

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.