



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 Punchbowl Street, Room 321
Honolulu, Hawaii 96813

October 10, 2002

(SN 40)

WIA Bulletin No. 9-02

TO: WIA Partners

SUBJECT: Resolution of Findings from Monitoring and Oversight Reviews

PURPOSE

The purpose of this bulletin is to transmit the procedures for the resolution of findings arising from the State Department of Labor and Industrial Relations' (DLIR) monitoring and oversight reviews of its Workforce Investment Act (WIA) subrecipients.

BACKGROUND

Section 667.500 of the WIA Final Rule assigns states the responsibility for resolving findings that arise from their monitoring and oversight reviews of WIA grant subrecipients. As part of this responsibility, states must prescribe standards and procedures for the timely resolution of findings.

POLICY

The standards and procedures that DLIR will follow to resolve monitoring and oversight findings with its subrecipients are provided in Attachment A to this bulletin.

INQUIRIES

Questions regarding this bulletin should be directed to Judy Gordon at (808) 586-9064.

A handwritten signature in black ink, appearing to read "Leonard Agor".

Leonard Agor, Director
Department of Labor and Industrial Relations

Attachment

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Procedures for Resolving WIA Monitoring and Oversight Findings

I. PURPOSE

The purpose of these procedures is to delineate the steps that will be followed by the State Department of Labor and Industrial Relations (DLIR) in resolving any findings arising from the oversight and monitoring of its grant subrecipients under the Workforce Investment Act (WIA).

II. DEFINITIONS

- A. **Administrative Finding** - An action by a WIA subrecipient that violates applicable statutes, regulations, grant agreements, contracts, and/or DLIR policies, but that does not involve the misexpenditure of funds.
- B. **Disallowed Costs** - Expenditures of WIA funds by a WIA subrecipient that violate applicable statutes, regulations, grant agreements, contracts, and/or DLIR policies.
- C. **Final Determination** - DLIR's final decision regarding the disposition of findings that were identified through general oversight or a monitoring review of a WIA subrecipient.
- D. **Finding** - An administrative deficiency or the misexpenditure of WIA funds by a subrecipient identified by DLIR through general oversight or a monitoring review of a WIA subrecipient.
- E. **Informal Resolution** - A period during which a WIA subrecipient is provided with an opportunity to present additional arguments or documents to resolve open findings listed in the initial determination.
- F. **Initial Determination** - DLIR's preliminary decision regarding the disposition of findings that were identified through general oversight or a monitoring review of a WIA subrecipient.
- G. **Monitoring Letter** - A report written by DLIR staff and sent to a WIA subrecipient that details the results of a monitoring review.

- H. **Sanction** - An action imposed on a subrecipient by DLIR after the final determination as a means of resolving findings identified through general oversight or a monitoring review.
- I. **Subrecipient** - An entity to which a WIA grant is awarded by DLIR and which is accountable to DLIR for the use of the funds provided.

III. BACKGROUND

Under WIA, DLIR is responsible for conducting general oversight and periodic monitoring of its subrecipients in order to determine whether program activities and expenditures are in compliance with applicable statutes, regulations, grant agreements, contracts, and/or DLIR policies.

After the completion of an investigation, on-site monitoring, or a desk monitoring review, DLIR sends the subrecipient a monitoring letter that lists any findings of non-compliance. The subrecipient is given a period of time in which to respond to the letter, agree or disagree with the findings, provide documentation to support their claims, and/or specify corrective actions to be taken to resolve the findings.

Once the above steps have been completed, DLIR is responsible for resolving any findings on which there is disagreement with the subrecipient. The procedures that DLIR has developed for the resolution of these findings are provided below.

IV. Determination Procedures

A. Initial Determination

Within 45 calendar days of DLIR's receipt of a subrecipient's response to a monitoring letter, DLIR will issue an initial determination on the status of the findings.

The initial determination will include the following:

1. DLIR's findings of non-compliance as originally stated in the monitoring letter issued to the subrecipient;
2. The response from the subrecipient acknowledging or disputing the findings and specifying any corrective actions to be taken; and
3. DLIR's initial determination of the acceptability of the subrecipient's responses and proposed corrective actions.

DLIR will mail the initial determination to the subrecipient by "Certified Mail - Return Receipt Requested."

B. Informal Resolution

Subrecipients may submit a written request to DLIR for an informal resolution of the findings within 10 calendar days of receiving DLIR's initial determination.

Informal resolution discussions may be held by telephone, if necessary, but preferably in person. The subrecipient should be prepared to present documentary evidence to refute administrative findings or to support the allowability of any questioned or disallowed costs.

The informal resolution process should be completed within 60 calendar days of the subrecipient's receipt of the initial determination.

C. Final Determination

If no request for an informal resolution is received, DLIR will issue a final determination no later than 45 calendar days after issuing the initial determination. If a request for an informal resolution is received, DLIR will issue a final determination no later than 45 calendar days after the end of the informal resolution period. DLIR will mail the final determination to the subrecipient by "Certified Mail - Return Receipt Requested."

The final determination will include the following:

1. A list of the findings in the initial determination for which the subrecipient's responses were not acceptable;
2. The subrecipient's responses to the findings including any additional information or documentation that may have been provided during the informal resolution process;
3. DLIR's final determination of the acceptability of the subrecipient's responses and proposed corrective actions, and the basis for each decision;
4. Identification, or request for identification, of any disallowed costs;
5. A list of actions that must be taken by the subrecipient to resolve the findings;
6. A description of any sanctions that may be imposed; and

7. Notification of the subrecipient's right to appeal the final determination.

If the final determination is appealed, and the decision of the appeal does not uphold DLIR's determination, an amended final determination will issued.

V. APPEAL PROCEDURES

A. Request for a Hearing

The subrecipient may submit a request to the DLIR Director for a hearing regarding the final determination within 30 calendar days of the receipt of the notice.

The request for a hearing must be accompanied by a copy of the final determination and should specifically state which decisions are being contested. Those portions of the final determination not being contested will be considered resolved and not subject to review by the hearing officer.

When no request for a hearing is made, the final determination will constitute final action by DLIR and the findings will not be subject to further discussion.

B. Conduct of Hearing

The appeal hearing will be conducted by the DLIR Employment Security Appeals Referee (ESAR) Office. Hearings will be scheduled, held, and conducted as follows:

1. Written notice of a hearing, specifying the time, place and those findings which are in dispute, will be given or mailed to the parties at least fifteen (15) days prior to the hearing. Failure to object to such hearing within the time specified in the notice will be deemed consent by the parties to such hearing.

A hearing may be rescheduled at the request of an interested party for reasonable cause.

2. A single hearing with all parties appearing at the same time will be held whenever possible. Hearings may be held with the parties appearing in person, by telephone, or other suitable communication devices agreed to by the parties.

Where it is impractical to hold a single hearing, the evidence may be taken separately by the same or different referees upon due notice to all interested parties. The decision will be based upon the complete record.

3. The parties appearing for a hearing before the referee will be provided written instructions stating the procedures that will be followed in the conduct of a hearing.
4. The decision of the referee will be in writing and will be signed by the referee. The document will set forth the findings of fact and the reasons for the decision.

The decision of the referee will be final and not subject to further review or appeal.

VI. DEBT COLLECTION

If DLIR's final determination includes a finding of disallowed costs, and this determination is upheld by the ESAR, DLIR will require repayment of the amount by the subrecipient from non-federal funds.

The debt collection procedures will be as follows:

- A. A debt will be established at the time a "Request for Repayment" is made by DLIR. Such request will be stated in writing and mailed to the subrecipient by "Certified Mail - Return Receipt Requested" no later than 45 days after the issuance of the final determination or the amended final determination.
- B. Interest Rate - Interest shall be charged after 30 days from the date that the initial Request for Repayment is issued on the full outstanding liability. The rate of interest shall be the current rate on 90-day United States Treasury Bills or the rate specified in the Request for Repayment. The rate of interest will be adjusted quarterly according to the current rate on 90-day U.S. Treasury Bills.
- C. Penalty Fee - If the debt is not resolved within 60 calendar days from the date of the initial Request for Repayment, a penalty fee of five percent (5%) of the full outstanding debt will be assessed and added to the debt.
- D. Administrative Fee - The State may assess an administrative fee for all costs incurred in the collection of the debt after the initial Request for Repayment has been made. The administrative fee shall cover administrative costs incurred in the processing and expenses of handling of the debt, including the use of a private debt collection agency. The administrative fee shall be assessed in 30-day increments. Administrative fees shall be in addition to the debt, interest and penalty fees.

- E. Delinquent Debt - A debt is considered delinquent if it has not been repaid by the date specified in the initial Request for Repayment, not to exceed 60 calendar days. The date of delinquency can be stayed by the State if a satisfactory repayment arrangement has been made by that date. Any repayment arrangement or other agreement shall establish a new delinquent debt period.
- F. Second Request for Repayment - When a debt is considered delinquent, a second written Request for Repayment shall be issued by Certified Letter, Return Receipt Requested. The second Request for Repayment shall include interest charges, penalty fee and administrative fees assessed to date. Where there exists an ongoing contractual relationship with the State, the subrecipient shall be given 30 days notice that the reimbursement or payment for services performed by the subrecipient may be withheld by the recipient upon issuance of the second Request for Repayment.
- G. Third Request for Repayment - Where the debt is not resolved or repaid within 30 days of the second Request for Repayment, a third Request for Repayment will be issued by Certified Letter, Return Receipt Requested. Upon issuance of the third Request for Repayment, the collection of the debt shall be referred to the State of Hawaii Attorney General for appropriate action, including any legal remedies. The Attorney General may choose to refer the account to a collection agency.
- H. Any outstanding debt shall be promptly reported to the credit reporting agency. The State Attorney General shall be asked to file a petition for bankruptcy proceeding to protect the right of recovery where appropriate.
- I. Method of Repayment - The State shall accept methods of repaying a debt or erasing a debt by substituting disallowed WIA costs with valid non-federal costs in the order of preference listed below:
 - 1. Stand-in Costs - This method is not actually a debt repayment but is a way of "erasing" the debt. The debtor must identify allowable costs from non-federal sources for appropriate cost categories associated with the grant during the grant period, but not charged to the grant, and substitute those costs for the disallowed costs for the disallowed federal costs, thus erasing the debt. This method would require negotiation and written agreement between the debtor and the State recipient agency. Such costs are subject to audit. Documentation must be maintained when such agreement is made. In order to be considered as valid substitutions, the costs (1) shall have been reported by the grantee as uncharged program costs under the same title and in the same program year in which the disallowed costs were incurred, (2) shall have been incurred in compliance with laws, regulations and contractual provisions governing WIA, and (3) shall not result in a violation of the applicable cost limitations.

2. **Services-in-Lieu of Cash** - This method involves a repayment agreement with the debtor whereby additional grant agency services, are paid through non-federal funds and received in lieu of cash. When it becomes clear that a debtor cannot repay through any other repayment method, an agreement of this nature may be negotiated. This method requires a written agreement signed by both parties with conditions regarding the type of funds to be used, documentation subject to audit, a description of the services rendered, and a time limitation.
3. **Withholding** - This repayment method will involve withholding funds from the current grant amounts owed the debtor for past services or other considerations already provided in satisfaction of the debt owed. This method is available only if there is a continuing contractual relationship with the debtor.
4. **Installment Payment** - Installment repayment of cash will be allowed for instances when the full debt amount cannot be repaid in lump sum. Cash installment repayments are usually of short duration, from three to five months, and are limited to 36 months. The duration shall be negotiated by the State based upon the size of the debt and the debtor entity's ability to pay.
5. **Adjustment in Payments** - When cash payment in lump sum or in installments is not possible, the adjustment in payments repayment agreement method is the preferred alternative. Under this method, an agreement is entered into with the entity whereby the grant is reduced by the amount of the debt while the program is maintained at an undiminished cost level supported by non-federal contributions.