

Subpart H—Federal Application of Remedial Action to State Agencies

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; 5 U.S.C. 301 *et seq.*

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which ETA shall follow upon either discovering independently or receiving from other(s) information indicating that State agencies may not be adhering to JS regulations.

§ 658.701 Statements of policy.

(a) It is the policy of the Employment and Training Administration (ETA) to take all necessary action, including the imposition of the full range of sanctions set forth in this subpart, to ensure that State agencies comply with all requirements established by JS regulations.

(b) It is the policy of ETA to initiate decertification procedures against State agencies in instances of serious or continual violations of JS regulations if less stringent remedial actions taken in accordance with this subpart fail to resolve noncompliance.

(c) It is the policy of the ETA to act on information concerning alleged violations by State agencies of the JS regulations received from any person or organization.

§ 658.702 Initial action by the Regional Administrator.

(a) The ETA Regional Administrator shall be responsible for ensuring that all State agencies in his/her region are in compliance with JS regulations.

(b) Wherever a Regional Administrator discovers or is apprised of possible State agency violations of JS regulations by the review and assessment activities under subpart G of this part, or through required reports or written complaints from individuals, organizations or employers which are elevated to ETA after the exhaustion of State agency administrative remedies, the Regional Administrator shall conduct an investigation. Within 10 days after receipt of the report or other information, the Regional Administrator shall

make a determination whether there is probable cause to believe that a State agency has violated JS regulations.

(c) The Regional Administrator shall accept complaints regarding possible State agency violations of JS regulations from employee organizations, employers or other groups, without exhaustion of the complaint process described at subpart E, if the Regional Administrator determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants. In such cases, the Regional Administrator shall investigate the matter within 10 working days, may provide the State agency 10 working days for comment, and shall make a determination within an additional 10 working days whether there is probable cause to believe that the State agency has violated JS regulations.

(d) If the Regional Administrator determines that there is no probable cause to believe that a State agency has violated JS regulations, he/she shall retain all reports and supporting information in ETA files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination, he/she shall so notify the Administrator in writing and the time for the investigation shall be extended 20 additional working days.

(e) If the Regional Administrator determines that there is probable cause to believe that a State agency has violated JS regulations, he/she shall issue a Notice of Initial Findings of Non-compliance by registered mail to the offending State agency. The Notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the JS complaint system, a copy of said notice shall be sent to the National MSFW Monitor Advocate.

(f)(1) The State agency shall have 20 working days to comment on the findings, or a longer period, up to 20 additional days, if the Regional Administrator determines that such a longer

period is appropriate. The State agency's comments shall include agreement or disagreement with the findings and suggested corrective actions, where appropriate.

(2) After the period elapses, the Regional Administrator shall prepare within 20 working days, written final findings which specify whether or not the State agency has violated JS regulations. If in the final findings the Regional Administrator determines that the State agency has not violated JS regulations, the Regional Administrator shall notify the State Administrator of this finding and retain supporting documents in his/her files. If the final finding involves services to MSFWs or the JS complaint system, the Regional Administrator shall also notify the National Monitor Advocate. If the Regional Administrator determines that a State agency has violated JS regulations, the Regional Administrator shall prepare a Final Notice of Noncompliance which shall specify the violation(s) and cite the regulations involved. The Final Notice of Noncompliance shall be sent to the State agency by registered mail. If the noncompliance involves services to MSFWs or the JS complaint system, a copy of the Final Notice shall be sent to the National MSFW Monitor Advocate.

(g) If the violation involves the misspending of grant funds, the Regional Administrator may order in the Final Notice of Noncompliance a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the Regional Administrator disallows costs, the Regional Administrator shall give the reasons for the disallowance, inform the State agency that the disallowance is effective immediately and that no more funds may be spent in the unallowed manner, and offer the State agency the opportunity to request a hearing pursuant to § 658.707. The offer, or the acceptance of an offer of a hearing, however, shall not stay the effectiveness of the disallowance. The Regional Administrator shall keep complete records of the disallowance.

(h) If the violation does not involve misspending of grant funds or the Regional Administrator determines that

the circumstances warrant other action:

(1) The Final Notice of Noncompliance shall direct the State agency to implement a specific corrective action plan to correct all violations. If the State agency's comment demonstrates with supporting evidence (except where inappropriate) that all violations have already been corrected, the Regional Administrator need not impose a corrective action plan and instead may cite the violations and accept their resolution, subject to follow-up review, if necessary. If the Regional Administrator determines that the violation(s) cited had been found previously and that the corrective action(s) taken had not corrected the violation(s) contrary to the findings of previous follow-up reviews, the Regional Administrator shall apply remedial actions to the State agency pursuant to § 658.704.

(2) The Final Notice of Noncompliance shall specify the time by which each corrective action must be taken. This period shall not exceed 40 working days unless the Regional Administrator determines that exceptional circumstances necessitate corrective actions requiring a longer time period. In such cases, and if the violations involve services to MSFWs or the JS complaint system, the Regional Administrator shall notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and shall specify that time period. The specified time period shall commence with the date of signature on the registered mail receipt.

(3) When the time period provided for in paragraph (h)(2) of this section elapses, ETA staff shall review the State agency's efforts as documented by the State agency to determine if the corrective action(s) has been taken and if the State agency has achieved compliance with JS regulations. If necessary, ETA staff shall conduct a follow-up visit as part of this review.

(4) If, as a result of this review, the Regional Administrator determines that the State agency has corrected the violation(s), the Regional Administrator shall record the basis for this determination, notify the State agency, send a copy to the Administrator, and retain a copy in ETA files.

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(5) If, as a result of this review, the Regional Administrator determines that the State has taken corrective action but is unable to determine if the violation has been corrected due to seasonality or other factors, the Regional Administrator shall notify in writing the State agency and the Administrator of his/her findings. The Regional Administrator shall conduct further follow-up at an appropriate time to make a final determination if the violation has been corrected. If the Regional Administrator's further follow-up reveals that violations have not been corrected, the Regional Administrator shall apply remedial actions to the State agency pursuant to § 658.704.

(6) If, as a result of the review the Regional Administrator determines that the State agency has not corrected the violations and has not made good faith efforts and adequate progress toward the correction of the violations, the Regional Administrator shall apply remedial actions to the State agency pursuant to § 658.704.

(7) If, as a result of the review, the Regional Administrator determines that the State agency has made good faith efforts and adequate progress toward the correction of the violation and it appears that the violation will be fully corrected within a reasonable time period, the State agency shall be advised by registered mail (with a copy sent to the Administrator) of this conclusion, of remaining differences, of further needed corrective action, and that all deficiencies must be corrected within a specified time period. This period shall not exceed 40 working days unless the Regional Administrator determines that exceptional circumstances necessitate corrective action requiring a longer time period. In such cases, the Regional Administrator shall notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and shall specify that time period. The specified time period shall commence with the date of signature on the registered mail receipt.

(8)(i) If the State agency has been given an additional time period pursuant to paragraph (b)(7) of this section, ETA staff shall review the State agency's efforts as documented by the State

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agency at the end of the time period. If necessary, ETA shall conduct a follow-up visit as part of this review.

(ii) If the State agency has corrected the violation(s), the Regional Administrator shall document that finding, notify in writing the State agency and the Administrator, and retain supporting documents in ETA files. If the State agency has not corrected the violation(s), the Regional Administrator shall apply remedial actions pursuant to § 658.704.

§ 658.703 Emergency corrective action.

In critical situations as determined by the Regional Administrator, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program, the Regional Administrator may impose immediate corrective action. Where immediate corrective action is imposed, the Regional Administrator shall notify the State agency of the reason for imposing the corrective action prior to providing the State agency an opportunity to comment.

§ 658.704 Remedial actions.

(a) If a State agency fails to correct violations as determined pursuant to § 658.702, the Regional Administrator shall apply one or more of the following remedial actions to the State agency:

(1) Imposition of special reporting requirements for a specified period of time;

(2) Restrictions of obligational authority within one or more expense classifications;

(3) Implementation of specific operating systems or procedures for a specified time;

(4) Requirement of special training for State agency personnel;

(5) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the elevation of specific decision-making functions from the State Administrator to the Regional Administrator;

(6) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant