAC – N, 7/1/2000]

11.2.9.2 SCOPE: The State Administrative Entity (SAE), New Mexico Workforce Development Areas/Local Workforce Development Boards (NMWDAs/LWDBs) and WIA Subrecipients.
[11.2.9.2 NMAC – N, 7/1/2000]

11.2.9.3 STATUTORY AUTHORITY: The Workforce Investment Act; Interim Final Rule at Subtitle E Administration, Sections 181 and 195 , and Subtitle F – Repeals and Conforming Amendments, Sections 199 and 199A. Also the Federal Register Volume 64, Number 72, dated April 15, 1999, Part 667, “Administrative Provisions Under Title I of the Workforce Investment Act,” Authority: Section 506(c), Pub. L. 105-220;20 U.S.C 9276(c) and any amendments thereto, and New Mexico House Bill 740. Chapter 260, Laws of 1999, Forty-fourth Legislature.
[11.2.9.3 NMAC – N, 7/1/2000]

11.2.9.4 DURATION: Permanent.
[11.2.9.4 NMAC – N, 7/1/2000]

11.2.9.5 EFFECTIVE DATE: July 1, 2000 unless a later date is cited at the end of a section.
[11.2.9.5 NMAC – N, 7/1/2000]

11.2.9.6 OBJECTIVE: Title I of the WIA as passed by the United States Congress emphasizes the safeguard and security of WIA funds that are passed down to the State; therefore, it is required that States receiving WIA monies develop a policy to address sanctions and corrective action for any and all service providers utilizing WIA funds. The objective of this policy is to provide NMWDAs/LWDBs with guidance and instruction on Sanctions, Corrective Actions, and Liability.
[11.2.9.6 NMAC – N, 7/1/2000]

11.2.9.7 DEFINITIONS: [RESERVED.]
[11.2.9.7 NMAC – N, 7/1/2000]

11.2.9.8 ACTION: This policy provides information, guidance and instruction related to Sanctions, Corrective Actions, and Liability.

A. Liability. WIA regulatory provisions establish accountability for program expenditures from the United States Department of Labor (USDOL) down to the states (the Governor), the SAE, all providers using WIA funds, and to all organizations or individuals incurring costs under a WIA agreement. Misexpenditure of WIA funds does not expressly imply that a sanction will be imposed. An organization which is not itself directly responsible for misexpenditure, but is involved nevertheless by being situated somewhere along the liability ladder, may escape the imposition of sanction(s) by demonstrating substantial compliance with all of the following four conditions:

(1) It has established and adhered to an appropriate system for the award and monitoring of contracts with providers which contain acceptable standards for ensuring accountability;

(2) It has entered into a written contract with such provider(s) which established clear goals and obligations in unambiguous terms;

(3) It has acted with due diligence to monitor the implementation of any provider’s contract, an/or including appropriate monitoring activities (including audits) at reasonable intervals; and

(4) It has taken prompt and appropriate corrective action upon becoming aware of any evidence (emphasis added) of a violation of the WIA or applicable regulations by such provider.

B. Areas of Mandated Sanctions Under the WIA. The Governor shall approve a Local Workforce Development Area’s Plan, unless:

(1) Corrective measures for deficiencies found in audits or in meeting performance standards from previous years have not been taken or are not acceptably underway (i.e. approved by the SAE);

(2) The Administrative Entity does not have the capability (e.g. internal controls) to administer funds, as determined by audit, monitoring, or non-compliance with the requirements of the WIA, Regulations or appropriate SAE policies;

(3) There are inadequate safeguards for the protection of funds received;

(4) The WIA Local Plan does not comply with the Act or Regulations; and,

(5) The WIA Local Plan does not comply with the criteria for coordinating activities under this

Act.

(a) If a WIA Local Plan is not approved for one of the reasons stated above, the SAE will initiate corrective measures to resolve the area(s) of deficiency.

(b) The procedures to be followed are described later in this NMAC. Should the corrective measures taken by the New Mexico Local Workforce Development Area be inadequate to correct the deficiency, the Governor will impose one of the sanctions identified in this policy.

C. Lack of Local Workforce Development Board – Chief Elected Official (CEO) Agreement on the WIA Local Plan, or Governor Disapproval of a Plan.

(1) If the LWDB and CEO cannot agree on the design and submission of the WIA Local Plan, with the result that funds cannot flow to that area, the Governor shall redesignate the Local Workforce Development Area into another Local Workforce Development Area or Areas. Subsequent to redesignation the Local Workforce Development Boards affected shall be reconstituted and WIA Plans modified as required to comply with the Act. Services under an approved WIA Plan shall not be suspended while the Local Workforce Development Board is reconstituted and the WIA Plan modified.

(2) If a Local Workforce Development Area fails to submit a plan, or submits a plan which is not approved by the Governor, the Governor may direct the expenditure of funds allocated to the Local Workforce Development Area. The Governor's authority to direct the expenditure of funds remains in effect only until such time as a plan is submitted and approved or a new Local Workforce Development Area is designated.

(3) Under non-approval of the Plan, no determination may be made until after the affected Local Workforce Development Area has been afforded advance written notice of the Governor's intent to exercise such authority and an opportunity has been given to appeal to the State Workforce Development Board.

(4) If a Local Workforce Development Area fails to expend funds allocated to it in accordance with its Plan, the Governor, subject to appropriate notice and opportunity for comment may direct the expenditure of funds only in accordance with the WIA State Plan.

(5) The Governor's by-pass authority to direct the expenditure of funds as specified shall remain in effect only until:

(a) The Local Workforce Development Area corrects the failure;

(b) The Local Workforce Development Area submits an acceptable modification, or,

(c) A new Local Workforce Development Area is designated.

(6) No determination may be made by the Governor because of a Local Workforce Development Area's failure to expend funds according to its plan except after the Local Workforce Development Area has received advance written notice from the Governor of the intent to exercise such authority, and advisement of an opportunity to appeal to the State Workforce Development Board.

D. Performance Standards for Dislocated Workers and Adult and Youth Activities.

(1) The Governor shall provide technical assistance to programs which do not meet federal performance standards.

(2) Should a Local Workforce Development Area fail to meet federal performance standards for two consecutive program years, the Governor shall notify the USDOL Secretary and the Local Workforce Development Area of the continual failure and shall develop and impose a reorganization plan in compliance with the Act.

(3) A reorganization plan may restructure the Local Workforce Development Board, prohibit the use of designated eligible providers, merge the Local Workforce Development Area with one or more other existing Local Workforce Development Areas, select an alternate administrative entity to administer the program, and/or other changes as the Governor determines necessary to improve performance.

E. Management of WIA Funds.

(1) The SAE has established a Governor's standard for each LWDA to attain an expenditure level of no less than 85 percent of the allocated WIA grant funds during the first year of their availability. "Obligation" of funds is not synonymous with expenditure of funds.

(2) The SAE will analyze each LWDA's quarterly expenditure report. If there is a 15 percent negative deviation for two or more consecutive quarters for WIA funds, the LWDA will be required to prepare a justification of its expenditure rate, and propose appropriate corrective action measures.

F. Non-Compliance with the WIA Plan.

(1) The Act provides funds to the States for three years. However, congress generally expects funds to be used effectively during the year for which the funds are appropriated. Expenditures should be made for provision of employment and training services to participants as identified in the WIA Plan based on an annual (program year) timetable.

(2) If reports on the expenditure rate and participant data information indicate that the Local Workforce Development Area is not expending funds in a manner consistent with the WIA Plan and in accord with congressional intent, the Governor may be required to designate unspent funds from the Local Workforce Development area as an involuntary deobligation. The funds may then be reallocated to alternate eligible providers within the Local Workforce Development Area, or to other Workforce Development Areas, who have demonstrated an ability to spend such funds. Every effort will be made to ensure eligible residents within the initial workforce development area receive services.

G. Submission of Reports.

Local Workforce Development Areas are required to submit quarterly financial, Management Information System (MIS) and program activity reports to the SAE. The SAE then compiles and analyzes the data and prepares State reports to the USDOL and State Workforce Development Board to evaluate how each Local Workforce Development Area is performing, to track on other compliance with WIA goals, and to administer and oversee WIA programs within the State.

H. Conduct and Resolution of Audit.

(1) Conduct. Under WIA, the State is required to ensure that independent financial and compliance audits of all programs funded by WIA are conducted at least once every two years. Previously, annual audits have been required by the Single Audit Act of 1984 that replace all prior audit requirements of the Federal Government.

(2) The Single Audit Act requires an annual audit of federal funds for all activities receiving over \$100,000 a year, directly, or indirectly, from the Federal Government. Non-performance of audits will result in the audit being conducted by a firm chosen by the SAE with cost to be deducted from the non-performing Local Workforce Development Area's administrative fund availability.

(3) Resolution. Audit resolution procedures are identified in 11.2.10. NMAC.

I. Excess Cash.

(1) USDOL monitors the SAE and Local Workforce Development Areas to determine if excess cash exists (i.e. the amount of cash the Local Workforce Development Area has drawn down in excess of immediate needs.) While there is no exact definition of "immediate needs" for WIA, USDOL's definition of "reasonable" is a one day supply of cash. This is determined by an analysis of daily cash flow.

(2) The Secretary of Labor may establish a debt against the State for cash maintained in excess of reasonable grant needs and charge interest on that debt to be paid from non-WIA funds. Therefore, the SAE shall monitor drawdown requests, and will require justification for all unusual requests. The SAE shall freeze drawdowns when excess cash is identified.

J. Discrimination.

(1) The Governor is responsible for ensuring that anti-discrimination laws mandated in WIA are properly enforced. If the Secretary of Labor believes that any program funded under WIA is not in compliance with the anti-discrimination laws, he or she may refer the matter to the U.S. Attorney General with a recommendation that appropriate civil action be instituted or other actions be taken.

(2) The SAE, upon becoming aware of a pattern of discriminatory practices through monitoring or complaints, shall take appropriate action to ensure compliance with federal non-discrimination laws.

K. Other Violations. Local Workforce Development Areas will also incur sanctions for non-compliance with the WIA requirements identified below:

(1) Service Provider Deficiencies – correcting Local Workforce Development Area WIA Service Provider deficiencies identified though USDOL or SAE monitoring;

(2) Local Workforce Investment Board Membership – maintaining Local Workforce Investment Board membership in accordance with Section 117 of the WIA;

(3) Procurements – making procurements according to required policies and procedures established by the SAE including prior approval from the SAE where necessary; and,

(4) Non-compliance – complying with the terms of the WIA, Federal Regulations or SAE (Governor's) policies.

L. Imposition of Sanctions. The New Mexico State Workforce Development Board/Governor shall impose sanctions for violations identified in this policy. The specific sanction(s) imposed will be determined by the degree of severity and willfulness of the violation, and by the Local Workforce Development Area's efforts to

correct the problem. Sanctions identified in the WIA and its Interim Final Regulations (dated April 15, 1999), or as amended, include, but are not limited to:

- (1) Disapproval of the local WIA Plan until conditions, violations, or deficiencies have been corrected;
- (2) Reallocation of unexpended or unacrued funds;
- (3) Revocation of all or any part of the local WIA Plan;
- (4) Prohibition of use of designated eligible service providers;
- (5) Redesignation of the Local Workforce Development Area;
- (6) Reorganization of the Local Workforce Development Area;
- (7) Restructuring of the Local Workforce Development Board;
- (8) Selection of an alternate entity to administer the program for the Local Workforce Development Area; and,
- (9) Imposition of other corrective measures as necessary.

M. Guidelines for Imposing Sanctions.

(1) When the SAE identifies a violation of the Act, Federal Regulations, or SAE policies, through oversight, monitoring or audit, the SAE shall notify the affected Local Workforce Development Area of the violation and develop with the Local Workforce Development Board specific corrective action(s), with timetables for implementation. Additionally, the SAE may:

- (2) Provide technical assistance, when appropriate, to aid in resolution of the problem(s); or
- (3) Disapprove request for drawdowns of WIA funds until the violation or deficiency has been corrected; or
- (4) Have appropriate SAE staff monitor the implementation of corrective action.

N. Failure to Implement Corrective Action. If the corrective action is not implemented within the agreed timetable, or fails satisfactorily to rectify the problem, the SAE will meet with the Local Workforce Development Area Administrative Entity, the Local Workforce Development Board Chairperson, and the appropriate CEO representative to discuss:

- (1) The violation of the Act, Federal Regulations, or State policy;
- (2) The corrective measures imposed by the SAE;
- (3) The technical assistance provided by the SAE to the Local Workforce Development Area Administrative Entity;
- (4) The current status of the problem(s); and,
- (5) The sanctions mandated by the Act.

O. The SAE will offer the Local Workforce Development Board and CEO an opportunity to prepare and implement a revised or new plan of corrective action. Timetables for submission of a plan and for submission will be determined by the SAE, with input from the Local Workforce Development Board and CEO.

P. Continued failure to correct the problem will result in a State recommendation to the New Mexico Workforce Development Board/Governor to impose additional sanctions.

[11.2.9.8 NMAC – N, 7/1/2000]

11.2.9.9 CONTACT ENTITY: Inquiries regarding this policy should be directed to the New Mexico Department of Labor at (505) 827-6827 in Santa Fe.

[11.2.9.9 NMAC – N, 7/1/2000]

11.2.9.10 DISTRIBUTION: NMWDA and LWDB Chairpersons, SAE/NMWDA/LWDB Legal Counsel, NMWDA/LWDB Administrative Entities, SAE/NMWDA/LWDB EO Office, SAE Subrecipients, Department of Labor, NMWDA/LWDA Subrecipients and New Mexico Records Center and Archives.

[11.2.9.10 NMAC – N, 7/1/2000]

11.2.9.11 ATTACHMENTS: [RESERVED]

[11.2.9.11 NMAC – N, 7/1/2000]