

by the service provider to expand capacity to provide effective training.

(2) Incentive payments must be consistent with incentive payments for performance-based contracting as described in the Federal Acquisition Regulations.

(i) *Performance reporting.*

Performance outcomes achieved under the WIOA Pay-for-Performance contract, measured against the levels of performance specified in the contract, must be tracked by the local area and reported to the State pursuant to WIOA sec. 116(d)(2)(K) and § 677.160.

(j) *Validation.* WIOA Pay-for-Performance contracts must include independent validation of the contractor's achievement of the performance benchmarks specified in the contract. (WIOA sec. 3(47)(B)) This validation must be based on high-quality, reliable, and verified data.

(k) *Guidance.* The Secretary may issue additional guidance related to use of WIOA Pay-for-Performance contracts.

§ 683.520 What funds can be used to support Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

(a) For WIOA Pay-for-Performance contract strategies providing adults and dislocated worker training services, funds allocated under secs. 133(b)(2)–(3) of WIOA can be used. For WIOA Pay-for-Performance contract strategies providing youth activities, funds allocated under WIOA sec. 128(b) can be used.

(b) No more than 10 percent of the total local adult and dislocated worker allotments can be expended on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allotment can be expended on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(1)–(2) of WIOA.

§ 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

Section 189(g)(2)(D) of WIOA authorizes funds used for WIOA Pay-for-Performance contract strategies to be available until expended. Under WIOA sec. 3(47)(C), funds that are obligated but not expended due to a contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. The Secretary will issue additional

guidance related to the funds availability and reallocation.

§ 683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

(a) Using funds from the Governor's reserve the State may:

(1) Provide technical assistance to local areas including assistance with structuring WIOA Pay-for-Performance contracting strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance.

(2) Conduct evaluations of local WIOA Pay-for-Performance contracting strategies, if appropriate.

(b) Using non-Federal funds, Governors may establish incentives for Local Boards to implement WIOA Pay-for-Performance contract strategies as described in this subpart.

(c) In the case of a State in which local areas are implementing WIOA Pay-for-Performance contract strategies, the State must:

(1) Collect and report to DOL data on the performance of service providers entering into WIOA Pay-for-Performance contracts, measured against the levels of performance benchmarks specified in the contracts, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 and in accordance with any additional guidance issued by the Secretary.

(2) Collect and report to DOL State and/or local evaluations of the design and performance of the WIOA Pay-for-Performance contract strategies, and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the strategies, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160, and in accordance with any guidance issued by the Secretary.

(3) Monitor local areas' use of WIOA Pay-for-Performance contract strategies to ensure compliance with the five required elements listed in § 683.500, the contract specifications in § 683.510, and State procurement policies.

(4) Monitor local areas' expenditures to ensure that no more than 10 percent of a local area's adult and dislocated worker allotment and no more than 10 percent of a local area's youth allotments is expended on WIOA Pay-for-Performance contract strategies.

(d) The Secretary will issue additional guidance on State roles in WIOA Pay-for-Performance contract strategies.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

§ 683.600 What local area, State, and direct recipient grievance procedures must be established?

(a) Each local area, State, outlying area, and direct recipient of funds under title I of WIOA, except for Job Corps, must establish and maintain a procedure for participants and other interested parties to file grievances and complaints alleging violations of the requirements of title I of WIOA, according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 686.1050.

(b) Each local area, State, and direct recipient must:

(1) Provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;

(2) Require that every entity to which it awards title I funds provide the information referred to in paragraph (b)(1) of this section to participants receiving title I-funded services from such entities; and

(3) Must make reasonable efforts to assure that the information referred to in paragraph (b)(1) of this section will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

(c) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(d) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (c)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Innovation and Opportunity Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and

(5) An opportunity for appeal to the Secretary under the circumstances described in § 683.610(a).

(e) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Innovation and Opportunity Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(f) The remedies that may be imposed under local, State and direct recipient grievance procedures are enumerated at WIOA sec. 181(c)(3).

(g)(1) The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIOA sec. 188 and/or 29 CFR part 37. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIOA sec. 188 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue NW., Washington, DC 20210, for processing.

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State or local law.

§ 683.610 What processes does the Secretary use to review grievances and complaints of title I recipients?

(a) The Secretary investigates allegations arising through the grievance procedures described in § 683.600 when:

(1) A decision on a grievance or complaint under § 683.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within

60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision on a grievance or complaint under § 683.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

(c) Appeals made under paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIOA sec. 184(f) or sec. 188, grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless the Department notifies the parties that the Department of Labor will investigate the grievance under the procedures at § 683.430. Discrimination complaints brought under WIOA sec. 184(f) or sec. 188 or 29 CFR part 37 will be referred to the Director of the Civil Rights Center.

(e) Complaints and grievances from participants receiving services under the Wagner-Peyser Act will follow the procedures outlined at 20 CFR 658.

§ 683.620 How are complaints and reports of criminal fraud and abuse addressed under the Workforce Innovation and Opportunity Act?

(a) Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the DOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756. The Web site is <http://www.oig.dol.gov/contact.htm>.

(b) Complaints of a non-criminal nature may be handled under the procedures set forth in § 683.600 or through the Department's Incident Reporting System.

§ 683.630 What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?

(a) Non-designation of local areas:

(1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State Board for a unit of general local government (including a combination of such units) or grant recipient that requests, but is not granted, initial or subsequent designation of an area as a local area under WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250.

(2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State Board does not result in designation, the appellant may request review by the Secretary under § 683.640.

(b) Denial or termination of eligibility as a training provider:

(1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local Board or the designated State agency under WIOA sec. 122(b), 122(c), or 122(d).

(ii) Termination of eligibility or other action by a Local Board or State agency under WIOA sec. 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a one-stop operator under WIOA sec. 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) Testing and sanctioning for use of controlled substances.

(1) A State must establish due process procedures, in accordance with WIOA sec. 181(f), which provide expeditious appeal for:

(i) Participants in programs under title I subtitle B of WIOA subject to testing for use of controlled substances, imposed under a State policy established under WIOA sec. 181(f)(1); and

(ii) Participants in programs under title I subtitle B of WIOA who are sanctioned, in accordance with WIOA sec. 181(f)(2), after testing positive for

the use of controlled substances, under the policy described in paragraph (c)(1)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

§ 683.640 What procedures apply to the appeals of non-designation of local areas?

(a) A unit of general local government (including a combination of such units) or grant recipient whose appeal of the denial of a request for initial or subsequent designation as a local workforce investment area to the State Board has not resulted in such designation, may appeal the State Board's denial to the Secretary.

(b) Appeals made under paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State Board.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250, the Secretary may require that the area be designated as a local workforce investment area. In making this determination the Secretary may consider any comments submitted by the State Board in response to the appeal made under paragraph (a) of this section.

(e) The Secretary must issue a written decision to the Governor and the appellant.

§ 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

(a) A local area which has been found in substantial violation of WIOA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIOA sec. 184(b). The appeal must be

filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization.

(b) The sanctions described in paragraph (a) of this section do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued the decision described in paragraph (e) of this section.

(c) A local area which has failed to meet local performance accountability measures for 3 consecutive program years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal to the Governor to rescind or revise such plan, in accordance with 20 CFR 677.225.

(d) Appeals to the Secretary made under paragraph (a) of this section must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

§ 683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?

(a)(1) Except for actions under WIOA secs. 116 and 188(a) or 29 CFR parts 31, 32, 35, 37 and 49 CFR part 25, the Grant Officer must use the procedures outlined in § 683.440 before imposing a sanction on, or require corrective action by, recipients of funds under title I of WIOA.

(2) To impose a sanction or corrective action for a violation of WIOA sec. 188(a) the Department will use the procedures set forth in 29 CFR part 37.

(3) To impose a sanction or corrective action for a violation of WIOA sec. 116 the Department will use the procedures set forth in 20 CFR part 677.

(b) *States.* When a Grant Officer determines that the Governor has not fulfilled its requirements under 2 CFR part 200, an audit, or a monitoring compliance review set forth at sec. 184(a)(4) of WIOA and § 683.200(a), or has not taken corrective action to

remedy a violation as required by WIOA secs. 184(a)(5) and 184(b)(1), the Grant Officer must require the Governor to impose the necessary corrective actions set forth at WIOA secs. 184(a)(5) and 184(b)(1), or may require repayment of funds under WIOA sec. 184(c). If the Secretary determines it is necessary to protect the funds or ensure the proper operation of a program or activity, the Secretary may immediately suspend or terminate financial assistance in accordance with WIOA sec. 184(e).

(c) *Local areas.* If the Governor fails to promptly take the actions specified in WIOA sec. 184(b)(1) when it determines that a local area has failed to comply with the requirements described in § 683.720(a), and that the local area has not taken the necessary corrective action, the Grant Officer may impose such actions directly against the local area.

(d) *Direct grant recipients.* When the Grant Officer determines that a direct grant recipient of subtitle D of title I of WIOA has not taken corrective action to remedy a substantial violation as the result of noncompliance with 2 CFR part 200, the Grant Officer may impose sanctions against the grant recipient.

(e) *Subrecipients.* The Grant Officer may impose a sanction directly against a subrecipient, as authorized in WIOA sec. 184(d)(3) and 2 CFR 200.338. In such a case, the Grant Officer will inform the direct grant recipient of the action.

§ 683.710 Who is responsible for funds provided under title I and Wagner-Peyser?

(a) The recipient of the funds is responsible for all funds under its grant(s) awarded under WIOA title I and the Wagner-Peyser Act.

(b)(1) The local government's chief elected official(s) in a local workforce investment area is liable for any misuse of the WIOA grant funds allocated to the local area under WIOA secs. 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(2) When a local workforce area or region is composed of more than one unit of general local government, the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

(3) When there is a change in the chief elected official(s), the Local Board is required to inform the new chief elected official(s), in a timely manner, of their responsibilities and liabilities as well as the need to review and update any written agreements among the chief elected official(s).

(4) The use of a fiscal agent does not relieve the chief elected official, or

