

Sanctions Rules for Adoption

ADOPTED RULE WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER

The Texas Workforce Commission (Commission) adopts new Chapter 800, Subchapter E. §§800.152, 800.161, 800.172, 800.174, 800.175, 800.181 and 800.191 as published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4841) with changes. The Commission adopts the repeal of Chapter 800, Subchapter E. §§800.151, 800.171, 800.173-800.178, 800.182, and 800.191; and new Chapter 800, Subchapter E, §§800.151, 800.171, and 800.176 without changes. These rules will not be republished.

Purpose. The purpose of the rule changes is to set forth the Commission's sanction plan, which includes a description of the responsibilities of Boards and subrecipients of the Agency and the Agency's role in preventing sanctionable acts that could trigger penalties. The purpose of the sanctions rules is to provide for a process to cure and correct deficiencies of a Board and subrecipient of the Agency at the earliest possible time to ensure services are delivered to the employers and residents in the workforce area. The sanctions rules serve to notify a Board and subrecipient of the Agency of what constitutes a sanctionable act. The new sanctions rules complement the new subchapter on Performance Review and Assistance, which focuses on assisting Boards and subrecipients of the Agency in avoiding potential sanctions.

Sanctions encompass the assignment of sanction status and assessment of penalties. Penalties may be assessed based on a case-by-case review of the circumstances surrounding the sanctionable acts. The Agency will consider the steps necessary to ensure successful service delivery outcomes, customer needs, and accountability for contract management services and activities provided by a Board in the assignment of sanction status and the assessment of penalties.

Background. The Commission is charged with ensuring accountability of Boards and subrecipients of the Agency. Boards are charged with the oversight and contract management of the services and activities delivered by contract service providers of the One-Stop Service Delivery Network. Specifically, Board and Commission goals reflect Workforce Investment Act (WIA) goals: streamlining services; empowering individuals; universal access; increased accountability; strong role for Boards and the private sector; and state and local flexibility. The four principles of Texas' vision are: limited and efficient state government; local control; personal responsibility; and support for strong families.

Texas Government Code Chapter 2308, Texas Labor Code Title 4 and WIA have imposed on Boards a number of duties and responsibilities for the administration of Commission-funded activities, including maintaining adequate fiscal systems, complying with the uniform rules for administration of grants and agreements, meeting the contract performance measures, and complying with all applicable state and federal statutes and regulations. The Commission is responsible for oversight of Boards' and Agency subrecipients' activities and for identifying

difficulties in or failures to meet contract performance levels or noncompliance with applicable statutes and regulations.

The adopted rules emphasize the relationship between the Commission and Boards and other subrecipients of the Agency in assuring compliance with federal and state requirements through the Agency conducting performance reviews; technical assistance; contract oversight and management; and monitoring. Where preventive measures have not succeeded, the rules lay out a detailed sanctions plan. If performance review and assistance, including a performance improvement plan, do not produce anticipated results, the Agency will consider sanction actions described in this subchapter to ensure that there is no interruption of services.

The general changes to the rules are as follows:

requiring that a Board or subrecipient of the Agency cooperate with performance review and assistance, including technical assistance, and contract management activities;

adding subrecipients of the Agency (not a Board's contractor) to the entities that are subject to corrective and sanction actions; and

replacing the term "program" with "services" and "activities" to focus on the full range of services and activities available through the Texas Workforce Centers.

clarifying terms such as corrective action plan and contracted performance measures.

More specifically, the changes to the rules include the following:

- (1) reducing repetition in definitions and rules for Level One Sanctions, Level Two Sanctions, and Level Three Sanctions as well as clarifying the related definitions to show the increasing severity;
- (2) adding an Intent to Sanctions provision;
- (3) making all penalties available as options for the different "sanctionable acts" so that the new criteria may be applied to each situation based on the totality of the circumstances, such as the severity of the act or acts, previous occurrences of the acts, and efforts by the Board or subrecipient of the Agency to prevent the occurrence of the sanctionable acts;
- (4) adding acts that may result in penalties;
- (5) renaming types of sanctions as "corrective actions" and "penalties";
- (6) clarifying that corrective actions and penalties may be assessed during the year and identifying sanction levels that may occur either during the year or after the end of a year; and
- (7) reorganizing the appeal section and including a new Informal Conferences and Informal Dispositions subsection.

The Commission received comments from the following Local Workforce Development Boards: the South East Texas Workforce Development Board, the Texoma Workforce Development

Board, and the West Central Workforce Development Board. Some commenters were for the rules, others recommended modifications to the proposed language.

Comment: Regarding terminology, one commenter recommended that the rules be reviewed and terminology revised to ensure uniformity, specifically related to the terms Performance Improvement Plan (as used in §§800.151 (c) and 800.175 (a) (1) (A)) and corrective action plan (as used in §800.174 (b) (4) and (5)). The commenter stated that if these are different items, definitions should be developed for each; if they are the same, the terminology should be consistent.

Response: The Commission agrees that there are separate references to performance improvement plans within the rules. Part of the difficulty when implementing different statutes and regulations is that there are often different terms that describe the same concepts. In addition, there are terms that have multiple definitions. The Commission agrees to clarify these terms by adding the definitions of performance improvement plan to the performance review and assistance rule and corrective action plan to the sanctions rules. The performance improvement plan is generally a technical assistance plan that is developed jointly with the Board or contract service provider of the Agency and the Agency and other entities if appropriate as a quality improvement or preventive measure to improve performance at any time. The Commission anticipates that performance improvement plans will include proactive strategies for improving performance and will most likely include a jointly developed strategy that includes detailed technical assistance methods to address areas identified for improvement. On the other hand, a corrective action plan would include Commission-prescribed steps to remedy specific failures in performance such as a sanctions finding or a monitoring finding. Both plans may identify technical assistance methods. Under WIA, technical assistance is required for first-year failure of WIA performance measures and WIA indicates that technical assistance may include implementing performance improvement plans. The Commission intends that after first-year failure in WIA, the Agency may require a Board to develop a performance improvement plan or a corrective action plan, depending on whether the technical assistance can be jointly resolved via a performance improvement plan or whether more prescriptive action is required via a corrective action plan.

Comment: Regarding §800.161, one commenter recommended that a time frame be established for the Intent to Sanction letter, such as “not less than 30 days prior to placing a Board on sanction status.” Regarding §800.161 (b), another commenter recommended that an Intent to Sanction letter become a required step before the Agency places a Board in sanction status or assesses a penalty. In the spirit of partnership, adequate and timely notification of action will allow the Agency and the Board to work together to address issues. Regarding §800.161(b), another commenter recommended that an Intent to Sanction letter should be required. A third commenter asked why a letter would not be provided when the Intent to Sanction is issued and stated that the Boards need to be notified in order to assess the areas of concern and cure the sanctionable act.

Response: The Commission procedures include providing a Notice of Sanction Determination (Sanction Determination) to the Boards or other subrecipients referenced in §800.181, which provides a ten-day period prior to imposition of a sanction. The Intent to Sanction is envisioned

to serve, not as the Sanction Determination, but rather as a final opportunity to resolve an issue to avoid a possible sanction by the Agency. The Commission intends to use an Intent to Sanction letter in almost all situations and include a sufficient time frame for a Board or subrecipient of the Agency to cure or respond to possible sanction concerns. The Commission recognizes that the time frame the Boards or contract service providers need to respond may vary significantly based on the sanctionable act at issue. Thus, the Agency may encounter situations in which more or less than 30 days is appropriate to place the Board or contract service provider on notice that an Intent to Sanction may be issued. The Commission specifically made the Intent to Sanction letter optional to allow the Agency the flexibility to avoid unnecessary delay in the situations in which the Board has previously been given opportunities to cure or provide information in response to concerns or it is clear that a sanction is appropriate given the circumstances at the time. The Commission also considers that the performance improvement plans will give Boards ample opportunity to recognize and resolve issues. For these reasons, the Commission disagrees with changing the language in the proposed rule.

Comment: Regarding §800.161(c), one commenter stated that there should be an appeal process for Level One sanctions.

Response: The Commission agrees and intends that each level of sanctions be appealable, including Level One sanctions and believes that the language in the rule clearly conveys that Level One sanctions are appealable.

Comment: Regarding §800.171, one commenter stated that this section is too broad and all encompassing and that it allows the Agency to sanction or assess penalties at any time for almost any reason -- even a minor violation of a single contract provision or failure to meet one performance measure at any given time. In the narrowest interpretation of this section, it is likely that every Board during any given month could be in sanction status for failing to meet one performance measure. The commenter recommended elimination of this section and retention of §800.172, which clearly identifies sanctionable acts.

Response: The intent of §800.171 was to provide a general introduction regarding the types of activities that may result in corrective actions and penalties and subject a Board to being placed in sanction status. The Commission does intend that the Agency apply the sanctions rules to the Boards and consider the circumstances surrounding the implementation of sanctions. The Commission anticipates continuing to delineate what constitutes lesser and more severe sanctionable acts and anticipates specifying what penalties are appropriate for each sanctionable act.

Comment: Regarding §800.171(a), one commenter questioned why sanctions would be imposed at any time during the program year. This may not appropriately reflect performance that is calculated on a year-to-date basis. For example, year-to-date measures/lag time measures.

Response: The Commission agrees that failures in performance can be the basis of sanctions; however, there are also a number of ongoing compliance requirements that reflect performance during the year and that are the basis for effective and efficient management of funds. These requirements should be regularly evaluated as a basis for sanctions. The Commission intends

that performance concerns be identified and addressed even before the sanctions process is considered. The rules are intended to allow for interventions prior to the end of the year to avoid year-end failures in performance and to address ongoing concerns that call for immediate corrective action.

Comment: Regarding §800.172, one commenter recommended that the federal, state or Commission rule, regulation or legislative requirements specific to each sanctionable act in items (A) through (G) be included by each act.

Response: The Commission recognizes that the factors regarding number, severity, nature and extent of the sanctionable act or acts, as well as any mitigating circumstances surrounding the act or acts, are factors relevant to assessing the appropriate penalty, and for that reason, the rule sets forth the criteria to be evaluated in determining the appropriate sanction. Also, the Commission listed the types of penalties that may result in the different levels of sanctions to provide general guidelines regarding how the Agency generally weighs the severity of the violations. The Commission intends not to restrict or bind the Agency by imposing the same or similar sanction in all circumstances for the same or similar sanctionable act or acts because of the importance of reviewing all of the circumstances. For that reason, the Commission does not agree to modify the language further.

Comment: Regarding §800.172(1), one commenter inquired as to the 90% tolerance stated in the rule and asked whether this constitutes meeting the measure for purposes of possible sanctions. The commenter inquired whether the 90% tolerance applies to language about failing to meet participation rates for two consecutive quarters.

Response: The Commission clarifies that the 90% level constitutes a floor to avoid sanction based solely on performance measures failure. However, the 90% level would not be sufficient to meet performance measures.

Comment: Regarding §800.172 (b)(1)(B), one commenter asked what constitutes a second violation and asked whether the same act is a second violation, or a repeat violation?

Response: The Commission intends that a second violation, whether of the same type or a different type, could amount to a different sanctionable act, regardless of whether the second violation was a repeat of a sanctionable act that previously occurred or whether it was any other sanctionable act.

Comment: Regarding §800.172 (b)(1)(C), one commenter requested clarification on this provision regarding failure to rectify reported threats to health and safety of program participants within 30 days of notice.

Response: The Commission agrees to clarify this provision by adding additional information related to what is a threat to health and safety. Texas Workforce Centers should follow all health and safety laws. The intent of this provision is to impart the need of Boards to address complaints regarding facilities used by employees or the public and to respond appropriately. The Commission requires Boards to take appropriate steps to be informed about other governing

statutes or regulations in order to ensure health and safety and conduct business accordingly. If a complaint regarding health and safety is made concerning a Texas Workforce Center, the Board shall determine: how to rectify the concern and the appropriate degree of investigation needed; what steps are required to rectify the problem; whether to request technical assistance; and whether reporting to other federal, state or local entities is required. If a complaint regarding health and safety is made concerning a child care center, training facility or service location other than a facility that is a service location within the One-Stop Delivery System, the Board should make a timely referral to the appropriate oversight entity. The Commission anticipates that a sanctionable act could result from a Board's failure to monitor a subrecipient or Texas Workforce Center for compliance with health and safety laws. Sanctionable acts would likely occur if complaints went unaddressed, or the failure to perform a good faith monitoring of health and safety laws resulted in an injury to an employee, applicant, participant, or recipient of services.

Comment: Regarding §800.172(c)(2)(A)&(B), one commenter requested a clarification of the difference between a performance measure and a participation rate. The commenter asked whether participation rates are performance measures.

Response: Participation rates are a type of performance measure. The participation rates are included separately to provide emphasis because of the importance of the Boards' collectively meeting those performance measures to avoid potential financial sanctions against the state.

Comment: Regarding §800.174(a)(3), one commenter recommended including language regarding technical assistance, training or other assistance that may come from entities other than the Agency. A local Board may benefit from technical assistance obtained from other Boards or outside entities in addition to that provided by the Agency.

Response: The Commission agrees to change the language to permit the use of other providers of training or technical assistance. The Commission envisions that peer technical assistance and awareness of best practices will become the preferred options for the delivery of these critical services.

Comment: Regarding §800.174 (b) (8), one commenter questioned the necessity of requiring the Board's Executive Director to report on progress at Commission meetings until performance is satisfactory. This could result in substantial additional costs for the workforce area, appears to have little value for the Board and could be more easily accomplished through electronic means or other telecommunications means.

Response: The Commission in its rules has attempted to provide as comprehensive a list of remedies as possible, which includes requiring Board Executive Directors or other administrative officers to participate in a dialog with the Commission in a public meeting. While this option would only be utilized in limited circumstances, the Commission intends that it may be available for situations where direct interaction with a Board's Executive Director or other administrative officer is necessary to fully convey the intent of the Commission regarding approaches for the Agency to remedying sanctionable acts and implementing appropriate and timely corrective actions.

Comment: Regarding §800.174(b)(12),(13) and (19), one commenter asked whether these statements seem to diminish local control.

Response: The Commission's intent is to foster a Board's ability to exercise local control over the planning and oversight of the delivery of workforce training and services and evaluation of workforce development in the workforce area. The requirement to obtain prior Agency approval, the prohibition against using certain providers or other actions deemed necessary by the Agency are actions aimed at enhancing the Agency's ability to manage its contracts with the Board and subrecipients of the Agency and to ensure contract compliance in instances where a Board's or subrecipient's performance does not meet the standards set forth in a contract. In most instances, the Agency would take these actions only when other attempts to assist the Board had not resulted in the necessary performance improvement.

Comment: Regarding §800.174(d), one commenter asked whether there could be further clarification by incorporating a time period to address a prior sanction before automatically increasing the level of sanction when an additional sanctionable act occurs.

Response: The rules set out that the level of sanction may change if certain circumstances occur. The sanctions status will not automatically change. In general, a Board may be moved to a lower level of sanction if some but not all of the sanctionable acts are resolved and a Board may be moved to a higher level of sanction if new or additional sanctionable acts occur. The Commission intends to give the Boards guidance on how and when such changes in status would occur. Boards may be assured that the Commission anticipates that the sanctions process will carefully consider relevant facts before changing a sanction status. For example, concerns may be addressed via a modification in a corrective action plan in lieu of assigning a higher level of sanction.

Comment: Regarding §800.176, one commenter stated appreciation for the addition of the section, which allows for a voluntary Informal Conference and informal disposition.

Response: The Commission appreciates the commenter's support for the Informal Conference and anticipates that this option will assist in reaching satisfactory resolutions.

Comment: Regarding costs to comply, one commenter stated that the information for this rule stated that there are no anticipated costs to persons who are required to comply with the rules as proposed. The commenter respectfully disagreed with this statement, as the requirements in §§800.174(b)(1), 800.174(b)(2) and 800.174(b)(8) will likely result in unanticipated additional costs to a local workforce area, if any of these corrective actions and penalties are imposed. The commenter stated that if the Agency does require a local workforce area to engage in corrective actions that result in unanticipated costs, the Agency should provide sufficient funds to the workforce area to ensure compliance.

Response: The Commission agrees that funds may need to be expended to cover the costs of the items mentioned in §800.174(b)(1), (2) and (8). However, costs associated with meeting these particular requirements would entail redirecting existing resources within the workforce area rather than creating entirely new costs. The Commission also believes that requiring staff to

participate in technical assistance, attend required training or make presentations at Commission meetings would serve to improve the Board's performance, thus ensuring greater cost efficiency in the future. Regarding the request for additional funds to defray costs of corrective actions, the Agency may consider such requests during the sanction process. In addition, the Commission has set aside WIA funds to assist Boards with costs of implementing performance improvement plans and corrective action plans.

The repeal adopted under Texas Labor Code §§301.061 and 302.002 provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects the Texas Labor Code, Title 4.

Subchapter E. Sanctions

§800.151. Scope and Purpose

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The new rules adopted under Texas Labor Code §§301.061 and 302.002 provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted new rules affect the Texas Labor Code, Title 4.

Subchapter E. Sanctions

§800.151. Scope and Purpose

(a) The purpose of this subchapter is to:

- (1) ensure accountability of Local Workforce Development Boards (Boards) and other subrecipients of the Agency, in meeting the needs of employers and job seekers,

- (2) ensure performance in reaching outcome measures,
 - (3) ensure adequate returns on state investments, and
 - (4) support the state in achieving its goals.
- (b) The Agency may review financial, administrative, and performance data to evaluate a Board and subrecipient of the Agency to determine the need for sanctions.
 - (c) To accomplish the purposes of this Subchapter, the Agency may require at any point during the year that a Board or subrecipient of the Agency cooperate with remedial actions, including but not limited to entering into a Performance Improvement Plan and other performance review and assistance activities.
 - (d) This rule incorporates by reference the existing rule for the Job Training Partnership Act Program cited in §805.170 - §805.196 of this title.

§800.152. Definitions

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Corrective Action Plan -- A plan developed and imposed by the Agency that requires a Board or other entity to take Agency-identified actions within a specified time frame designed to correct specific instances of noncompliance or other failures.
- (12) Level One Sanction Status -- A sanction status assigned by the Agency to a Board or other subrecipient of the Agency for significant inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A Level One Sanction Status may be associated with the assessment of one or more penalties as referenced in this subchapter.
- (23) Level Two Sanction Status -- A higher sanction status than Level One assigned by the Agency to a Board or other subrecipient of the Agency for severe inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A Level Two sanction may be associated with the assessment of more severe penalties than those assessed to a Board or subrecipient of the Agency in Level One Sanction Status.
- (34) Level Three Sanction Status -- The highest sanction status assigned by the Agency to a Board or other subrecipient of the Agency for extreme inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A level three

sanction may be associated with the assessment of the most severe penalties being assessed against the Board or subrecipient of the Agency.

§800.161. Intent to Sanction

- (a) An Intent to Sanction letter may be issued by the Agency. The purpose of the Intent to Sanction letter is to describe technical assistance available and a specific timeline for the implementation by ~~to provide~~ a Board or subrecipient of the Agency and to ~~with an~~ provide an opportunity to cure the sanctionable acts.
- (b) An Intent to Sanction letter shall not be required prior to the Agency placing a Board in sanction status or assessing a penalty.
- (c) There shall be no appeal to an Intent to Sanction letter.

§800.171 Sanctionable Acts

- (a) The Agency may place a Board in sanction status or assess a corrective action or penalty for failure to ensure at any time during the program year compliance with the following:
 - (1) one or more contracted performance measures;
 - (2) one or more contract provisions; and
 - (3) one or more federal or state statutes, regulations, guidances, directives, or circulars, including the Commission rules contained in Part 20 of this title.
- (b) The Agency may assess penalties for sanctionable acts listed in this subchapter. Notwithstanding the list of sanctionable acts appearing after each specific level of sanction in §800.172 of this title, the Agency may assign a higher or lower level of sanction status based on the severity or mitigating circumstances surrounding the sanctionable acts.

§800.172. Sanction Status

- (a) The Agency may place a Board or subrecipient of the Agency in Level One Sanction Status for sanctionable acts as described in this section.
 - (1) Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year, including but not limited to the following:
 - (A) failure to submit timely and accurate required financial or performance reports;

- (B) failure to take corrective action to resolve findings identified during monitoring, investigative, or program reviews, including failing to comply with a Performance Improvement Plan developed by the Agency;
 - (C) failure to rectify or resolve all independent audit findings or questioned costs within required time frames;
 - (D) failure to submit the annual audit required by OMB Circular A-133, as may be amended;
 - (E) breach of administrative and service contract requirements;
 - (F) failure to retain required service delivery and financial records; or
 - (G) failure of a Board to meet its targeted Temporary Assistance for Needy Families (TANF) participation rate for two consecutive quarters.
- (2) Sanctionable acts that occur after the end of a program, grant, fiscal, contract, or calendar year that may include, but are not limited to, one or more of the following acts:
- (A) failure to attain and maintain performance within 90% of any established contracted performance measures; or
 - (B) failure to attain and maintain participation rates within 90% of any established contracted performance measures.
- (b) The Agency may place a Board or subrecipient of the Agency in Level Two Sanction Status for sanctionable acts as described in this section.
- (1) Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year including but not limited to the following:
- (A) failure to rectify a Level One sanction within 180 days of notice;
 - (B) committing a second violation within the same fiscal year; or
 - (C) failure to rectify reported threats to health and safety of program participants within 30 days of notice.
- (2) Sanctionable acts that occur after the end of a program, grant, fiscal, contract, or calendar year including, but not limited to, one or more of the following:
- (A) failure to attain and maintain performance within 75% of any established contracted performance measures; or

- (B) failure to attain and maintain participation rates within 75% of any ~~established~~ contracted performance measures.
- (c) The Agency may place a Board or subrecipient of the Agency in Level Three Sanction Status for sanctionable acts as described in this section.
 - (1) Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year including but not limited to the following:
 - (A) failure to rectify a Level One sanction within 360 days of notice;
 - (B) failure to rectify a Level Two sanction within 180 days of notice;
 - (C) committing three or more Level One violations or two or more Level Two violations within the same fiscal year; or
 - (D) failure to rectify reported threats to health and safety of program participants within 90 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective action or making referrals to appropriate authorities.
 - (2) Sanctionable acts that occur after the end of a program, grant, fiscal, contract, or calendar year including, but not limited to, one or more of the following acts:
 - (A) failure to return annual performance to 75% of any ~~established~~ contracted performance measures within two program years; or
 - (B) failure to return annual participation rates to 75% of any ~~established~~ contracted performance measures within two program years.
- (d) Notwithstanding subsections (a), (b) and (c) of this section the Agency may use the criteria set forth in §800.171(a) of this title (relating to Sanctionable Acts) to determine the appropriate level of sanction.

§800.174. Corrective Actions and Penalties

- (a) The Agency may assess corrective actions and penalties on a Board or subrecipient of the Agency based on the following criteria as determined appropriate by the Agency given the totality of the circumstances surrounding the occurrence of the sanctionable act or acts:
 - (1) severity, nature, duration, and extent;
 - (2) previous occurrences of sanctionable acts; and

- (3) efforts by the Board or subrecipient of the Agency to prevent the occurrence of the sanctionable act, including efforts to: obtain technical assistance, training, or other assistance from the Agency or another entity; resolve monitoring findings; and prevent potential sanctionable acts.
- (b) To assist the Board or subrecipients of the Agency in correcting any deficiencies, the Agency may assess for each occurrence of a sanctionable act as described in this subchapter, including, but not limited to, one or more of the following corrective actions or penalties including the penalties listed in subsection (c) (1) - (4) of this section:
- (1) participation in technical and quality assurance activities;
 - (2) mandatory participation in training;
 - (3) on-site visits by the Agency to monitor and assist with daily operations of a Board, Board's contractor, or subrecipient of the Agency;
 - (4) an Agency-developed and Board-implemented corrective action plan to address the weaknesses identified;
 - (5) timely implementation of the corrective action plan;
 - (6) submission of additional or more detailed financial or performance reports;
 - (7) designation as a high-risk Board or subrecipient of the Agency requiring additional monitoring visits;
 - (8) appearances by the Board's Executive Director, other administrative officer or the subrecipient of the Agency to report on activities and progress in Commission meetings until performance is satisfactory;
 - (9) meetings with the local workforce development area's Chief Elected Officials, Board Chair, Board members, Board's Executive Director, or the subrecipients of the Agency;
 - (10) formal Agency presentation to Chief Elected Officials or Board members;
 - (11) Agency oversight and management of problem situations, ~~including, but not limited, to~~ such as the appointment of a steward;
 - (12) Agency approval of specified Board actions (i.e., prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval of the Agency);
 - (13) prohibiting the use of designated service providers, including state agencies and Texas Workforce Center operators;

- (14) payment by reimbursement only, with required supporting documentation;
 - (15) delay, suspension, or denial of contract payments;
 - (16) reduction or deobligation of Board funds such as may occur when the Commission reduces a Board's contracted TANF funds in an amount not to exceed 25% of the funding allocated to the local workforce development area and applies those funds to assisting the sanctioned Board in meeting the contracted ~~federal~~ participation rates;
 - (17) ineligibility for additional discretionary or other funds;
 - (18) contract cancellation or termination; and
 - (19) other actions deemed appropriate by the Agency to assist the Board or subrecipient of the Agency in correcting deficiencies.
- (c) The Commission may recommend to TCWEC pursuant to Texas Government Code Chapter 2308 that one or more of the following penalties be imposed:
- (1) prohibiting the use of particular service providers, including state agencies and Texas Workforce Center operators;~~prohibiting the use of designated service providers, including state agencies;~~
 - (2) requiring payment by reimbursement;
 - (3) selecting an alternative provider;
 - (4) issuing a notice of intent to cease immediately reimbursement of local program costs;
 - (5) requiring modification of the Board's local plan;
 - (65) issuing a notice of intent to revoke all or part of the affected local plan;
 - (76) imposing a reorganization plan under Texas Government Code, § 2308.268 for the local workforce development area;
 - (87) restructuring the Board, including decertification of the current Board and appointment and certification of a new Board ~~restructuring the Board;~~
 - (98) merging the local workforce development area into one or more other local workforce development areas~~merging the local workforce development area with another area;~~ or

(109) any other act deemed appropriate by the Commission.

- (d) More than one penalty may be assessed in response to one occurrence of a sanctionable act. The number and severity of penalties assessed for one or more occurrences of sanctionable acts may correlate with the sanction status level assigned to a Board or subrecipient of the Agency. If a Board is already in a sanction status when another sanctionable act occurs or is discovered, the Agency may ~~increase~~ assign a higher the level of sanction ~~status of~~ to the Board or subrecipient of the Agency.

§800.175. Corrective Actions Measures and Penalties Under the Workforce Investment Act (WIA)

- (a) Corrective Actions Measures.

- (1) If a Board fails to meet contract performance measures for youth activities in WIA, Title I, Chapter 4; adult employment and training activities in WIA, Title I, Chapter 5; or dislocated worker employment and training activities in WIA, Title I, Chapter 5, in any WIA program year, the Commission may require that, within a specified period of time, the Board:
- (A) complete a performance improvement plan;
 - (B) modify its local plan; or
 - (C) take other action designed to improve the Board's performance.
- (2) A Board's failure to complete the corrective actions measures described in paragraph (1) of this subsection within the specified time limits may result in the Agency imposing penalties under this subchapter and withholding WIA payments to the Board.

- (b) Penalties for Second-Year Nonperformance. If a Board fails to meet the contract performance measures for youth activities in WIA, Title I, Chapter 4; adult employment and training activities in WIA, Title I, Chapter 5; or dislocated worker employment and training activities in WIA, Title I, Chapter 5, for one or more of the same measures for two consecutive WIA program years in a two-year period beginning on or after July 1, 2001, the Commission shall make a recommendation to TCWEC that it impose a reorganization plan for the local workforce development area, which may include one or more of the corrective actions or penalties included in §800.174(c)(1) - (10) of this subchapter.;

~~(1) restructuring the Board, including decertification of the current Board and appointment and certification of a new Board;~~

~~(2) prohibiting the use of particular service providers, including state agencies and Texas Workforce Center operators;~~

~~(3) merging the local workforce development area into one or more other local workforce development areas; or~~

~~(4) taking such other actions as determined appropriate.~~

(c) Penalties for Second-Year Nonperformance During Transition. If a Board fails to meet the contract performance measures for 50% or more of the measures for youth activities in WIA, Title I, Chapter 4; adult employment and training activities in WIA, Title I, Chapter 5; or dislocated worker employment and training activities in WIA, Title I, Chapter 5, for two consecutive WIA program years in a two-year period beginning on or after July 1, 1999 and ending on or before June 30, 2002, the Commission shall make a recommendation to TCWEC that it impose a reorganization plan for the local workforce development area, which may include one or more of the corrective actions or penalties included in §800.174(c)(1) - (10) of this subchapter.;

~~(1) restructuring the Board, including decertification of the current Board and appointment and certification of a new Board;~~

~~(2) prohibiting the use of particular service providers, including state agencies and Texas Workforce Center operators;~~

~~(3) merging the local workforce development area into one or more other local workforce development areas; or~~

~~(4) taking such other actions as determined appropriate.~~

(d) Penalties for Noncompliance with Requirements.

(1) Each local workforce development area, including the Board, chief elected officials, one-stop operators and service providers receiving WIA funds, shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving funds as promulgated in circulars or rules of the Office of Management and Budget's Uniform Grant Management Standards.

(2) Each local workforce development area, including the Board, Chief Elected Officials, Texas Workforce Center operators, and service providers receiving WIA funds, must comply with Title I of WIA, as well as all other federal and state laws and regulations.

(3) If the Agency finds that a Board is not in compliance with the requirements of paragraph (1) of this subsection, or is in substantial violation of paragraph (2) of this subsection, the Agency shall require corrective action to secure prompt compliance and may assess penalties as provided under this subchapter.

- (4) If the Agency finds that a Board has not taken the required corrective action in the time specified, the Commission shall take the following actions and make recommendations to TCWEC that TCWEC:
- (A) issue a notice of intent to revoke all or part of the local plan;
 - (B) issue a notice of intent to cease immediately reimbursement of local program costs;
 - (C) select an alternate entity to administer WIA for the Board involved;
 - (D) restructure the Board including decertification of the current Board and appointment and certification of a new Board;
 - (E) prohibit the Board from using particular service providers, including state agencies and Texas Workforce Center service providers;
 - (F) merge the local workforce development area into one or more other local workforce development areas; or
 - (G) make such other changes as deemed necessary to secure compliance.
- (e) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of a Board to ensure the establishment and operation of a one-stop service delivery network as required by WIA §121 and Chapter 801, Subchapter B, One-Stop Service Delivery Network of this title, may result in the imposition of penalties as provided in this subchapter, and the Agency's withholding of payment for any WIA administrative expenses until the Board can demonstrate to the satisfaction of the Agency that all of the required elements of a One-Stop Service Delivery Network are operational.
- (f) Repayment. The Board and Chief Elected Officials shall be jointly and severally liable for repayment to the Agency from nonfederal funds for WIA expenditures in the local workforce development area that are found by the Agency not to have been expended in accordance with the WIA.
- (g) Other Penalties. In addition to the penalties provisions in subsections (a)-(f) of this section, in the administration and provision of WIA services, a Board and contractor receiving WIA funds shall also be subject to all sections of Subchapter E, relating to Sanctions Rules.

§800.176. Informal Conferences and Informal Dispositions

An informal conference is defined as an informal meeting between a Board or subrecipient of the Agency and person(s) designated by the Director of the Workforce Division, held for the purpose of agreeing on a proposed informal disposition of a penalty action. An informal conference shall be voluntary and shall not be a prerequisite to a hearing in an appeal of a penalty.

§800.181. Sanction Determination

- (a) The Director of Workforce Development of the Agency determines whether a sanction shall be assessed, including whether it is appropriate to place the Board in a sanction status level and whether it is appropriate to assign a penalty.
- (b) The Commission shall work in concert with the Texas Council on Workforce and Economic Competitiveness, whenever necessary, to assess sanctions as required by Texas Government Code, §2308.268 and §2308.269.
- (c) The Agency shall send a written Notice of the Sanction Determination (Sanction Determination) to the following:
 - (1) the Board's ~~e~~Executive Director or administrative officer;
 - (2) the Board's chair; and
 - (3) the lead Chief Elected Official of the local workforce development area.
- (d) The Sanction Determination date of notice shall be the date the Sanction Determination is sent to the Board's executive director by certified mail. All notices of sanctions shall be sent by facsimile (fax) transmission and letter by certified mail, return receipt requested.
- (e) The Sanction Determination shall include the following information:
 - (1) the sanctionable act upon which the sanction was based;
 - (2) the sanction status level in which the Board is placed and the conditions upon which the Board may be removed from sanction status;
 - (3) the penalty and the effective date of the penalty; and
 - (4) the corrective action required, including the timeline for completing the corrective action; and
 - (5) the technical assistance from the Agency or other entity to assist in completing the corrective action.
- (f) The Agency shall send the Sanction Determination at least ten working days in advance of the effective date of the sanction.

§800.191. Appeal

- (a) A Board may appeal a Sanction Determination; however, a recommendation to another entity by the Agency under §800.178 of this title, may not be appealed under this section.

- (b) A request for appeal of a Notice of Sanction Determination (Sanction Determination) shall be submitted within ten working days following the receipt of the Sanction Determination. The appeal must be submitted to the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.
- (c) The Agency shall refer the request for appeal to a hearing officer. The hearing officer shall receive oral and written evidence, as deemed appropriate by the hearing officer, from both parties and prepare a written proposal for decision to be submitted to the Agency's Executive Director for final decision.
- (d) The decision of the Agency's Executive Director shall be final.