

Mass Workforce Issuance

100 DCS 01.111

☒ Policy ☐ Information

To: Chief Elected Officials
Workforce Development Board Chairs
Workforce Development Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Operations Managers

cc: WIOA State Partners

From: Alice Sweeney, Director
Department of Career Services

Date: January 25, 2017

Subject: **Audit Resolution and Debt Collection**

Purpose: To notify Local Workforce Development Boards, One-Stop Career Center Operators and other local workforce partners of the Audit Resolution and Debt Collection policy to provide the Department of Career Services (DCS), sub-recipients and contractors with the policies and procedures that will be used by DCS in the resolution of findings/problems which arise in audits, incident reports, compliance reviews, investigations and unresolved monitoring findings.

Background: Section 683.420 of the WIOA Regulations requires each state to establish policies and procedures for resolving sub-recipient audit findings that impact the WIOA program, to resolve the findings/problems with its sub-recipients and service providers, and to ensure that corrective action for all findings/problems (including debt collection action for disallowed costs) is instituted within 180 business days after receipt of the audit, incident, compliance or investigation report. WIOA regulations also require the Governor to establish an appeals process for resolution of findings/problems contained in such reports.

Policy: This policy sets forth:

1. DCS procedures to be used in resolving findings/problems which arise from an audit, incident report, monitoring, compliance review or investigation.
2. The procedures and policies for an appeals process for resolving disputes.

Action

Required: All DCS sub-recipients and contractors shall have policies and procedures that comply with the attached.

Effective: Immediately

Inquiries: Please email all questions to PolicyQA@MassMail.State.MA.US. Also, indicate Issuance number and description.

References: 2 CFR Part 200.345
2 CFR Part 2900.22
31 CFR Part 900-904
WIOA Section 683.420-683.440
WIOA Section 683.800-683.850
WIOA Section 184

DEPARTMENT OF CAREER SERVICES
AUDIT RESOLUTION AND DEBT COLLECTION POLICY AND PROCEDURES

Introduction

Findings/problems which arise from an audit, incident report, compliance review, monitoring or investigation must be resolved within 180 business days of the release of reports containing findings/problems. Findings/problems related to compliance-reviews and monitoring reports may be informally resolved by the corrective action requirements contained in monitoring policies. However, if the corrective action is insufficient, not implemented, if the findings/problems may result in potential questioned costs, or there is a danger that funds will not be safeguarded, then the procedures contained in this policy will be used.

A. Resolution Process

1. The procedure is a three part process: the Initial Determination, an Informal Resolution period, and the Final Determination. These must all be accomplished within 180 business days of the receipt of final report.

The resolution process will accomplish the following:

- a. Determine the need for and implement corrective action for all findings/problems that impact the WIOA program.
 - b. Allow or disallow all questioned costs and provide the basis for each determination.
 - c. Establish a debt (where appropriate) and indicate the method of repayment planned or required.
2. Provide the sub-recipient or service provider with its appeal rights and prescribe an appeals procedure for resolving disputes which provides for:
 - a. the filing of an appeal not more than 30 business days after the issuance of the Final Determination
 - b. the rules of procedures
 - c. the timely submission of evidence
 - d. the timing of decisions
 - e. any further appeal rights

B. Initial Determination

The Initial Determination is a preliminary decision on disallowing/allowing questioned costs and resolving any non-monetary (administrative) findings/problems. It offers the sub-recipient or service provider an opportunity for informal resolution, not a formal hearing. Actions include issuing both a draft Initial Determination and an Initial Determination.

Time Table:

1. A draft Initial Determination which addresses disallowed costs and administrative findings is sent to the sub-recipient for comment within 60 business days of receipt or DCS' issuance of the report.
2. The sub-recipient will be permitted a maximum of 30 business days to provide additional documentation and comment on the draft Initial Determination.
3. DCS will review each response, adjusting its findings/problems if appropriate and issue an Initial Determination within 30 business days, certified mail-return receipt requested.

C. Action during Informal Resolution Period

During this phase the sub-recipient is given another opportunity to present new evidence, documentation, or explanation to change the decision by DCS. The sub-recipient or service provider has an opportunity to agree to corrective action before the awarding agency initiates sanctions or remedial actions. The sub-recipient or service provider may admit to the non-allowability of a questioned cost and make repayment. The terms of repayment will be negotiated.

Sub-recipients or service providers will be allowed 60 business days for informal resolution from the issuance of the draft Initial Determination letter to the issuance of the Initial Determination.

D. Procedures for Informal Resolution of Initial Determination:

DCS will issue an Initial Determination within 30 business days of receipt of the sub-recipient or service provider's response to the draft Initial Determination. The Initial Determination will, where appropriate, adjust findings/problems based upon a review of the sub-recipient's or service provider's documentation.

The sub-recipient or service provider will then be permitted up to 30 business days to respond to the Initial Determination. The response must include a corrective action plan to address administrative findings/problems of the Initial Determination, including a timetable for implementation and completion of corrective action. If the sub-recipient or service provider agrees to repay disallowed costs, the sub-recipient or service provider must propose

a repayment plan for those costs. The sub-recipient or service provider may, at this time, submit additional documentation for consideration.

DCS will then have 30 business days to review the sub-recipient's or service provider's response; remove questioned costs, if appropriate, and renegotiate the resolution.

E. Final Determination

The Final Determination will be sent to the sub-recipient or service provider within 30 business days after DCS receives or issues the final report. The Final Determination will be sent certified mail-return receipt requested.

The Final Determination will:

1. Reference the Initial Determination
2. DCS' final decision to disallow the costs, listing each disallowed cost specifically and noting the reasons for each disallowance (lengthy explanations may be incorporated by reference to item and page number of the audit report)
3. Identify the questioned costs in the report which have been allowed by DCS and the basis for the allowance of the costs
4. Demand repayment of the disallowed costs
5. Describe debt collection actions and other sanctions which DCS will impose if repayment is not made
6. Inform the sub-recipient or service provider of its right to a hearing

F. Disallowed Costs

When a cost is disallowed in the Final Determination, a debt is created. However, if the sub-recipient requests a hearing, no further collection action will be taken pending the outcome of the hearing.

DCS will reference in the Final Determination letter that disallowances are based on information that was currently available. If new information which impacts the report (audit, compliance, incident, investigation) becomes available, the Final Determination letter may be reopened, but this is not intended to extend the negotiation process indefinitely.

G. Sanctions and Remedial Actions

1. Monitoring

- a. The sub-recipient's efforts to correct the deficiency will be monitored on a continuing basis by appropriate staff. Depending on the severity of the deficiency and the time of year, it may only be necessary to review the status of the corrective action during routine monitoring. However, in instances of non-compliance with Federal laws and regulations, appropriate corrective actions must be completed within six months after receipt of the report.
- b. If the sub-recipient or service provider fails to correct the deficiency in the allotted time, the sanctions and remedies noted in the Final Determination may be exercised. This occurs only if the sub-recipient has foregone its right to a hearing or the hearing officer has upheld DCS' Final Determination.

NOTE: DCS reserves the right to overturn a hearing officer's decision where it determines that non-compliance with the Act or regulations still exists.

H. Post Findings/Problems & Determination Follow-up on Unresolved Findings/Problems

In some instances, certain findings/problems, particularly administrative findings/problems, may not be resolved within the six months' time frame allowed. To ensure that these unresolved findings/problems are fully resolved, proper controls will be implemented that will track resolution during the post final findings/problems and determination period. Sub-recipients will be required to report on, at least quarterly, the status of unresolved audit and monitoring findings/problems.

1. Possible Sanctions for miss-expenditure of WIOA Funds

If the sub-recipient or service provider fails to correct deficiencies noted within the allotted time period, the sanctions and remedies noted in a Final Determination may be exercised by the Department of Labor. (This is assuming that the sub-recipient or service provider has foregone its rights to a hearing or an Administrative Law Judge (ALJ), sec. 683.800, has upheld the grant officer's Final Determination). Some actions that may be initiated in response to disallowances associated with the misexpenditure of WIOA funds are described as follows:

- a. **Reprogramming:** This requires reducing the WIOA expenditures by the amount of the disallowance and reusing the funds for allowable WIOA purposes. The reuse of the funds must be for the grant purposes in which the disallowance occurred and within the same funding period. For example, assume that the Program Year 2014 2 CFR part 200 audits was issued on July 31, 2016. Any reprogramming (includes the expenditure of any amount reprogrammed) to be done, therefore, must occur prior to July 1, 2017 (end of three year funding period) - If a six month resolution period is included before reprogramming is considered, then only five months would be available to complete the reprogramming exercise. In the event the auditee elected to resolve the disallowance through reprogramming and time in the funding period is inadequate, then a FIFO (First In /First Out) methodology can be used against

allowable costs charged to the subsequent program year's allocation. This action would essentially preclude any funding reduction for the allocation for the program year in which the disallowance occurred. The FIFO exercise must be completed within the three year funding period.

- b. **Offset:** Offset is a Grant Officer action that affects the amount of funds a state will receive for administration. Offset does not affect allocations received by State Administrative Agency (SAA). Under Offset, the state can request that the amount provided for state administration (the portion of WIOA reserved for state level administration only) be reduced in the current or in subsequent periods in an amount equal to a portion of or the total amount of the debt. The amount of the disallowance is taken from current or future administrative funds provided in the grant in which the disallowance occurred. Offset is not an option if the misexpenditure of funds was due to willful disregard of the requirements of WIOA, gross negligence, or failure to observe accepted standards of administration. If offset is granted, the debt is not fully satisfied until the Grant Officer reduces amounts allotted to the State by the amount of the miss-expenditure.
- c. **Repayment:** In accordance with section 184 (d)(1) of the Act, the preferred corrective action for misexpenditure of WIOA funds is nonfederal cash repayment.

2. Waiver of State Liability

General: Waiver of State Liability can be requested if the misexpenditure is not a violation of Section 184(d) of the Act such as willful disregard of the requirements of the Workforce Innovation and Opportunity Act, gross negligence or failure to observe accepted standards of administration and/or does not constitute fraud.

States may request a waiver of liability associated with the aforementioned miss-expenditures. If the disallowed costs at issue are the subject of an ETA Grant Officer resolution (683.440), the request must be made no later than the informal resolution period between the grant officer's Initial and Final Determinations (180 business days).

For audits of sub-recipients conducted by the Office of the Inspector General (OIG), states are allowed 360 days from the date the OIG issues the final approved audit report to ETA to submit a waiver request.

A waiver of the recipient's liability can only be considered by the Grant Officer when:

- a. The miss-expenditure was not a violation of section 184(a)) of the Act or did not constitute fraud:

Section 184(d) of WIOA states that each recipient shall be liable to repay such amounts from non-WIOA funds, upon a determination that the miss-expenditure

of funds was due to willful disregard of the requirements of this Act, gross negligence, or failure to observe accepted standards of administration. No such finding shall be made except after notice and opportunity for a fair hearing.

- b. The misexpenditure occurred at a sub-recipient service provider level

Waiver provisions are for violations by a sub-recipient or service provider only. Disallowances associated with a vendor are considered sub-recipient or service provider disallowances.

- c. The recipient (state) has:

- i) issued a Final Determination which disallows the miss-expenditure
- ii) provided an appeals process which has been exhausted
- iii) established a debt for the disallowed costs.

- d. Recipient (state) waiver requests must document that the recipient has:

- i) established and adhered to an appropriate system for the award and monitoring of contracts with sub-recipients or service providers which contain acceptable standards for ensuring accountability
- ii) entered into a written contract with such sub-recipient or service provider which established clear goals and obligations in unambiguous terms
- iii) acted with due diligence to monitor the implementation of the sub-recipient or service provider contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals
- iv) taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of the Act or regulations

- e. Recipient (state) satisfies the ETA Grant Officer that further collection action either by the recipient or sub-recipient would be inappropriate or would prove futile.

Requests for Approval to Forego Debt Collection Action:

Timing: Requests may be submitted at any time after the recipient has completed the above requirements. However, if the disallowed costs at issue are the subject of an ETA Grant Officer resolution (683.440), the request must be made no later than the informal resolution period between the grant officer's Initial and Final Determinations. Requests to forego debt collection action must include the following:

- i) A description and assessment of all actions taken by the sub-recipient or service provider.
- ii) Evidence that the recipient (state) satisfied criteria a through (d) identified in No.4 above.
- iii) Evidence that the misexpenditure was not made by sub-recipient but by an entity receiving funds from the sub-recipient.
- iv) Evidence that the Final Determination which disallows costs and establishes debt has been issued at the appropriate level.
- v) Evidence that final action within recipient's (state's) appeal system has been completed.
- vi) Evidence that further collection action by either the recipient or the sub-recipient or service provider would be inappropriate or would prove futile.

If the Grant Officer determines that the state has demonstrated substantial compliance with requirements a through d in item 4 above, a waiver of the imposition of sanctions upon the state may be granted.

The state will not be released from liability for misspent funds under Section 184(a) unless the Grant Officer determines that further collection action, either by the state or sub-recipient or service provider, would be inappropriate or would prove futile (683.430).

3. Debt Collection

If a cost is disallowed, then a payment demand letter will be sent to the sub-recipient.

a. Types of Debt

A debt arises when all appeals processes are exhausted and a final decision is issued to the sub-recipient or service provider describing the debt and demanding repayment. Debts may arise from the following situations:

i) Erroneous Payment

These are overpayments caused by a procedural or computational error on the part of DCS or the Contractor.

ii) Outstanding Advances

Contractors receive advance funding. In some cases, payments to Contractors might exceed contract cost upon expiration, completion, or termination of the contract. The amount by which payments exceed costs is called the "fund balance". When the contract is closed out and the Contractor refuses to "return the outstanding advance", a debt is established.

iii) Unallowable Costs

Contractors incur costs which are unallowable under the terms and conditions of the contract. DCS may unknowingly pay the Contractor either in advance or through reimbursement, for the unallowable cost. When DCS discovers and disallows the cost the payment becomes a debt.

b. Methods of Collection

When a debt is established as a result of any of the preceding causes, the following debt collection methods shall be employed. Cash is the preferred method of repayment although any of the following methods may be approved at the discretion of DCS.

i) Cash

Cash is the method of repayment that will be pursued and preferred over all other methods of repayment for debt collection actions. Settlement of debts on a non-cash basis will be by exception.

ii) Installment Payments

Cash installment repayment agreements are usually of short duration, from three to twelve months, and are limited to thirty-six months by the Federal Claims Collection Standards (31 CFR Part 900-904).

Duration is negotiated based on the size of the debt and the debtor's ability to pay.

Use of cash installment repayment is suggested for instances when debt collection efforts are impeded by an inability to pay the full amount in a lump sum.

c. Adjustment in Payment

When cash repayment in a lump sum or through installments is impossible, the adjustment in payments through a repayment agreement is entered into with the Contractor. Under this agreement the contract is reduced by the amount of the

debt repayment, while the program is maintained at an undiminished cost level, through non-federal contributions.

d. Services in Lieu of Cash

This method involves a repayment agreement with the debtor whereby additional contract services above those originally agreed to with the Contractor, aid with non-federal funds, are received in lieu of cash. When it becomes clear that a debtor cannot repay through any other repayment method, an agreement must be signed by both parties documenting the services to be rendered and the type of funds to be used. Authorization for audit shall be included in the agreement.

e. Withholding

This repayment plan involves withholding amounts owed the debtor for past service for the considerations already provided in satisfaction the debt owed.

f. Offset

In this case, the contract amount is simply reduced by the amount of the debt. DCS uses this option when DOL offsets a debt against DCS and the debt resulted from a disallowed expenditure by the sub-recipient or service provider.

g. Stand-in Costs

The use of stand-in costs may be considered as a substitute for disallowed costs in audit, or other resolution procedures. The application of stand-in costs occurs during the initial resolution process. If an auditee or other applicable party agrees that the questioned costs are disallowable and wishes to propose the use of stand-in costs; the proposal shall be included with the audit resolution report or other documents provided as comments to DCS. If the auditee or other applicable party is uncertain about the allowability of the questioned costs before the initial determination, the proposal to use stand-in costs may be presented during the informal resolution period.

For more detailed explanation of the use of stand-in costs, refer to Mass Workforce Issuance 100 DCS 01.110, Stand-in Costs, Costs Sharing and Matching.

4. Debt Collection Procedures

Demand for payment shall be included in DCS' letter/notice of final determination establishing the debt.

Prompt action is necessary to protect DCS interest; e.g., prompt legal action is required in anticipation of executing of the statute of limitations.

Interest shall be charged as applicable at a rate of Prime Interest Rate plus 2% and shall start to accrue when the debt becomes delinquent (30 business days from the date that repayment is due.)

If an installment repayment agreement is arranged with the sub-recipient or service provider, the agreement shall charge interest at a rate of Prime Interest Rate plus 2%, compounded monthly for the term of the agreement.

If the debt is not repaid, or no repayment terms are agreed upon within 30 business days from the date of the notice of debt, all sanctions allowable to DCS should be imposed upon the sub-recipient/service provider.

5. Legal Action

Legal action to collect the debt should be taken if the debt remains delinquent and sanctions or other means of collection have been unsuccessful by DCS.

Upon determination that legal action is necessary to collect the debt, the file and all other appropriate documents are forwarded to DCS' legal representatives for action.

A final demand for payment notice shall be issued by DCS' legal representatives. The demand notice shall state that if payment is not received or payment terms not arranged by a certain date, then DCS shall start legal proceedings against the debtor.

If the final demand notice is unsuccessful collecting the debt, then DCS' legal representatives shall use all legal means at their disposal to collect the debt.

6. Summary

Repayment is the primary sanction for miss-expenditure of WIOA funds.

Offset can be requested by the state unless the misexpenditure of funds is due to willful disregard of the requirements of the Act, gross negligence, or failure to observe accepted standards of administration. The ETA Grant Officer can waive the imposition of sanctions upon a recipient and can impose sanctions directly against a sub-recipient or service provider if the recipient has satisfactorily complied with specific requirements.

States may hold units of local government, which constitute a sub-recipient, liable for misexpenditures (sec. 184(d)).

Hearings will be conducted in accordance with the DCS' Hearings Procedures

180 Day Clock for Resolution Process

ACTION	DAYS	DAY OF CLOCK
Report received	0	0
Draft Initial Determination	60 business days from receipt or issuance of report	60 th
Sub-recipient response to Draft Initial Determination	30 business days from receipt of Draft Initial Determination	90 th
DCS Review & Incorporates Sub-recipient documentation, Adjusts finding/problem, & issues Initial Determination	30 business days from date of sub-recipient's response	
Sub-recipient response to Initial Determination	30 business days from date of initial determination	150 th
DCS issues Final Determination	30 business days from date of Sub-recipient's response	180 th

The sub-recipient then has the option of filing a complaint and requesting hearing, which must be conducted in accordance with the DCS' Hearing Procedures.

A copy of DCS' Hearing Procedures is attached for reference.

AUDIT AND MONITORING RESOLUTION

HEARING PROCEDURES

A hearing, when requested, is provided within thirty (30) business days after a complaint (or appeal of a Final Determination).

1. The Hearing Procedure includes written notice of the:

- a) Date, time and place of the hearing, manner in which it will be conducted, and issues to be decided,
- b) Opportunity to withdraw the request for a hearing in writing before the hearing,
- c) Opportunity to request rescheduling of the hearing for good cause,
- d) Opportunity to be represented by an attorney or other representative of the complainant's (appellant's) choice,
- e) Opportunity to bring witnesses and documentary evidence,
- f) Opportunity to have records or documents relevant to the issue produced by their custodian when such records or documents are kept by the recipient or its sub-recipient in the ordinary course of business,
- g) Opportunity to question any witness or parties,
- h) The right to an impartial hearing officer,
- i) Decision from the hearing officer to the Complainants (Appellants) within 60 business days of the filing of the complaint (appeal).

- may be extended with the consent of all parties for good cause,

The written decision will include:

- Synopsis of facts
- Statement of reasons for the decision, and
- Statement of remedies to be applied

- j) Where a complaint procedure provides for an awarding agency's review of the hearing officer's decision as provided in the DCS' Local Workforce Board Oversight and Monitoring Requirements Policy (100 DCS 17.104) and Audit Resolution and Debt Collection Policy Issuance (100 DCS 01.111), the awarding agency shall provide final written decision to the complainants (appellants).

2. Role of the Hearing

The hearing procedure is designated primarily to provide the complainant/appellant an opportunity to be heard, to present evidence through witnesses or by affidavits, and to present arguments in his/her behalf. The hearing may also be a vehicle through which the Hearings Official may obtain any additional evidence considered necessary to make the

required findings of fact and to issue recommendation regarding the decision based on these findings.

3. Impartial Status of Hearings Official

The Hearing Officer assigned shall maintain absolute impartiality in the conduct of the hearing and the subsequent findings. To insure impartiality, the Hearing Officer may not be representative of program operations or management of the awarding agency. Such staff must be seen as having "ownership" of or being impacted by the decision. Further, "administrative", as used in the sense of an administrative hearing, is meant to set the hearing apart from a judicial or quasi-judicial process - to establish it as an administrative procedure. It is not to be interpreted as allowing or requiring the hearing to be presided over by a person in the awarding agency administration. However, a staff person of the awarding agency, separate and distinct from the administration or operations unit, may act as a hearing official. The staff person may not represent the same program area under which the appeal is filed. It must be clear that whenever staff of the awarding agency and/or another jurisdiction acts as the hearings official, the appearance of "partiality" is enhanced. Another option is contracting for a hearings official, thus assuring impartiality.

4. Control of Hearing

It is the responsibility of the Hearing Officer to maintain control of the hearing at all times. Before convening the hearing, the Hearing Officer will see that all necessary persons are present and that all necessary equipment and support staff are available to continue the hearing without interruption.

The Hearing Officer will be firm and unequivocal in rulings and conduct, and will ensure that all parties observe expected standards of behavior during the conduct of the hearing to include their behavior toward the Hearing Officer, witnesses and each other. Where these standards cannot be maintained through discussion and/or admonishments, the Hearing Officer will call a recess until order can be restored.

5. Preliminary Steps

- a) Introduction of the case: Explain why the hearing is being held. State the functions and responsibilities of the Hearing Officer and advise the parties on how to address the Hearing Officer as well as expected conduct and procedural matters. Explain the decision process and include in the record the right of appeal to appropriate higher level.
- b) Introduction of participants: All persons that are a party to the hearing will be introduced. Persons that are party to the hearing will be recorded and care should be taken to ensure that proper spelling of names and identification of roles is included in the record.

- c) Swearing in of witnesses: As the hearing is an informal procedure, the swearing in of witnesses is not a necessary action. However, should both parties request and/or agree to a swearing in of witnesses, this may occur.
- d) Review of hearing procedure: The Hearing Officer will explain the hearing procedures to be observed, especially those relating to the presentation and admissibility of evidence. The Hearing Officer's role will be clarified and will include the ruling on each witness requested. Witnesses at the hearing will be limited to those persons having direct knowledge of the issues and/or circumstances relative to the issue at hand. Strict adherence to the rules of evidence is not required and probative hearsay should be weighed by the Hearing Officer.

The Hearing Officer will seek to avoid repetitious testimony. Witnesses should be eliminated if reputation is not an issue.

Character

The Hearing Officer may also call as a witness, on his/her own initiative, any person who has not been requested by either party, and whose testimony he/she believes is necessary to resolve the issue.

- e) Opening statement: The purpose of opening statements is to give the parties an opportunity to advise the Hearing Officer with regard to the issues and to summarize the evidence to be presented.
- f) Presentation of the case: The nature of the hearing is fact finding and both the agency and the appellant have responsibility for furnishing any and all information relevant and available to resolve the issue. However, the Hearing Officer will not rely solely on the parties to bring out all necessary testimony. Even though both parties are represented, it remains the responsibility of the Hearing Officer to elicit any testimony and information from the parties which may be necessary to reach the truth of the matter and arrive at a fair decision. If the testimony does not otherwise come forward, the Hearing Officer should ask the necessary questions or call the necessary witnesses to enable a fair decision based on factual information to be issued.
- g) Order of presentation: The appellant will present first, followed by the awarding agency representative. If the Hearing Officer calls witnesses they will be presented after all other parties have presented their witnesses.
- h) Examination of witnesses: The party calling is entitled to conduct the initial questioning. Witnesses testifying are subject to cross-examination by the other party and the Hearing Officer.

If the witness is called by the Hearing Officer, the initial questioning should be conducted by the official. The effected parties will be permitted to ask additional questions.

As the ultimate responsibility for obtaining the facts rests with the Hearing Officer, care must be taken to address remaining questions to the witness before their dismissal and to ask if they have anything additional to add that they consider relevant to the issues.

- i) Limiting the testimony: The Hearing Officer should maintain control of the hearing at all times and restrict the testimony to the issues which were stated in the appeal. This will avoid unnecessarily long hearings replete with unnecessary and/or irrelevant testimony.

6. Admission of Evidence

- a) General: Evidence will not be received unless it is both relevant and material and not unduly repetitious. However, since the purpose of the hearing is to assist in resolving the issue, the Hearing Officer may permit wide latitude in the introduction of evidence in some cases.

- b) Procedure.

When admitting evidence, the Hearing Officer will:

- determine whether testimony of each witness is based on personal and/or direct knowledge or is based on hearsay;
 - request that a witness who testifies about a conversation or occurrence describe dates, places and/or persons and times as precisely as possible;
 - require that witnesses who present opinions regarding professional or technical matters state their qualifications; and
 - mark as exhibits and make a part of the record all documents which are admitted as evidence.
- c) Exhibits: The Hearing Officer will ensure that all exhibits are marked with date of submission, numbered, and initialed. Exhibits admitted into evidence should be placed in a file in order of receipt.
 - d) Objections to Evidence: Parties may object to clearly irrelevant, immaterial, or unduly repetitious evidence. Where the objection is to the admissibility of the documentary evidence, it will be made before the document is assigned an exhibit number. Both parties should see the proposed exhibit and state objections, and,

similarly, the Hearing Officer should rule on any objection before assigning a number.

- e) Technical Objections: Ordinarily, technical objections to testimony or evidence are not entertained. However, where a party objects to the introduction of a document on the grounds that it has been altered or is not a duplicate of the proposed document, the Hearing Officer will satisfy that the document is authentic before allowing it to become part of the record. While the disputed document may be admitted into evidence, the Hearing Officer should require production of the original or take additional testimony or evidence to certify authenticity.
- f) Rulings of admissibility: The Hearing Officer will decide any questions regarding admissibility of evidence as it is presented. However, if it appears at any point in the hearing that evidence was improperly excluded or included, the Hearing Officer will reverse the ruling after showing cause. Tests will be applied to ensure that any evidence is clearly relevant to the issue.

Relevancy - Evidence is relevant when it will have some bearing on the issues. To be relevant, however, evidence need not be addressed with positive directness to the issues so long as it is evidence which, in the common course of events, either by itself or with other evidence will prove or render probable (or disprove or render improbable) the issues.

Materiality - Evidence is unduly repetitious when it is duplicative of other evidence which conclusively proves the point. Even though evidence is both relevant and material, the Hearing Officer should exclude it if it is unduly repetitious.

7. Closing the Hearing

At the end of the proceedings, both parties summarize their position in a final statement. This statement may include a summary of what each party believes the evidence produced at the hearing tends to show. It also may include objections or contentions made during the course of the hearing. It often will be a wise precaution for the Hearing Officer to set a reasonable maximum length of time for the closing statements.

Announcement to parties: The Hearing Officer will, in a statement to the parties, inform them of the manner and process in which his/her decision, based on the facts discovered in the hearing, will be issued. The Hearing Officer will be clear as to the manner of distribution of his/her report and the party responsible for the final decision based on the recommended decision issued by the Hearing Officer. Actions allowed or required following receipt of the decision should be clearly stated at the close of the hearing as well as in the body of the report/decision. Time frames for rendering the decision as well as subsequent action should be clearly stated.

8. Writing the Recommended Decision

Nature of Recommended decision

The recommended decision is a statement by the Hearing Officer of his/her findings with regard to the matter which gave rise to the appeal and the general environment out of which the appeal arose. It includes an analysis of the Hearing Officer's findings and a decision on the merits of type appeal and on the general environment out of which the appeal arose. The findings are not a summary of the testimony of each witness, but represent the conclusion derived from an exposition of the relevant and material facts believed to be true. The findings must be clear, concise, and cogent. The recommended decision must be predicated on the finding of fact.

The recommended decision must be expressed in clear and simple terms so that all parties will have no doubt about the recommended decision. Where not obvious, the meaning of all abbreviations used in the decision should be set forth.

Format of a typical Recommendation decision

a) General

The recommended decision will normally not exceed 5 to 6 double spaced pages of short paragraphs and thoughts expressed in clear and simple terms so that all parties will have no doubt about the decision.

A typical recommended decision will have a cover sheet and include topical sections appearing in the following order: Introduction; Background; Issues; Findings of Fact and Conclusions; and Recommended Decision.

The Cover Sheet

The cover sheet will be captioned as follows: "The Findings and Recommended Decision in the Appeal of:" It will include the names and addresses of the parties in the appeal and their representatives, the nature of the appeal, the date(s) the hearing was held, and the name of the Hearing Officer.

i) The Introduction

The Introduction will set out the reasons the hearing was convened and the number of witnesses heard. If the request for the hearing was based solely on the appellant's dissatisfaction with the awarding agency's proposed corrective action, this fact should be stated.

ii) The Background

The Background will place the appeal in perspective, showing what events led to the filing of the appeal and what action was taken by the appellant to obtain relief. State, but do not elaborate on, the appeal procedures preceding the convening of the hearing. This section may be omitted where a clear understanding of the case can be obtained from the findings of fact.

iii) The Issues

The Hearing Officer will state the issues clearly and briefly, numbering each issue separately. The Hearing Officer will not simply restate the issues which were raised by the parties, but will, after a careful review of the record, state those issues which, in the Hearing Officer's opinion, constitute the issues pertinent to a proper determination of the case. If one or more significant subsidiary issues must be resolved before considering a major issue in the case, the Hearing Officer should list each subsidiary issue under the pertinent major issue.

iv) The Findings of Fact and Conclusion

The Findings of Fact are made by the Hearing Officer from an evaluation of the evidence contained in the appeal file and presented at the hearing.

When one or more issues or subsidiary issues are of such a complex nature that a single, all-inclusive statement of the findings/problems of fact leads to confusion, the Hearing Officer will state separately the findings of fact on such issues.

Keep conclusions separate from findings of fact. Findings of fact may state the evidence given and, if in conflict, may state both sides and the version the Hearing Officer has accepted and the reason therefore. Conclusions are drawn from the findings of fact. A summary of the findings of fact will be useful and should be made in each case.

v) The Recommended Decision

After arriving at the Findings of Fact, the Hearing Officer will make a Decision based on the findings of fact and conclusions, applying the facts and the conclusions to WIOA statutes, regulations and other relevant policies. The Hearing Officer's duty is to hear the evidence, make a finding, and reach a decision. The hearing process is not an adversary procedure. Therefore, the Hearing Officer does not "deny the appeal" and this phrase should not be used. Where a finding and the decision is for the awarding agency, the Hearing Officer should simply indicate "the evidence does not support the appeal".

Once the Hearing Officer has made a recommended decision, DCS will review the decision and provide to the sub-recipient its final written decision within 15 business days of the issuance of the Hearing Officer's recommended decision.

Further Appeal Rights

There are no further appeal rights for the sub-recipient or service provider.