

§ 683.750 What procedure must be used for administering the offset/deduction provisions of the Workforce Innovation and Opportunity Act?

(a)(1) For misexpenditures by direct recipients of title I and Wagner-Peyser Act formula funds the Grant Officer may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant Officer. Generally, the Grant Officer will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (a)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of WIOA and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient misexpenditures that were not due to willful disregard of the requirements of WIOA and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure, if the Grant Officer has required the State to repay or offset such amount, the State may deduct an amount equal to the misexpenditure from the subrecipient's allocation of the program year after the determination was made. Deductions are to be made from funds reserved for the administrative costs of the local programs involved, as appropriate.

(c) If offset is granted, the debt will not be fully satisfied until the Grant Officer reduces amounts allotted to the recipient by the amount of the misexpenditure.

(d) For recipients of funds under title I and Wagner-Peyser Act funds, a direct recipient may not make a deduction under paragraph (b) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIOA funds.

Subpart H—Administrative Adjudication and Judicial Review

§ 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIOA who is dissatisfied by a determination not to award Federal financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a contractor against which the Grant Officer has directly imposed a sanction or corrective action under sec. 184 of WIOA, including a sanction against a State under part 677 of this chapter, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this subpart must specifically state those issues or findings in the final determination upon which review is requested. Issues or findings in the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of WIOA, its regulations, the grant or other agreement under WIOA raised in the final determination and the request for hearing are subject to review.

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, with one copy to the Departmental official who issued the determination.

(e) The procedures in this subpart apply in the case of a complainant who has engaged in the alternative dispute resolution process set forth in § 683.840, if neither a settlement was reached nor a decision issued within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period provided in § 683.840. In addition to including the final determination upon which review is requested, the complainant must include a copy of any

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Stipulation of Facts and a brief summary of proceedings.

[81 FR 56410, Aug. 19, 2016, as amended at 86 FR 1779, Jan. 11, 2021]

§ 683.810 What rules of procedure apply to hearings conducted under this subpart?

(a) *Rules of practice and procedure.* The rules of practice and procedure promulgated by the OALJ at subpart A of 29 CFR part 18, govern the conduct of hearings under this subpart. However, a request for hearing under this subpart is not considered a complaint to which the filing of an answer by the Department or a Department agency or official is required. Technical rules of evidence will not apply to hearings conducted pursuant to this part. However, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination will apply.

(b) *Prehearing procedures.* In all cases, the Administrative Law Judge (ALJ) should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in WIOA sec. 183(c), incorporating 15 U.S.C. 49.

(d) *Timely submission of evidence.* The ALJ must not permit the introduction at the hearing of any documentation if it has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) *Burden of production.* The Grant Officer has the burden of production to support her or his decision. This burden is satisfied once the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

20 CFR Ch. V (4–1–23 Edition)

§ 683.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

(a) In ordering relief the ALJ has the full authority of the Secretary under WIOA, except as described in paragraph (b) of this section.

(b) In grant selection appeals of awards funded under WIOA title I, subtitle D:

(1) If the Administrative Law Judge rules, under § 683.800, that the appealing organization should have been selected for an award, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the organization continues to meet the requirements of the applicable solicitation, whether the funds which are the subject of the ALJ's decision will be awarded to the organization, and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees, and the operational needs of the program.

(2) If the Administrative Law Judge rules that additional application review is required, the Grant Officer must implement that review and, if a new organization is selected, follow the steps laid out in paragraph (b)(1) of this section to determine whether the grant funds will be awarded to that organization.

(3) In the event that the Grant Officer determines that the funds will not be awarded to the appealing organization for the reasons discussed in paragraph (b)(1) of this section, an organization which does not have an approved Negotiated Indirect Cost Rate Agreement will be awarded its reasonable application preparation costs.

(4) If funds are awarded to the appealing organization, the Grant Officer will notify the current grantee within 10 days. In addition, the appealing organization is not entitled to the full grant amount but only will receive the funds remaining in the grant that have not been obligated by the current grantee through its operation of the grant and its subsequent closeout.

(5) In the event that an organization, other than the appealing organization,