

COMMONWEALTH OF VIRGINIA  
VIRGINIA COMMUNITY COLLEGE SYSTEM

**WORKFORCE INVESTMENT ACT**

**VIRGINIA WORKFORCE LETTER (VWL) #05-01**

**TO:** LOCAL WORKFORCE INVESTMENT BOARDS

**FROM:** WORKFORCE DEVELOPMENT SERVICES

**SUBJECT:** OVERSIGHT AND COMPLIANCE ACTIVITIES FOR LOCAL WORKFORCE INVESTMENT ACT AREAS (LWIA)

**DATE:** FEBRUARY 7, 2011

**Purpose:**

To inform local workforce areas on matters pertaining to monitoring, compliance, the range of possible sanctions the state may impose and the manner in which a local area may appeal these matters. It is the Commonwealth's expectation that most violations will be resolved through the corrective action plan and technical assistance that results from the monitoring process described in this document. Compliance is not viewed by Virginia as a punitive exercise, and to the extent possible depending upon the situation, all efforts will be made by the Commonwealth to work with local areas to resolve compliance matters before it becomes necessary to impose various sanctions that the WIA permits, and in some cases, requires, to be imposed.

References: Workforce Investment Act, Section 183, Section 184; 20 CFR Part 652 et al., Workforce Investment Act (WIA); Final Rules, Section(s) 667.400, 667.410, 667.500, 667.700-710; 29 Code of Federal Regulation (CFR) Part 97, *Common Rule for Uniform Administrative Requirements for Grant and Cooperative Agreement to State and local Governments*

**Part I – Monitoring, Compliance and Resolution**

**A. Background:**

The WIA mandates the necessity to monitor recipients and sub recipients of all grants awarded and funds expended under WIA title I to determine compliance with the Act and WIA regulations. §667.400 requires that the state develop a state monitoring system that meets the requirements of §667.410(b). The state, through the Virginia Community College System (VCCS) as WIA administrative entity, must monitor Local Boards annually for compliance with applicable laws and regulations in accordance with the state monitoring system. Monitoring must

include an annual review of each local area's compliance with the uniform administrative requirements.

§667.410 (a) states that each recipient and sub recipient must conduct regular oversight and monitoring of WIA activities and those of sub recipients and contractors in order to:

- (1) Determine that expenditures have been made against the cost categories and within the cost limitations specified in the Act and the regulations in this part;
- (2) Determine whether or not there is compliance with other provisions of the Act and the WIA regulations and other applicable laws and regulations; and
- (3) Provide technical assistance as necessary and appropriate.

The regulations say further at 667.410 (b)(2) that the State monitoring system must:

- (i) Provide for at least annual on-site monitoring reviews of local areas' compliance with DOL uniform administration requirements, as required by WIA section 184(a)(4);
- (ii) Ensure that established policies to achieve program quality and outcomes meet the objectives of the Act and the WIA regulations, including policies relating to: the provision of services by One-Stop Centers; eligible providers of training services; and eligible providers of youth activities;
- (iii) Enable the state to determine if sub recipients and contractors have demonstrated substantial compliance with WIA requirements; and

Section 667.410 (b)(4) states:

- (4) The state must require that prompt corrective action be taken if any substantial violation of standards identified in paragraph (b) (2) or (3) of this section is found. (WIA sec. 184(a) (5).

The Common Rule for Uniform Administrative Requirements for grant and Cooperative Agreements to State and Local Governments, Subpart C., Section 97.40(a) states:

Grantees are responsible for managing the day-to-day operations of grant and sub grant supported activities to assure compliance with applicable federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

## **B. State-level Process for Monitoring:**

WIA Regulation 20 CFR 667.705 indicates that the Secretary of Labor holds the recipient (state) responsible for all funds granted to the state. In turn, the state holds local boards responsible for all WIA funds they receive and disburse, including the proper expenditures of such money. The state is responsible for monitoring compliance with WIA requirements set in federal law, federal regulations, state policies, administrative implementation guidance (Virginia Workforce Letters), as well as other applicable federal and state laws and policies.

The VCCS staff responsibility is to determine if policies and procedures are in place; and determine if the policies and procedures are adequate to ensure WIA Compliance. Another significant role of the VCCS is to provide technical assistance to local workforce boards and one-stop operators to assist local operations in achieving WIA compliance and program performance standards.

The major systems of compliance review include, but are not limited to:

- ✓ Administrative
- ✓ Financial
- ✓ Program

The state considers local areas accountable for actions taken, directly or indirectly, through service providers.

Specifically, the state will [ §§667.410, 667.500, and 667.700-710 ]:

1. Undertake at least annually, reviews and monitoring of local area activities, including administrative, financial, and programmatic assessments, as well as compliance with the WIA statute, regulations, DOL, and/or state policies/procedures. More targeted and periodic reviews may also be conducted by the state as determined necessary;
2. Identify and notify local areas of problem areas discovered during review and monitoring, and outline corrective action required;
3. Upon completion of state monitoring review, issue a draft report of findings, concerns and any necessary corrective actions within 45 days. Local areas will have 10 days to review the draft report for accuracy of the findings and submit comments. After this time period, a final report will be issued. If the report requires corrective action, then the local areas will have 45 days from receipt of the report to complete a corrective action plan.
4. Continue to monitor implementation of corrective actions for improvements in deficient areas and provide technical assistance as needed or requested by the local area. Local areas may request extensions of time to make corrective actions if there is satisfactory documentary evidence of progress being made towards resolution.
5. Identify, communicate and impose sanctions that may be applied should required corrective action not be completed within the identified timeframe.
  - a. The local area will be notified by the state of its intent to impose a specific sanction. Such notice will be given at least 10 days before the scheduled imposition of sanctions and reiterate the violation, acceptable corrective action and appeal process.
  - b. If satisfactory evidence of corrective action initiated is presented to the state within this 10 day period, the state will postpone or not impose the sanction(s).

The range of possible sanctions is defined in Part II below.

6. Review and take action on local appeals as defined in Part III below.

### **C. Local level requirements for monitoring**

All local workforce areas must develop internal and sub recipient monitoring policies and procedures. Also, on an annual basis, they must monitor their internal and sub recipient systems for compliance with the WIA federal and state requirements. These requirements are included in, but are not limited to, the applicable State WIA policies Virginia Workforce Letters, VCCS Contracts/Grant Agreements, Federal laws and regulations, Federal Uniform administrative requirements, and/or Federal cost principles. As with the state, the major systems of local compliance review shall include, but be not limited to:

- ✓ Administrative
- ✓ Financial
- ✓ Program

## **Part II –Compliance Violations and Range of Possible Sanctions**

### **A. Range of Possible Violations (Not all inclusive).**

In the course of the state-conducted monitoring described in Part I above, or based on information as may be identified by the state through the course of operations, certain violations may be identified as listed below. Please note that this list is not all inclusive.

#### **Administrative Violations**

1. Failure to address deficiencies within forty-five (45) days after receipt of the state's monitoring report outlining corrective action required [state requirement to coincide with §667.170(a)(6)];
2. Failure to obtain/maintain adequate supporting documentation for activities in accordance with state and federal WIA policy and procedures;
3. Failure to maintain a WIB as per any of the provisions of §661.300 through 661.325;
4. Failure to form and maintain a youth council to carry out responsibilities as per §§661.335 and 661.340;
5. Failure to submit accurate required financial, participant, data collection, and other reports by established due dates without written explanation and local workforce area written acknowledgment [§667.300 and state requirement to coincide with §667.170 (a)(8)].
6. Failure to monitor sub recipients as per §667.410;
7. Failure to maintain accurate, required and current data in the VOS data collection system (§667.300 and Section 185).

## Fiscal Violations

1. Failure to conduct procurement according to state and federal policies and procedures, including prior approval where necessary [Section 184(a)(3)(B)];
2. Failure to operate within minimum cash balance requirements (i.e., keeping only enough cash on hand to meet immediate cash needs) [state requirement to coincide with §667.170(10)];
3. Failure to comply with program cost limitations according to the approved plan budget [§667.220 and 667.410(a)(1)];
4. Failure to comply with expenditure rates in accordance with WIA, established state policy and procedures and or an approved local plan
5. Incurring costs outside the grant period
6. Failure to properly report and dispose of government property as instructed by DOL (§667.170);
7. Charging unallowable costs to a grant;
8. Charging the same costs to more than one grant;
9. Expenditure of WIA funds for non-WIA allowable activities defined in WIA or regulations.

## Program Violations

1. Failure to obtain proper eligibility determination information indicating ineligible or possibly ineligible participants receiving WIA benefits (where the sub recipient discovered ineligible participants on its own, took appropriate action, and resolved the finding, sanctions would most likely not be imposed) [667.170(a)(5)].
2. Failure to comply with:
  - a. Time limitations specified by the WIB for the participation of individuals in OJTs as identified in monitoring reports [Section 101(31) and §663.700];
  - b. Dollar amounts and/or duration for Individual Training Accounts (§663.420);
  - c. Requirements for determining eligibility for Training Providers (§663.530, §663.535);
  - d. Provision to provide at least one (1) core service to an individual before they receive intensive services or numbers established by LWIB (§663.160);
  - e. Provision to provide at least one (1) intensive service to individual before they receive training services or numbers established by LWIB (§663.240);
  - f. Eligibility requirements and established time limits set by WIB for both supportive services (§663.810) and needs-related payments (§663.815-840).
3. Failure to meet adjusted levels of performance on required core indicators (common measures) for a program for a second consecutive program year [Section 136(h)(1)].

### **B. Description of Sanctions**

1. Reallocation of unexpended funds (WIA 128 (c); 133(c))
2. Disallowing costs associated with a particular violation or deficiency and the seeking of repayment (WIA 184(c))

3. Disapproval of requests for specific or all WIA fund drawdown requests from an area until the violation or deficiency has been corrected. (WIA 184(b)(B)(v))
4. The state may deduct the amount of mis-expenditure from the local area's amount of allowable administrative funds from of the subsequent program year's allocation. (WIA 184(b)(4))
5. Development of a performance improvement plan or the requirement for a modification to the approved local plan. (WIA 136(h))
6. Monetary sanctions may be imposed to reduce the funding allocation for the next program year by up to 5 percent based on the degree of failure to meet the state adjusted levels of performance [in conformance with the federal policy imposed on the state - Section 136(g)(1)(B)].

*Using the average percent achieved across relevant indicators for each program, and for the overall program based on customer satisfaction, there will be a 1 percent monetary sanction for every 3 percentage points below 100 percent cumulative attainment of the lower limit of the ranges established. As an example, achievement between 97.0 and 99.99 percent of the lower limit would result in a one percent reduction; achievement between 94.0 and 96.99 percent would result in a two percent deduction, etc. (as per DOL Consultation Paper on Awarding Incentive Grants and Applying Sanctions*

7. Revocation of a local area plan approval until required corrections or actions have been taken by the local area. (WIA 184(b)(1)(A))
8. Imposition of a reorganization plan, pursuant to Sections 136(h)(2) and 184(b) of WIA, including but not limited to:
  - a. Decertifying the WIB
  - b. Prohibiting the use of specific providers
  - c. Selecting an alternate entity to administer the WIA program locally
  - d. Merging the local area into one or more local areas
  - e. Making other such changes as determined necessary to ensure compliance
9. Should the state determine it necessary to protect the integrity of the funds or to ensure the proper operation of the program or activity involved, the state may determine it necessary to suspend future federal awards completely or terminate the awards in place. ((WIA 184(b)(B)(v); 184(e))

Part III – Process for a local area to file appeals related to compliance and sanction matters
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1. Any appeal to the Commonwealth of Virginia must be made within fifteen (15) Calendar days of notification of a final report or subsequent sanction notice, and must be made in writing to:
  - Vice Chancellor for Workforce Development
  - Virginia Community College System
  - 101 N. 14<sup>th</sup> Street, 15<sup>th</sup> Floor
  - Richmond, VA 23219

2. The appeal must specifically indicate what action(s) is being appealed and include information supporting the grounds upon which the appeal is sought.
3. The VCCS WIA Appeals Board, comprised of the Vice Chancellor for Workforce Development Services as Chair, the Vice Chancellor for Administrative Services, and an Auditor from the VCCS Internal Audit Division (the Auditor must be a member of the Internal Audit staff not participating in an audit involving the WIA programs), will:
  - a. Review the appeal within twenty (20) calendar days of receipt of the request for appeal;
  - b. Notify the complainant, and other concerned parties (CLEOs, grant recipient etc.) by certified mail, return receipt requested, within twenty (20) calendar days after receiving the notice of appeal. The notification shall include the following information:
    1. The date, time, and place of an appeals board meeting to review the matter. A telephonic option will be provided for the complainant may call in.
    2. The name, address, and telephone number of the contact person issuing the notice.
  - c. Conduct a review in response to the appeal;
  - d. Make recommendations to the Chancellor of the Virginia Community College System as to the adjudication of the appeal.
4. The Chancellor of the Virginia Community College System is the final arbiter of all appeals and will make the final determination. The Chancellor's final written decision will be issued to the complainant and other related parties by certified mail, return receipt requested, within sixty (60) calendar days of receipt of the appeal. The written decision will include the following information:
  - a. A summary of the original matter that is being appealed;
  - b. A summary of the basis for the appeal;
  - c. A statement of the facts as determined by the appeals board
  - d. The Chancellor's decision and the reasons for the decision; and
  - e. Notice that appellant has the right to appeal the decision of the Chancellor within 60 days of the receipt of the decision to the Secretary of Labor.
5. Appeals of state level decisions that were not rendered a decision within the required sixty (60) day time limit may be made to the Secretary of Labor pursuant to 20 CFR Section 667.610(a)(1). The appeal must be made within one hundred and twenty (120) days of the filing of the complaint with the Commonwealth of Virginia or within sixty (60) days of receipt of Commonwealth of Virginia's decision.

All appeals to the Federal level must be sent by certified mail, return receipt requested, to the following address:

Secretary of Labor  
U.S. Department of Labor  
200 Constitution Avenue, NW

Washington, D.C. 20210  
Attention: ASET

A copy of the appeal must be simultaneously provided to the opposing party and to the Employment and Training Regional Administrator as follows:

Regional Administrator- Region 2  
U.S. Department of Labor/ETA  
The Curtis Center, Suite 825 East  
Philadelphia, PA 19106

Upon receipt of the appeal from the local area, the Secretary must render a final decision within 30 days (WIA Law, Section 136(h)(2)(A)(B), (WIA Final Rules and Regulations - 20 CFR, Section 667.650(b)).