

§ 632.44 Sanctions for violation of the Act.

(a) Pursuant to sections 164 (d), (e), (f), (g), and (h) of the Act, the Secretary may impose appropriate sanctions and corrective actions for violations of the Act, Regulations, or grant terms and conditions. Additionally, sanctions may include the following:

(1) Offsetting debts, arising from misexpenditure of grant funds, against amounts to which the grantee is or may be entitled under the Act, except as provided in section 164(e)(1) of the Act. The debt shall be fully satisfied when the Secretary reduces amounts allotted to the grantee by the amount of the misexpenditure; and

(2) Determining the amount of Federal cash maintained by the grantee or its subgrantee or contract or in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt.

(b) Except for actions under section 164(f) and 167 of the Act, to establish a debt or violation subject to sanction and/or corrective action, the Secretary shall utilize initial and final determination procedures outlined in part 636.

(c) To impose a sanction or corrective action regarding a violation of section 167 of the Act, the Secretary shall utilize the procedures of 29 CFR part 31.

(d) (1) The Secretary shall hold the grantee responsible for all funds under the grant. The grantee shall hold its subgrantees and contractors responsible for JTPA funds received through the grant.

(2) The Secretary shall determine the liability of the grantee for misexpenditures of grant funds in accordance with section 164(e) of the Act, including the requirement that the grantee shall have taken prompt and appropriate corrective actions for misexpenditures by a subgrantee or contractor.

(3) Prompt, appropriate, and aggressive debt collection action to recover any funds misspent by subgrantees or contractors ordinarily shall be considered a part of the corrective action required by section 164(e)(2)(D) of the Act.

(4) In making the determination required by section 164(e)(2) of the Act, the Secretary may determine, based on a request from the grantee, that the grantee may forego certain collection actions against a subgrantee or contractor where that subgrantee or contractor was not at fault with respect to the liability criteria set forth in section 164(e)(2)(A) through section 164(e)(2)(D) of the Act. The Secretary shall consider such requests in assessing whether the grantee's corrective action was appropriate in light of section 164(e)(2)(D) of the Act.

(5) The grantee shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act until the Secretary determines that further collection action, either by the grantee or subgrantee or contractor, would be inappropriate or would prove futile.

(e) Nothing in this section shall preclude the Secretary from imposing a sanction directly against a subgrantee or contractor as authorized in section 164(e)(3) of the Act. In such a case, the Secretary shall inform the grantee of the Secretary's action.

Subpart E—Program Design and Management

§ 632.70 Waiver of regulations under Parts 632 and 636.

(a) A Native American section 401 grantee may request, and the Assistant Secretary of Labor for Employment and Training may grant, a waiver of specific provisions of 20 CFR Parts 632 and 636, or of any applicable administrative issuance, to the extent that such request is consistent with the provision of the Act.

(b)(1) In requesting a waiver under this section, the Native American section 401 grantee shall demonstrate how it will enhance the provision of services or outcomes to participants, which may include, but are not limited to, the following purposes: improving the targeting of services to the hard-to-serve; increasing the level of basic and occupational skills training provided by the JTPA program; contributing to the provisions of academic enrichment services to youth; promoting coordination of JTPA programs with other

human resources programs; or substantially improving the job placement outcomes of the JTPA program.

(2) The request shall describe the regulatory requirements to be waived and demonstrate how such requirements impede the enhancement of the services and outcomes described in paragraph (b)(1) of this section.

(3) The waiver request shall indicate how the grantee will modify its planning documents as a result of the waiver.

(c) A waiver shall not be granted for:

(1) Any statutory requirement;

(2) The formula for allocation of funds;

(3) Eligibility requirements for services as provided in this part;

(4) Requirements for public health or safety, labor standards, civil rights, occupational safety or health, or environmental protection; or

(5) Prohibitions or restrictions relating to construction of buildings or facilities.

(d) Waivers granted shall be effective for no more than four years from the date the waiver is granted.

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§ 632.75 General responsibilities of Native American grantees.

This subpart sets out program operation requirements for Native American grantees including program management, linkages, coordination and consultation, allowable activities, participant benefits and duration of participation provisions. It also sets forth the responsibilities of Native American grantees with respect to non-discrimination and equitable provision of services.

§ 632.76 Program management systems.

(a) All Native American grantees shall establish management information systems to control and assess all programs. Native American grantees must institute and maintain effective systems for the overall management of all programs including:

(1) Eligibility verification systems as described in § 632.77;

(2) Complaint and hearing procedures as described in part 636; and

(3) Mechanisms for taking immediate corrective action where problems have been identified and for restitution of JTPA funds for improper expenditures.

(b) All Native American grantees shall establish and maintain financial management and participant tracking systems in accordance with § 632.32 and § 632.77. The principal objectives of such systems shall be to provide the Native American grantee with systems necessary to effectively manage its program and to provide information necessary to design program activities and delivery mechanisms and complete Federal required reports.

(c) Each Native American grantee shall establish and use procedures for the continuous, systematic assessment of program performance in relation to the performance standards and goals contained in its CAP.

(d) Native American grantees shall establish and use procedures whereby the information collected and assessments conducted shall be considered in subsequent program planning and in the selection of service deliverers.

§ 632.77 Participant eligibility determination.

(a) Each Native American grantee, and any subgrantees or contractors assigned responsibility for the determination of participant eligibility, shall be responsible for developing and maintaining a system which reasonably ensures an accurate determination and subsequent verification of eligibility based on the information presented at the time of application.

(b) The ultimate responsibility for the selection of participants and the maintenance of participant records rests with the Native American grantee. However, the Native American grantee may assign the administration of this responsibility to subgrantees or contractors. The selected agency must provide adequate documentation of each participant's eligibility and retain in the participant's folder the information on which this determination is based.

(c) The eligibility determination shall be based upon a signed, completed, application form which records all information necessary to determine