

## CHAPTER 12

## IOWA JOB TRAINING PARTNERSHIP PROGRAM

[Prior to 1/14/87, Planning and Programming 630—Chapter 19]

[Prior to 7/17/96, see Iowa Department of Economic Development, 261—Chapter 19]

[Prior to 2/25/98, see Job Service Division[345] Ch 14]

**877—12.1(7B,PL97-300,PL102-367) Assumption of responsibility.** Effective July 1, 1996, the department of workforce development was designated the department responsible for activities and services under the Job Training Partnership Act (PL 97-300, as amended by PL 102-367). The JTPA administrative functions previously performed by the department of economic development were transferred to the department of workforce development by Iowa Code chapter 84A.

**877—12.2(7B,PL97-300,PL102-367) Purpose.** The purpose of the Iowa Job Training Partnership Act program is to establish programs to prepare youth and unskilled adults for entry into the labor force and afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of and will benefit from the training to obtain productive employment.

**877—12.3(7B,PL97-300,PL102-367) Definitions.** The following definitions apply to this chapter and the Iowa Job Training Partnership Act program unless the context otherwise requires:

“*Act*” means the Job Training Partnership Act, P.L. 97-300, as amended by P.L. 102-367.

“*Administrative capacity*” means the positions that have overall administrative responsibility for selection, hiring, placement, or supervisory responsibilities regarding participants served or staff hired under a grant agreement.

“*Administrative entity*” means the organization, corporation, agency or unit of government designated under an agreement between a private industry council and representative(s) of the parties to an Iowa Code chapter 28E agreement to manage and execute a job training plan in a service delivery area of the state.

“*Chief elected official (CEO)*” means the local elected official who is selected from the participating units of government in the service delivery area (SDA) to act as their authorized representative. In the case of a service delivery area, this would be the chairperson of the local elected officials’ JTPA board. For the state, the CEO is the governor.

“*Community-based organizations (CBO)*” means private, nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services. Examples include United Way of America, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in Section 7(10) of the Rehabilitation Act of 1973), tribal governments, and agencies serving youth, persons with disabilities, displaced homemakers, or on-reservation Indians.

“*Department*” or “*DWD*” means the department of workforce development, which has been designated as the state administrative entity to administer the Job Training Partnership Act on behalf of the governor.

“*Grant recipient*” means the organization, corporation, agency or unit of government designated under an agreement between a private industry council and representative(s) of the parties to a 28E agreement to receive Job Training Partnership Act funds on behalf of a service delivery area of the state.

“*Local elected officials (LEO)*” means county supervisors, except with respect to contiguous municipal corporations with a population of 200,000 or more that serve a substantial part of a labor market, in which case the mayor of that municipality(ies) is also a “local elected official.” LEOs must approve the local service delivery area’s local training plans and modifications before they are submitted to the governor.

“*Local training plan*” means a written program of action approved by the governor which delineates the method of operation and proposed budget for a JTPA program in a service delivery area. The two types of local training plans are:

1. The Job Training Plan (JTP) is the designation given to the plan for the Title IIA and IIB programs.

2. The Title III Dislocated Workers Plan is the designation given to the plan which describes the Dislocated Worker Center program.

“*Private industry council (PIC)*” means the group of persons in a service delivery area appointed to oversee (review, monitor, and evaluate) the programs conducted pursuant to that service delivery area’s local training plans. The PIC must also approve the local service delivery area’s local training plans and modifications before they are submitted to the governor.

“*Service delivery area (SDA)*” means those regions in which the state is divided and through which job training services are delivered. Each SDA must have a PIC, a LEO 28E agreement, a LEO/PIC agreement, a job training plan, a grant recipient, an administrative entity, and service providers.

“*Service provider*” means any person, organization, or other entity which receives a contract (financial or nonfinancial) under JTPA through an SDA grant recipient or JTPA grantees or contractors to carry out substantive work (e.g., employment, training, support services, purchases of supplies or equipment).

“*Subrecipient*” means any person, organization or other entity which receives financial assistance under JTPA through an SDA grant recipient. In a service delivery area where the grant recipient and administrative entity are separate entities, the term “subrecipient” includes the administrative entity.

“*Workforce development board*” or “*WDB*” means the board appointed by the governor pursuant to Iowa Code chapter 84A.

**877—12.4(7B,PL97-300,PL102-367) Service delivery area designations.**

**12.4(1) Governor’s proposed service delivery areas.** After receiving the recommendations of the workforce development board, the department of workforce development shall publish in a daily newspaper of general circulation in the state the governor’s proposed designation of service delivery areas.

**12.4(2) Public comment.** Units of local government, business organizations, and other affected persons or organizations may make written comments on the proposed service delivery areas to the Policy Office, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, within 30 days from the date of publication or a date designated by the department which allows at least 30 days for comment.

**12.4(3) Petitions for alternative service delivery area designation.** Within 30 days from the date of publication of the governor’s proposed designation of service delivery areas or a date designated by the department which provides at least 30 days for response, any unit of general local government or consortium of contiguous units of general local government which serves a substantial portion of a labor market area may petition for alternative service delivery area designation. Petitions under this subrule shall be submitted to the Policy Office, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, and shall include:

*a.* The name or names of the unit or units of general local government in the proposed alternative service delivery area.

*b.* The aggregate population of that unit or units according to the 1990 U.S. Census data.

*c.* In the case where the proposed alternative service delivery area contains more than one unit of general local government or less than 200,000 aggregate population, a statement describing how the proposed alternative service delivery area serves a substantial portion of a labor market area.

*d.* A statement indicating how the proposed alternative service delivery area will promote effective delivery of job training services.

*e.* In the case where the proposed alternative service delivery area represents a consortium of units of general local government, a letter of intent must be executed by each unit of general local government in the proposed alternative service delivery area, which indicates that each unit endorses the petition and will amend its consortium agreement to conform to Iowa Code chapter 28E and these rules.

**12.4(4) Appeal of petition for alternative service delivery area designation.** When the governor denies a petition for alternative service delivery area designation, which alleges the petitioning unit

of general local government has a population of 200,000 or more, or the petitioning consortium of contiguous units of general local government has an aggregate population of 200,000 or more and serves a substantial part of a labor market area, the petitioning entity may appeal the denial to the Secretary, U.S. Department of Labor, Washington, D.C. 20210. To be heard, the appeal must be filed within 30 days of receipt of such denial.

**12.4(5) *Publication of final service delivery area designations.*** After the governor makes a final designation of service delivery areas in the state, the department of workforce development shall publish a notice of the final designations in a daily newspaper of general circulation in the state.

**877—12.5(7B,PL97-300,PL102-367) Service delivery area redesignation.**

**12.5(1)** An SDA will be redesignated by merging its counties into one or more other SDAs if the PIC and the appropriate chief elected official or officials fail to reach an agreement on the PIC/LEO agreement or the job training plan, or if all units of local government choose not to participate in an SDA, or if they are unable to find a grant recipient.

**12.5(2)** The governor may act as the chief elected official in an SDA that is to be redesignated until redesignation occurs.

**12.5(3)** Redesignation will occur no later than March 1 prior to the program year in which the redesignations will be effective.

**877—12.6(7B,PL97-300,PL102-367) Consortium agreements.**

**12.6(1) *Submission date.*** Subject to subrules 12.6(2) and 12.6(3), units of general local government in a service delivery area shall jointly submit a consortium agreement which satisfies Iowa Code chapter 28E within 30 days from the date of publication of the service delivery area designation.

**12.6(2) *Extension.*** Where the units of general local government provide evidence of just cause, the governor may, at the governor's discretion, extend the 30-day consortium agreement submission date.

**12.6(3) *Election not to participate.*** Where a unit of general local government in a service delivery area does not wish to participate in the Iowa Job Training Partnership Act program by entering a consortium agreement, the unit shall by board resolution or other appropriate legal action indicate its election not to participate. Proof of adoption of a resolution electing not to participate shall be submitted within 30 days of the publication of the final service delivery area designation to the governor. Such election shall be effective for one year.

**12.6(4) *Elements of LEO agreements.*** In addition to conforming to Iowa Code chapter 28E, each JTPA 28E LEO agreement must contain the following elements:

*a.* Designation of the person or persons who will serve as the chief elected official(s) who will be responsible for making appointments to the PIC, developing an agreement with the PIC, approving and signing local training plans, and negotiating with the PIC.

*b.* Apportionment of responsibility and liability among the participating units of government for any losses, expenses, and burdens which may result from the consortium involvement in the JTPA program.

**12.6(5) *Consortium agreement approval.*** Before a consortium agreement shall be operational, it shall be submitted to and approved by the Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

**877—12.7(7B,PL97-300,PL102-367) Private industry council.** Within each service delivery area there shall be established a private industry council. Appointees to public and nonprofit sector positions on a private industry council shall exclusively represent one and only one organization or agency. Appointees to private sector positions on a private industry council shall exclusively represent the private sector.

**12.7(1) *Composition of the PIC.***

*a.* There must be a minimum of 17 members on each PIC and the private sector representatives must constitute a majority of the membership. The required members include 9 members from the private sector, 3 members from community-based organizations and organized labor, and 1 representative from

each of the following public agencies: education, vocational rehabilitation, public assistance, public employment service and economic development.

*b.* In order to maintain the partnership between the PIC and LEOs, the following LEOs may not serve on the PIC.

- (1) A member of a unit of government which is a party to a JTPA 28E LEO agreement and
- (2) Designated as a chief elected official or
- (3) A member who serves in an executive capacity for the LEOs. Executive capacity is defined as:
  1. A member of a LEO executive board,
  2. A member of a LEO executive committee, or
  3. A member of another LEO executive body which has the authority to negotiate with the PIC, approve the PIC/LEO agreement, vote to approve/disapprove the SDA's job training plan developed by the PIC, or act on behalf of the LEOs in the partnership with the PIC.

*c.* It is permissible for a local elected official to serve on the PIC if:

(1) The individual represents one of the eight groups designated in the Act, is nominated and appointed in a manner consistent with the Act and is not serving on a LEO board in an executive capacity as defined in 12.7(1)“b”(3) above, or

(2) The individual is serving in an executive capacity, but is serving on the PIC as a nonvoting member.

**12.7(2) *Selecting PIC members.***

*a.* Whenever a new position is created or a vacancy occurs on a PIC for any reason, the division administrator of the division of workforce development center administration must be notified in writing of the vacancy within seven days of vacancy. This notification must come from the chief elected official (CEO) or someone designated by the CEO to notify the department.

*b.* The chief elected officials must appoint a new member to fill the position and submit a “Request for Private Industry Council Certification” to the department within 45 days of the position’s becoming open.

*c.* Printed copies of “Request for Private Industry Council Certification” forms shall be available from the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309. This form shall be used by the official(s) who appointed the private industry council in each service delivery area when applying for private industry council certification. All information requested by the form must be completed. When requested, the official(s) submitting the request for certification shall also submit copies of letters of nomination for all nominees to the private industry council.

**12.7(3) *PIC nomination process.***

*a.* Nominations to the nonprofit or public PIC positions must come from the interested organizations. For example, nominations to education positions must come from educational agencies and institutions, and labor representative position nominees must come from recognized state and local labor organizations.

*b.* Nominations are good for 90 days. After the 90-day period, nominations expire and must be resubmitted.

**12.7(4) *Appointment and certification.***

*a.* After selecting PIC members from the nominees submitted, local elected officials must submit those names to the department for certification.

*b.* Whenever a PIC is not composed of the required representatives as specified in 12.7(1), the PIC is out of compliance with the Act.

*c.* If the appointment and request for certification are not completed within the 45-day time period, the PIC will be found in nonconformance and the procedure for PIC decertification will be initiated, unless the vacant position is not one of the required 17 positions listed in 12.7(1).

*d.* A newly appointed PIC member may not vote on issues before the PIC until the department certifies the appointment of that member.

*e.* No change in the size, membership, chair or composition of a PIC shall be valid and effective until approved in writing by the department.

**12.7(5) PIC decertification.** If at any time the department determines that a PIC does not conform, it shall give that PIC a written notice of nonconformance which states the deficiency and allows a period of time in which to correct the deficiency. Failure to satisfy the notice of nonconformance within the time period allowed is grounds for the decertification of the PIC.

**877—12.8(7B, PL97-300, PL102-367) Private industry council/local elected official agreement.** The local JTPA program is operated as a partnership between the PIC and LEOs. This partnership is formed by an agreement between the PIC and LEOs which outlines procedures for developing the local job training plans for all JTPA titles and programs in the SDA and which provides for the selection of the grant recipient, administrative entity and Title III grantee.

**12.8(1) Elements.** The PIC/LEO agreement must include, at a minimum, the following elements:

*a. Local training plan development procedure.* The agreement must include a determination as to who (e.g., PIC members, elected officials, grant recipient staff, administrative entity staff, consultants) will be involved in the preparation of the various job training plans.

*b. Selection of Title III grantee.* The agreement must describe the required request for proposal procedure that will be used to select the Title III grantee.

*c. Selection of the grant recipient and administrative entity for Title II.* The agreement must specify which entity or entities will act as the grant recipient and administrative entity for the Title II programs or how they will be chosen.

*d. Policy guidance.* The PIC and LEOs must agree on how policy guidance will be provided for the SDA's JTPA program. This effort could entail periodic meetings between representatives of each group to coordinate their policy recommendations for the administrative entity. Alternatively, either group could be designated to take the lead in guiding policy and establishing a systematic method to keep the other group informed and provide for its input.

*e. Oversight.* Both the PIC and the LEOs are responsible for oversight of the program. The agreement must state who will conduct oversight, how and when it will occur. Oversight is defined as reviewing, monitoring, and evaluating the JTPA program within the SDA. The PIC and LEOs may perform the oversight function jointly or the PIC may take the lead and keep the LEOs informed.

*f. Lines of communication.* Regardless of how the LEOs and the PIC decide to coordinate individual responsibilities, the agreement must contain the method used by the PIC and the LEOs to keep each other informed. These procedures could include an indication of who is responsible for initiating communication, at what intervals, by what means (for example, personal meetings and written reports), and issues needing review on a regular basis.

*g. Development of the local workforce development plan.* The Act requires the local workforce development plan to be developed jointly with the LEOs and the PIC in each SDA. The agreement must indicate the procedure for participating in the development of the workforce development plan.

*h. Period of agreement.* The period of time covered by the agreement must be defined.

**12.8(2) Revisions or modifications.**

*a.* The LEO/PIC agreement should be reviewed and modified, as necessary, prior to the planning cycle each program year.

*b.* If the LEO/PIC agreement is rewritten or modified, a copy of the agreement must be sent within 30 days of its execution to: Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

**12.8(3) Certifications.** All grantees must certify, as a condition to receive funding, compliance with the following laws and implementing regulations:

*a.* Job Training Partnership Act (PL 97-300) and amendments contained in P.L. 102-367.

*b.* U.S. Department of Labor (DOL) implementing regulations as described in 29 CFR 626 et al.

*c.* Age Discrimination Act of 1964 (PL 88-352) and DOL implementing regulations.

*d.* Civil Rights Act of 1964 (PL 88-352) and DOL implementing regulations.

*e.* Equal Employment Opportunity Commission Policy Statement (2/26/87) and 29 CFR Part 34.

*f.* Education Amendments of 1972 (PL 92-318) and DHEW implementing regulations.

*g.* Rehabilitation Act of 1973 (PL 93-112) and DOL implementing regulations.

- h.* Americans With Disabilities Act of 1990 (PL 101-336) and Department of Justice implementing regulations (8 CFR 274a).
- i.* Immigration Reform and Control Act of 1986 (PL 99-603) and Department of Justice implementing regulations (8 CFR 274a).
- j.* Military Selective Service Act, Section 3, and Selective Service registration information and forms.
- k.* DOL Nonprocurement, Debarment, and Suspension regulations (49 CFR Part 29).
- l.* Iowa Code chapter 7B.
- m.* Iowa Administrative Code 877—Chapter 12.
- n.* Iowa Civil Rights Act of 1965, as amended.
- o.* Federal Executive Order Number Fifteen - Code of Fair Practices (4/2/73).
- p.* Federal Executive Order Number Eleven - Amendments to Executive Order Number Fifteen (3/30/84).
- q.* Other relevant regulations as noted in the JTPA handbook for grantees.

**877—12.9(7B,PL97-300,PL102-367) Plan requirements.**

**12.9(1) *Job training plan.*** Pursuant to rule 12.8(7B,PL97-300,PL102-367), each service delivery area shall develop a job training plan signed by the chairperson of the PIC and the chief elected official(s). Plan development instructions will be issued to the SDAs prior to the effective date of the local training plan submission. The instructions will include guidelines for and explanations of the planning information requested. Plan development must be conducted in coordination with the other SDAs, regional advisory boards, the department, local school districts, and other local agencies, including at a minimum, the department of human services, vocational rehabilitation, area agency on aging, and the community action agency.

*a. Where submitted.* The job training plan and all modifications shall be submitted to the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

*b. Submittal date.* The job training plan shall be submitted no later than May 1 of each program year. An original and four copies of the final plan must be submitted.

*c. Failure to submit or gain approval.*

(1) The human resource investment council committee of the WDB will approve or disapprove the job training plan within 30 days of submittal.

(2) If a plan is disapproved, the disapproval will be provided to the PIC and LEOs in writing, detailing the reasons for the disapproval and revisions required to approve the plan. Any required revisions shall include only pages that need changes. The entire plan does not need to be resubmitted. The revision must be clearly marked and resubmitted within 20 days from the date of disapproval.

(3) Revisions must be signed by the PIC chairperson and chief elected official. After revisions are submitted, the final determination approving or disapproving the plan will be made within 15 days.

*d. Local documentation.* Each party to the job training plan shall adhere to the job training plan public review and comment process, shall document adherence and retain copies of all written comments received. Proof of publication of the availability of the proposed and final job training plan for public review shall accompany each job training plan submitted.

*e. Modifications.* Modifications to a job training plan may be made when:

- (1) Agreed to and signed by the PIC and the local elected official(s);
- (2) Published no later than 80 days before it is effective; and
- (3) Approved by WDB prior to implementation.

**12.9(2) *Title III dislocated workers plan.***

*a.* Funds are allocated under Title III for the statewide operation of programs providing activities and services to dislocated workers. Programs will be operated in each service delivery area through a dislocated worker center which will be selected by the PIC and LEOs through a request for proposal (RFP) process that meets state procurement standards.

*b.* By March 3 of each program year, each SDA must publish a notification that the Title III plan is being drafted in at least one newspaper of general circulation. The notification must solicit

comments from appropriate local educational and other public agencies and labor organizations in the area representing employees having the skills for which training is proposed.

**12.9(3) Workforce development plan.** The Wagner-Peyser Act, which establishes the national public employment service system, requires the department to develop a workforce development plan for each SDA in cooperation with the PIC and chief elected official(s). The LEO/PIC agreement establishes procedures for the cooperative development of the plan.

Each program year the department will issue a technical assistance guide (TAG) explaining the procedures for completing the local workforce development plan. For planning purposes, the amount of the Wagner-Peyser allocation for each SDA will be provided to the PIC's workforce development representative within 30 days of notification to the governor. The state will also publish the substate resource distributions in a newspaper of general circulation.

*a. Cooperative efforts.* Each local workforce development plan must be developed taking into consideration proposals developed jointly by the PIC and LEOs. The workforce development representative on the PIC serves as the department coordinator in this effort.

*b. Plan submittal, review and approval process.*

(1) The workforce development plan must be submitted by the date established in the workforce development TAG. An original and two copies must be sent to:

Department of Workforce Development  
150 Des Moines Street  
Des Moines, IA 50309

(2) Workforce development board review. After approval by the PIC and LEOs, each workforce development plan will be reviewed by the human resources investment council committee of the workforce development board. The human resource investment council committee will determine if the components of the plan have been jointly agreed to by the department, the PIC, and LEOs and if the plan is consistent with the 5- and 20-year state plans for workforce development.

If the WDB determines the above provisions have not been met, the plan will be returned to the department with the WDB's recommendations for it to consider jointly with the PIC and LEOs. Thirty days from the date of written notification that the plan cannot be approved are permitted to modify and resubmit the plan.

*c. Failure to agree.* If agreement cannot be reached between the department, the PIC and LEOs, the plan may be submitted to the WDB and Secretary of Labor and must be accompanied by the proposed modifications as recommended by the disagreeing parties. In such cases, the WDB must inform the Secretary of Labor of its recommendations for resolution of the disagreement.

*d. Governor's review.* The governor is permitted to review and transmit to the Secretary of Labor proposed modifications of any workforce development plans.

**877—12.10(7B,PL97-300,PL102-367) Grant agreements.** Upon department approval of a plan, the department will issue a grant agreement. The grant agreement shall be between the department and the designated grant recipient. The grant recipient shall retain responsibility for ensuring that the administration of the program meets all applicable federal and state requirements even when subcontracting or designation of other entities to perform JTPA activities and services. These rules and applicable federal and state laws and regulations and the provisions of the Iowa JTPA handbook and handbook updates must be incorporated by reference in each grant agreement. The department shall hold grantees, including SDA grant recipients, responsible for JTPA funds received through the grant. The grantees shall hold subgrantees and subrecipients responsible for JTPA funds received through the grant.

**877—12.11(7B,PL97-300,PL102-367) Incentive grant award system.** Exceptional performance in the Title IIA and Title IIC programs is recognized and rewarded through an incentive grant system. Section 202(b)(3) of the Act reserves 5 percent of each state's Title IIA funds to provide incentive grants to SDAs which demonstrate superior performance and to provide technical assistance to those SDAs which do not qualify for incentive grants.

**12.11(1) Division of funds.**

a. If there are any incentive funds from previous program years which must be awarded due to a redetermination, the amount of those funds will be subtracted from the available funds for the current year.

b. Incentive grant funds are divided into two categories:

- (1) Thirty-three percent of the funds are reserved by the department to provide technical assistance;
- (2) Sixty-seven percent of the funds available are apportioned into formula shares for each SDA using the regular Title IIA formula. These SDA formula shares are further subdivided into specific dollar amounts corresponding to the eight Title IIA performance measures. The department will assign percentage weights to each of the eight performance measures.

**12.11(2) Data requirements and time line for incentive awards.**

a. The determination of actual performance achievement on the eight performance standards and subsequent incentive awards will be based upon data contained in the management information system (MIS). All final program year data must be entered in the MIS and a final JTPA annual status report generated no later than August 15 following the end of the program year. The information contained on this report will be used for incentive award determinations. No updates to this data will be permitted unless authorized by the department.

b. The initial determination of incentive awards will be made no later than September 1 following the end of the program year. By that time each grantee will be notified of its initial performance and incentive award determination. The grantee will be allowed 15 days to respond to the initial determination. The grantee's response is to be limited to the calculation of the awards. A final determination and the awarding of incentive funds will occur no later than October 1 following the end of the program year.

c. The department reserves the authority to adjust the time lines to award incentive funds if exceptional circumstances warrant an adjustment.

**12.11(3) Qualification for incentive awards.** To be eligible for an incentive award for any performance measure, a grantee must exceed the base performance standard.

**12.11(4) Determination of incentive award amounts.**

a. If an SDA qualifies for incentive funds for a given performance measure, its share of the dollars for that measure is combined with the shares of all qualifying SDAs to establish the total incentive funds available for that performance measure. These funds are then divided as described in paragraph "c."

b. If an SDA does not qualify for incentive funds for a given performance measure, its share of those dollars reverts to the department to provide technical assistance to the SDAs that do not qualify for incentive grants. These funds will be pooled and the department will determine how these funds are to be expended for technical assistance. If any of these funds are not expended during the program year, the funds will be carried forward and added to incentive awards in the following program year.

c. The amount awarded to an SDA for each performance measure exceeded will be determined as follows:

- (1) The percent each SDA exceeded the performance standard is calculated. These figures are converted into a percent of the total for each of the qualifying SDAs. This percent represents the portion of the total funds for that performance measure each SDA would be entitled to without reductions. This calculation is performed for each of the eight performance measures. An SDA's total incentive award will be the sum of its share of the funds in each of these measures.

- (2) An SDA's incentive award may be reduced for any of the following reasons: low expenditure rates; failure to meet service level requirements for dropouts; failure to meet service level requirements for WIN registrants; or late submittal of a required report. An SDA's incentive award will not be reduced to less than 10 percent of its incentive award.

**12.11(5) Redistribution of reduced awards.** The department will redistribute those funds which are reduced from an SDA's incentive awards. The procedure for redistributing these funds will be developed by the department and priority will be given to those SDAs whose incentive awards were not reduced. The department will provide a written description of the redistribution calculation to each SDA.



**12.11(6) Distribution of funds.**

- a. Incentive awards, including incentive funds which are redistributed, may not exceed an amount equal to 50 percent of an SDA's formula allocation of new program year funds for Title IIA.
- b. Actual distribution of the funds will occur after the end of each program year when final performance standards are calculated. At that time, each SDA's Title IIA performance will be compared against its standards to determine eligibility for, and the amount of, incentive awards.
- c. Incentive awards granted during any program year will be distributed based upon performance from the previous program year.

**877—12.12(7B,PL97-300,PL102-367) Reallocation process.** In order to avoid the loss of JTPA funds to the state, the department will reallocate Title IIA, IIB and III funds. The department will redistribute carryover funds in accordance with the formula and procedures developed by the department. The department's reallocation formula and procedures will be distributed to the SDAs in writing.

**877—12.13(7B,PL97-300,PL102-367) Financial management.** Each JTPA grantee must provide fiscal controls and accounting procedures sufficient to prepare required reports, demonstrate compliance with matching requirements, and trace funds to ensure compliance with the Act, state and federal regulations, and general grant agreement provisions.

**12.13(1) A financial management system must include:**

- a. Adequate administrative and internal controls to safeguard funds;
- b. Procedures to ensure that expenditures are planned, controlled, recorded, and reported against the following: training, participant support, and administrative cost categories; the total of each Title or program; and adult and youth for Title IIA and 6 percent funds;
- c. Procedures to ensure that expenditures are reported by the following: each funding source listed in the budget summary; program year; cost category; and adult and youth for Title IIA and 6 percent funds;
- d. Financial records that accurately and properly reflect program costs by allowable cost categories;
- e. Procedures to ensure timely and accurate reporting;
- f. Procedures to ensure compliance with cost provisions of the Act, state and federal regulations, and grant agreement general provisions;
- g. Procedures to determine that costs incurred are necessary, reasonable, and allocable to the program;
- h. Procedures for determining allowable costs;
- i. Procedures that ensure that cash on hand is kept to a minimum;
- j. Procedures to identify program income including controls to ensure the proper reporting, use, and accountability of those funds;
- k. Procedures for determining allowable match including documenting and reporting match;
- l. Information needed to evaluate the effectiveness of the program; and
- m. Procedures for maintaining time and attendance records.

**12.13(2) An accounting system must use generally accepted accounting principles to control and account for JTPA funds to ensure JTPA moneys are used in accordance with the Act, state and federal regulations, and grant agreement provisions. An accounting system must include procedures for:**

- a. Coding of expenses to the following: grants; total of each Title and program; cost categories within each Title and program; and adult and youth for Title IIA and 6 percent funds;
- b. Reviewing, editing, and approving expenditures for accuracy, allowability and allocability;
- c. Reconciling books of account with bank statements;
- d. Posting transactions to books of account;
- e. Preparing trial balances;
- f. Preparing financial reports by grant, funding source as listed in the budget summary, program year, cost category, and adult and youth for Title IIA and 6 percent funds;
- g. Maintaining a petty cash system if one is used;

- h.* Maintaining a cash receipt and disbursement system;
- i.* Distributing joint costs;
- j.* Safeguarding unsigned and signed checks; and
- k.* Maintaining a payroll system.

**12.13(3)** Program income. Any JTPA program income generated must be reported monthly to the department. Each grantee will be notified regarding action that must be taken with income generated.

**12.13(4)** Administrative cost pool. Administrative funds received under all JTPA titles may be used to form an administrative cost pool. However, the actual reporting of administrative costs must be by title or program. A cost allocation plan may be used to distribute the joint costs to titles and programs for reporting purposes. The plan must be in place prior to the pooling of administrative costs.

**12.13(5)** Bonding. An individual who is authorized to act on behalf of a grantee for the purpose of receiving or depositing JTPA funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs must be covered, at a minimum, by a fidelity bond equal to the lower of \$100,000 or the highest advance or reimbursement received through check or drawdown during the term of a grant agreement.

**12.13(6)** Indirect cost rates. Indirect costs may be charged to a JTPA grant if the grantee has an approved indirect cost agreement with a federal cognizant agency and the agreement covers the term of the grant. Up to 10 percent of salaries and fringe benefits, excluding participant salaries and fringe benefits, or the approved rate, whichever is less, may be charged to a JTPA grant.

**12.13(7)** Time and attendance records. Time and attendance records must be maintained for any individuals who receive any part of their wage from JTPA funds, including participants, and for all participants who receive tryout employment compensation, needs-based payments, or support service payments which are made directly to the participant. Time coding or allocation plans must be used for all personnel receiving payment from more than one fund or JTPA Title or program.

**12.13(8)** Matching. The state education coordination and grants program (8 percent) and the Title III employment and training assistance for dislocated workers require matching funds be identified by a total amount equal to the amount provided pursuant to Sections 123(b) and 304 of the Act. Local grantees and contractors must assist the state in meeting these matching requirements. The Title III match must be made from nonfederal sources, whereas the 8 percent match may use both nonfederal and federal (non-JTPA) fund sources.

Matching requirements may be satisfied by cash contributions or by in-kind contributions identified and are used to provide services to JTPA participants. In-kind matching contributions for the state education coordination and grants program may be used in support of participants enrolled in the 8 percent program only. In-kind matching for the Title III program must be linked to participants enrolled in Title III.

**12.13(9)** Close-out. Each grantee must complete and submit the following documents as provided by the department within 45 days of the end date of the grant agreement:

- a.* A grantee/contractor submittal of close-out documents form;
- b.* A request for reimbursement form;
- c.* A periodic financial status report form;
- d.* A grantee/contractor release form; and
- e.* An inventory of JTPA-related property.

**12.13(10)** Monitoring. These monitoring requirements are intended to promote effective use of public funds and to provide procedures to ensure the objectives of the program are met.

- a.* The grantee must perform financial and program compliance monitoring at reasonable intervals.
- b.* The monitoring system must be designed to determine if the program and financial operations comply with all applicable laws and regulations. The monitoring system must include provisions for checking:

- (1) Financial management;
- (2) Participant eligibility determination;
- (3) Program and plan compliance;
- (4) Equal opportunity compliance; and

(5) Participant files.

c. A monitoring report on each entity must be prepared and maintained along with documentation of corrective action.

**877—12.14(7B,PL97-300,PL102-367) Auditing.** Each grantee must submit to the department an annual list of all subrecipient contracts including the name of the subrecipient, the dollar amount of the contract, the contract number, and a description of the contract.

**12.14(1) Annual audit.** Each grantee must perform an annual independent financial and compliance audit of funds received by the grantee and its subrecipients. All costs incurred with the audit are the responsibility of the grantee. The grantee must ensure that the following are audited:

- a. The grantee;
- b. For Title II grants, the administrative entity, if different from the grantee;
- c. All subrecipient contracts of \$25,000 or more;
- d. Five percent of all remaining subrecipient financial contracts;
- e. Five percent of all remaining participant files for eligibility and financial transactions.

**12.14(2) Audit procedures.**

a. Grantees must provide the information contained in the auditing section of the Iowa JTPA handbook to the auditor selected to do the JTPA audit.

b. The auditor must determine whether the financial statements of the audited entity accurately represent the financial position and the results of financial operations in accordance with generally accepted accounting principles applicable to governmental agencies.

c. Each audit must determine whether the audited entity has complied with the JTPA, applicable DOL regulations and state administrative rules.

d. All audits must be conducted in accordance with applicable auditing standards set forth in the financial and compliance element of the Standards for Audit of Governmental Organizations, Programs, Activities and Functions.

**12.14(3) Audit tests.** At a minimum, each audit must include a test for compliance with applicable federal and state laws and regulations in the following areas:

- a. Allowability of costs;
- b. Classification of costs;
- c. Cost limitations by category;
- d. Expenditure requirements for the state education and coordination and grants programs and the Title IIA adult and youth program funds;
- e. Participant record keeping and documentation;
- f. Grantee monitoring procedures;
- g. Reporting requirements;
- h. Program income;
- i. Matching requirements for Title III and state education coordination and grants programs.

**12.14(4) Audit resolution procedures.** The department shall hold grantees liable for JTPA funds received through the grant. Grantees are responsible for audit resolution involving their subgrantees. This procedure shall be used by the department to resolve audit findings contained in grantee audits.

a. *Grantee audit resolution.*

(1) Grantees are liable to the state for any misexpenditure of JTPA funds received through the grant.

(2) Grantees are responsible for audit resolution involving their subgrantees including affording the subgrantee an opportunity for a hearing under the local grantee complaint procedure.

(3) Prompt, appropriate, and aggressive debt collection action by the grantee to recover any funds misspent by subgrantees shall be considered a part of the corrective action.

(4) If a grantee requests a waiver under 12.14(4) "f," the grantee shall not be released from liability for misspent funds of their subgrantees until DOL accepts the state's audit resolution and corrective action report concerning the waiver by the state. If DOL rejects the state's waiver, the grantee remains liable to the state for the misspent funds.

b. *Initial determination.*

(1) For each final audit report received from each grantee, an initial determination allowing or disallowing costs questioned in the audit report and proposing corrective action(s) to be taken by the grantee will be sent to the grantee.

(2) Each initial determination will include:

1. Citations to relevant statutory, regulatory, or grant agreement provisions supporting the findings and determinations;

2. Necessary corrective action required by the department for the grantee to achieve compliance;

3. Request for additional documentation, if needed, to satisfactorily respond to findings; and

4. Notice of the opportunity for an audit resolution conference with the department.

c. *Response period.* Each grantee will be allowed a 30-day period from the date of notification in which to respond to the initial determination and, if requested, meet with the department to discuss informal resolution. If further clarification or information is requested by the department to assist in the preparation of the final determination, additional time will be allowed for the grantee to respond to the request.

d. *Final determination.*

(1) After receipt of the grantee's response to the initial determination, a final determination will be issued and sent by certified mail, return receipt requested, to the grantee within 30 days. A final determination will be issued whether or not a response to the initial determination has been made.

(2) A final determination will include:

1. Identification of those costs questioned in the audit report which will be allowed and an explanation of why those costs are allowed;

2. Identification of disallowed costs, listing each disallowed cost and describing reasons for each disallowance; and

3. Information on the grantee's right to appeal through the department's appeal process as provided in 12.14(4) "g."

(3) A copy of each final determination will be used to establish a debt account in the amount of costs disallowed. An audit resolution report will be forwarded to the DOL in the manner prescribed by the Secretary of Labor.

e. *Disallowance of costs.* The following criteria will be applied to questioned costs in determining whether those costs will be disallowed:

(1) Costs not expended in accordance with the Act, regulations, grant agreement, plan, or administrative rules shall be disallowed;

(2) If the misexpenditure was due to willful disregard of the requirements of the Act, regulations, grant agreement, plan, or administrative rules, gross negligence, or failure to observe accepted standards of administration, the costs will be disallowed and repayment must be from non-JTPA funds;

(3) Costs may be disallowed if the funds were not expended in accordance with generally accepted accounting practices;

(4) Ignorance of the requirements of the Act, regulations, rules or grant provisions is not sufficient justification to allow a questioned cost;

(5) The grantee's inability to pay the debt will not be a consideration in the determination of allowing a cost.

f. *Waiver.*

(1) If an established debt has been determined to have resulted from a fraudulent action or from willful disregard of the Act or applicable rules and regulations, no waiver will be granted. The department will initiate immediate debt collection action against the grantee and may notify the DOL Office of the Inspector General. This action will be taken regardless of whether the fraud or willful disregard occurred at the grantee or any other subrecipient level.

(2) A grantee may request a waiver of debt collection from the department. The request must be in writing and include supporting documentation. In determining whether to impose any sanction on a grantee, including the disallowance of questioned costs for violations by a subrecipient, the department will first determine whether the grantee has adequately demonstrated that it has:

1. Established and adhered to an appropriate system for the enrollment of participants and the award of contracts with subrecipients which contain acceptable standards for ensuring accountability, clear goals, and obligations in unambiguous terms;

2. Acted with due diligence to monitor the implementation of the subrecipient contracts and participant files, including the performance of the appropriate monitoring, auditing and verification activities at reasonable intervals; and

3. Taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of this Act or the regulations by the subrecipient.

(3) If the department determines that the grantee has demonstrated substantial compliance with the requirements of paragraph "a," the department may waive the imposition of sanctions against the grantee and include the waiver in the state's audit resolution and corrective action report to DOL. The grantee will not be released from liability for misspent funds until DOL accepts the state's audit resolution and corrective action report and approves the state's resolution activities. Any waiver by the department for the benefit of the grantee shall be considered a waiver proposal which is subject to final disposition by the DOL.

(4) Unless waived, each recipient shall repay to the state amounts found not expended in accordance with the Act, regulations, administrative rules, or grant agreement provisions.

(5) Each recipient shall repay from non-JTPA funds misexpenditures due to willful disregard of the requirements of the Act, regulations, administrative rules, or grant agreement provisions; gross negligence; or failure to observe accepted standards of administration.

*g. Request for hearing.*

(1) Requests for hearing on provisions of a final report or final determination shall be filed within 15 days of receipt of the final determination. The request for hearing shall specify those provisions of the report or determination upon which a hearing is requested. Those provisions of the report or determination not specified for hearing, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to review.

(2) The party requesting the hearing shall have the burden of establishing, by a preponderance of the evidence, the facts and the entitlement to the relief requested.

(3) The grantee will receive written notice of the date, time and place of the hearing, an opportunity to present evidence, and a written decision.

#### **877—12.15(7B,PL97-300,PL102-367) Debt collection procedures.**

##### **12.15(1) Establishment of debt.**

*a. Audits.* A debt is established by the release of a final determination on an audit report. The amount of the debt is determined by the amount of costs disallowed in the final determination.

*b. Compliance review reports.* A debt is established upon the release of a final report disallowing costs resulting from a compliance review report. The final compliance review report includes a review of the corrective action taken by the grantee and any disallowed costs.

*c. Postponement of debt collection.* If a grantee requests and the department recommends, a waiver under debt collection procedures will not be initiated unless DOL rejects the department's audit resolution and corrective action report concerning the waiver request. If a hearing is requested on a final determination or final report, debt collection will be delayed pending the outcome of the hearing.

##### **12.15(2) Notification of debt.**

*a.* Within ten days of the establishment of the debt, an initial demand letter will be sent by certified mail, return receipt requested, to the grantee from the department requesting repayment of the misspent funds.

*b.* If no response or payment is received within 15 days of the date of the initial demand letter, a final demand letter will be sent by certified mail, return receipt requested.

*c.* Letters not claimed and signed for by the grantee shall be treated as "no response" for purposes of calculation of time periods.

**12.15(3) *Payment methods.***

a. Grantees shall pay debts in a one-time cash payment except in cases of documented financial hardship or as allowed by the department.

b. The department may charge interest on the debt when established.

c. The following repayment methods may be used by the department:

(1) Repayment agreement. A repayment agreement may be negotiated for a time period not to exceed one year. The agreement shall be in writing and signed by the department and the grantee. The agreement shall include a schedule of payments which includes exact payment dates, amount of the debt, interest, date of agreement and a requirement for payment in full for breach of the agreement by the grantee.

(2) Allocation reduction. Title IIA and IIB allocations to a grantee may be reduced when DOL offsets a debt against funds allotted to the state and the state debt resulted from a misexpenditure by the grantee or its subrecipients. This method may not be used for any other title or subpart of the JTPA.

(3) If the misexpenditure of funds was due to a grantee's willful disregard for the requirements of the Act, regulations, administrative rules, or grant agreement provisions, gross negligence, or failure to observe accepted standards of administration, the grantee shall repay those amounts from non-JTPA funds.

**12.15(4) *Legal actions.*** The state will take necessary and appropriate legal actions to recover misspent grant funds in the event a grantee refuses to satisfy a debt owed to the state.

**877—12.16(7B,PL97-300,PL102-367) Grantee report requirements.**

**12.16(1) *State reports.*** There are three reports which are required to be filed by each grantee with the department: the monthly progress report, file merge report, and the annual report. Instructions for completion and any necessary data or forms will be provided in writing to the grantee by the department.

**12.16(2) *Monthly reports.*** The information entered into the department's management information system (MIS) is the official database of the Iowa JTPA program. All reports must be consistent with the data contained in the MIS. To ensure consistency, reports must be completed at the same time and use the same reporting period as the file merge reports which are prepared and submitted by the fifteenth of each month using the last day of the previous month as an end date for the reporting period. After a file merge report is submitted, any other reports submitted for the same reporting period must agree. No additional data should be included for that reporting period which would change a subsequent report for the same reporting period.

a. *Monthly progress reports.*

(1) This report contains data on enrollments, participant characteristics, terminations, activities and services, budgets, expenditures, participant service levels, and performance measures. Information from these standardized reports will be distributed quarterly via JTPA issuance and will also be disseminated at meetings of the WDB, PIC chairpersons, chief LEOs and to other interested parties as requested. The information contained in these reports will be used to identify specific areas where technical assistance is needed.

(2) A report must be generated for the Title IIA adult and youth program, the Title IIB summer youth employment and training program, the dislocated worker center program, the state education coordination and grants program, and the older individual training program in each SDA each month. A report must also be generated for any special project or program such as: the state education coordination and grants offender projects, the Title IVC veterans programs, and the Title III discretionary grants. These reports must be completed as designated in the appropriate grant agreement.

(3) These reports must be signed by the grantee certifying the accuracy of the information and must be received by the division administrator with a copy to the appropriate field administrator by the fifteenth of each month for the preceding month except that the final monthly progress report for each program year must be received by July 31. All data for the program year must be entered into the system prior to completing the final monthly progress reports. A copy of the monthly progress report for the state education coordination and grants program must also be sent to the department of education. For

Title IIB, reports are due on July 15, August 15, September 15, and October 15 with the final report due on November 15.

*b. File merge report.*

(1) The file merge report contains data on all titles and programs and is compiled by merging files in the management information system (MIS) as instructed by the department in the JTP information system user news. This merged data is then transmitted electronically to the department.

(2) The file merge reports from all SDAs are entered into the department's database, where the data is used to compile aggregate reports and analyze data at the state and SDA levels.

(3) The file merge reports must be submitted for each month by the fifteenth of the following month, except for the end-of-program-year file merge report which must be received by July 31. All data for the program year must be entered into the system prior to running the end-of-the-year file merge report.

**12.16(3) Annual report.**

*a.* Several narrative reports are required in connection with JTPA activities. Section 104(b)(10) requires the PIC and LEOs in each SDA to submit an annual report to the governor; state legislation requires the department to submit an annual report to the Iowa general assembly. The WDB is required to submit an annual report to the governor concerning all JTPA activities.

*b.* To coordinate all requirements, a report must be submitted annually for the following JTPA titles and programs:

- (1) Title IIA adult and youth program;
- (2) Title IIB summer youth employment and training program; and
- (3) Title III dislocated worker center program; and, if applicable,
- (4) State education coordination and grants programs;
- (5) Older individual training program;
- (6) Title III discretionary dislocated worker program; and
- (7) Title IVC veterans employment program.

*c.* The annual report for each title or program must include the cumulative information from the final monthly progress report for the program year plus a description of programs conducted during the program year. The narrative description should be no longer than five typewritten pages. Other elements may be included at local option.

*d.* Financial information contained in the annual report must agree with the grantee's close-out information which is submitted to the department.

*e.* All annual reports must be signed by the PIC chairperson and chief elected official, except for 8 percent projects and Title IVC.

*f.* All annual reports must be received by the division administrator no later than September 15 following each program year end. A copy of the state education coordination and grants program report must be submitted to the department of education (DOE) based on the agreement between the administrative entity and DOE. Since the Title IIB summer youth employment and training program is on a different program year cycle, the annual report for Title IIB will be for the previously completed summer program year.

**877—12.17(7B,PL97-300,PL102-367) Compliance review system.** The department is responsible for reviewing program operations of all its grantees and subrecipients. The components of the review system are based upon policies, objectives and procedures prescribed in federal, state, or local documents. The review system is intended to comply with the state's oversight and monitoring responsibilities while minimizing the degree of interference with local decision making and control of JTPA programs.

Federal and state documents used to conduct reviews are listed in 12.8(3).

**12.17(1) Method of review.** There are two methods of review: statistical and procedural.

*a. Statistical method.* The statistical aspect of the reviews examines three areas: participant service levels, fiscal data, and performance measures.

(1) The review of service levels includes the items identified on the planning summaries in the local training plan which vary between JTPA titles or programs.

(2) The fiscal review may vary from JTPA title and program. The fiscal evaluation may include, but is not limited to, a review of expenditure levels in accordance with program requirements including cost category limitations, allowable costs, matching requirements, planned expenditure rates compared to actual expenditure levels, youth expenditures and the noneconomically disadvantaged expenditure requirements.

(3) The program performance review will include, but may not be limited to, a calculation of actual performance in each title and program and an evaluation against performance standards.

*b. Procedural method.* The procedural aspect of the reviews includes the examination of procedures used to organize and operate JTPA programs in the SDAs. Local procedures will be reviewed to determine compliance with federal and state requirements governing the program. Items in this review include, but are not limited to, the following: applicant and participant process, activities and services; auditing; cash management; complaint procedures; debt collection; equal opportunity; federal and state reports; financial management; fiscal accountability; general program provisions; grant agreement provisions; LEO/PIC agreement; local job training plan; management information system; monitoring; monthly progress reports; participant service levels; participant and service provider record; PICs and LEOs; procurement procedures; property; record retention and verification.

**12.17(2) Procedures and time lines.** There are two procedures used to implement the methods of review described above: the monthly performance review and the annual financial and program compliance review.

*a. Monthly performance review.*

(1) Monthly performance reviews of the operation of JTPA programs will be conducted for each grantee by the department. These reviews will provide a continuous process of program examination and identification of technical assistance needs.

(2) Monthly performance reviews will use the statistical method relying upon several reports including the JTPA financial status report (FSR), the MIS computer-generated monthly progress report and a monthly JTPA annual status report (JASR).

(3) The summary and details of the analysis will be provided to each local JTPA director by the end of each month. If significant findings are found in the analysis, corrective actions will be required or recommended and in some cases modification to the technical assistance plan may be necessary. If corrective action is required, the JTPA director must provide a written response along with the monthly reports submitted for the subsequent month. Follow-up determinations on findings and corrective actions will usually be carried out by examining the monthly reports. If a significant finding continues over a period of several months, an on-site review may be required.

*b. Annual financial and program compliance reviews.*

(1) Annual financial and program compliance reviews provide for a comprehensive, in-depth evaluation of all JTPA programs and a system of technical assistance to correct program deficiencies.

(2) Formal program compliance and financial management reviews will be conducted with each grantee by the department annually using a compliance guide and applicable documents. The formats of these reviews will be included in the Iowa JTPA handbook made available to each grantee.

(3) With the exception of Title IIB, both a financial management and program compliance review will be conducted during the first six months of the program year.

(4) A Title IIB program compliance review will be completed with each grantee during July of each summer program year. A program compliance review of 5 percent of the Title IIB work sites in each SDA will be conducted during June and July of each summer program year.

(5) The guides and documents used in conducting both program compliance and financial management reviews will include both statistical and procedural methods of review. The comprehensive review is designed to examine the statistical success or failure of the program operation and to evaluate the procedures, policies and methods of operation.

**12.17(3) Compliance review reports.**

*a.* A report will be completed on each financial and program compliance review and on each work site visit. This report shall include: a description of findings including any questioned costs;



recommended corrective action to be implemented by the grantee; and time frames for completing any corrective action and responding to the report.

*b.* Because these reviews examine both program achievement and program efficiency, technical assistance is provided on both a required and recommended basis. Required corrective actions are necessary for any program performance levels or procedures which are deficient or in conflict with required standards of operation. Recommended corrective actions are suggested which may result in improved program efficiency or effectiveness.

*c.* Initial reports that include corrective action will be sent to the grantee only. The initial report may also be sent to the PIC chairperson and the chief elected official if the review identifies substantial problems.

*d.* The grantee must respond in writing to each report that includes required corrective action. The response must include a description and documentation of any corrective action taken. If the grantee disagrees with the findings of the report, the grantee must include in the response the reasons for the disagreement and any appropriate documentation.

*e.* The grantee shall have 20 days from the date of the report to respond to program compliance review reports. A maximum of 15 days shall be allowed to respond to financial management reports. For worksite visits, findings requiring corrective action must be initiated immediately upon verbal notification of the findings. A written response to worksite findings must be made within 10 days of the date a written report is issued.

*f.* A second report will be sent to the grantee within 20 days of receiving the grantee's response, if further corrective action is required. The grantee shall have 15 days to respond to the second report.

*g.* The department will issue a final report within 20 days of receipt of the grantee's response and corrective action. Copies of the final report, along with copies of the initial report and any responses from the grantee, will be sent to the PIC chairperson and the chief elected official.

*h.* Except for Title IIB, follow-up reviews will be conducted during the third quarter of the program year to review corrective actions taken in response to findings identified during the initial reviews. Title IIB follow-up will be conducted during the summer program year. Any follow-up visit will be documented via a letter to the grantee describing the findings and directing further corrective actions as necessary. If further corrective action is required, the grantee will have 15 days to respond.

**12.17(4) *Questioned costs.*** If the department questions costs in a compliance review or audit report, debt collection procedures will be initiated as provided in 12.15(7B,PL97-300,PL102-367). Grantees will be afforded an opportunity to request a hearing in accordance with 12.14(4) "g." Waiver requests by the grantee for subgrantee misexpenditures will follow the requirements of 12.14(4) "f."

**877—12.18(7B,PL97-300,PL102-367) Sanctions for violations of the Act.** The state may impose appropriate sanctions and corrective actions for violations of the Act, regulations, grant terms or conditions and other applicable laws and regulations.

**12.18(1) *Findings warranting sanctions.***

*a.* In determining whether to impose a sanction, the department will consider the frequency, quantity, flagrancy, severity and willfulness of the finding and whether it was the result of willful disregard of the Act or other applicable laws and regulations. The findings may fall into four major categories: administrative, fiscal, program operation and performance standards.

*b.* Administrative findings. Sanctions may be imposed for failure to establish a 28E agreement to implement JTPA programs; maintain private industry council membership in accordance with Section 102 of the JTPA; establish a LEO/PIC agreement; meet publication and distribution requirements for local training plans; agree on a local training plan; obtain or maintain supporting documentation for grant activities; maintain accurate and current required data in the MIS; submit revised planning summaries to maintain an up-to-date local training plan; make procurements according to required policies and procedures including prior approval where necessary; implement required corrective actions; submit accurate required reports on time; implement the technical assistance plan; perform required audits; and meet monitoring requirements. This list is not intended to be all-inclusive.

*c.* Fiscal findings. Sanctions may be imposed for failure to operate within the minimum cash balance requirements; comply with program cost limitations; maintain adequate expenditure rates in accordance with the local training plan; properly allocate expenditures to JTPA and between titles and programs; properly disburse funds; obtain and document required match; maintain adequate systems of fiscal control; and submit accurate required fiscal reports on time. This list is not intended to be all-inclusive.

*d.* Program operation findings. Sanctions may be imposed for failure to obtain proper information for eligibility determination resulting in ineligible participants receiving benefits from the program; meet required enrollment levels for dropouts and WIN recipients; enroll substantial segments of the eligible population in proportion to their existence in that population; and meet required expenditure rates for Title IIA youth. This list is not intended to be all-inclusive.

*e.* Program performance findings (Title IIA only). Sanctions may be imposed for failure to meet performance standards for one year; two consecutive years; and more than two consecutive years.

Findings under this category are distinct from other types of sanctionable findings in that these deficiencies relate to performance criteria and sanctions as described in Section 106(h) of the Act. Sanctions to be taken under this Section are solely in response to an SDA's failure to meet performance standards. For purposes of Section 106(h) of the Act, "failure to meet performance standards" means achieving the standard in fewer than five of the seven DOL performance measures in Title IIA.

**12.18(2) *Types of sanctions.*** Sanctions which may be imposed, as listed below, are intentionally progressive in their severity to reflect the willfulness, severity or flagrancy of the finding. The severity of the sanction imposed may also increase with repeated findings. Sanctions include, but are not limited to, the following:

- a.* Disallowing costs associated with the particular violation or deficiency and seeking repayment;
- b.* Stopping the drawdown of funds until the violation or deficiency is corrected;
- c.* Reallocating unexpended or unobligated funds;
- d.* Prohibiting the use of certain service providers;
- e.* Revoking all or any part of the grant agreement affected;
- f.* Disapproving the local training plan or requiring modifications until conditions, violations or deficiencies are corrected;
- g.* Requiring the restructuring of the JTPA organization within the grantee or administrative entity;
- h.* Requiring the selection of an alternate grantee or administrative entity;
- i.* Requiring the restructuring of the PIC;
- j.* Decertifying the PIC;
- k.* Redesignating the SDA.

**12.18(3) *Determination and notification of sanctions.***

*a.* All findings and questioned costs which may warrant sanction will be referred to a committee appointed by the division administrator. The committee may request and receive additional information and documentation concerning the findings and questioned costs. It is the responsibility of the committee to determine whether or not a sanction will be imposed.

*b.* The decision to impose the disallowed cost sanction will take into consideration the criteria stated in 12.14(4) "e."

*c.* If the sanction committee recommends imposing any of the sanctions in 12.18(2) "f" to "k," this recommendation will be taken to the WDB or a committee empowered to act on the WDB's behalf for review and recommendation. The sanction committee will then take the WDB's recommendation into consideration in its determination of whether or not to impose any of the referenced sanctions.

*d.* The initial notification of sanction will be communicated to the grantee, the PIC, and the LEOs within 30 days of the establishment of the findings. The grantee, the PIC and the LEOs will be allowed 15 days to respond to this initial notification of sanction. A final notification of sanction will be made no later than 60 days after the establishment of the findings.

*e.* Sanctions taken to prevent the misexpenditure of funds (e.g., in cases of fraud, illegal expenditures) will be imposed on an immediate basis along with notification to the grantee, the PIC and the LEOs.

*f.* Prior to imposing any sanction, except those sanctions taken to avoid misexpenditure of funds, the grantee, the PIC and the LEOs will be notified of their appeal rights. The grantee, the PIC and the LEOs may also appeal, within 15 days of the sanction imposition, sanctions imposed on an immediate basis to protect the misexpenditure of funds.

**12.18(4)** *Process for appealing proposed sanctions to be applied for failure to meet performance standards.*

*a.* For sanctions imposed for failure to meet performance standards, the grantee, the PIC and LEOs will be provided with the opportunity to request a hearing. A request for hearing must be filed within 15 days of receipt of the final notification of sanction.

*b.* The division administrator, or the division administrator's designee, will conduct the hearing and make a proposed decision to the department's director within 30 days of the receipt of the request for a hearing. The grantee, the PIC and the LEOs will be provided the opportunity to present evidence, both written and oral. The parties will receive written notice of the date, time and place of the hearing.

*c.* The department director will provide the grantee, PIC and LEOs written notification of the determination of the hearing within 60 days of the receipt of the request for a hearing.

*d.* If the determination upholds the imposition of the sanction, the PIC and LEOs may jointly submit an appeal to DOL as provided in JTPA Section 164(b) and 29 CFR 628.5 (March 15, 1983).

**12.18(5)** *Process for appealing the proposed sanction of revoking all or part of the local training plan.* Within 30 days of receipt of notification of intent to revoke all or part of the local training plan, the PIC and LEOs may jointly appeal to the DOL as provided in 29 CFR 628.5 (March 15, 1983).

**12.18(6)** *Process for appealing the proposed sanctions of PIC decertification and SDA redesignation.* Reserved.

**12.18(7)** *Process for appealing all other sanctions including disallowed costs.* For all other sanctions, the grantee, the PIC and the LEOs will be provided the opportunity to file a request for a hearing.

**877—12.19(7B,PL97-300,PL102-367) Equal opportunity compliance.** The Directorate of Civil Rights (DCR) has adopted regulations, 29 CFR Part 34 (January 15, 1993), to implement the equal opportunity and nondiscrimination provisions of the Act. These regulations require the department of workforce development to establish and adhere to a method of administration (MOA) designed to give reasonable guarantee of compliance with equal opportunity and nondiscrimination provisions. The department's MOA requires each SDA to develop a local MOA which includes required elements as outlined in the JTPA handbook to ensure compliance with the Act and regulations. Those requirements include, but are not limited to:

**12.19(1)** *Designation of equal opportunity officer.* Each grantee shall designate an individual or committee to coordinate equal opportunity and affirmative action responsibilities.

*a.* The name, title of position, address, telephone and TDD (or relay) number of the equal opportunity (EO) officer should be made public.

*b.* An adequate level of resources (i.e., nonpersonnel, such as travel budget, and training funds) must be provided to the EO officer to enable the officer to accomplish the responsibilities assigned. The EO officer must report directly, on EO matters, to the grantee's director.

*c.* The equal opportunity officer should have a background relative to EO laws, regulations, theories of discrimination, and understanding of how to conduct EO investigations and reviews or be given the opportunity to receive training and appropriate technical assistance to develop such a background.

**12.19(2)** *Notification.* Procedures must be established to inform applicants, participants, program beneficiaries and employees that the program does not discriminate in admission, access, treatment or, where applicable, employment in JTPA programs.

*a.* A system should be maintained for periodic distribution of EO-related policies, guidelines, and information.

*b.* Publication in languages other than in English must be provided to ensure all individuals are informed of JTPA programs and activities. In determining the language(s) used to provide the

information, the grantee shall consider the scope of the program and the size and concentration of the population.

*c.* Advertisements, recruitment materials, program brochures, and other similar publications regarding JTPA programs must contain the initial and continuing notice or alternative tagline as required by 29 CFR 34.23.

**12.19(3) Posters.** Equal opportunity and affirmative action posters must be displayed prominently and in reasonable numbers. Posters should explain briefly the procedures for filing a complaint and identify a local contact person who can provide assistance.

**12.19(4) Monitoring.** A system for periodic monitoring of the compliance status of subcontractors and subrecipients must be established and implemented.

*a.* The system should provide for periodic on-site reviews to assess their EO compliance.

*b.* Findings should be documented and retained.

*c.* The system should identify EO training and technical assistance needs and identify methods to meet these needs.

**12.19(5) Discrimination complaint procedures.** The equal opportunity officer for the grantee, administrative entity or subrecipient is responsible for adopting and publishing the complaint procedures. The complaint procedure must include the following minimum elements:

*a. Who may file.* Any persons may file who believe they have been subjected to discrimination on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief and, for beneficiaries only, citizenship or participation in JTPA.

*b. Where to file.* The complainant may file with grantee, administrative entity, subrecipient or the director of the Directorate of Civil Rights (DCR) at the following address: Director, Directorate of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, D.C. 20210.

*c. When to file.* A complaint must be filed within 180 days of the alleged discrimination. Only the director of DCR may, for good cause shown, extend the filing deadline.

*d. Contents of complaint.* Each complaint should be in writing and shall:

(1) Be signed by the complainant or representative;

(2) Contain the complainant's name and address (or specify another means of contacting the complainant);

(3) Identify the respondent;

(4) Describe the complainant's allegations in sufficient detail to allow the grantee, administrative entity or subrecipient to determine whether the complaint falls under the jurisdiction of the grantee, administrative entity or subrecipient jurisdiction, was timely filed, and has apparent merit. This information may be provided by completing DCR's Complaint Information Form (CIF) and accompanying Privacy Act Consent Form.

*e. Due process elements.* The complaint handling process and responses to those charges should provide for:

(1) Notice to all parties of the specific charges and responses to those charges;

(2) An impartial decision maker;

(3) The right of both parties to representation;

(4) The right of both parties to present evidence;

(5) The right of both parties to question others who present evidence; and

(6) A decision made strictly on the presented evidence.

*f. Processing time frames.* The complaint procedure must provide for notice to the complainant of the following time frames:

(1) If the complainant chooses to file with the recipient, the complainant shall allow the grantee, administrative entity or subrecipient 60 days to process the complaint.

(2) Within 60 days, the grantee, administrative entity or subrecipient shall offer a resolution of the complaint to the complainant and shall notify the complainant of the right to file a complaint with the director of the DCR and inform the complainant that this right must be exercised within 30 days.

(3) If, by the end of 60 days, the grantee, administrative entity or subrecipient has not completed its processing of the complaint or has failed to notify the complainant of the resolution, the complainant or the complainant's representative may, within 30 days of the expiration of the 60-day period, file with the director of DCR.

(4) The director of DCR may extend the 30-day time limit for good cause shown.

(5) The grantee, administrative entity or subrecipient shall notify the complainant immediately in writing upon determining that it does not have jurisdiction over the complaint. The notice shall be in writing, include the reasons for the determination, and state the complainant's right to file with the director of DCR within 30 days' receipt of the notice.

*g. Service providers.* In the case of service providers, the required complaint procedures must be adopted and published on behalf of the service provider by the grantee.

*h. Resolution.* The grantee, administrative entity or subrecipient must have a sanction policy to ensure that a resolution can be enforced.

*i. Complaint log.* The grantee, administrative entity or subrecipient must maintain a log of all discrimination complaints.

**12.19(6) Accessibility.** JTPA-funded programs must be accessible to persons with disabilities and program information must be available, as necessary, in languages other than English and for the visual and hearing impaired.

*a.* JTPA grantees should conduct a self-evaluation regarding the accessibility of the facilities where JTPA services are provided and establish alternate methods of providing services where facilities are determined not to be physically accessible to persons with disabilities.

*b.* Accessibility standards should be consistent with regulations adopted by the DOL, Directorate of Civil Rights to implement JTPA.

**12.19(7) Record keeping.** Characteristics data (e.g., race, sex, national origin, age, disability status) must be maintained in the records on applicants, participants, program beneficiaries and employees and records must be sufficient to determine whether grantees are in compliance with nondiscrimination and equal opportunity provisions of the applicable civil rights laws, regulations, and executive orders.

**12.19(8) Overcoming sex stereotyping.** Mechanisms must be developed for the use of recruitment, training, and other program activities and services to overcome sex stereotyping by encouraging entry of men or women into occupations with skill shortages where their representation is less than 25 percent of the labor force in the occupation. A list to assist in identifying those Iowa occupational areas where men or women represent less than 25 percent within the occupational area is available to grantees from the state administrative entity.

**12.19(9) Methods of administration (MOA).** Each grantee, administrative entity, or subrecipient shall develop and submit to DWD their MOA. The MOA shall be in compliance with 29 CFR Part 34 and the Iowa JTPA handbook. The purpose of the MOA is to give reasonable guarantee that grantees, administrative entities, or subrecipients have established systems to ensure the implementation of nondiscrimination and equal opportunity requirements under JTPA.

**12.19(10) Corrective action sanctions.** Procedures must be established for taking prompt action to correct or remedy noncompliance or, as necessary, to invoke sanctions where noncompliance cannot be resolved voluntarily. Procedures for corrective action sanctions should provide for:

- a.* Notice to contractor to correct deficiencies;
- b.* Coordination with federal and state civil rights enforcement agencies, when necessary;
- c.* An appeal process with risk of contract suspension, termination, denial, discontinuance, or debarment from future contracting subject to a final appeal utilizing the existing complaint procedure;
- d.* Rights and remedies for suspension, termination, denial or discontinuance of the contract for cause should be stated in the contract;
- e.* Execution, as necessary, of a written assurance or a conciliation agreement which includes documentation that violations have been corrected. A conciliation agreement must be in writing, address each cited violation, specify the corrective or remedial action to be taken within a specified period, provide for periodic reporting on the status of corrective and remedial action, ensure violations will not recur, and provide for enforcement for a breach of the agreement.

*f.* Contract termination and debarment procedures must be developed. The procedures should take into consideration the history of experience with the contractor, nonperformance, the response to the corrective action required, lack of good faith or a minimal effort taken to indicate remedial action. These procedures should establish the basis for debarment or termination of the grant whether due to civil rights violations or violations of any other contract provision.

**12.19(11)** *Contracting with small and minority firms and women's business enterprises.* Steps must be taken to ensure small and minority firms and women's business enterprises are used when possible as sources of supplies, equipment, construction and services. Grantees should identify small, minority and women's business enterprises in their SDAs and maintain a list to be contacted.

**877—12.20(7B,PL97-300,PL102-367) SDA level complaint procedures.**

**12.20(1)** SDA grantee complaint procedures. Each service delivery area (SDA) grantee shall establish procedures for resolving any complaint by a participant, subgrantee, subcontractor and other interested persons alleging a violation of the JTPA, regulations, grant or other agreements under the JTPA by the SDA grantee, administrative entity, private industry council, subgrantee or subcontractor. At a minimum, the SDA level complaint procedure shall provide for:

- a.* Resolution of any complaint, except discrimination complaints which shall be resolved consistent with 12.19(5) and 12.21(4), alleging a violation of the Act, federal regulations, JTPA administrative rules, grant or other agreements under the Act;
- b.* Resolution of complaints arising from actions such as audit disallowances or the imposition of sanctions taken with respect to audit findings, investigations or monitoring reports;
- c.* Filing of complaints within one year of the alleged violation, except for allegations of fraud or criminal activity and discrimination prohibited under the Act;
- d.* An opportunity for a hearing within 30 days of the date the complaint is filed;
- e.* Written notice of the date, time, and place of the hearing;
- f.* An opportunity to present evidence at the hearing;
- g.* Opportunity to have records or documents relevant to the issues produced by their custodian when the records or documents are kept by or for the SDA grantee or its subgrantees in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;
- h.* A written decision within 60 days of the date a complaint is filed;
- i.* A written explanation to all parties of the right to request a review by the state of the complaint if a party receives an adverse decision or if there is no final decision within the 60-day period. Requests for review by the state must meet the requirements of 12.21(3);
- j.* If the state should fail to issue a decision within 30 days of the filing of the request for state review, a party may request from the Secretary of Labor a determination whether reasonable cause exists to believe that the Act or regulations have been violated. A request to the Secretary of Labor must be filed within 10 days of the date a decision should have been issued by the state and conform to the requirements of 29 CFR 629.52(d) as of October 7, 1980.
- k.* Upon enrollment, all participants must receive a written description of the complaint procedures which they are to follow. The description must include notification of the right to file a complaint and instructions on how to do so;
- l.* If a person is not familiar with English, a written or oral translation into a language understood by the individual must be provided. If a person is illiterate or semiliterate, the person must be advised of such right to the satisfaction of that person's understanding;
- m.* During the complaint process, each complainant and party must be notified in writing of the next step in the complaint procedure;
- n.* A complaint log and a record of each complaint filed must be maintained at the local level.

**12.20(2)** Grantees and other subrecipients of JTPA funds must ensure that employers of participants under this Act continue to operate, or establish and maintain, a grievance procedure relating to the terms and conditions of employment. Employers may operate their own grievance procedure or use the grievance procedure established by the grantee. Employers shall inform participants of the grievance procedure they are to follow and of their right to have the employer's decision reviewed by the grantee.

**877—12.21(7B,PL97-300,PL102-367) Department complaint procedures.****12.21(1) General information.**

a. These rules indicate and specify the minimum procedural requirements for resolving complaints about the Job Training Partnership Act (JTPA) program administered by the department and operated by grantees within each service delivery area (SDA) alleging a violation of the JTPA, state or federal regulations, grant or other agreements under the Act. For complaints involving audit reports, compliance review reports and the imposition of sanctions on the grantee, refer to the rules applicable to audit resolution, debt collection, compliance reviews and sanctions for filing deadlines and procedures.

b. The JTPA and federal implementing regulations require the establishment of both local and state level complaint procedures. Grievances or complaints about local level actions, decisions, activities, and programs are to be resolved through the SDA level complaint procedure. As provided in subrule 12.21(3) the state may, upon request of a party or upon its own motion, review a final local complaint decision. Complainants may file initially with the state if the requirements of subrule 12.21(4) are met.

c. These rules do not apply to proceedings that determine law or policy of general applicability based on legislative fact nor to automatic grant adjustments for classes of contractors, subcontractors or participants when adjustments are required by state or federal law.

d. Complaints may be brought by participants, subgrantees, subcontractors, and other interested persons. The department may also initiate complaints as required by statute or constitution in order to determine the legal rights, duties, or privileges of a party which are at issue.

e. The identity of any person who has furnished information relating to, or assisting in an investigation of a possible violation of JTPA shall be kept confidential to the extent possible, consistent with due process and a fair determination of the issues.

f. No grantee, administrative entity, private industry council, or subgrantee shall in any manner discriminate against or discharge any individual because the individual has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any proceeding or investigation under or related to this Act.

**12.21(2) Definitions.** As used in this complaint procedure the following definitions apply, unless the context otherwise requires.

*“Complaint”* means an alleged injury, injustice or wrong and includes the term grievance.

*“Contested case”* means a proceeding in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by the department, after an opportunity for an evidentiary hearing.

*“Director”* means the director of the department of workforce development.

*“Dismissal”* means that a complaint will not be pursued for the following reasons:

1. The alleged violation is not one that arises in connection with JTPA Act, regulations, grant, or other agreements under the Act; or

2. No useful purpose would be derived in pursuing further action on the complaint.

*“Final action”* means resolution of the complaint by withdrawal, settlement agreement, dismissal, or final decision.

*“Interested person”* incorporates the legal concept of “standing” and means a person who has some personal and legal interest in the matter which is the subject of the complaint and can demonstrate a specific injurious effect on this interest.

*“Settlement agreement”* means a written agreement, signed by the parties, that has been executed and which recites the subject of the controversy, the solution mutually agreed upon by the parties, and a statement of the action to be taken, or prohibited in the future, by each of the parties.

*“Withdrawal”* means the complainant requested, prior to a hearing, that no further action be taken by the state on the complaint.

**12.21(3) State review of SDA complaint decisions.** If a party does not receive a final decision at the SDA level within 60 days of filing of the complaint or receives an adverse decision, a party may request a review of the complaint by the department.

a. *Filing deadline.* To be considered, a request must be filed with the department within 10 days of receipt of the adverse decision or 15 days after the decision was mailed.

*b. Exhaustion of local procedures.* No party may file a request for review by the department until the SDA procedures have been exhausted, unless a decision has not been issued within 60 days of the filing of the complaint.

*c. Where to file.* The request shall be filed with the JTPA complaint officer at the department.

*d. Contents.* The request shall be in writing and shall include:

- (1) The date of filing the request for review;
- (2) The names and addresses of all parties involved;
- (3) A clear statement of the facts, relevant dates, and which provision(s) needs review. Provisions not identified for review will be considered resolved, unless the agency desires to review a provision on its own motion;

- (4) The date the complaint was filed with the SDA and the date the SDA decision was issued or should have been issued;

- (5) Signature of the party requesting the review; and

- (6) A copy of the SDA level decision, if issued.

*e. Notice.* After receipt of the request for review, the JTPA complaint officer will:

- (1) Send written notice of the filing and a description of the review process to each party;
- (2) Request from the SDA complaint officer a copy of the SDA complaint file consisting of all pertinent documents including, but not limited to, the original complaint, evidence, hearing transcript, briefs, pleadings and written decision(s);

- (3) Transmit the request to appropriate personnel; and

- (4) Establish a deadline for submission of briefs, exceptions or additional evidence.

*f. State review process.*

- (1) Review procedure. The director, or the director's designee, will review the SDA decision, complaint file, all timely filed briefs and exceptions, and any other relevant information. The director, or the director's designee, may request additional information from the parties, investigate any matter, request oral arguments on the complaint, or take any other appropriate action to aid in the review process;

- (2) Standard of review. Deference will be given to the findings of fact made at the local level. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence and decision. The local decision will be reviewed to determine:

1. Consistency with state, federal and local law, regulation and policy under the JTPA;

2. The lawfulness of the local procedure;

3. Whether the decision is in violation of any statutory or regulatory provision;

4. Whether it is in excess of the authority delegated to the SDA;

5. Whether it is supported by substantial evidence in the record when that record is reviewed as a whole; and

6. Whether it is unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

- (3) Final decision.

1. When the director reviews the SDA decision, the decision of the director is final. When an individual designated by the director reviews the SDA decision, the designee will prepare a recommended decision which the director may adopt, modify or reject. The director shall issue a final written agency decision.

2. A final written agency decision will be made within 30 days of the filing of the request for department review. This written decision of the director is final agency action and subject to judicial review as provided in Iowa Code section 17A.19.

**12.21(4) State complaint procedure.**

*a. Who may file.* A participant, subgrantee, subcontractor or other interested person may file a complaint.

*b. Jurisdiction.* A complaint may be filed with the state to adjudicate or otherwise resolve an allegation that the department has violated the JTPA, applicable federal or state regulations, grants, contracts or other agreements under the JTPA. For complaints involving audit reports, compliance review



reports, and the imposition of sanctions on the grantee, refer to the sections on audit resolution, debt collection, compliance reviews and sanctions for special filing deadlines and procedures.

*c. Time.*

(1) Except for complaints alleging fraud or discrimination prohibited under the Act, complaints shall be filed within one year of the alleged occurrence. For appeals of final audit reports, compliance review reports and the imposition of sanctions refer to the applicable rules for filing deadlines.

(2) Discrimination-based complaints. All complaints alleging discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation, or belief and, for beneficiaries only, citizenship or participation in JTPA must be filed within 180 days of occurrence. Discrimination-based complaints may be filed with the DWD or Directorate of Civil Rights, U.S. Department of Labor at the following address: Director, Directorate of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, D.C. 20210. The state JTPA complaint officer will provide the charging party with the U.S. Department of Labor complaint information form and assistance in completing and filing the complaint. If the complainant elects to file with DWD, a written decision will be issued within 60 days of the filing date of the complaint. If the complainant is not satisfied with DWD's resolution of the complaint or if no decision is released within the 60 days, the complainant has the right to file a complaint with the Directorate of Civil Rights. This right must be exercised within 30 days after DWD notifies the complainant of the proposed resolution or within 30 days of the expiration of the 60-day period.

*d. Contents.* Complaints shall:

- (1) Be clearly portrayed as a complaint by the complainant;
- (2) Be legible and signed by the complainant or the complainant's authorized representative;
- (3) Pertain to a single subject, situation or set of facts;
- (4) State the name, address and telephone number (or TTY - Telecommunications Device for the Deaf - number) of the complainant and the name, address and telephone number of an attorney or other representative of the complainant's choice;
- (5) State the name of the party or parties complained against and, if known to the complainant, the address and telephone number of the party or parties complained against;
- (6) Contain a clear and concise statement of the facts, including pertinent dates, constituting the alleged violations;
- (7) Cite the provisions of JTPA regulations, grants or other agreements under JTPA believed to have been violated;
- (8) State the relief or remedial action(s) sought;
- (9) Include copies of documents supporting or referred to in the complaint; and
- (10) State whether or not an oral hearing is requested.

*e. Where filed.* Complaints shall be filed with the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

**12.21(5)** *Acknowledgment of complaint and notice of opportunity for hearing.*

*a.* A complaint shall be deemed filed with the state when it has been received by the JTPA complaint officer in a form which satisfies the requirements of paragraph 12.21(4) "d."

*b.* Upon receipt of a complaint in proper form, the department of workforce development will send by personal service or certified mail, a copy of the complaint and a letter of acknowledgment and notice to the parties. The letter of acknowledgment and notice shall contain the filing date, the docket number, and guidance concerning the following:

- (1) The opportunity for informal resolution of the complaint at any time before a contested case hearing is convened.
- (2) The opportunity for a party to request a hearing by filing a request for hearing with the complaint officer within seven days of receipt of the acknowledgment of the complaint.
- (3) Opportunity for a party to be represented by counsel at the party's own expense.
- (4) Failure to file a written request for a hearing within the time provided constitutes a waiver of the right to a hearing. The presiding officer will rule on the complaint based upon the pleadings, evidence and briefs submitted.

- (5) If a hearing is requested, the hearing shall be held within 30 days of the filing of the complaint.
- (6) The opportunity for a party to submit written evidence, pleadings and briefs in a time and manner prescribed by the presiding officer.
- (7) When an administrative law judge presides, the administrative law judge shall issue a proposed decision within 60 days of the filing date of the complaint and forward a copy to each party, the complaint officer and the director.
- (8) Should the administrative law judge fail to issue a written decision within 60 days or if a party receives an adverse decision, a party may request an independent state review of the complaint. The request must be filed with the director within 10 days of the issuance date of the adverse decision or within 10 days from the date on which the decision should have been issued. If accepted for review, a decision shall be made within 30 days and the director's decision is final.
- (9) Parties may file exceptions to and appeals of the proposed decision for review by the director no later than 10 days from the issuance date of the proposed decision by filing with the complaint officer exceptions, appeals, and appeal briefs or briefs in support of the exceptions. The parties will receive written notice of the acceptance or denial of the request for review. The state reserves the right to review the administrative law judge's decision on its own motion.
- (10) If no exceptions to or appeals of the proposed decision are filed within the time provided or not reviewed upon agency motion, the proposed decision of the administrative law judge shall become the final agency decision.

**12.21(6) Settlement.** A controversy may, unless precluded by statute, be informally settled by mutual agreement of the parties any time before or after a controversy is formally identified by the filing of a complaint, notice, or petition, and before a contested case hearing is convened. The settlement shall be effected by a written settlement agreement signed by all parties or a written statement from the complainant that the complaint has been withdrawn or resolved to the complainant's satisfaction. The complaint officer shall acknowledge the informal settlement and notify the parties of the final action. With respect to the specific factual situation which is the subject of controversy, the informal settlement shall constitute a waiver, by all parties of the formalities to which they are entitled under the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A, JTPA and the rules and regulations under JTPA.

**12.21(7) Waiver of right to a hearing.** Failure to request a hearing in a timely fashion constitutes a waiver of a right to a hearing. If no hearing is requested, the presiding officer shall make a record of the written evidence, pleadings and briefs submitted by the parties. These documents shall be considered the complete record and will be the basis for the administrative law judge's proposed decision.

**12.21(8) Notice of hearing.** Upon receipt of a timely request for a hearing, the JTPA complaint officer will assign the matter to an administrative law judge. The parties shall be notified of this assignment and all future correspondence and filings shall be directed to the administrative law judge and copies of the documents shall be served on all parties and the JTPA complaint officer. All hearings shall be conducted in accordance with the procedures required in Iowa Administrative Code 871—Chapter 26.

These rules are intended to implement Iowa Code chapters 7B and 84A and P.L. 97-300 as amended by P.L. 102-367.

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<sup>1</sup> Effective date (1/22/86) of rule 19.8 delayed 70 days by Administrative Rules Review Committee.

<sup>2</sup> See IAB, Economic Development Department.