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STATE EMPLOYMENT SERVICES INSTRUCTION NUMBER: 12-12
(REPLACES STATE WIA INSTRUCTION NUMBER 02-03)

TO: Local Workforce Investment Area (LWIA) Administrators
Local Workforce Investment Board (LWIB) Chairs
Administrative Entity Executive Directors

SUBJECT: WIA Sanctions Policy for Failure to Meet Performance Goals

ISSUANCE DATE: February 21, 2013

EFFECTIVE DATE: July 1, 2013 (**Note:** Any LWIA failing a Program Year 2012 or later performance goal will be immediately subject to this policy.)

PURPOSE: To provide Local Workforce Investment Areas (LWIAs) guidance on the State's policy related to the application of sanctions for failure to meet local performance goals under WIA Common Measures.

REFERENCES: Workforce Investment Act 1998, (P.L. 105-220), Section 136; 20CFR Part 666, published at 65 Federal Register 49294, 49417 (August 11, 2000), Subpart d, 666.240 and 666.420; TEGL 8-99, "Negotiating Performance Goals, and Incentives and Sanctions Process under Title I of the Workforce Investment Act;" TEGL 19-02, Sanctions Policy for Failure to Meet State Negotiated Performance Goals Under Title I of the Workforce Investment Act (WIA); TEGL 09-07, Revised Incentive and Sanctions Policy for Workforce Investment Act Title 1B Programs.

BACKGROUND: A stated goal of the Workforce Investment Act is to increase employment, retention and earnings of participants. WIA specifies core indicators of performance as the basis of a comprehensive performance accountability system. In 2002, several federal agencies developed a set of common performance measures. Beginning in 2005, US Department of Labor Employment and Training Administration incorporated the definitions of the common performance measures to be used for federally-funded job training and employment programs with a similar purpose. The measures for Adults and Dislocated Workers include entered employment rate, employment retention, and six-month average earnings. Youth program performance includes placement in employment or education, attainment of a degree or certificate, and literacy and numeracy gains.

States and LWIAs negotiate goals of performance for the WIA common measures and are subject to sanctions for performance that does not meet the negotiated performance levels.

Section 136(g) of the Act and Section 666.240 of the Regulations address the application of sanctions to states for failure to meet negotiated performance goals. If a state fails to meet negotiated goals of performance for one year, the state may request technical assistance from the US Department of Labor. If a state fails to meet the negotiated goals for two consecutive years, the state may be subject to financial sanctions, up to five percent, in the form of a reduction in the annual allocation for the program area.

"Putting South Carolinians Back to Work"

Similarly, local areas have negotiated goals of performance on the Common Measures. Based on actual performance results, local areas may qualify for incentives (as funds are available) or may be subject to sanctions. **Failure to meet the negotiated level of performance is defined as failing to achieve at least 80 percent of the negotiated level on a specific performance measure.** Guidance on the application of sanctions to local areas for failure to meet the negotiated goals is found in Section 136(g) of the Act and 666.420 of the Regulations. Technical assistance must be provided to local areas failing to meet the negotiated goals of performance for any program year.

POLICY: The ultimate goal of the sanctions policy is to improve services to customers and to promote continuous performance improvement. The State's Sanctions Policy for local areas failing to meet negotiated levels of performance is as follows:

Failed Performance Measure(s) in One Program Year

If a Local Workforce Investment Area (LWIA) fails to meet the negotiated level on a performance measure(s) in one program year, a notice will be sent to the Administrative Entity Signatory Official, and copies sent to the LWIA's Chief Elected Officials (CEO) and the Local Workforce Investment Board (LWIB) Chairperson. The LWIB will be required to submit a Corrective Action Plan (CAP) within 45 days of the notice, describing how it will improve and meet performance. The CAP must include, but is not limited to:

1. A description of the reason or reasons for failure, including an analysis of the reasons for failure and how the cause was determined.
2. A description of immediate and long-term actions that will be taken to improve performance measures.
3. A timeline for completing each action identified.
4. Identification of technical assistance needed to implement the plan.
5. A description of how the LWIB will monitor and measure the effectiveness of the corrective action activities to ensure performance improvement.
6. Signatures of the LWIB chairperson and Administrative Entity Signatory Official. A copy of the CAP must be sent to the CEO(s).

Department of Employment and Workforce (DEW) Local Operations staff will review the CAP and notify the signatory official, LWIB Chair, and CEOs in writing of the plan acceptance. Appropriate parties will be notified within 15 days if additional information is required.

Upon acceptance of the CAP, the LWIB will submit progress reports to the DEW Local Operations Coordinator on a mutually agreed upon schedule. Report submissions will continue until the end of the program year.

Failed Same Performance Measure(s) in Two Consecutive Program Years

If a local area fails the same performance measure(s) for two consecutive program years, DEW will issue a written notice to CEOs, LWIB Chair and Administrative Signatory Official. In addition, DEW staff will present to the full LWIB the performance, sanctions, and potential consequences to the LWIB and the LWIA of continued failed performance.

The LWIA will be ineligible for incentive funds earned in the second consecutive year of failing a performance measure.

The LWIA will be required to commit funds for dedicated external technical assistance.

DEW staff will work with appropriate LWIA staff to amend the CAP as needed. Timelines for further local area action, additional monitoring, reporting, and technical assistance will be determined by a joint LWIB, DEW, local service provider(s) (if any) and Administrative Entity Ad Hoc Committee.

Failed Same Performance Measure(s) in Three Consecutive Program Years

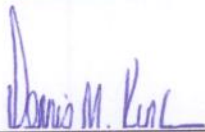
With the expanded awareness, actions, and technical assistance being provided to LWIAs over the previous two program years, it is not expected that there will be a third year of failed performance. However, should this occur, the Governor, or the State Workforce Investment Board (SWIB) acting on behalf of the Governor, will take corrective actions. The corrective actions may include the development of a reorganization plan under which the Governor/SWIB:

1. Requires the appointment and certification of a new LWIB;
2. Prohibits the use of particular service providers that have been identified as achieving poor levels of performance; or
3. Requires other appropriate measures designed to improve the performance of the local area. (Examples of such measures can include, selecting an alternative entity to administer the program, or merging the local area into one or more other local areas.)

A local area may appeal to the Governor/SWIB to rescind or revise the reorganization plan no later than thirty (30) days after receiving notice of the plan. The Governor/SWIB will make a final decision within thirty (30) days of receipt of the appeal. The Governor/SWIB's final decision may be appealed by the LWIB to the Secretary of Labor not later than thirty (30) days after the local area receives the decision. Procedures for appeal can be found at 20CFR 667.650.

ACTION: Please ensure that all appropriate stakeholders receive and understand this policy. In addition, the policy should immediately be incorporated into, or become an addendum to, all service provider contracts.

INQUIRIES: Questions may be directed to Mary jo Schmick at 803-737-2708, or mschmick@dew.sc.gov.



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