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TITLE 71. LABOR AND INDUSTRY
CHAPTER 5. UNEMPLOYMENT COMPENSATION

Current through HB 32, 342, 524, 669, 686, 883, 1125, and 1321, and SB 2448, 2647 and 2835, 2017 Regular Session, not including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication. The final official version of the statutes affected by 2017 legislation will appear on Lexis.com and Lexis Advance in September 2017.

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ARTICLE 1. GENERAL PROVISIONS

§ 71-5-1. Citation and purpose

This chapter shall be known and may be cited as the "Mississippi Employment Security Law." The purpose of the law is to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment.

HISTORY: *SOURCES: Codes, 1942, § 7368; Laws, 1936, ch. 176; Laws, 1948, ch. 412, § 1, eff July 1, 1948, unless context expressly provides otherwise.*

§ 71-5-3. Public policy

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden, which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

HISTORY: *SOURCES: Codes, 1942, § 7369; Laws, 1936, ch. 176; Laws, 1936, 1st Ex. ch. 3.*

§ 71-5-5. Suspension under federal conditions [Repealed effective July 1, 2019]

The Legislature finds and declares that the existence and continued operation of a federal tax upon employers, against which some portion of the contributions required under this chapter may be credited, will protect Mississippi employers from undue disadvantages in their competition with employers in other states. If at any time, upon a formal complaint to the Governor, he shall find that Title IX of the Social Security Act has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, and that, as a result thereof, the provisions of this chapter requiring Mississippi employers to pay contributions will subject them to a serious competitive disadvantage in relation to employers in other states, he shall publish such findings and proclaim that the operation of the provisions of this chapter requiring the payment of contributions and benefits shall be suspended for a period of not more than six (6) months. The Department of Employment Security shall thereupon requisition from the Unemployment Trust Fund all monies therein standing to its credit, and shall deposit such monies, together with any other monies in the Unemployment Compensation Fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited.

In all other cases, and unless the Governor shall issue such proclamation, this chapter shall remain in full force and effect.

If within the aforesaid six-month period the Governor shall find that other federal legislation has been enacted which avoids the competitive disadvantage herein described, he shall forthwith publicly so proclaim, and upon the date of such proclamation, the provisions of this chapter requiring the payment of contributions and benefits shall again become fully operative as of the date of such suspension with the same effect as if such suspension had not occurred. If within such six-month period no such other federal legislation is enacted or the Legislature of this state has not otherwise prescribed, the Department of Employment Security shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the Department of Employment Security to pay for the costs of making such refunds. When the Department of Employment Security shall have executed the duties herein prescribed and performed such other acts as are incidental to the termination of its duties under this chapter, the Governor shall, by public proclamation, declare that the provisions of this chapter, in their entirety, shall cease to be operative.

HISTORY: *SOURCES: Codes, 1942, § 7370; Laws, 1936, 1st Ex. ch. 3; Laws, 2004, ch. 572, § 8; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 8; reenacted and amended, Laws, 2010, ch. 559, § 8; reenacted without change, Laws, 2011, ch. 471, § 8; reenacted without change, Laws, 2012, ch. 515, § 8; Laws, 2013, ch. 309, § 1, eff from and after passage (approved March 6, 2013.)*

§ 71-5-7. Suspension under state conditions

If at any time the provisions of this chapter requiring the payment of contributions and benefits shall be held invalid under the Constitution of this state by the Supreme Court of this state or invalid under the United States Constitution by the Supreme Court of the United States, the department shall forthwith requisition from the unemployment trust fund all monies therein standing to the credit of the department, and shall deposit such monies, together with any other monies in the unemployment compensation fund, in any banks or public depositories in this state in which general funds of the state may be deposited. If within six (6) months after the date of such decision the Legislature of this state enacts a new unemployment compensation law, such monies shall be paid into the unemployment compensation fund established thereunder. If within such six-month period the Legislature of this state has not enacted a new unemployment compensation law, the department shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid, his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the department to pay for the costs of making such refunds. The provisions of this chapter, so far as necessary to the execution by the department of the duties prescribed in this section and to the performance of such other acts as are incidental to the termination of its duties under this chapter, shall remain in full force and effect until the completion thereof.

HISTORY: *SOURCES: Codes, 1942, § 7371; Laws, 1936, 1st Ex. ch. 3; Laws, 2013, ch. 309, § 2, eff from and after passage (approved March 6, 2013.)*

§ 71-5-9. Refunds upon termination

Refunds provided under Sections 71-5-5 and 71-5-7 shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody.

HISTORY: *SOURCES: Codes, 1942, § 7372; Laws, 1936, 1st Ex. ch. 3.*

§ 71-5-11. Definitions [Repealed effective July 1, 2019]

As used in this chapter, unless the context clearly requires otherwise:

A. "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

B. "Benefit year" with respect to any individual means the period beginning with the first day of the first week with respect to which he first files a valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year; and, thereafter, the period beginning with the first day of the first week with respect to which he next files his valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year. Any claim for benefits made in accordance with Section 71-5-515 shall be deemed to be a "valid claim" for purposes of this subsection if the individual has been paid the wages for insured work required under Section 71-5-511(e).

C. "Contributions" means the money payments to the State Unemployment Compensation Fund required by this chapter.

D. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

E. "Department" or "commission" means the Mississippi Department of Employment Security, Office of the Governor.

F. "Executive director" means the Executive Director of the Mississippi Department of Employment Security, Office of the Governor, appointed under Section 71-5-107.

G. "Employing unit" means this state or another state or any instrumentalities or any political subdivisions thereof or any of their instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions, any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work. All individuals performing services in the employ of an elected fee-paid county official, other than those related by blood or marriage within the third degree computed by the rule of the civil law to such fee-paid county official, shall be deemed to be employed by such county as the employing unit for all the purposes of this chapter. For purposes of defining an "employing unit"

which shall pay contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one (1) of such corporations, then each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

H. "Employer" means:

(1) Any employing unit which,

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars ($ 1,500.00) or more, except as provided in paragraph (9) of this subsection, or

(b) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one (1) individual (irrespective of whether the same individual was in employment in each such day), except as provided in paragraph (9) of this subsection;

(2) Any employing unit for which service in employment, as defined in subsection I(3) of this section, is performed;

(3) Any employing unit for which service in employment, as defined in subsection I(4) of this section, is performed;

(4) (a) Any employing unit for which agricultural labor, as defined in subsection I(6) of this section, is performed;

(b) Any employing unit for which domestic service in employment, as defined in subsection I(7) of this section, is performed;

(5) Any individual or employing unit which acquired the organization, trade, business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(6) Any individual or employing unit which acquired its organization, trade, business, or substantially all the assets thereof, from another employing unit, if the employment record of the acquiring individual or employing unit subsequent to such acquisition, together with the employment record of the acquired organization, trade, or business prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit as an employer subject to this chapter under paragraph (1) or (3) of this subsection;

(7) Any employing unit which, having become an employer under paragraph (1), (3), (5) or (6) of this subsection or under any other provisions of this chapter, has not, under Section 71-5-361, ceased to be an employer subject to this chapter;

(8) For the effective period of its election pursuant to Section 71-5-361(3), any other employing unit which has elected to become subject to this chapter;

(9) (a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (1) or (4) (a) of this subsection, the wages earned or the employment of an employee performing domestic service, shall not be taken into account;

(b) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph (1) or (4) (b) of this subsection, the wages earned or the employment of an employee performing services in agricultural labor, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (1) of this subsection;

(10) All entities utilizing the services of any employee leasing firm shall be considered the employer of the individuals leased from the employee leasing firm. Temporary help firms shall be considered the employer of the individuals they provide to perform services for other individuals or organizations.

I. "Employment" means and includes:

(1) Any service performed, which was employment as defined in this section and, subject to the other provisions of this subsection, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) Services performed for remuneration for a principal:

(a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services;

(b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operator of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

However, for purposes of this subsection, the term "employment" shall include services described in subsection I(2)(a) and (b) of this section, only if:

(i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(ii) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe; however, such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subsection I(5) of this section.

(4) (a) Services performed in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 USCS Section 3306(c)(8), and

(b) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) For the purposes of subsection I(3) and (4) of this section, the term "employment" does not apply to service performed:

(a) In the employ of:

(i) A church or convention or association of churches; or

(ii) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order; or

(c) In the employ of a governmental entity referred to in subsection I(3), if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision or a member of an Indian tribal council;

(iii) As a member of the State National Guard or Air National Guard;

(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) In a position which, under or pursuant to the laws of this state or laws of an Indian tribe, is designated as:

1. A major nontenured policy-making or advisory position, or

2. A policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week; or

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(e) By an inmate of a custodial or penal institution; or

(f) As part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training, unless coverage of such service is required by federal law or regulation.

(6) Service performed by an individual in agricultural labor as defined in paragraph (15)(a) of this subsection when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of Twenty Thousand Dollars ($ 20,000.00) or more to individuals employed in agricultural labor, or

(ii) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same moment of time.

(b) For the purposes of subsection I(6) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of subsection I(1).

(c) For the purpose of subsection I(6), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (6)(b) of this subsection:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of subsection I(6) the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(iii) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(7) The term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for an employing unit which paid cash remuneration of One Thousand Dollars ($ 1,000.00) or more in any calendar quarter in the current or the preceding calendar year to individuals employed in such domestic service. For the purpose of this subsection, the term "employment" does not apply to service performed as a "sitter" at a hospital in the employ of an individual.

(8) An individual's entire service, performed within or both within and without this state, if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service is performed in this state; and

(i) The base of operations or, if there is no base of operations, the place from which such service is directed or controlled is in this state; or

(ii) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(9) Services not covered under paragraph (8) of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(10) Service shall be deemed to be localized within a state if:

(a) The service is performed entirely within such state; or

(b) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(11) The services of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (8), (9) or (10) of this subsection or the parallel provisions of another state's law), if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States; but

(i) The employer is an individual who is a resident of this state; or

(ii) The employer is a corporation which is organized under the laws of this state; or

(iii) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state; or

(d) An "American employer," for purposes of this paragraph, means a person who is:

(i) An individual who is a resident of the United States; or

(ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(iii) A trust if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state.

(12) All services performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this state, notwithstanding the provisions of subsection I(8).

(13) Service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 USCS Section 3301 et seq., is required to be covered under this chapter, notwithstanding any other provisions of this subsection.

(14) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control and direction over the performance of such services both under his contract of service and in fact; and the relationship of employer and employee shall be determined in accordance with the principles of the common law governing the relation of master and servant.

(15) The term "employment" shall not include:

(a) Agricultural labor, except as provided in subsection I(6) of this section. The term "agricultural labor" includes all services performed:

(i) On a farm or in a forest in the employ of any employing unit in connection with cultivating the soil, in connection with cutting, planting, deadening, marking or otherwise improving timber, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

(ii) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of naval stores products or any commodity defined in the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g), or in connection with the raising or harvesting of mushrooms, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals,

reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subitem (A), but only if such operators produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(C) The provisions of subitems (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business;

(vi) As used in paragraph (15)(a) of this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in subsection I(7) of this section, or service performed as a "sitter" at a hospital in the employ of an individual.

(c) Casual labor not in the usual course of the employing unit's trade or business.

(d) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother.

(e) Service performed in the employ of the United States government or of an instrumentality wholly owned by the United States; except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, then to the extent permitted by Congress and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities

and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units. If this state should not be certified under the Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any year, then the payment required by such instrumentality with respect to such year shall be deemed to have been erroneously collected and shall be refunded by the department from the fund in accordance with the provisions of Section 71-5-383.

(f) Service performed in the employ of an "employer" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(a), or as an "employee representative" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(f), and service with respect to which unemployment compensation is payable under an unemployment compensation system for maritime employees, or under any other unemployment compensation system established by an act of Congress; however, the department is authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in Section 71-5-117 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act or acts of Congress or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter.

(g) Service performed in any calendar quarter in the employ of any organization exempt from income tax under the Internal Revenue Code, 26 USCS Section 501(a) (other than an organization described in 26 USCS Section 401(a)), or exempt from income tax under 26 USCS Section 521 if the remuneration for such service is less than Fifty Dollars ($ 50.00).

(h) Service performed in the employ of a school, college, or university if such service is performed:

(i) By a student who is enrolled and is regularly attending classes at such school, college or university, or

(ii) By the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that

(A) The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and

(B) Such employment will not be covered by any program of unemployment insurance.

(i) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly

organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(j) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in subsection M of this section.

(k) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and services performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law.

(l) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(m) Service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, except those employed by political subdivisions, state and local governments, nonprofit organizations and Indian tribes, as defined by this chapter, or any other entities for which coverage is required by federal statute and regulation.

(n) If the services performed during one-half (1/2) or more of any pay period by an employee for the employing unit employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half (1/2) of any such pay period by an employee for the employing unit employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him.

(o) Service performed by a barber or beautician whose work station is leased to him or her by the owner of the shop in which he or she works and who is compensated directly by the patrons he or she serves and who is free from direction and control by the lessor.

(p) Service performed by a "direct seller" if:

(i) Such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the department

prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment; or such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment;

(ii) Substantially all the remuneration (whether or not paid in cash) for the performance of the services described in item (i) of this subparagraph is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

J. "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of the state controlled system of public employment offices.

K. "Public employment service" means the operation of a program that offers free placement and referral services to applicants and employers, including job development.

L. "Fund" means the Unemployment Compensation Fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

M. "Hospital" means an institution which has been licensed, certified, or approved by the State Department of Health as a hospital.

N. "Institution of higher learning," for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation;

(4) Is a public or other nonprofit institution;

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher learning for purposes of this section.

O. "Re-employment assistance" means money payments payable to an individual as provided in this chapter and in accordance with Section 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act and Section 303(a)(5) of the Social Security Act, with respect to his unemployment through no fault of his own. Wherever the terms "benefits" or "unemployment benefits" appear in this chapter, they shall mean re-employment assistance.

P. (1) "State" includes, in addition to the states of the United States of America, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(2) The term "United States" when used in a geographical sense includes the states, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(3) The provisions of paragraphs (1) and (2) of subsection P, as including the Virgin Islands, shall become effective on the day after the day on which the United States Secretary of Labor approves for the first time under Section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted to the secretary by the Virgin Islands for such approval.

Q. "Unemployment."

(1) An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount as computed and adjusted in Section 71-5-505. The department shall prescribe regulations applicable to unemployed individuals, making such distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department deems necessary.

(2) An individual's week of total unemployment shall be deemed to commence only after his registration at an employment office, except as the department may by regulation otherwise prescribe.

R. (1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that "wages," for purposes of determining employer's coverage and payment of contributions for agricultural and domestic service means cash remuneration only. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department; however, that the term "wages" shall not include:

(a) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(i) Retirement, or

(ii) Sickness or accident disability, or

(iii) Medical or hospitalization expenses in connection with sickness or actual disability, or

(iv) Death, provided the employee:

(A) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and

(B) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive a cash consideration in lieu of such benefit, either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(b) Dismissal payments which the employer is not legally required to make;

(c) Payment by an employer (without deduction from the remuneration of an employee) of the tax imposed by the Internal Revenue Code, 26 USCS Section 3101;

(d) From and after January 1, 1992, the amount of any payment made to or on behalf of an employee for a "cafeteria" plan, which meets the following requirements:

(i) Qualifies under Section 125 of the Internal Revenue Code;

(ii) Covers only employees;

(iii) Covers only noncash benefits;

(iv) Does not include deferred compensation plans.

(2) [Not enacted].

S. "Week" means calendar week or such period of seven (7) consecutive days as the department may by regulation prescribe. The department may by regulation prescribe that a week shall be deemed to be in, within, or during any benefit year which includes any part of such week.

T. "Insured work" means "employment" for "employers."

U. The term "includes" and "including," when used in a definition contained in this chapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

V. "Employee leasing arrangement" means any agreement between an employee leasing firm and a client, whereby specified client responsibilities such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other such administrative duties are to be performed by an employee leasing firm, on an ongoing basis.

W. "Employee leasing firm" means any entity which provides specified duties for a client company such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other administrative duties, in connection with the client's employees, that are directed and controlled by the client and that are providing ongoing services for the client.

X. (1) "Temporary help firm" means an entity which hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

(2) "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.

Y. For the purposes of this chapter, the term "notice" shall include any official communication, statement or other correspondence required under the administration of this chapter, and sent by the department through the United States Postal Service or electronic or digital transfer, via modem or the Internet.

HISTORY: *SOURCES: Codes, 1942, § 7440; Laws, 1940, ch. 295, § 13; Laws, 1948, ch. 412, § 10; Laws, 1955, Ex. Sess. ch. 93, § 2; Laws, 1971, ch. 519, § 13; Laws, 1977, ch. 497, § 1; Laws, 1978, ch. 533, § 1; Laws, 1979, ch. 311; Laws, 1981, ch. 343, § 1; Laws, 1983, ch. 371, § 1; Laws, 1985, ch. 406; Laws, 1992, ch. 339, § 1; Laws, 1993, ch. 328, § 1; Laws, 1998, ch. 331, § 1; Laws, 1998, ch. 491, § 1; Laws, 2002, ch. 562, § 1; Laws, 2004, ch. 572, § 9; Laws, 2007, ch. 606, § 3; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 9; reenacted and amended, Laws. 2011. ch. 471. § 9; Laws. 2012. ch. 414. § 1; reenacted without change, Laws. 2012. ch. 515. § 9; Laws. 2013. ch. 309, § 3, eff from and after passage (approved March 6, 2013.)*

§ 71-5-13. Reciprocal arrangements

(1) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 71-5-11, subsection I, or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one (1) of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The department is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

(a) Whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government shall be deemed to be wages for employment by employers for the purposes of Sections 71-5-501 through 71-5-507 and Section 71-5-511(e), provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests; and

(b) Whereby the department will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government, upon the basis of employment or wages for employment by employers, as the department finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of Sections 71-5-451 through 71-5-459. The department is hereby authorized to make to other state or federal agencies, and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

(3) The department is also authorized, in its discretion, to enter into or cooperate in arrangements with any federal agency whereby the facilities and services of the personnel of the department may be utilized for the taking of claims and the payment of unemployment compensation or allowances under any federal law enacted for the benefit of discharged members of the Armed Forces.

(4) The department shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws; and

(b) Avoiding the duplicate use of wages and employment by reason of such combining.

HISTORY: *SOURCES: Codes, 1942, § 7441; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 4; Laws, 1971, ch. 519, § 14; Laws, 2013, ch. 309, § 14, eff from and after passage (approved March 6, 2013.)*

§ 71-5-15. Non-liability of state

Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund; and neither the state nor the commission shall be liable for any amount in excess of such sums.

HISTORY: *SOURCES: Codes, 1942, § 7439; Laws, 1936, ch. 176.*

§ 71-5-17. Representation in court

(1) In any civil action to enforce the provisions of this chapter, the commission, the board of review, and the state may be represented by any qualified attorney who is employed by the commission and is designated by it for this purpose or, at the commission's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter, or of any rules and regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides.

HISTORY: *SOURCES: Codes, 1942, § 7438; Laws, 1936, ch. 176; Laws, 1938, ch. 147.*

§ 71-5-19. Penalties; when overpayment of benefits occurs; reciprocity with other states in collection of overpayment [Repealed effective July 1, 2019]

(1) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state, of the federal government or of a foreign government, either for himself or for any other person, shall be punished by a fine of not less than One Hundred Dollars ($ 100.00) nor more than Five Hundred Dollars ($ 500.00), or by imprisonment for not longer than thirty (30) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(2) Any employing unit, any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from any employing unit under this chapter, or who willfully fails or refuses to make any such contribution or other payment, or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than One Hundred Dollars ($ 100.00) nor more than One Thousand Dollars ($ 1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement, or representation, or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and

four-tenths percent (5.4%) for the tax year in which such violation is discovered by the department and for the next two (2) succeeding tax years.

(3) Any person who shall willfully violate any provision of this chapter or any other rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than One Hundred Dollars ($ 100.00) nor more than One Thousand Dollars ($ 1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and four-tenths percent (5.4%) for the tax year in which the violation is discovered by the department and for the next two (2) succeeding tax years.

(4) (a) An overpayment of benefits occurs when a person receives benefits under this chapter:

(i) While any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case;

(ii) While he was disqualified from receiving benefits; or

(iii) When such person receives benefits and is later found to be disqualified or ineligible for any reason, including, but not limited to, a redetermination or reversal by the department or the courts of a previous decision to award such person benefits.

(b) Any person receiving an overpayment shall, in the discretion of the department, be liable to have such sum deducted from any future benefits payable to him under this chapter and shall be liable to repay to the department for the Unemployment Compensation Fund a sum equal to the overpayment amount so received by him; and such sum shall be collectible in the manner provided in Sections 71-5-363 through 71-5-383 for the collection of past-due contributions. In addition to Sections 71-5-363 through 71-5-383, the following shall apply to cases involving damages for overpaid unemployment benefits which have been obtained and/or received through fraud as defined by department regulations and laws governing the department. By definition, fraud can include failure to report earnings while filing for unemployment benefits. In the event of fraud, a penalty of twenty percent (20%) of the amount of the overpayment shall be assessed. Three-fourths (3/4) of that twenty percent (20%) penalty shall be deposited into the unemployment trust fund and shall be used only for the purpose of payment of unemployment benefits. The remainder of that twenty percent (20%) penalty shall be deposited into the Special Employment Security Administrative Fund. Interest on the overpayment balance shall accrue at a rate of one percent (1%) per month on the unpaid balance until repaid and shall be deposited into the Special Employment Security Administration Fund. All interest, penalties and damages deposited into the Special Employment Security Administration Fund shall be used by the department for administration of the Mississippi Department of Employment Security.

(c) Any such judgment against such person for collection of such overpayment shall be in the form of a seven-year renewable lien. Unless action be brought thereon prior to expiration of the lien, the department must refile the notice of the lien prior to its expiration at the end of seven (7) years. There shall be no limit upon the number of times the department may refile notices of liens for collection of overpayments.

(d) All warrants issued by the department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the department. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

(5) The department, by agreement with another state or the United States, as provided under Section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this state or of another state or under an unemployment benefit program of the United States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this state or of another state or under an unemployment program of the United States.

HISTORY: *SOURCES: Codes, 1942, § 7437; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1952, ch. 383, § 3; Laws, 1977, ch. 351; Laws, 1985, ch. 414; Laws, 1986, ch. 331; Laws, 1992, ch. 339, § 2; Laws, 1994, ch. 303, § 1; Laws, 2000, ch. 412, § 1; Laws, 2004, ch. 572, § 10; Laws, 2007, ch. 606, § 4; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 10; reenacted without change, Laws, 2010, ch. 559, § 9; reenacted without change, Laws, 2011, ch. 471, § 10; reenacted and amended, Laws, 2012, ch. 515, § 10; Laws, 2013, ch. 309, § 4, eff from and after passage (approved March 6, 2013.)*

§ 71-5-21. Saving clause

The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

HISTORY: *SOURCES: Codes, 1942, § 7443; Laws, 1940, ch. 295.*

ARTICLE 3. MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

§ 71-5-101. Organization [Repealed effective July 1, 2019]

There is established the Mississippi Department of Employment Security, Office of the Governor. The Department of Employment Security shall be the Mississippi Employment Security Commission and shall retain all powers and duties as granted to the Mississippi Employment Security Commission. Wherever the term "Employment Security Commission" appears in any law, the same shall mean the Mississippi Department of Employment Security, Office of the Governor. The Executive Director of the Department of Employment Security may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the department.

HISTORY: *SOURCES: Codes, 1942, §§ 7399, 7400; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, §§ 5a, 5b; Laws, 2004, ch. 572, § 11; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 11; reenacted without change, Laws, 2010, ch. 559, § 10; reenacted without change, Laws, 2011, ch. 471, § 11; reenacted without change, Laws, 2012, ch. 515, § 11, eff from and after July 1, 2012.*

§ 71-5-103 and 71-5-105. Repealed

Repealed by Laws, 2004, ch. 572, § 59 effective from and after July 1, 2004.

§ 71-5-103. Codes, 1942, § 7401; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5c, eff July 1, 1948.

§ 71-5-105. Codes, 1942, § 7402; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5d; Laws, 1975, ch. 514, eff from and after July 1, 1975.

§ 71-5-107. Executive officer [Repealed effective July 1, 2019]

The department shall administer this chapter through a full-time salaried executive director, to be appointed by the Governor, with the advice and consent of the Senate. He shall be responsible for the administration of this chapter under authority delegated to him by the Governor.

HISTORY: *SOURCES: Codes, 1942, § 7403; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5e; Laws, 2004, ch. 572, § 12; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 12; reenacted without change, Laws, 2010, ch. 559, § 11; reenacted without change, Laws, 2011, ch. 471, § 12, reenacted without change, Laws, 2012, ch. 515, § 12, eff from and after July 1, 2012.*

§ 71-5-109. Board of review [Repealed effective July 1, 2019]

There is created a Board of Review consisting of three (3) members to be appointed by the executive director. The executive director shall designate one (1) member of the Board of Review as chairman. Each member shall be paid a salary or per diem at a rate to be determined by the executive director, and such expenses as may be allowed by the executive director. All salaries, per diem and expenses of the Board of Review shall be paid from the Employment Security Administration Fund.

HISTORY: *SOURCES: Codes, 1942, § 7404; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5f; Laws, 2004, ch. 572, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 13; reenacted without change, Laws, 2010, ch. 559, § 12; reenacted without change, Laws, 2011, ch. 471, § 13; reenacted without change, Laws, 2012, ch. 515, § 13, eff from and after July 1, 2012.*

§ 71-5-111. Employment security administration fund [Repealed effective July 1, 2019]

There is created in the State Treasury a special fund to be known as the Employment Security Administration Fund. All monies which are deposited or paid into this fund are appropriated and made available to the department. All monies in this fund shall be expended solely for the purpose of defraying the cost of administration of this chapter, and for no other purpose whatsoever. The fund shall consist of all monies appropriated by this state and all monies received from the United States of America, or any agency thereof, or from any other source for such purpose. Notwithstanding any provision of this section, all monies requisitioned and deposited in this fund pursuant to Section 71-5-457 shall remain part of the Employment Security Administration Fund and shall be used only in accordance with the conditions specified in that section. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund under this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7421; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8a; Laws, 1958, ch. 536, § 2(a); Laws, 2004, ch. 572, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 14; reenacted without change, Laws, 2010, ch. 559, § 13; reenacted without change, Laws, 2011, ch. 471, § 14; reenacted without change, Laws, 2012, ch. 515, § 14, eff from and after July 1, 2012.*

§ 71-5-112. Funds to clear through state treasury; laws governing expenditures [Repealed effective July 1, 2019]

All funds received by the Mississippi Department of Employment Security shall clear through the State Treasury as provided and required by Sections 71-5-111 and 71-5-453. All expenditures from the administration fund of the department authorized by Section 71-5-111 shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

HISTORY: *SOURCES: Laws, 1973, ch. 381, § 3; Laws, 1974, ch. 334; Laws, 1984, ch. 488, § 273; Laws, 2004, ch. 572, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 15; reenacted and amended, Laws, 2010, ch. 559, § 14; reenacted without change, Laws, 2011, ch. 471, § 15; reenacted without change, Laws, 2012, ch. 515, § 15, eff from and after July 1, 2012.*

§ 71-5-113. Funds received from the Social Security Board [Repealed effective July 1, 2019]

All monies received from the Social Security Board or its successors for the administration of this chapter shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board or its successors for the proper and efficient administration of this chapter.

It shall be the duty of the department to take appropriate action with respect to the replacement, within a reasonable time, of any monies received from the Social Security Board, or its successors, for the administration of this chapter, and monies used to match grants pursuant to the provisions of the Wagner-Peyser Act, which the board, or its successors, find, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of those found necessary by the Social Security Board, or its successors, for the proper administration of this chapter. Funds which have been expended by the department or its agents in accordance with the budget approved by the Social Security Board, or its successors, or in accordance with the general standards and limitations promulgated by the Social Security Board, or its successors, prior to such expenditure (where proposed expenditures have not been

specifically disapproved by the Social Security Board, or its successors), shall not be deemed to require replacement. To effectuate the purposes of this paragraph, it shall be the duty of the department to take such action to safeguard the expenditure of the funds referred to herein as it deems necessary. In the event of a loss of such funds or an improper expenditure thereof as herein defined, it shall be the duty of the department to notify the Governor of any such loss or improper expenditure and submit to him a request for an appropriation in the amount thereof. The Governor shall transmit to the next regular session of the Legislature following such notification, the department's request for an appropriation in an amount necessary to replace funds which have been lost or improperly expended as defined above. Such request of the department for an appropriation shall not be subject to the provisions of Sections 27-103-101 through 27-103-139. The Legislature recognizes its obligation to replace such funds as may be necessary and shall make necessary appropriations in accordance with such requests.

HISTORY: *SOURCES: Codes, 1942, § 7422; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8b, c; Laws, 1958, ch. 536, § 2b, c; Laws, 2004, ch. 572, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 16; reenacted without change, Laws, 2010, ch. 559, § 15; reenacted without change, Laws, 2011, ch. 471, § 16; reenacted without change, Laws, 2012, ch. 515, § 16, eff from and after July 1, 2012.*

§ 71-5-114. Special employment security administration fund [Repealed effective July 1, 2019]

There is created in the State Treasury a special fund, to be known as the "Special Employment Security Administration Fund," into which shall be deposited or transferred all interest, penalties and damages collected on and after July 1, 1982, pursuant to Sections 71-5-363 through 71-5.379 and all interest and penalties required to be deposited into the fund pursuant to Section 71- 5-19(4)(b). Interest, penalties and damages collected on delinquent payments deposited during any calendar quarter in the clearing account in the Unemployment Trust Fund shall, as soon as practicable after the close of such calendar quarter, be transferred to the Special Employment Security Administration Fund. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund under this chapter. Those monies may be expended for any programs for which the department has administrative responsibility but shall not be expended or made available for expenditure in any manner which would permit their substitution for (or permit a corresponding reduction in) federal funds which would, in the absence of those monies, be available to finance expenditures for the administration of the state unemployment compensation and employment service laws or any other laws directing the administration of any programs for which the department has the administrative responsibility. Nothing in this section shall prevent those monies in this fund from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when necessary. The monies in this fund may be used by the department for the payment of costs of administration of the employment security laws of this state which are found not to be or not to have been properly and validly chargeable against funds obtained from federal sources. All monies in this Special Employment Security Administration Fund shall be continuously available to the department for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time. The monies in this fund are specifically made available to replace, as contemplated by Section 71-5-113, expenditures

from the Employment Security Administration Fund established by Section 71-5-111, which have been found, because of any action or contingency, to have been lost or improperly expended.

The department, whenever it is of the opinion that the money in the Special Employment Security Administration Fund is more than ample to pay for all foreseeable needs for which such special fund is set up, may, by written order, order the transfer therefrom to the Unemployment Compensation Fund of such amount of money in the Special Employment Security Administration Fund as it deems proper, and the same shall thereupon be immediately transferred to the Unemployment Compensation Fund.

HISTORY: *SOURCES: Laws, 1982, ch. 383, § 1; Laws, 2004, ch. 572, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 17; reenacted without change, Laws, 2010, ch. 559, § 16; reenacted without change, Laws, 2011, ch. 471, § 17; reenacted and amended, Laws, 2012, ch. 515, § 17, eff from and after July 1, 2012.*

§ 71-5-115. Duties and powers of executive director [Repealed effective July 1, 2019]

It shall be the duty of the executive director to administer this chapter; and the executive director shall have the power and authority to adopt, amend or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the executive director shall prescribe. The executive director shall determine the department's own organization and methods of procedure in accordance with the provisions of this chapter, and shall have an official seal which shall be judicially noticed. Not later than the first day of February in each year, the executive director shall submit to the Governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the executive director deems proper. Whenever the executive director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

HISTORY: *SOURCES: Codes, 1942, § 7405; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6a; Laws, 1952, ch. 383, § 4a; Laws, 1958, ch. 533, § 6a; Laws, 1962, ch. 564, § 3a; Laws, 2004, ch. 572, § 18; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 18; reenacted without change, Laws, 2010, ch. 559, § 17; reenacted without change, Laws, 2011, ch. 471, § 18; reenacted without change, Laws, 2012, ch. 515, § 18, eff from and after July 1, 2012.*

§ 71-5-116. Annual report tracking data from contractors to be used to improve workforce training programs

The Mississippi Department of Employment Security will develop an annual report which tracks data received from contractors. Contractors will cooperate with the Mississippi Department of Employment Security to accumulate relevant data. Collected data and reports are intended solely to allow the Mississippi Department of Employment Security to improve workforce training programs, tailoring trainings to employer needs and hiring trends for in-demand jobs in Mississippi.

HISTORY: *SOURCES: Laws, 2012, ch. 505, § 2, eff from and after passage (approved May 1, 2012.)*

§ 71-5-117. Regulations and general rules [Repealed effective July 1, 2019]

General rules may be adopted, amended or rescinded by the executive director only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this state. Regulations may be adopted, amended or rescinded by the executive director and shall become effective in the manner and at the time prescribed by the executive director.

HISTORY: *SOURCES: Codes, 1942, § 7406; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6b; Laws, 1952, ch. 383, § 4b; Laws, 1958, ch. 533, § 6b; Laws, 1962, ch. 564, § 3b; Laws, 2004, ch. 572, § 19; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 19; reenacted without change, Laws, 2010, ch. 559, § 18; reenacted without change, Laws, 2011, ch. 471, § 19; reenacted without change, Laws, 2012, ch. 515, § 19, eff from and after July 1, 2012.*
Miss. Code Ann. § 71-5-119

§ 71-5-119. Publication [Repealed effective July 1, 2019]

The department shall cause to be available for distribution to the public the text of this chapter, its regulations and general rules, its reports to the Governor, and any other material it deems relevant and suitable, and shall furnish the same to any person upon application therefor.

HISTORY: *SOURCES: Codes, 1942, § 7407; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6c; Laws, 1952, ch. 383, § 4c; Laws, 1958, ch. 533, § 6c; Laws, 1962, ch. 564, § 3c; Laws, 2004, ch. 572, § 20; Laws, 2007, ch. 606, § 5; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 20; reenacted without change, Laws, 2010, ch. 559, § 19; reenacted without change, Laws, 2011, ch. 471, § 20; reenacted without change, Laws, 2012, ch. 515, § 20, eff from and after July 1, 2012.*

§ 71-5-121. Personnel [Repealed effective July 1, 2019]

Subject to other provisions of this chapter, the executive director is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of department duties; however, all personnel who were former members of the Armed Forces of the United States of America shall be given credit regardless of rate, rank or commission. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis, in accordance with Section 25- 9-101 et seq., that provides for a state service personnel system. The executive director shall not employ any person who is an officer or committee member of any political party organization. The executive director may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling monies or signing checks hereunder. The veteran status of an individual shall be considered and preference given in accordance with the provisions of the State Personnel Board.

The department and its employees are exempt from Sections 25-15-101 and 25-15-103.

The department may use federal granted funds to provide such group health, life, accident and hospitalization insurance for its employees as may be agreed upon by the department and the federal granting authorities.

The department shall adopt a "layoff formula" to be used wherever it is determined that, because of reduced workload, budget reductions or in order to effect a more economical operation, a reduction in force shall occur in any group.

In establishing this formula, the department shall give effect to the principle of seniority and shall provide that seniority points may be added for disabled veterans and veterans, with due regard to the efficiency of the service. Any such layoff formula shall be implemented according to the policies, rules and regulations of the State Personnel Board.

HISTORY: *SOURCES: Codes, 1942, § 7408; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6d; Laws, 1952, ch. 383, § 4d; Laws, 1958, ch. 533, § 6d; Laws, 1962, ch. 564, § 3d; Laws, 1964, ch. 442, § 3; Laws, 1995, ch. 507, § 1; Laws, 2004, ch. 572, § 21; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 21; reenacted without change, Laws, 2010, ch. 559, § 20; reenacted without change, Laws, 2011, ch. 471, § 21; reenacted without change, Laws, 2012, ch. 515, § 21, eff from and after July 1, 2012.*

§ 71-5-123. Advisory councils [Repealed effective July 1, 2019]

The executive director shall retain all powers and duties as granted to the state advisory council appointed by the former Employment Security Commission. The executive director may appoint local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and of such members representing the general public as the executive director may designate. Such councils shall aid the department in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Members of the advisory councils shall receive a per diem in accordance with Section 25-3-69 for attendance upon meetings of the council, and shall be reimbursed for actual and necessary traveling expenses. The per diem and expenses herein authorized shall be paid from the Employment Security Administration Fund.

HISTORY: *SOURCES: Codes, 1942, § 7409; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6e; Laws, 1952, ch. 383, § 4e; Laws, 1958, ch. 533, § 6e; Laws, 1962, ch. 564, § 3e; Laws, 1989, ch. 320, § 1; Laws, 2004, ch. 572, § 22; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 22; reenacted without change, Laws, 2010, ch. 559, § 21; reenacted without change, Laws, 2011, ch. 471, § 22; reenacted without change, Laws, 2012, ch. 515, § 22, eff from and after July 1, 2012.*

§ 71-5-125. Promotion of employment [Repealed effective July 1, 2019]

The department shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigation and research studies.

HISTORY: *SOURCES: Codes, 1942, § 7410; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6f; Laws, 1952, ch. 383, § 4f; Laws, 1958, ch. 533, § 6f; Laws, 1962, ch. 564, § 3f; Laws, 2004, ch. 572, § 23; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 23; reenacted without change, Laws, 2010, ch. 559, § 22; reenacted without change, Laws, 2011, ch. 471, § 23; reenacted without change, Laws, 2012, ch. 515, § 23, eff from and after July 1, 2012.*

§ 71-5-127. Records and reports; confidentiality of information [Repealed effective July 1, 2019]

(1) Any information or records concerning an individual or employing unit obtained by the department pursuant to the administration of this chapter or any other federally funded programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this article or by regulation. Information or records may be released by the department when the release is required by the federal government in connection with, or as a condition of funding for, a program being administered by the department.

(2) Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as may be necessary. The department, Board of Review and any referee may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which they or any of them deem necessary for the effective administration of this chapter. Information, statements, transcriptions of proceedings, transcriptions of recordings, electronic recordings, letters, memoranda, and other documents and reports thus obtained or obtained from any individual pursuant to the administration of this chapter shall, except to the extent necessary for the proper administration of this chapter, be held confidential and shall not be published or be opened to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity.

(3) Any claimant or his legal representative at a hearing before an appeal tribunal or the Board of Review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter.

(4) Any employee or member of the Board of Review or any employee of the department who violates any provisions of this section shall be fined not less than Twenty Dollars ($ 20.00) nor more than Two Hundred Dollars ($ 200.00), or imprisoned for not longer than ninety (90) days, or both.

(5) The department may make the state's records relating to the administration of this chapter available to the Railroad Retirement Board, and may furnish the Railroad Retirement Board, at the expense of such board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

HISTORY: *SOURCES: Codes, 1942, § 7411; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(1); Laws, 1952, ch. 383, § 4g(1); Laws, 1958, ch. 533, § 6g(1); Laws, 1962, ch. 564, § 3g(1); Laws, 2004, ch. 572, § 24; Laws, 2007, ch. 606, § 6; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 24; reenacted without change, Laws, 2010, ch. 559, § 23; reenacted without change, Laws, 2011, ch. 471, § 24; reenacted without change, Laws, 2012, ch. 515, § 24, eff from and after July 1, 2012.*

§ 71-5-129. Destruction of useless records [Repealed effective July 1, 2019]

Records hereinafter designated, which are found by the department to be useless, may be disposed of in accordance with approved records control schedules.

(a) Records which have been preserved by it for not less than three (3) years:

(1) Initial claims for benefits,

(2) Continued claims for benefits,

(3) Correspondence and master index cards in connection with such claims for benefits, and

(4) Individual wage slips filed by employers subject to the provisions of the Unemployment Compensation Law.

(b) Records which have been preserved by it for not less than six (6) months after becoming inactive:

(1) Work applications,

(2) Cross-index cards for work applications,

(3) Test records,

(4) Employer records,

(5) Work orders,

(6) Clearance records,

(7) Counseling records,

(8) Farm placement records, and

(9) Correspondence relating to all such records.

Nothing herein contained shall be construed as authorizing the destruction or disposal of basic fiscal records reflecting the financial operations of the department and no records may be destroyed without the approval of the Director of the Department of Archives and History.

HISTORY: *SOURCES: Codes, 1942, §§ 7411-01, 7411-02, 7411-03; Laws, 1944, ch. 290, § 1; Laws, 1950, ch. 418; Laws, 1952, ch. 390; Laws, 1970, ch. 504, § 1; Laws, 1981, ch. 501, § 25; Laws, 1987, ch. 318; Laws, 2004, ch. 572, § 25; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 25; reenacted without change, Laws, 2010, ch. 559, § 24; reenacted without change, Laws, 2011, ch. 471, § 25; reenacted without change, Laws, 2012, ch. 515, § 25, eff from and after July 1, 2012.*

§ 71-5-131. Privileged communications [Repealed effective July 1, 2019]

All letters, reports, communications, or any other matters, either oral or written, from the employer or employee to each other or to the department or any of its agents, representatives or employees, which shall have been written, sent, delivered or made in connection with the requirements and administration of this chapter shall be absolutely privileged and shall not be made the subject matter or basis of any suit for slander or libel in any court of the State of Mississippi unless the same be false in fact and maliciously written, sent, delivered or made for the purpose of causing a denial of benefits under this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7412; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(2); Laws, 1952, ch. 383, § 4g(2); Laws, 1958, ch. 533, § 6g(2); Laws, 1962, ch. 564, § 3g(2); Laws, 2004, ch. 572, § 26; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 26; reenacted without change, Laws, 2010, ch. 559, § 250; reenacted without change, Laws, 2011, ch. 471, § 26; reenacted without change, Laws, 2012, ch. 515, § 26, eff from and after July 1, 2012.*

§ 71-5-133. Failure to produce records [Repealed effective July 1, 2019]

In any case where an employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, shall fail or refuse upon demand by the department or its duly appointed agents to produce or permit the examination or copying of any book, paper, account, record or other data pertaining to payrolls or employment or ownership of interests or stock in any employing unit, or bearing upon the correctness of any report, or for the purpose of making a report as required by this chapter where none has been made, then and in that event the department or its duly authorized agents may, by the issuance of a subpoena, require the attendance of such employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, and take testimony with respect to any such matter and may require any such person to produce any books or records specified in such subpoena. The department or its authorized agents at any such hearing shall have power to administer oaths to any such person or persons. When any person called as a witness by a subpoena signed by the department or its agents and served upon him by the sheriff of a county of which such person is a resident, or wherein is located the principal office of such employing unit or wherein such records are located or kept, shall fail to obey such subpoena to appear before the department or its authorized agent, or shall refuse to testify or to answer any questions or to produce any book, record, paper or other data when required to do so, such failure or refusal shall be reported to the Attorney General, who shall thereupon institute proceedings by the filing of a petition in the name of the State of Mississippi, on the relation of the department, in the circuit court or other court of competent jurisdiction of the county where such witness resides, or wherein such records are located or kept, to compel the obedience of such witness. Such petition shall set forth the facts and circumstances of the demand for and refusal or failure to permit the examination or copying of such records, or the failure or refusal of such witness to testify in answer to such subpoena or to produce the records so required by such subpoena. Such court, upon the filing and docketing of such petition, shall thereupon promptly issue an order to the defendants named in the petition to produce forthwith in such court, or at a place in such county designated in such order for the examination or copying by the department or its duly appointed agents, the records, books or documents so described, and to testify concerning matters described in such petition. Unless such defendants to such petition shall appear in the court upon a day specified in such order, which day shall be not more than ten (10) days after the date of issuance of such order, and offer, under oath, good and sufficient reasons why such examination or copying should not be permitted, or why such subpoena should not be obeyed, such court shall thereupon deliver to the department or its agents, for examination or copying, the records, books and documents so described in the

petition and so produced in such court, and shall order the defendants to appear in answer to the subpoena of the department or its agents, and to testify concerning matters inquired about by the department. Any employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, who shall willfully disobey such order of the court after the same shall have been served upon him shall be guilty of indirect contempt of such court from which such order shall have issued, and may be adjudged in contempt of the court and punished therefor as provided by law.

HISTORY: *SOURCES: Codes, 1942, § 7413; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6h; Laws, 1952, ch. 383, § 4h; Laws, 1958, ch. 533, § 6h; Laws, 1962, ch. 564, § 3h; Laws, 2004, ch. 572, § 27; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 27; reenacted without change, Laws, 2010, ch. 559, § 26; reenacted without change, Laws, 2011, ch. 471, § 27; reenacted without change, Laws, 2012, ch. 515, § 27, eff from and after July 1, 2012.*

§ 71-5-135. Failure to make reports [Repealed effective July 1, 2019]

If any employing unit fails to make any report required by this chapter, the department or its authorized agents shall give notice to such employing unit to make and file such report within fifteen (15) days from the date of such notice. If such employing unit, by its proper members, officers or agents, shall fail or refuse to make and file such reports within such time, then and in that event such report shall be made by the department or its authorized agents from the best information available, and the amount of contributions due shall be computed thereon; and such report shall be prima facie correct for the purposes of this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7414; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6i; Laws, 1952, ch. 383, § 4i; Laws, 1958, ch. 533, § 6i; Laws, 1962, ch. 564, § 3i; Laws, 1992, ch. 362, § 1; Laws, 2004, ch. 572, § 28; Laws, 2007, ch. 606, § 7; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 28; reenacted without change, Laws, 2010, ch. 559, § 27; reenacted without change, Laws, 2011, ch. 471, § 28; reenacted without change, Laws, 2012, ch. 515, § 28, eff from and after July 1, 2012.*

§ 71-5-137. Oaths and witnesses [Repealed effective July 1, 2019]

In the discharge of the duties imposed by this chapter, the department, any referee, the members of the Board of Review, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, to take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7415; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6j; Laws, 1952, ch. 383, § 4j; Laws, 1958, ch. 533, § 6j; Laws, 1962, ch. 564, § 3j; Laws, 2004, ch. 572, § 29; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 29; reenacted without change, Laws, 2010, ch. 559, § 28; reenacted without change, Laws, 2011, ch. 471, § 29, Laws, 2012, ch. 515, § 29, eff from and after July 1, 2012.*

§ 71-5-139. Subpoenas [Repealed effective July 1, 2019]

In case of contumacy or refusal to obey a subpoena issued to any person, any court in this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, the Board of Review, any referee, or any duly authorized representative of any of them, shall have jurisdiction to issue to such person an order requiring

such person to appear before the department, the Board of Review, any referee, or any duly authorized representative of any of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records if it is in his power so to do, in obedience to a subpoena of the department, the Board of Review, any referee, or any duly authorized representative of any of them, shall be punished by a fine of not more than Two Hundred Dollars ($ 200.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense.

HISTORY: *SOURCES: Codes, 1942, § 7416; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6k; Laws, 1952, ch. 383, § 4k; Laws, 1958, ch. 533, § 6k; Laws, 1962, ch. 564, § 3k; Laws, 2004, ch. 572, § 30; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 30; reenacted without change, Laws, 2010, ch. 559, § 29; reenacted without change, Laws, 2011, ch. 471, § 30; reenacted without change, Laws, 2012, ch. 515, § 30, eff from and after July 1, 2012.*

§ 71-5-141. Protection against self-incrimination [Repealed effective July 1, 2019]

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the department, the Board of Review, any referee, or any duly authorized representative of any of them, or in obedience to the subpoena of any of them in any cause or proceeding before the department, the Board of Review or an appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

HISTORY: *SOURCES: Codes, 1942, § 7417; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6l; Laws, 1952, ch. 383, § 4l; Laws, 1958, ch. 533, § 6l; Laws, 1962, ch. 564, § 3l; Laws, 2004, ch. 572, § 31; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 31; reenacted without change, Laws, 2010, ch. 559, § 30; reenacted without change, Laws, 2011, ch. 471, § 31; reenacted without change, Laws, 2012, ch. 515, § 31, eff from and after July 1, 2012.*

§ 71-5-143. State-federal cooperation [Repealed effective July 1, 2019]

In the administration of this chapter, the department shall cooperate, to the fullest extent consistent with the provisions of this chapter, with the Social Security Board created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the reasonable, valid and lawful regulations prescribed by the Social Security Board pursuant to and under the authority of the Social Security Act, governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works, or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of benefits, and such recipient's rights to further benefits under this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7418; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6m; Laws, 1952, ch. 383, § 4m; Laws, 1958, ch. 533, § 6m; Laws, 1962, ch. 564, § 3m; Laws, 2004, ch. 572, § 32; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 32; reenacted without change, Laws, 2010, ch. 559, § 31; reenacted without change, Laws, 2011, ch. 471, § 32; reenacted without change, Laws, 2012, ch. 515, § 32, eff from and after July 1, 2012.*

§ 71-5-145. 1235 Echelon Parkway named the Henry J. Kirksey Building

The building located at 1235 Echelon Parkway in Jackson, Mississippi, and in which the Mississippi Department of Employment Security is housed, shall be named the Henry J. Kirksey Building. The Department of Finance and Administration shall prepare a distinctive plaque, to be placed in a prominent place within the Henry J. Kirksey Building, which states the background, accomplishments and service to the state of the Honorable Henry J. Kirksey.

HISTORY: *SOURCES: Laws, 2007, ch. 339, § 2, eff from and after passage (approved Mar. 14, 2007.)*

ARTICLE 5. EMPLOYMENT SERVICE

§ 71-5-201. State employment service [Repealed effective July 1, 2019]

The Mississippi State Employment Service is established in the Mississippi Department of Employment Security, Office of the Governor. The department, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this article and for the purpose of performing such functions as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes" (29 USCS Section 49 et seq.). Any existing free public employment offices maintained by the state but not heretofore under the jurisdiction of the department shall be transferred to the jurisdiction of the department, and upon such transfer all duties and powers conferred upon any other department, agency or officers of this state relating to the establishment, maintenance and operation of free public employment offices shall be vested in the department. The Mississippi State Employment Service shall be administered by the department, which is charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of that act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of that act of Congress, as amended, are accepted by this state, in conformity with 29 USCS Section 49c, and this state will observe and comply with the requirements thereof. The department is designated and constituted the agency of this state for the purposes of that act. The department may cooperate with or enter into agreements with the Railroad Retirement Board or veteran's organization with respect to the establishment, maintenance and use of free employment service facilities.

HISTORY: *SOURCES: Codes, 1942, § 7419; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7a; Laws, 1971, ch. 519, § 12; Laws, 1972, ch. 425, § 1; Laws, 2004, ch. 572, § 33; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 33; reenacted without change, Laws, 2010, ch. 559, § 32; reenacted without change, Laws, 2011, ch. 471, § 33; reenacted without change, Laws, 2012, ch. 515, § 33, eff from and after July 1, 2012.*

§ 71-5-203. Financing

All moneys received by this state under the said act of Congress, as amended, shall be paid into the employment security administration fund. Said moneys are hereby made available to the commission to be expended as provided by this article and by said act of Congress, upon voucher signed by the executive director or such other officer or employee of the commission as it may authorize so to do. For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private, non-profit organization; and as a part of any such agreement, the commission may accept moneys, services, or quarters as a contribution to the employment security administration fund.

HISTORY: *SOURCES: Codes, 1942, § 7420; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7b, eff July 1, 1948.*

ARTICLE 7. CONTRIBUTIONS

§ 71-5-351. Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP)

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter. Such contributions shall become due and be paid by each employer to the department for the fund each calendar quarter on or before the last day of the month next succeeding each calendar quarter in which the contributions accrue unless the employer has filed an election with the department to participate in the Mississippi Level Payment Plan (MLPP) and complies with the provision of the MLPP. The department may extend the due date of such contributions if the due date falls on a Saturday, Sunday or state or federal holiday. Such contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2) (a) Any employer who is a newly subject employer or any employer who meets the requirements of participation in the MLPP shall be allowed one (1) participation election per year. The department may by regulation establish exceptions to this rule as appropriate. The department shall establish by regulation the requirements for computation and adjustment of compensation and shall compute the amount of payments that will be made quarterly and notify each employer before the first tax payment is due for the year. Equal payments will be made for calendar quarters ending March, June and September and settlement will be made for any overage or shortage at the time payment is due for the December quarter.

(b) An employer who meets the following criteria may participate in the MLPP:

(i) The employer has not been delinquent in filing unemployment reports or paying unemployment taxes to the department during the last two (2) calendar years and must make current all other delinquent unemployment taxes and reports;

(ii) The employer has been an employer subject to the unemployment laws of the State of Mississippi, or in accordance with department regulations regarding MLPP, for at least twelve (12) months prior to the year the employer starts participating;

(iii) The employer must agree to file reports through the department's online system or other agency prescribed electronic facility and pay electronically;

(iv) The employer remains current in filing and paying taxes; and

(v) The employer must make the election by April 1 of the year.

(c) Employers who participate in the MLPP and pay their contribution by bank draft shall utilize the pay schedule provided for in this paragraph. The pay schedule shall be as follows:

(i) January to March due date May 15;

(ii) April to June due date August 15;

(iii) July to September due date November 15; and

(iv) October to December due date January 31.

(d) In the event the computed Size of Fund Index (SOFI) for any rate year computation falls below one percent (1.0%), the additional fifteen (15) days' delay provided for bank draft customers will be suspended for that year.

(3) For purposes of payment of contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to One-half Cent (1/2 cent(s)) or more, in which case it shall be increased to One Cent (1 cent(s)).

(4) For the purposes of this section and Sections 71-5-353, 71-5-357 and 71-5-359, taxable wages shall not include that part of remuneration which, after remuneration equal to Seven Thousand Dollars ($ 7,000.00) through December 31, 2010, and Fourteen Thousand Dollars ($ 14,000.00) thereafter, has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state employment fund. For the purposes of this section, the term "employment" shall include service constituting employment under any unemployment compensation law of another state.

(5) Absent evidence of willful or fraudulent attempt to avoid taxation, the effective date of liability of an employer or assessment of liability for covered employment against an employer shall not occur for any period preceding the three (3) calendar years before the date of registration or assessment, unless said three-year limitations period is waived by the employer.

(6) The executive director may grant a reasonable extension of time beyond the statutory due date within which to file any report required by this section to an employer located in an area included in a declaration of an emergency or disaster by the President or the Governor. The executive director may, in his discretion, recognize extensions of time authorized and granted by the Internal Revenue Service for the filing of tax returns.

HISTORY: *SOURCES: Codes, 1942, § 7390; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4a; Laws, 1950, ch. 454, § 1a; Laws, 1952, ch. 383, § 2a; Laws, 1956, ch. 404, § 2a; Laws, 1958, ch. 533, § 5a; Laws, 1962, ch. 564, § 2a; Laws, 1964, ch. 442, § 2a; Laws, 1971, ch. 519, § 6; Laws, 1977, ch. 497, § 2; Laws, 1983, ch. 371, § 2; Laws, 1985, ch. 413; Laws, 1998, ch. 331, § 2; Laws, 2001, ch. 431, § 1; Laws, 2005, ch. 437, § 4; Laws, 2010, ch. 504, § 1; Laws, 2013, ch. 309, § 5, eff from and after passage (approved March 6, 2013.)*

§ 71-5-353. Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances

(1) (a) Each employer shall pay unemployment insurance contributions equal to five and four-tenths percent (5.4%) of taxable wages paid by him each calendar year, except as may be otherwise provided in Section 71-5-361 and except that each newly subject employer shall pay unemployment insurance contributions at the rate of one percent (1%) of taxable wages, for his first year of liability, one and one-tenth percent (1.1%) of taxable wages for his second year of liability, and one and two-tenths percent (1.2%) of taxable wages for his third and subsequent years of liability unless the employer's experience-rating record has been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the rate for a year is determined; thereafter the employer's contribution rate shall be determined in accordance with the provisions of Section 71-5-355.

(b) Notwithstanding the newly subject employer contribution rate provided for in paragraph (a) of this subsection, the contribution rate of all newly subject employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar year 2013 only. The contribution rate of all newly subject employers shall be reduced by three one-hundredths of one percent (.03%) for calendar year 2014 only. For purposes of this chapter, "newly subject employers" means employers whose unemployment insurance experience-rating record has not been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the contribution rate for a year is determined.

(2) (a) (i) There is hereby created in the Treasury of the State of Mississippi special funds to be known as the "Mississippi Workforce Enhancement Training Fund" and the "Mississippi Works Fund" which consist of funds collected pursuant to subsection (3) of this section.

(ii) Funds collected shall initially be deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently appropriate amounts shall be transferred to the Mississippi Workforce Investment and Training Fund Holding Account described in Section 71-5-453. In the event any employer pays an amount insufficient to

cover the total contributions due, the amounts due shall be satisfied in the following order:

1. Unemployment contributions;

2. Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and the Mississippi Works contributions, known collectively as the Mississippi Workforce Investment and Training contributions, on a pro rata basis;

3. Interest and damages; then

4. Legal and processing costs.

The amount of unemployment insurance contributions due for any period will be the amount due according to the actual computations unless the employer is participating in the MLPP. In that event, the amount due is the MLPP amount computed by the department. Cost of collection and administration of the Mississippi Workforce Enhancement Training contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be allocated based on a plan approved by the United States Department of Labor (USDOL). The Mississippi Community College Board shall pay the cost of collecting the Mississippi Workforce Enhancement Training contributions, the State Workforce Investment Board shall pay the cost of collecting the State Workforce Investment contributions and the Mississippi Department of Employment Security shall pay the cost of collecting the Mississippi Works contributions. Payments shall be made semiannually with the cost allocated to each based on a USDOL approved plan on a pro rata basis, for periods ending in June and December of each year. Payment shall be made by each organization to the department no later than sixty (60) days after the billing date. Cost shall be allocated under the USDOL's approved plan and in the same ratio as each contribution type represents to the total authorized by subparagraph (ii)(2) of this paragraph to be collected for the period.

(b) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be distributed as follows:

(i) For calendar year 2014, ninety-four and seventy-five one-hundredths percent (94.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(ii) For calendar years subsequent to calendar year 2014, ninety-three and seventy-five one-hundredths percent (93.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(iii) Workforce Enhancement Training contributions and State Workforce Investment contributions for calendar years 2014 and 2015 shall be distributed as provided in subparagraphs (i) and (ii) of this paragraph regardless of when the contributions were collected.

(c) All contributions collected for the State Workforce Enhancement Training Fund, the State Workforce Investment Fund and the Mississippi Works Fund will be initially deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently transferred to the Workforce Investment and Training Holding Account and will be held by the Mississippi Department of Employment Security in such account for a period of not less than thirty (30) days. After such period, the Mississippi Workforce Enhancement Training contributions shall be transferred to the Mississippi Community College Board Treasury Account, the State Workforce Investment contributions and the Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Mississippi Works Treasury Account in the same ratio as each contribution type represents to the total authorized by paragraph (a)(ii)(2) of this subsection to be collected for the period and within the time frame determined by the department; however, except in cases of extraordinary circumstances, these funds shall be transferred within fifteen (15) days. Interest earnings or interest credits on deposit amounts in the Workforce Investment and Training Holding Account shall be retained in the account to pay the banking costs of the account. If after the period of twelve (12) months interest earnings less banking costs exceeds Ten Thousand Dollars ($ 10,000.00), such excess amounts shall be transferred to the respective accounts within thirty (30) days following the end of each calendar year on the basis described in paragraph (b) of this subsection. Interest earnings and/or interest credits for the State Workforce Investments funds shall be used for the payment of banking costs and excess amounts shall be used in accordance with the rules and regulations of the State Workforce Investment Board expenditure policies.

(d) All enforcement procedures for the collection of delinquent unemployment contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for collections of delinquent unemployment insurance contributions designated for the Unemployment Compensation Fund, the Mississippi Workforce Enhancement Training Fund, the State Workforce Investment Board Fund and the Mississippi Works Fund.

(e) (i) Except as otherwise provided for in this subparagraph (i), all monies deposited into the Mississippi Workforce Enhancement Training Fund treasury account shall be utilized exclusively by the Mississippi Community College Board in accordance with the Workforce Training Act of 1994 (Section 37-153-1 et seq.), policies approved by the Mississippi Community College Board and the annual plan developed by the State Workforce Investment Board for the following purposes: to provide training at no charge to employers and employees in order to enhance employee productivity. Such training may be subject to a minimal administrative fee to be paid from the Mississippi Workforce Enhancement Training Fund as established by the State Workforce Investment Board subject to the advice of the Mississippi Community College Board. The initial priority of these funds shall be for the benefit of existing businesses located within the state. Employers may request training for existing employees and/or newly hired employees from the Mississippi Community College Board. The Mississippi Community College Board will be responsible for approving the training. A portion of the funds collected

for the Mississippi Workforce Enhancement Training Fund shall be used for the development of performance measures to measure the effectiveness of the use of the Mississippi Workforce Enhancement Training Fund dollars. These performance measures shall be uniform for all community colleges and shall be reported to the Governor, Lieutenant Governor and members of the Legislature. Nothing in this section or elsewhere in law shall be interpreted as giving the State Workforce Investment Board authority to direct the Mississippi Community College Board or individual community or junior colleges on how to expend money for workforce training, whether such money comes from the Mississippi Workforce Enhancement Training Fund, is appropriated by the Legislature to the Mississippi Community College Board for workforce training or comes from other sources. The Mississippi Community College Board, individual community or junior colleges and the State Workforce Investment Board shall cooperate with each other and with other state agencies to promote effective workforce training in Mississippi. Any subsequent changes to these performance measures shall also be reported to the Governor, Lieutenant Governor and members of the Legislature. A performance report for each community college, based upon these measures, shall be submitted annually to the Governor, Lieutenant Governor and members of the Legislature.

(ii) Except as otherwise provided in this paragraph (e), all funds deposited into the State Workforce Investment Board bank account shall be used for administration of State Workforce Investment Board business, grants related to training, and other projects as determined appropriate by the State Workforce Investment Board and shall be nonexpiring. Policies for grants and other projects shall be approved through a majority vote of the State Workforce Investment Board.

(iii) All funds deposited into the Mississippi Department of Employment Security Mississippi Works Fund shall be disbursed exclusively by the Executive Director of the Mississippi Department of Employment Security, in accordance with the rules and regulations promulgated by the State Workforce Investment Board Rules Committee in support of workforce training activities approved by the Mississippi Development Authority in support of economic development activities. Funds allocated by the executive director under this subparagraph (iii) shall only be utilized for the training of unemployed persons, for immediate training needs for the net new jobs created by an employer, for the retention of jobs or to create a work-ready applicant pool of Mississippians with credentials and/or postsecondary education in accordance with the state's Workforce Investment and Opportunity Act plan. The executive director shall give priority to the training of unemployed persons. Not more than twenty-five percent (25%) of the funds may be allocated for the retention of jobs and/or creation of a work-ready applicant pool. Not more than Five Hundred Thousand Dollars ($ 500,000.00) may be allocated annually for the training needs of any one (1) employer. The Mississippi Public Community College System and its partners shall be the primary entities to facilitate training. In no case shall these funds be used to supplant workforce funds available from any other sources, including, but not limited to, local, state or federal sources that are available for workforce training and development.

Training conducted utilizing these Mississippi Works funds may be subject to a minimal administrative fee to be paid from the Mississippi Works Fund as authorized by the Mississippi Department of Employment Security. All costs associated with the administration of these funds shall be reimbursed to the Mississippi Department of Employment Security from the Mississippi Works Fund.

(iv) 1. The Department of Employment Security shall be the fiscal agent for the receipt and disbursement of all funds in the State Workforce Investment Board bank account.

2. In managing the State Workforce Investment Board bank account, the department shall ensure that any funds expended for contractual services rendered to the State Workforce Investment Board shall be paid only to service providers who have been selected on a competitive basis. Any contract for services entered into using funds from the Workforce Investment Fund bank account shall contain the deliverables stated in terms that allow for the assessment of work performance against measurable performance standards and shall include milestones for completion of each deliverable under the contract. For each contract for services entered into by the State Workforce Investment Board, the board shall develop a quality assurance surveillance plan that specifies quality control obligations of the contractor as well as measurable inspection and acceptance criteria corresponding to the performance standards contained in the contract's statement of work.

3. Any commodities procured for the board shall be procured in accordance with the provisions of Section 31-7-13.

(v) In addition to other expenditures, the department shall expend from the State Workforce Investment Board bank account for the use and benefit of the State Workforce Investment Board, such funds as are necessary to prepare and develop a study of workforce development needs that will consist of the following:

1. An identification of the state's workforce development needs through a well-documented quantitative and qualitative analysis of:

a. The current and projected workforce training needs of existing and identified potential Mississippi industries, with priority given to assessing the needs of existing in-state industry and business. Where possible, the analysis should include a verification and expansion of existing information previously developed by workforce training and service providers, as well as analysis of existing workforce data, such as the data collected through the Statewide Longitudinal Data System.

b. The needs of the state's workers and residents requiring additional workforce training to improve their work skills in order to compete for better employment opportunities, including a priority-based

analysis of the critical factors currently limiting the state's ability to provide a trained and ready workforce.

c. The needs of workforce service and training providers in improving their ability to offer industry-relevant training, including an assessment of the practical limits of keeping training programs on the leading edge and eliminating those programs with marginal workforce relevance.

2. An assessment of Mississippi's current workforce development service delivery structure relative to the needs quantified in this subparagraph, including:

a. Development of a list of strengths/weaknesses/opportunities/threats (SWOT) of the current workforce development delivery system relative to the identified needs;

b. Identification of strategic options for workforce development services based on the results of the SWOT analysis; and

c. Development of results-oriented measures for each option that can be baselined and, if implemented, tracked over time, with quantifiable milestones and goals.

3. Preparation of a report presenting all subjects set out in this subparagraph to be delivered to the Lieutenant Governor, Speaker of the House of Representatives, Chairman of the Senate Finance Committee and Chairman of the House Appropriations Committee no later than February 1, 2015.

4. Following the preparation of the report, the State Workforce Investment Board shall make a recommendation to the House and Senate Appropriations Committees on future uses of funds deposited to the State Workforce Investment Fund account. Such future uses may include:

a. The development of promotion strategies for workforce development programs;

b. Initiatives designed to reduce the state's dropout rate including the development of a statewide career awareness program;

c. The long-term monitoring of the state's workforce development programs to determine whether they are addressing the needs of business, industry, and the workers of the state; and

d. The study of the potential restructuring of the state's workforce programs and delivery systems.

(3) (a) (i) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be collected at the following rates:

1. For calendar year 2014 only, the rate of nineteen one-hundredths of one percent (.19%) based upon taxable wages of which eighteen one-hundredths of one percent (.18%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution; and

2. For calendar year 2015 only, the rate of sixteen one-hundredths of one percent (.16%), based upon taxable wages of which fifteen one-hundredths of one percent (.15%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution.

(ii) Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be collected at the following rates:

1. For calendar year 2016 only, at a rate of twenty-four one-hundredths percent (.24%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and eight one-hundredths percent (.08%) shall be the Mississippi Works contribution.

2. For calendar years subsequent to calendar year 2016, at a rate of twenty one- hundredths percent (.20%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and four one-hundredths percent (.04%) shall be the Mississippi Works contribution. The Mississippi Works contribution shall be collected for calendar years in which the general experience ratio, adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%), results in a general experience rate of less than two-tenths percent (.2%). In all other years the Mississippi Works contribution shall not be in effect.

(iii) The Mississippi Workforce Enhancement Training Fund contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be in addition to the general experience rate plus the individual experience rate of all employers but shall not be charged to reimbursing or rate-paying political subdivisions or institutions of higher learning, or reimbursing nonprofit organizations, as described in Sections 71-5-357 and 71-5-359.

(b) All Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions collected shall be deposited initially into the Mississippi Department of

Employment Security bank account for clearing contribution collections and shall within two (2) business days be transferred to the Workforce Investment and Training Holding Account. Any Mississippi Workforce Enhancement Training Fund and/or State Workforce Investment Board bank account and/or Mississippi Works Fund transactions from the Mississippi Department of Employment Security bank account for clearing contribution collections that are deposited into the Workforce Investment and Training Fund Holding Account and are not honored by a financial institution will be transferred back to the Mississippi Department of Employment Security bank account for clearing contribution collections out of funds in the Mississippi Workforce Investment and Training Fund Holding Account.

(c) Suspension of the Workforce Enhancement Training Fund contributions required pursuant to this chapter shall occur if the insured unemployment rate exceeds an average of five and five-tenths percent (5.5%) for the three (3) consecutive months immediately preceding the effective date of the new rate year following such occurrence and shall remain suspended throughout the duration of that rate year. Such suspension shall continue until such time as the three (3) consecutive months immediately preceding the effective date of the next rate year that has an insured unemployment rate of less than an average of four and five-tenths percent (4.5%). Upon such occurrence, reactivation shall be effective upon the first day of the rate year following the event that lifts suspension and shall be in effect for that year and shall continue until such time as a subsequent suspension event as described in this chapter occurs.

(4) All collections due or accrued prior to any suspension of the Mississippi Workforce Enhancement Training Fund will be collected based upon the law at the time the contributions accrued, regardless of when they are actually collected.

HISTORY: *SOURCES: Codes, 1942, § 7391; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4b; Laws, 1950, ch. 454, § 1b; Laws, 1952, ch. 383, § 2b; Laws, 1956, ch. 404, § 2b; Laws, 1958, ch. 533, § 5b; Laws, 1962, ch. 564, § 2b; Laws, 1964, ch. 442, § 2b; Laws, 1971, ch. 519, § 7; Laws, 1979, ch. 465, § 1; Laws, 1984, ch. 301, § 1; Laws, 1998, ch. 331, § 3; Laws, 1998, ch. 491, § 2; Laws, 2005, ch. 437, § 1; Laws, 2010, ch. 302, § 1; Laws, 2010, ch. 504, § 2; Laws, 2013, ch. 309, § 6; Laws, 2014, ch. 504, § 1; Laws, 2016, ch. 302, § 1, eff from and after passage (approved Mar. 21, 2016.)*

§ 71-5-355. Modified rates

(1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) “Tax year” means any period beginning on January 1 and ending on December 31 of a year.

(b) “Computation date” means June 30 of any calendar year immediately preceding the tax year during which the particular contribution rates are effective.

(c) “Effective date” means January 1 of the tax year.

(d) Except as hereinafter provided, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H, plus the total of all remuneration paid by such employer excluded from the definition of wages by Section 71-5-351. For the computation of modified rates, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H.

(e) For the computation of modified rates, "eligible employer" means an employer whose experience-rating record has been chargeable with benefits throughout the thirty-six (36) consecutive calendar-month period ending on the computation date, except that any employer who has not been subject to the Mississippi Employment Security Law for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar-month period ending on the computation date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to any tax year, who has failed to file any two (2) quarterly reports within the qualifying period by September 30 following the computation date. No employer or employing unit shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which the employing unit is found by the department to be in violation of Section 71-5-19(2) or (3) and for the next two (2) succeeding tax years. No representative of such employing unit who was a party to a violation as described in Section 71-5-19(2) or (3), if such representative was or is an employing unit in this state, shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation was detected by the department and for the next two (2) succeeding tax years.

(f) With respect to any tax year, "reserve ratio" means the ratio which the total amount available for the payment of benefits in the Unemployment Compensation Fund, excluding any amount which has been credited to the account of this state under Section 903 of the Social Security Act, as amended, and which has been appropriated for the expenses of administration pursuant to Section 71-5-457 whether or not withdrawn from such account, on October 31 (close of business) of each calendar year bears to the aggregate of the taxable payrolls of all employers for the twelve (12) calendar months ending on June 30 next preceding.

(g) "Modified rates" means the rates of employer unemployment insurance contributions determined under the provisions of this chapter and the rates of newly subject employers, as provided in Section 71-5-353.

(h) For the computation of modified rates, "qualifying period" means a period of not less than the thirty-six (36) consecutive calendar months ending on the computation date throughout which an employer's experience-rating record has been chargeable with benefits; except that with respect to any eligible employer who has not been subject to this article for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement, "qualifying period" means the period ending on the computation date throughout which his experience-rating record has been chargeable with benefits, but in no event less than the twelve (12)

consecutive calendar-month period ending on the computation date throughout which his experience-rating record has been so chargeable.

(i) The "exposure criterion" (EC) is defined as the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits as of November 16 of each calendar year or the next working day if November 16 falls on a holiday or a weekend, divided by the total wages, exclusive of wages paid by all state agencies, all political subdivisions, reimbursable nonprofit corporations, and tax-exempt public service employment, for the twelve-month period ending June 30 immediately preceding such date. The EC shall be computed to four (4) decimal places and rounded up if any fraction remains.

(j) The "cost rate criterion" (CRC) is defined as follows: Beginning with January 1974, the benefits paid for the twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1975. Similar ratios are computed by subtracting the earliest month's benefit payments and adding the benefits of the next month in the sequence and dividing each sum of twelve (12) months' benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used to compute the numerator. If December is the final month of the period used to compute the numerator, then the twelve-month period ending the following June 30 will be used for the denominator. Benefits and total wages used in the computation of the cost rate criterion shall exclude all benefits and total wages applicable to state agencies, political subdivisions, reimbursable nonprofit corporations, and tax-exempt PSE employment.

The CRC shall be computed as the average for the highest monthly value of the cost rate criterion computations during each of the economic cycles since the calendar year 1974 as defined by the National Bureau of Economic Research. The CRC shall be computed to four (4) decimal places and any remainder shall be rounded up.

The CRC shall be adjusted only through annual computations and additions of future economic cycles.

(k) "Size of fund index" (SOFI) is defined as the ratio of the exposure criterion (EC) to the cost rate criterion (CRC). The target size of fund index will be fixed at 1.0. If the insured unemployment rate (IUR) exceeds a four and five-tenths percent (4.5%) average for the most recent completed July to June period, the target SOFI will be.8 and will remain at that level until the computed SOFI (the average exposure criterion of the current year and the preceding year divided by the average cost rate criterion) equals 1.0 or the average IUR falls to four and five-tenths percent (4.5%) or less for any period July to June. However, if the IUR falls below two and five-tenths percent (2.5%) for any period July to June the target SOFI shall be 1.2 until such time as the computed SOFI is equal to or greater than 1.0 or the IUR is equal to or greater than two and five-tenths percent (2.5%), at which point the target SOFI shall return to 1.0.

(l) No employer's unemployment contribution general experience rate plus individual unemployment experience rate shall exceed five and four-tenths percent (5.4%).

Accrual rules shall apply for purposes of computing contribution rates including associated functions.

(m) The term "general experience rate" has the same meaning as the minimum tax rate.

(2) Modified rates:

(a) For any tax year, when the reserve ratio on the preceding November 16, in the case of any tax year, equals or exceeds three percent (3%), the modified rates, as hereinafter prescribed, shall be in effect. In computation of this reserve ratio, any remainder shall be rounded down.

(b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his experience-rating record in the following manner:

(i) The department shall maintain an experience-rating record for each employer. Nothing in this chapter shall be construed to grant any employer or individuals performing services for him any prior claim or rights to the amounts paid by the employer into the fund.

(ii) Benefits paid to an eligible individual shall be charged against the experience-rating record of his base period employers in the proportion to which the wages paid by each base period employer bears to the total wages paid to the individual by all the base period employers, provided that benefits shall not be charged to an employer's experience-rating record if the department finds that the individual:

1. Voluntarily left the employ of such employer without good cause attributable to the employer or to accept other work;

2. Was discharged by such employer for misconduct connected with his work;

3. Refused an offer of suitable work by such employer without good cause, and the department further finds that such benefits are based on wages for employment for such employer prior to such voluntary leaving, discharge or refusal of suitable work, as the case may be;

4. Had base period wages which included wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566;

5. Extended benefits paid under the provisions of Section 71-5-541 which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers;

6. Is still working for such employer on a regular part-time basis under the same employment conditions as hired. Provided, however, that benefits shall be charged against an employer if an eligible individual is

paid benefits who is still working for such employer on a part-time "as-needed" basis;

7. Was hired to replace a United States serviceman or servicewoman called into active duty and was laid off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political subdivision or instrumentality of the state;

8. Was paid benefits during any week while in training with the approval of the department, under the provisions of Section 71-5-513B, or for any week while in training approved under Section 236(a) (1) of the Trade Act of 1974, under the provisions of Section 71-5-513C;

9. Is not required to serve the one-week waiting period as described in Section 71-5-505(2). In that event, only the benefits paid in lieu of the waiting period week may be noncharged; or

10. Was paid benefits as a result of a fraudulent claim, provided notification was made to the Mississippi Department of Employment Security in writing or by e.mail by the employer, within ten (10) days of the mailing of the notice of claim filed to the employer's last-known address.

(iii) Notwithstanding any other provision contained herein, an employer shall not be noncharged when the department finds that the employer or the employer's agent of record was at fault for failing to respond timely or adequately to the request of the department for information relating to an unemployment claim that was subsequently determined to be improperly paid, unless the employer or the employer's agent of record shows good cause for having failed to respond timely or adequately to the request of the department for information. For purposes of this subparagraph 'good cause" means an event that prevents the employer or employer's agent of record from timely responding, and includes a natural disaster, emergency or similar event, or an illness on the part of the employer, the employer's agent of record, or their staff charged with responding to such inquiries when there is no other individual who has the knowledge or ability to respond. Any agency error that resulted in a delay in, or the failure to deliver notice to, the employer or the employer's agent of record shall also be considered good cause for purposes of this subparagraph.

(iv) The department shall compute a benefit ratio for each eligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record during the period his experience-rating record has been chargeable, but not less than the twelve (12) consecutive calendar-month period nor more than the thirty-six (36) consecutive calendar-month period ending on the computation date, by his total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date. Such benefit ratio shall be computed to the tenth of a percent (.1%), rounding any remainder to the next higher tenth.

(v) 1. The unemployment insurance contribution rate for each eligible employer shall be the sum of two (2) rates: his individual experience rate in the range from zero percent (0%) to five and four-tenths percent (5.4%), plus a general experience rate. In no event shall the resulting unemployment insurance rate be in excess of five and four-tenths percent (5.4%), however, it is the intent of this section to provide the ability for employers to have a tax rate, the general experience rate plus the individual experience rate, of up to five and four- tenths percent (5.4%).

2. The employer's individual experience rate shall be equal to his benefit ratio as computed under subsection (2) (b) (iv) above.

3. The general experience rate shall be determined in the following manner: The department shall determine annually, for the thirty-six (36) consecutive calendar-month period ending on the computation date, the amount of benefits which were not charged to the record of any employer and of benefits which were ineffectively charged to the employer's experience-rating record. For the purposes of this item 3, the term "ineffectively charged benefits" shall include:

a. The total of the amounts of benefits charged to the experience-rating records of all eligible employers which caused their benefit ratios to exceed five and four-tenths percent (5.4%);

b. The total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five and four-tenths percent (5.4%) if they were eligible employers; and

c. The total of the amounts of benefits charged or chargeable to the experience-rating record of any employer who has discontinued his business or whose coverage has been terminated within such period; provided, that solely for the purposes of determining the amounts of ineffectively charged benefits as herein defined, a "benefit ratio" shall be computed for each ineligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record throughout the period ending on the computation date, during which his experience-rating record has been chargeable with benefits, by his total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date; and provided further, that such benefit ratio shall be computed to the tenth of one percent (.1%) and any remainder shall be rounded to the next higher tenth.

The ratio of the sum of these amounts (subsection (2)(b)(v)3a, b and c) to the taxable wages paid during the same period divided by all eligible employers whose benefit ratio did not exceed five and four-tenths percent (5.4%), computed to the next higher tenth of

one percent (.1%), shall be the general experience rate; however, the general experience rate for rate year 2014 shall be two tenths of one percent (.2%) and to that will be added the employer's individual experience rate for the total unemployment insurance rate.

4. a. Except as otherwise provided in this item 4, the general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or negative, and shall be determined as follows: From the target SOFI, as defined in subsection (1)(k) of this section, subtract the simple average of the current and preceding years' exposure criterions divided by the cost rate criterion, as defined in subsection (1)(j) of this section. The result is then multiplied by the product of the CRC, as defined in subsection (1)(j) of this section, and total wages for the twelve-month period ending June 30 divided by the taxable wages for the twelve-month period ending June 30. This is the percentage positive or negative added to the general experience rate. The sum of the general experience rate and the trust fund adjustment factor shall be multiplied by fifty percent (50%) and this product shall be computed to one (1) decimal place, and rounded to the next higher tenth.

   b. Notwithstanding the minimum rate provisions as set forth in subsection (1) (l) of this section, the general experience rate of all employers shall be reduced by seven one hundredths of one percent (.07%) for calendar year 2013 only.

5. The general experience rate shall be zero percent (0%) unless the general experience ratio for any tax year as computed and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%) is an amount equal to or greater than two-tenths of one percent (.2%), then the general experience rate shall be the computed general experience ratio and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%); however, in no case shall the sum of the general experience plus the individual experience unemployment insurance rate exceed five and four- tenths percent (5.4%). For rate years subsequent to 2014, Mississippi Workforce Enhancement Training contribution rate, and/or State Workforce Investment contribution rate, and/or Mississippi Works contribution rate, when in effect, shall be added to the unemployment contribution rate, regardless of whether the addition of this contribution rate causes the total contribution rate for the employer to exceed five and four-tenths percent (5.4%).

6. The department shall include in its annual rate notice to employers a brief explanation of the elements of the general experience rate, and shall include in its regular publications an annual analysis of benefits not charged to the record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), and of any other factors which may affect the size of the general experience rate.

(vi) When any employing unit in any manner succeeds to or acquires the organization, trade, business or substantially all the assets thereof of an employer, excepting any assets retained by such employer incident to the liquidation of his obligations, whether or not such acquiring employing unit was an employer within the meaning of Section 71-5-11, subsection H, prior to such acquisition, and continues such organization, trade or business, the experience-rating and payroll records of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(vii) When any employing unit succeeds to or acquires a distinct and severable portion of an organization, trade or business, the experience-rating and payroll records of such portion, if separately identifiable, shall be transferred to the successor upon:

1. The mutual consent of the predecessor and the successor;

2. Approval of the department;

3. Continued operation of the transferred portion by the successor after transfer; and

4. The execution and the filing with the department by the predecessor employer of a waiver relinquishing all rights to have the experience-rating and payroll records of the transferred portion used for the purpose of determining modified rates of contribution for such predecessor.

(viii) If the successor was an employer subject to this chapter prior to the date of acquisition, it shall continue to pay unemployment insurance contributions at the rate applicable to it from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date of acquisition, it shall pay unemployment insurance contributions at the rate applicable to the predecessor or, if more than one (1) predecessor and the same rate is applicable to both, the rate applicable to the predecessor or predecessors, from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date the acquisition occurred and simultaneously acquires the businesses of two (2) or more employers to whom different rates of unemployment insurance contributions are applicable, it shall pay unemployment insurance contributions from the date of the acquisition until the end of the current tax year at a rate computed on the basis of the combined experience-rating and payroll records of the predecessors as of the computation date for such tax year. In all cases the rate of unemployment insurance contributions applicable to such successor for each succeeding tax year shall be computed on the basis of the combined experience-rating and payroll records of the successor and the predecessor or predecessors.

(ix) The department shall notify each employer quarterly of the benefits paid and charged to his experience-rating record; and such notification, in the absence of an application for redetermination filed within thirty (30) days after the date of such notice, shall be final, conclusive and binding upon the employer for all purposes. A redetermination, made after notice and opportunity for a fair hearing, by a hearing officer designated by the department who shall consider and decide these and related applications and protests; and the finding of fact in connection therewith may be introduced into any subsequent administrative or judicial proceedings involving the determination of the rate of unemployment insurance contributions of any employer for any tax year, and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact in proceedings to redetermine the contribution rate of an employer.

(x) The department shall notify each employer of his rate of contribution as determined for any tax year as soon as reasonably possible after September 1 of the preceding year. Such determination shall be final, conclusive and binding upon such employer unless, within thirty (30) days after the date of such notice to his last-known address, the employer files with the department an application for review and redetermination of his contribution rate, setting forth his reasons therefor. If the department grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing by a hearing officer designated by the department who shall consider and decide these and related applications and protests; but no employer shall be allowed, in any proceeding involving his rate of unemployment insurance contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Sections 71-5-515 through 71-5-533 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him, and then only in the event that he was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in which the character of such services was determined. The employer shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, within ten (10) days after the date of notice thereof, there shall be an appeal to the department itself. Any such appeal shall be on the record before said designated hearing officer, and the decision of said department shall become final unless, within thirty (30) days after the date of notice thereof to the employer's last-known address, there shall be an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(3) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a) (i) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business

shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective on January 1 of the year following the year the transfer occurred.

(ii) If, following a transfer of experience under subparagraph (i) of this paragraph (a), the department determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability of unemployment insurance contributions, then the experience-rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer or an employing unit under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions. Instead, such person shall be assigned the new employer rate under Section 71-5-353. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c) (i) If a person knowingly violates or attempts to violate paragraph (a) or (b) of this subsection or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

1. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for such year, then a penalty rate of unemployment insurance contributions of two percent (2%) of taxable wages shall be imposed for such year. The penalty rate will apply to the successor business as well as the related entity from which the employees were transferred in an effort to obtain a lower rate of unemployment insurance contributions.

2. If the person is not an employer, such person shall be subject to a civil money penalty of not more than Five Thousand Dollars ($ 5,000.00). Each such transaction for which advice was given and each occurrence or reoccurrence after notification being given by the department shall be a separate offense and punishable by a separate penalty. Any such fine shall be deposited in the penalty and interest account established under Section 71-5-114.

(ii) For purposes of this paragraph (c), the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(iii) For purposes of this paragraph (c), the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(iv) In addition to the penalty imposed by subparagraph (i) of this paragraph (c), any violation of this subsection may be punishable by a fine of not more than Ten Thousand Dollars ($ 10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment. This subsection shall prohibit prosecution under any other criminal statute of this state.

(d) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(e) For purposes of this subsection:

(i) "Person" has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986; and

(ii) "Employing unit" has the meaning as set forth in Section 71-5-11.

(f) This subsection shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

HISTORY: *SOURCES: Codes, 1942, § 7392; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4c; Laws, 1950, ch. 454, § 1c; Laws, 1952, ch. 383, § 2c; Laws, 1956, ch. 404, § 2c; Laws, 1958, ch. 533, § 5c; Laws, 1962, ch. 564, § 2c; Laws, 1964, ch. 442, § 2c; Laws, 1971, ch. 519, § 8; Laws, 1977, ch. 497, § 3; Laws, 1979, ch. 465, § 2; Laws, 1980, ch. 350; Laws, 1981, ch. 447, § 1; Laws, 1982, ch. 349, § 1; Laws, 1984, ch. 301, § 2; Laws, 1985, ch. 442; Laws, 1986, ch. 319, § 1; Laws, 1987, ch. 394; Laws, 1988, ch. 322, § 1; Laws, 1991, ch. 511, § 1; Laws, 1992, ch. 463, § 1; Laws, 1993, ch. 307, § 1; Laws, 1994, ch. 303, § 2; reenacted, Laws, 1995, ch. 507, § 2; Laws, 1998, ch. 331, § 4; Laws, 1999, ch. 306, § 2; Laws, 2000, ch. 412, § 2; Laws, 2005, ch. 400, § 1; Laws, 2005, ch. 437, § 2; Laws, 2007, ch. 606, § 8; Laws, 2010, ch. 302, § 2; Laws, 2010, ch. 504, § 3; Laws, 2012, ch. 515, § 60; Laws, 2013, ch. 309, § 7; Laws, 2014, ch. 350, § 1; Laws, 2014, ch. 504, § 2; Laws, 2016, ch. 302, § 2, eff from and after passage (approved Mar. 21, 2016.)*

§ 71-5-357. Regulations governing nonprofit organizations [Repealed effective July 1, 2019]

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under Section 501(a) of such code (26 USCS Section 501).

(a) Any nonprofit organization which, under Section 71-5-11, subsection H(3), is or becomes subject to this chapter shall pay contributions under the provisions of Sections 71-5-351 through 71-5-355 unless it elects, in accordance with this paragraph, to pay to the department for the unemployment fund an amount equal to the amount of regular

benefits and one-half (1/2) of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(i) Any nonprofit organization which becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than twelve (12) months, beginning with the date on which such subjectivity begins, by filing a written notice of its election with the department not later than thirty (30) days immediately following the date of the determination of such subjectivity.

(ii) Any nonprofit organization which makes an election in accordance with subparagraph (i) of this paragraph will continue to be liable for payments in lieu of contributions unless it files with the department a written termination notice not later than thirty (30) days prior to the beginning of the tax year for which such termination shall first be effective.

(iii) Any nonprofit organization which has been paying contributions under this chapter may change to a reimbursable basis by filing with the department, not later than thirty (30) days prior to the beginning of any tax year, a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next tax year.

(iv) The department may for good cause extend the period within which a notice of election or a notice of termination must be filed, and may permit an election to be retroactive.

(v) The department, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer, of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of Sections 71-5-351 through 71-5-355.

(b) Payments in lieu of contributions shall be made in accordance with the provisions of subparagraph (i) of this paragraph.

(i) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions, for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(ii) Payment of any bill rendered under subparagraph (i) of this paragraph shall be made not later than forty-five (45) days after such bill was delivered to the nonprofit organization, unless there has been an application for review and redetermination in accordance with subparagraph (v) of this paragraph.

1. All of the enforcement procedures for the collection of delinquent contributions contained in Sections 71-5-363 through 71-5-383 shall be

applicable in all respects for the collection of delinquent payments due by nonprofit organizations who have elected to become liable for payments in lieu of contributions.

2. If any nonprofit organization is delinquent in making payments in lieu of contributions, the department may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next tax year, and such termination shall be effective for the balance of such tax year.

(iii) Payments made by any nonprofit organization under the provisions of this paragraph shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(iv) Payments due by employers who elect to reimburse the fund in lieu of contributions as provided in this paragraph may not be noncharged under any condition. The reimbursement must be on a dollar-for-dollar basis (One Dollar ($ 1.00) reimbursement for each dollar paid in benefits) in every case, so that the trust fund shall be reimbursed in full, such reimbursement to include, but not be limited to, benefits or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility which is subsequently reversed, or paid as a result of claimant fraud. However, political subdivisions who are reimbursing employers may elect to pay to the fund an amount equal to five-tenths percent (.5%) through December 31, 2010, and shall pay twenty-five one-hundredths percent (.25%) thereafter of the taxable wages paid during the calendar year with respect to employment, and those employers who so elect shall be relieved of liability for reimbursement of benefits paid under the same conditions that benefits are not charged to the experience-rating record of a contributing employer as provided in Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits paid in such circumstances for which reimbursing employers are relieved of liability for reimbursement shall not be considered attributable to service in the employment of such reimbursing employer.

(v) The amount due specified in any bill from the department shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was delivered to it, the organization files an application for redetermination by the department, setting forth the grounds for such application or appeal. The department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than fifteen (15) days after the redetermination was delivered to it, the organization files an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(vi) Past-due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Section 71-5-363, apply to past-due contributions.

(c) Each employer that is liable for payments in lieu of contributions shall pay to the department for the fund the amount of regular benefits plus the amount of one-half (1/2) of extended benefits paid are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one (1) employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (i) or subparagraph (ii) of this paragraph.

(i) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payment in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(ii) If benefits paid to an individual are based on wages paid by two (2) or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(d) In the discretion of the department, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required to execute and file with the department a surety bond approved by the department, or it may elect instead to deposit with the department money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this paragraph.

(i) The amount of the bond or deposit required by paragraph (d) shall be equal to two and seven-tenths percent (2.7%) thereafter to December 31, 2010, and one and thirty-five one-hundredths percent (1.35%) thereafter, of the organization's taxable wages paid for employment as defined in Section 71-5-11, subsection I(4), for the four (4) calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four (4) calendar quarters, the amount of the bond or deposit shall be as determined by the department.

(ii) Any bond deposited under paragraph (d) shall be in force for a period of not less than two (2) tax years and shall be renewed with the approval of the department at such times as the department may prescribe, but not less frequently than at intervals of two (2) years as long as the organization continues to be liable for payments in lieu of contributions. The department shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty (30) days of the date notice of the required adjustment was delivered to it. Failure by

any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided in paragraph (b)(v) of this section, shall render the surety liable on the bond to the extent of the bond, as though the surety was such organization.

(iii) Any deposit of money or securities in accordance with paragraph (d) shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under paragraph (d) by a nonprofit organization, or sell the securities it has so deposited, to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in paragraph (b)(v) of this section. The department shall require the organization, within thirty (30) days following any deduction from a money deposit or sale of deposited securities under the provisions hereof, to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall require the organization to make additional deposit within thirty (30) days of notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(iv) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount, or to increase or make whole the amount of a previously made deposit as provided under this subparagraph, the department may terminate such organization's election to make payments in lieu of contributions, and such termination shall continue for not less than the four (4) consecutive calendar-quarter periods beginning with the quarter in which such termination becomes effective; however, the department may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty (30) days.

(v) Group account shall be established according to regulations prescribed by the department.

(e) Any employer which elects to make payments in lieu of contributions into the Unemployment Compensation Fund as provided in this paragraph shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

HISTORY: *SOURCES: Codes, 1942, § 7392.3; Laws, 1971, ch. 519, § 16; Laws, 1977, ch. 497, § 4; Laws, 1978, ch. 339, § 1; Laws, 1982, ch. 480, § 1; Laws, 1983, ch. 361; Laws, 1998, ch. 331, § 5; Laws, 2002, ch. 562, § 2; Laws, 2004, ch. 572, § 34; Laws, 2007, ch. 606, § 9; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 34; Laws, 2010, ch. 504, § 4; reenacted without change, Laws, 2010, ch. 559, § 33; reenacted without change, Laws, 2011, ch. 471, § 34; reenacted and amended, Laws, 2012, ch. 515, § 34; Laws, 2013, ch. 309, § 15, eff from and after passage (approved March 6, 2013.)*

§ 71-5-359. Regulations governing state boards, instrumentalities, and political subdivisions [Repealed effective July 1, 2019]

(1) The Department of Finance and Administration shall, in the manner provided in subsection (3) of this section, pay, upon notice issued by the department, to the department for the Unemployment Compensation Fund an amount equal to the regular benefits and one-half (1/2) of the extended benefits paid that are attributable to service in the employ of a state agency. The amount required to be reimbursed by a certain agency shall be billed to the Department of Finance and Administration and shall be paid from the Employment Compensation Revolving Fund pursuant to subsection (3) of this section not later than thirty (30) days after such bill was sent, unless there has been an application for review and redetermination in accordance with Section 71-5-357(b)(v).

(2) The Department of Finance and Administration shall, in the manner provided in subsection (3) of this section, pay, upon a notice issued by the department, to the department for the Unemployment Compensation Fund an amount equal to the regular benefits and the extended benefits paid that are attributable to service in the employ of a state agency. The amount required to be reimbursed by a certain agency shall be billed to the Department of Finance and Administration and shall be paid from the Employment Compensation Revolving Fund pursuant to subsection (3) of this section not later than thirty (30) days after such bill was sent, unless there has been an application for review and redetermination in accordance with Section 71-5-357(b)(v).

(3) Each agency of state government shall deposit monthly for a period of twenty-four (24) months an amount equal to one-twelfth of one percent (1/12 of 1%) of the first Six Thousand Dollars ($ 6,000.00) paid to each employee thereof during the next preceding year into the Employment Compensation Revolving Fund that is created in the State Treasury. The Department of Finance and Administration shall determine the percentage to be applied to the amount of covered wages paid in order to maintain a balance in the revolving fund of not less than the amount determined by an actuary through an annual actuarial evaluation. The State Treasurer shall invest all funds in the Employment Compensation Revolving Fund and all interest earned shall be credited to the Employment Compensation Revolving Fund. The reimbursement of benefits paid by the Mississippi Department of Employment Security shall be paid by the Department of Finance and Administration from the Employment Compensation Revolving Fund upon notice from the department; and the Department of Finance and Administration shall issue warrants or may contract for the performance of the duties prescribed by subsections (2) and (3) of this section, and other duties necessarily related thereto.

(4) Any political subdivision of this state shall pay to the department for the unemployment compensation fund an amount equal to the regular benefits and the extended benefits paid that are attributable to service in the employ of such political subdivision unless it elects to make contributions to the unemployment fund as provided in subsection (9) of this section. The amount required to be reimbursed shall be billed and shall be paid as provided in Section 71-5-357, with respect to similar payments for nonprofit organizations.

(5) Each political subdivision, unless it elects to make contributions to the unemployment compensation fund as provided in subsection (9) of this section, shall establish a revolving fund and deposit an amount equal to two percent (2%) of the first Six

Thousand Dollars ($ 6,000.00) paid to each employee thereof during the next preceding year. However, the department shall by regulation establish a procedure to allow reimbursing political subdivisions to elect to maintain the balance in the revolving fund as required under this paragraph or to annually execute a surety bond to be approved by the department in an amount not less than two percent (2%) of the covered wages paid during the next preceding year.

(6) In the event any political subdivision becomes delinquent in payments due under this chapter, upon due notice, and upon certification of the delinquency by the department to the Department of Finance and Administration, the Department of Revenue, the Department of Environmental Quality and the Department of Insurance, or any of them, or any other agencies of the State of Mississippi that may be indebted to such delinquent political subdivision, such agencies shall direct the issuance of warrants which in the aggregate shall be the amount of such delinquency payable to the department and drawn upon any funds in the State Treasury which may be available to such political subdivision in satisfaction of any such delinquency. This remedy shall be in addition to any other collection remedies in this chapter or otherwise provided by law.

(7) Payments made by any political subdivision under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(8) Any governmental entity shall not be liable to make payments to the unemployment fund with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511, subsection (e), to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

(9) Any political subdivision of this state may elect to make contributions to the unemployment fund instead of making reimbursement for benefits paid as provided in subsections (4) and (5) of this section. A political subdivision which makes this election shall so notify the department, not later than three (3) months after it is officially organized or is otherwise established, and shall be subject to the provisions of Section 71-5-351, with regard to the payment of contributions. A political subdivision which makes this election shall pay contributions equal to two percent (2%) of taxable wages through calendar year 2010, and one percent (1%) of taxable wages thereafter paid by it during each calendar quarter it is subject to this chapter. The department shall by regulation establish a procedure to allow political subdivisions the option periodically to elect either the reimbursement or the contribution method of financing unemployment compensation coverage.

HISTORY: *SOURCES: Codes, 1942, § 7392.5; Laws, 1971, ch. 519, § 17; Laws, 1977, ch. 497, § 5; Laws, 1978, ch. 340, § 1; Laws, 1984, ch. 488, § 274; Laws, 1986, ch. 320; Laws, 1993, ch. 353, § 1; Laws, 1993, ch. 397, § 1; Laws, 1995, ch. 507, § 3; Laws, 2004, ch. 572, § 35; Laws, 2007, ch. 556, § 1; Laws, 2007, ch. 606, § 10; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 35; Laws, 2010, ch. 504, § 5; reenacted without change, Laws, 2010, ch. 559, § 34; reenacted and amended, Laws, 2011, ch. 471, § 35; reenacted without change, Laws, 2012, ch. 515, § 35, eff from and after July 1, 2012.*

§ 71-5-361. Period, election, and termination

(1) Except as provided in subsection (3) of this section, any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be deemed to be an employer during the whole of such calendar year.

(2) Except as otherwise provided in subsection (3) of this section:

(a) An employing unit (other than a state hospital, state institution of higher learning, state or state agency or other political subdivision or instrumentality) except as provided in subsections (b) and (c) of this subsection, shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay wages of One Thousand Five Hundred Dollars ($ 1,500.00) or more in any calendar quarter and that there were no twenty (20) days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter, or four (4) or more in the case of nonprofit organizations, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(b) An agricultural employer as defined under Section 71-5-11, subsection H(4)(a) shall cease to be an agricultural employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay for agricultural employment wages as defined in Section 71-5-11, subsection I(6) of Twenty Thousand Dollars ($ 20,000.00) in any calendar quarter of the preceding calendar year and that there were no twenty (20) days, each day being in a different week, within such calendar year, within which such employing unit employed ten (10) or more individuals in employment subject to this chapter, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(c) A domestic employer, as defined in Section 71-5-11, subsection H(4)(b), shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay wages for domestic employment of One Thousand Dollars ($ 1,000.00) or more in any calendar quarter of the preceding calendar year, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(d) For the purpose of this subsection, the two (2) or more employing units mentioned in Section 71-5-11, subsection H(5) or (6), shall be treated as a single employing unit. The department may, of its own motion, cancel and terminate the effect of registrations for purposes of its accounting records in cases where it has found that employing units, duly registered as covered employers under the chapter, have

died, ceased business or removed from the state without applying for termination of coverage, provided that the rights of claimants for benefits shall not be affected thereby.

(3) (a) An employing unit, not otherwise subject to this chapter, which files with the department its written election to become an employer subject thereto for not less than two (2) calendar years shall, with the written approval of such election by the department or the executive director, become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if it files with the department, on or before the thirty-first day of May of such year, a written application for termination of coverage thereunder.

(b) Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all purposes of this chapter for not less than two (2) calendar years. Upon written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if, prior to the thirty-first day of May of such year, such employing unit has filed with the department a written notice to that effect.

(4) (a) Prior to January 1, 1978, any political subdivision of this state may elect to cover under this chapter, for a period of not less than two (2) calendar years, services performed by employees in all of the hospitals and institutions of higher learning, as defined in Section 71-5-11, subsection M or N, operated by such political subdivision.

Election is to be made by filing with the department a notice of such election at least thirty (30) days prior to the effective date of such election. The election may exclude any services described in Section 71-5-11, subsection I(5). Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (b) and (c) of Section 71-5-357.

(b) Prior to January 1, 1978, the provisions in Section 71-5-511, subsection (g) with respect to benefit rights based on service for state and nonprofit institutions of higher learning shall be applicable also to service covered by an election under this section.

(c) Prior to January 1, 1978, the amounts required to be paid in lieu of contributions by any political subdivision under this section shall be billed and payment made as provided in subsections (b) and (c) of Section 71-5-357.

(d) Prior to January 1, 1978, an election under this section, after having been in effect for not less than two (2) calendar years, may be terminated by filing with the department written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed on and after that date.

HISTORY: *SOURCES: Codes, 1942, § 7393; Laws, 1940, ch. 295; Laws, 1955, Ex. ch. 93, § 1; Laws, 1971, ch. 519, § 9; Laws, 1977, ch. 497, § 6; Laws, 2013, ch. 309, § 16, eff from and after passage (approved March 6, 2013.)*

§ 71-5-363. Interest on past due contributions

Contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one percent (1%) per month from and after such date until payment plus accrued interest is received by the commission, provided that the commission may prescribe fair and reasonable general rules pursuant to which such interest shall not accrue during the first calendar year that any employer is subject to this chapter. Interest collected pursuant to this section shall be paid into the special employment security administration fund established by Section 71-5-114.

HISTORY: *SOURCES: Codes, 1942, § 7423; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9a; Laws, 1958, ch. 533, § 7a; Laws, 1968, ch. 561, § 3a; Laws, 1982, ch. 383, § 2, eff from and after July 1, 1982.*

§ 71-5-365. Failure to make reports and pay contributions

If any employer fails to make and file any report as and when required by the terms and provisions of this chapter or by any rule or regulation of the commission for the purpose of determining the amount of contributions due by him under this chapter, or if any report which has been filed is deemed by the executive director to be incorrect or insufficient, and such employer, after having been given notice by the executive director to file such report, or a corrected or sufficient report, as the case may be, shall fail to file such report within fifteen (15) days after the date of such notice, the executive director may (a) determine the amount of contributions due from such employer on the basis of such information as may be readily available to him, which said determination shall be prima facie correct, (b) assess such employer with the amount of contribution so determined, to which amount may be added and assessed by the executive director in his discretion, as damages, an amount equal to ten percent (10%) of said amount, and (c) immediately give notice to such employer of such determination, assessment, and damages, if any, added and assessed, demanding payment of same together with interest, as herein provided, on the amount of contributions from the date when same were due and payable. Such determination and assessment by the executive director shall be final at the expiration of fifteen (15) days from the date of such notice thereof demanding payment, unless:

(a) Such employer shall have filed with the department a written protest and petition for a hearing, specifying his objections thereto. Upon receipt of such petition within the fifteen (15) days allowed, the department shall fix the time and place for a hearing and shall notify the petitioner thereof. At any hearing held before the department as herein provided, evidence may be offered to support such determination and assessment or to prove that it is incorrect, and the commission shall have all the power provided in Sections 71-5-137 and 71-5-139. Immediately after such hearing a final decision in the matter shall be made by the commission, and any contributions or deficiencies in contributions found and determined by the commission to be due shall be assessed and

paid, together with interest, within fifteen (15) days after notice of such final decision and assessment, and demand for payment thereof by the department shall have been sent to such employer.

(b) The department, in its discretion, determines on the basis of information submitted by the employer that such assessment should be amended and adjusted to reflect the correct amount of taxes.

Sixty (60) days after the due date of the contributions, together with interest and damages, or upon issuance of a warrant, whichever occurs first, the department, in its discretion, may assess an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due as damages for failure to pay.

HISTORY: *SOURCES: Codes, 1942, § 7424; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9b; Laws, 1958, ch. 533, § 7b; Laws, 1968, ch. 561, § 3b; Laws, 1991, ch. 511, § 2; Laws, 1995, ch. 507, § 4; Laws, 2007, ch. 606, § 11, eff from and after July 1, 2007.*

§ 71-5-367. Collection by warrant

If an employer shall file a report in proper form and in proper amount, but shall fail to pay the amount of contributions shown to be due thereby at the time of such filing, or if an employer shall fail to pay any assessment as provided and made under Section 71-5-365 within fifteen (15) days after such assessment has become final as herein provided, the department may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such employer as has defaulted in the payment of such contributions or assessments, which may be found within his county, for the payment of the amount thereof, together with interest, damages, if any, assessed for failure to make and file a report or a corrected or sufficient report, and an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due, in the discretion of the department, as damages for failure to pay, if not already assessed under Section 71-5-365 and the costs of executing the warrant and to return such warrant to the department, and to pay to it the money collected by virtue thereof on the date specified therein. The department shall cause to be delivered to the clerk of the circuit court a copy of such warrant issued to the sheriff. Such clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such copy is filed. Thereupon the amount of such warrant so filed and entered shall become a lien upon the title to and interest in all real and personal property, including choses in action against negotiable instruments not past due, of the employer against whom the warrant is issued in the same manner as a judgment duly enrolled in the office of such clerk. Any such liens shall cover all contributions, interest and damages owed to the department from previous, current and future periods until the expiration of such lien or until the amount of the lien is fully satisfied. Such judgment shall not be a lien upon the property of the employer for a period of more than seven (7) years from the date of filing of the notice of the tax lien for failure to pay contributions, damages and interest unless action be brought thereon before the expiration of such time or unless the department refiles such notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the employer for a period of seven (7) years from the date of refiling such notice of tax lien unless action be brought thereon before the expiration of such time or unless the department refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times

the department may refile notices of tax liens. The sheriff shall proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply; and for his services in executing the warrant the sheriff shall be entitled to the same fees, which he may collect in the same manner.

The department may elect to issue the warrant directly to the circuit clerk of any county of this state for enrollment upon the judgment rolls of the county. In such case, the clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such warrant is filed. The lien shall have the same effect and remedies as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply.

All warrants issued by the department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the department. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

HISTORY: *SOURCES: Codes, 1942, § 7425; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9c; Laws, 1958, ch. 533, § 7c; Laws, 1968, ch. 561, § 3c; Laws, 1995, ch. 507, § 5; Laws, 1996, ch. 464, § 2; Laws, 2000, ch. 508, § 1; Laws, 2013, ch. 309, § 8, eff from and after passage (approved March 6, 2013.)*

§ 71-5-369. Jeopardy assessment and warrant

If the commission has just cause to believe and does believe that the collection of contributions from an employer will be jeopardized by delay, it may assess such contributions immediately, together with interest and other amounts provided by this chapter, and may immediately issue a jeopardy warrant under its official seal, directed to the sheriff of any county of said state. The sheriff shall, immediately upon receipt of such jeopardy warrant, file with the clerk of the circuit court of his county a copy thereof, and thereafter both the clerk and the sheriff shall proceed in accordance with the provisions of Section 71-5-367.

HISTORY: *SOURCES: Codes, 1942, § 7426; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9d; Laws, 1958, ch. 533, § 7d; Laws, 1968, ch. 561, § 3d, eff from and after July 1, 1968.*

§ 71-5-371. Liability of sheriff for failure to execute warrant

If any sheriff shall fail to return any warrant directed to him as herein provided on the return day thereof, the commission shall be entitled to recover judgment against the sheriff and the sureties on his official bond for the amount of the warrant and all costs, with lawful interest thereon until paid, together with ten per centum (10%) of the full amount thereof as damages, to be recovered by suit against the sheriff and his sureties by the commission. If any sheriff shall falsely make a nulla bona return on any warrant directed to him as herein provided, the commission shall be entitled to recover judgment against the sheriff and the sureties on his official bond for such amount as he could reasonably have made under such warrant and all costs, together with lawful interest thereon until paid, together with ten per centum (10%) thereon as damages, to be recovered by a suit against the sheriff and his sureties by the commission.

HISTORY: *SOURCES: Codes, 1942, § 7427; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9e; Laws, 1958, ch. 533, § 7e; Laws, 1968, ch. 561, § 3e, eff from and after July 1, 1968.*

§ 71-5-373. Defaulting employer

An employer liable for contributions under the provisions of this chapter who fails to make and file his returns and reports as required, or who fails to pay any contributions when due under the provisions of this chapter, shall forfeit his right to do business in this state until he complies with all the provisions of this chapter and until he enters into a bond with sureties, to be approved by the commission, in an amount not to exceed all contributions estimated to become due by said employer under the provisions of this chapter for any three-month period, conditioned to comply with the provisions of this chapter, and to pay all contributions legally due or to become due by him. The commission may proceed by injunction to prevent the continuance of said business, and any temporary injunction enjoining the continuance of such business shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

HISTORY: *SOURCES: Codes, 1942, § 7428; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9f; Laws, 1958, ch. 533, § 7f; Laws, 1968, ch. 561, § 3f, eff from and after July 1, 1968.*

§ 71-5-375. Contributions a lien

The contributions required by this chapter shall be a lien upon the property of any employer subject to its provisions who shall sell out his business or stock of goods, or who shall quit business, or whose property used or acquired in the business shall be sold under voluntary conveyance or under foreclosure, execution, attachment, distraint, or other judicial proceedings. Such employer shall, within ten (10) days before the happening of any of the above contingencies, be required to file such reports as the commission shall prescribe and to pay the contributions required by this chapter with respect to wages payable for employment up to the date of the happening of such contingency. The purchaser or successor in business shall withhold sufficient of the purchase money to cover the amount of contributions due and unpaid, until such time as such employer shall produce a receipt from the commission showing that the contributions have been paid or a certificate that no contributions are due. If such purchaser or successor shall fail to withhold purchase money as above provided, and the contributions shall not be paid within the ten (10) days specified above, such purchaser or successor shall be personally liable for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner.

HISTORY: *SOURCES: Codes, 1942, § 7429; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9g; Laws, 1958, ch. 533, § 7g; Laws, 1968, ch. 561, § 3g; Laws, 1983, ch. 362, eff from and after passage (approved March 16, 1983).*

§ 71-5-377. Priorities under legal dissolutions or distributions

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, but on a parity with claims for wages of not more than Two Hundred and Fifty Dollars ($ 250.00) to each claimant, earned within six (6) months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposals, or composition under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided therein for taxes due and owing this state.

HISTORY: *SOURCES: Codes, 1942, § 7430; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9h; Laws, 1958, ch. 533, § 7h; Laws, 1968, ch. 561, § 3h, eff from and after July 1, 1968.*

§ 71-5-379. Collection by suit

If, after due notice, an employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the commission, and this remedy shall be in addition to such other remedies as may be herein provided or otherwise provided by law. An employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review of claims for benefits under this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7431; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9i; Laws, 1956, ch. 533, § 7i; Laws, 1968, ch. 561, § 3k, eff from and after July 1, 1968.*

§ 71-5-381. No injunction allowed to restrain collection

No injunction shall be awarded by any court or judge to restrain the collection of contributions required by this chapter or to restrain the enforcement of this chapter. The provisions of section 11-13-11, shall not apply to contributions required by this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7432; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9j; Laws, 1958, ch. 533, § 7j; Laws, 1968, ch. 561, § 3j, eff from and after July 1, 1968.*

§ 71-5-383. Refunds

The commission is authorized and empowered to refund, without interest, such contributions, interest, and penalties as it may determine were paid erroneously by an employer, or may make or authorize an adjustment thereof in connection with subsequent contribution payments, provided the employer shall make written application for such refund or adjustment within three (3) years to the last day of the calendar year in which the services of individuals in employment, with respect to which such contributions were erroneously paid, were performed. For like cause and within the same period, adjustment or refund may be made on the commission's own initiative.

HISTORY: *SOURCES: Codes, 1942, § 7433; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9k; Laws, 1958, ch. 533, § 7k; Laws, 1968, ch. 561, § 3k, eff from and after July 1, 1968.*

§ 71-5-385. Requesting permission to file reports in special format; regulations; penalty

Any employer may request permission to file unemployment compensation wage and contribution reports in a special format. If the request is approved by the commission, the employer must file the wage and contribution reports in accordance with regulations established by the commission. Failure to follow established regulations may result in a penalty of up to Five Hundred Dollars ($ 500.00) each calendar quarter for each employer connected with the report.

HISTORY: *SOURCES: Laws, 1998, ch. 491, § 3, eff from and after July 2, 1998.*

§ 71-5-387. Contributions to the unemployment compensation fund by certain Indian tribes under Federal Unemployment Tax Act

(1) Indian tribe(s) as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe(s), subject to this chapter shall pay contributions under the same terms and conditions as all other subject employers, unless such Indian tribe elects to pay into the State Unemployment Fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Tribal unit(s) means any subdivision, subsidiary or business enterprise wholly owned by any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA) or any combination of any such subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA).

(3) Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in Section 71-5-357 pertaining to nonprofit organizations subject to this chapter, except the tribe may determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units or by combinations of individual tribal units. Any tribal unit not making such election, shall pay contributions as described in Sections 71-5-351 through 71-5-355.

(4) Payments in lieu of contributions shall be made in accordance with the provisions of Section 71-5-357.

(5) Failure of the Indian tribe or tribal unit to post any bond as required by this chapter or to make payments in lieu of contributions if so elected by the tribe or tribal unit, as provided in subsection (3) of this section, including assessments of interest and penalty, within ninety (90) days of mailing or transmittal of the first delinquency notice to the last known address, shall cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Section 71-5-357, for the following tax year, unless payment in full is received before January 1 of the next tax year.

(6) Any Indian tribe that loses the option to make payments in lieu of contributions, as provided in subsection (5) of this section, may have such options reinstated if, after a period of one (1) year, all contributions have been made timely and no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain unpaid.

(7) Failure of the Indian tribe or any tribal unit thereof to make required payments, reimbursements or contributions whichever may apply, including assessments of interest and penalty, after all collection activities deemed necessary by the commission have been exhausted, may cause services performed for such tribe to not be treated as "employment" for purposes of Section 71-5-11.

(8) If any Indian tribe fails to post any bond as required by this chapter or make payments required under this chapter, including contributions, reimbursements or assessments of interest and penalty, within ninety (90) days of the mailing or transmittal of a final notice, the commission shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

(9) The commission may determine that any Indian tribe that loses coverage under subsection (7) of this section, may again have services performed for such tribe included as "employment" for purposes of Section 71-5-11 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(10) Notices of payment and reporting delinquency to any Indian tribe or tribal unit shall include information that failure to make full payment within the prescribed time frame:

(a) Shall cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act (FUTA);

(b) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions;

(c) May cause the Indian tribe to be excepted from the definition of "employer," as provided in Section 71-5-11, and services in the employ of the Indian tribe, as provided in Section 71-5-11, to be excepted from "employment."

(11) Benefits based on service performed in employment with an Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, shall be payable in the same amount, on the same terms and subject to the same conditions, as benefits payable on the basis of other service subject to this chapter.

(12) Extended benefits paid that are attributable to service in the employ of an Indian tribe, and not reimbursed by the federal government, shall be financed in their entirety by such Indian tribe.

(13) Any non-FUTA exclusions, that are by reference included in this section, shall not apply to Indian tribes if federal law requires coverage of such services.

HISTORY: *SOURCES: Laws, 2002, ch. 562, § 3, eff from and after July 1, 2002.*

§ 71-5-389. Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality

(1) For the purposes of this section, the following terms shall have the respective meanings ascribed by this section:

(a) "Claimant agency" means the Mississippi Department of Employment Security.

(b) "Debtor" means any individual, corporation or partnership owing money or having a delinquent account with any claimant agency, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(c) "Debt" means any sum due and owing any claimant agency, including costs, court costs, fines, penalties and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

(d) "Department" or "Department of Revenue" means the Department of Revenue of the State of Mississippi.

(e) "Refund" means the Mississippi income tax refund which the department determines to be due any individual taxpayer, corporation or partnership.

(2) The collection remedy authorized by this section is in addition to and is not substitution for any other remedy available by law.

(3) (a) A claimant agency may submit debts in excess of Twenty-five Dollars ($ 25.00) owed to it to the department for collection through setoff, under the procedure established by this section, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(b) Upon the request of a claimant agency, the department shall set off any refund, as defined herein, against the sum certified by the claimant agency as provided in this section.

(4) (a) Within the time frame specified by the department, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off and certify the amount of debt or debts owed by each such debtor.

(b) If a debtor identified by a claimant agency is determined by the department to be entitled to a refund of at least Twenty-five Dollars ($ 25.00), the department shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. The Department of Revenue shall send the excess amount to the debtor within a reasonable time after such excess

is determined. At the time of the transfer of funds to a claimant agency pursuant to this paragraph (b), the Department of Revenue shall notify the taxpayer or taxpayers whose refund is sought to be set off that the transfer has been made. Such notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency pursuant to this paragraph (b) and the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within thirty (30) days of the date of mailing of the notice, the name and mailing address of the claimant agency to which the application for such a hearing must be sent, and the fact that the failure to apply for such a hearing, in writing, within the thirty-day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return or a joint refund, the notice shall also state the name of the taxpayer named in the return, if any, against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him regardless of the debt asserted against his spouse, and that in order to obtain a refund due him such taxpayer must apply in writing for a hearing with the claimant agency named in the notice within thirty (30) days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for such a hearing within thirty (30) days of the mailing of such notice, he will have waived his opportunity to contest the setoff.

(c) Upon receipt of funds transferred from the Department of Revenue pursuant to paragraph (b) of this subsection, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt.

(d) The claimant agency shall pay the Department of Revenue a fee, not to exceed Seventeen Dollars ($ 17.00) in each case in which a tax refund is identified as being available for offset. Such fees shall be deposited by the Department of Revenue into a special fund hereby created in the State Treasury, out of which the Legislature shall appropriate monies to defray expenses of the Department of Revenue in employing personnel to administer the provisions of this section.

(5) (a) When the claimant agency receives a protest or an application in writing from a taxpayer within thirty (30) days of the notice issued by the Department of Revenue, the claimant agency shall set a date to hear the protest and give notice to the taxpayer through the United States Postal Service or electronic digital transfer of the date so set. The time and place of such hearing shall be designated in such notice and the date set shall not be less than fifteen (15) days from the date of such notice. If, at the hearing, the sum asserted as due and owing is found not to be correct, an adjustment to the claim may be made. The claimant agency shall give notice to the debtor of its final determination as provided in paragraph (c) of this subsection.

(b) No issues shall be reconsidered at the hearing which have been previously litigated.

(c) If any debtor is dissatisfied with the final determination made at the hearing by the claimant agency, he may appeal the final determination to the circuit court of the county in which the main office of the claimant agency is located by filing notice of appeal with the administrative head of the claimant agency and with the clerk

of the circuit court of the county in which the appeal shall be taken within thirty (30) days from the date the notice of final determination was given by the claimant agency.

(6) (a) Upon final determination of the amount of the debt due and owing by means of hearing or by the taxpayer's default through failure to comply with timely request for review, the claimant agency shall remove the amount of the debt due and owing from the escrow account and credit such amount to the debtor's obligation.

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency shall notify the debtor in writing of the finalization of the setoff. Such notice shall include a final accounting if the refund which was set off, including the amount of the refund to which the debtor was entitled prior to the setoff, the amount of the debt due and owing, the amount of the collection fee paid to the Department of Revenue, the amount of the refund in excess of the debt which was returned to the debtor by the Department of Revenue, and the amount of the funds transferred to the claimant agency in excess of the debt determined to be due and owing at a hearing, if such a hearing was held. At such time, the claimant agency shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the Department of Revenue in excess of the amount of debt finally found to be due and owing.

(7) (a) Notwithstanding the provision that prohibits disclosure by the Department of Revenue of the contents of taxpayer records or information and notwithstanding any other confidentiality statute, the Department of Revenue may provide to a claimant agency all information necessary to accomplish and effectuate the intent of the section.

(b) The information obtained by claimant agency from the Department of Revenue in accordance with the provisions of this section shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices; and any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized confidential information by an agent or employee of the Department of Revenue.

HISTORY: *SOURCES: Laws, 2005, ch. 400, § 2; Laws, 2009, ch. 492, § 138; Laws, 2013, ch. 309, § 9, eff from and after passage (approved March 6, 2013.)*

§ 71-5-391. Use of administrative funds for payment of fees associated with receipt of electronic payments

The executive director of the department may use available administrative funds for payment of fees associated with receipt of electronic payments made to the department. In the event the fees are charged to an employer through a payment process external to the department, amounts not to exceed the charges for the electronic transaction may be credited to the employer and used as an offset to future indebtedness.

ARTICLE 9. UNEMPLOYMENT COMPENSATION FUND

§ 71-5-451. Establishment and control [Repealed effective July 1, 2019]

There is established as a special fund, separate and apart from all public monies or funds of this state, an Unemployment Compensation Fund, which shall be administered by the department exclusively for:

(a) All contributions collected under this chapter;

(b) Interest earned upon any monies in the fund;

(c) Any property or securities acquired through the use of monies belonging to the fund;

(d) All earnings of such property or securities;

(e) All monies credited to this state's account in the Unemployment Trust Fund pursuant to the Social Security Act, 42 USCS, Section 1104; and

(f) By way of reimbursement in accordance with Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (84 Stat. 711). All monies in the fund shall be mingled and undivided.

HISTORY: *SOURCES: Codes, 1942, § 7394; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(a); Laws, 1964, ch. 448, § 1(a); Laws, 1971, ch. 519, § 10; Laws, 1982, ch. 383, § 3; Laws, 2004, ch. 572, § 36; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 36; reenacted without change, Laws, 2010, ch. 559, § 35; reenacted without change, Laws, 2011, ch. 471, § 36; reenacted without change, Laws, 2012, ch. 515, § 36, eff from and after July 1, 2012.*

§ 71-5-453. Accounts and deposits

The department shall be the treasurer and custodian of the fund, and shall administer such fund in accordance with the directions of the department, and shall issue its warrants upon it in accordance with such regulations as the department shall prescribe. The department shall maintain within the fund three (3) separate accounts: (a) a clearing account, (b) an unemployment trust fund account, and (c) a benefit payment account. All monies payable to the fund, upon receipt thereof by the department, shall be immediately deposited in the clearing account. Refunds payable pursuant to Section 71-5-383 may be paid from the clearing account by the department. Transfers pursuant to Section 71-5-114 of all interest, penalties and damages collected shall be made to the Special Employment Security Administration Fund as soon as practicable after the end of each calendar quarter. Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be deposited into the Workforce Investment and Training Holding Account as described in this section. All other monies in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the Unemployment Trust Fund account for the State of Mississippi, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of monies in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all monies requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, monies in the clearing and benefit accounts may be deposited by the department, in any bank or public depository in which general funds of the

state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The department shall be liable for the faithful performance of its duties in connection with the Unemployment Compensation Fund under this chapter. A Workforce Investment and Training Holding Account shall be established by and maintained under the control of the Mississippi Department of Employment Security. Contributions collected pursuant to the provisions in this chapter for the Workforce Enhancement Training Fund, State Workforce Investment Fund and the Mississippi Works Fund shall be transferred from the clearing account into the Workforce Investment and Training Holding Account on the same schedule and under the same conditions as funds transferred to the Unemployment Compensation Fund. Such funds shall remain on deposit in the holding account for a period of thirty (30) days. After such period, Workforce Enhancement Training contributions shall be transferred to the appropriate Mississippi Community College Board Treasury Account by the department. The State Workforce Investment contributions shall be transferred to the State Workforce Investment Board bank account established by the department, and the department shall have the authority to deposit and disburse funds from the State Workforce Investment Board bank account as directed by the State Workforce Investment Board. The Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Treasury Account for the Mississippi Works Fund. Such transfers shall occur within fifteen (15) days after the funds have resided in the Workforce Investment and Training Holding Account for thirty (30) days. One (1) such transfer shall be made monthly, but the department, in its discretion, may make additional transfers in any month. In the event such funds transferred are subsequently determined to be erroneously paid or collected, or if deposit of such funds is denied or rejected by the banking institution for any reason, or deposits are unable to clear drawer's account for any reason, the funds must be reimbursed by the recipient of such funds within thirty (30) days of mailing of notice by the department demanding such refund, unless funds are available in the Workforce Investment and Training Holding Account. In that event such amounts shall be immediately withdrawn from the Workforce Investment and Training Holding Account by the department and re-deposited into the clearing account.

HISTORY: *SOURCES: Codes, 1942, § 7395; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(b); Laws, 1964, ch. 448, § 1(b); Laws, 1982, ch. 383, § 4; Laws, 2005, ch. 437, § 3; Laws, 2013, ch. 309, § 10; Laws, 2014, ch. 504, § 3; Laws, 2016, ch. 302, § 3, eff from and after passage (approved Mar. 21, 2016.)*

§ 71-5-455. Withdrawals

Monies shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that monies credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in Section 71-5-457. No monies in the Unemployment Compensation Fund shall be used to pay interest on any funds that might be borrowed for the purposes of this chapter, but any such interest that might be due shall be paid from other sources. The department shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amount standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Such sums shall be immediately deposited by the department in some bank within this state in an account to be known as the "benefit payment account," which shall be under the control of the department and on which said benefit payment account the department or its duly authorized representative is authorized to draw and issue its checks in payment of benefits to individuals entitled thereto under this chapter. Expenditures of such monies in the benefit account and benefit payment account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants shall bear the signature of the department's duly authorized agent for that purpose.

The department shall be subject to the applicable laws pertaining to security of public fund deposits as set forth in Sections 27-105-5 and 27-105-6.

HISTORY: *SOURCES: Codes, 1942, § 7396; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(c); Laws, 1964, ch. 448, § 1(c); Laws, 1984, ch. 301, § 3; Laws. 1994. ch. 303. § 3; Laws. 2013. ch. 309. § 11, eff from and after passage (approved March 6, 2013.)*

§ 71-5-457. Unemployment trust fund used for payment of administrative expenses [Repealed effective July 1, 2019]

(1) Except as otherwise provided in subsection (5), money credited to the account of this state in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to the Social Security Act, 42 USCS Section 1103, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by the Legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two (2) years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which:

(i) The aggregate of the amounts credited to the account of this state pursuant to the Social Security Act, 42 USCS Section 1103, during the same twelve-month period and the thirty-four (34) preceding twelve-month periods exceeds.

(ii) The aggregate of the amounts obligated pursuant to this section and charged against the amounts credited to the account of this state during such thirty-five (35) twelve-month periods. For the purposes of this section, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited andwhich are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth preceding such period.

(2) Money credited to the account of this state pursuant to the Social Security Act, 42 USCS Section 1103, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this law and of public employment offices pursuant to this section.

(3) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such

appropriation and, upon requisition, shall be deposited in the Employment Security Administration Fund, from which such payments shall be made. Money so deposited shall, until expended, remain a part of the Unemployment Compensation Fund and, if it will not be expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(4) The thirty-five-year limitation provided in this section is no longer in force, effective October 1, 1991.

(5) Notwithstanding subsection (1), monies credited with respect to federal fiscal years 1999, 2000 and 2001 shall be used by the department solely for the administration of the unemployment compensation program.

HISTORY: *SOURCES: Codes, 1942, § 7396.5; Laws, 1958, ch. 536, § 1(d); Laws, 1964, ch. 448, § 1(d); Laws, 1971, ch. 519, § 11; Laws, 1975, ch. 393; Laws, 1981, ch. 321, § 1; Laws, 1983, ch. 357; Laws, 1984, ch. 301, § 4; Laws, 1991, ch. 449 § 1; Laws, 1998, ch. 372, § 1; Laws, 2004, ch. 572, § 37; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 37; reenacted without change, Laws, 2010, ch. 559, § 36; reenacted without change, Laws, 2011, ch. 471, § 37; reenacted without change, Laws, 2012, ch. 515, § 37, eff from and after July 1, 2012.*

§ 71-5-459. Management of funds upon discontinuance of unemployment trust fund

The provisions of Sections 71-5-451 through 71-5-459, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes and of money credited pursuant to Section 903 of the Social Security Act, as amended, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in accordance with the provisions of this chapter, provided that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest bearing obligations of the United States of America, the State of Mississippi, and of any county; consolidated school district, supervisors district road bonds, and municipal bonds of counties, cities, and towns of Mississippi; federal land bank bonds and home owners loan corporation bonds; Yazoo and Mississippi Delta Levee District bonds; Mississippi Levee District bonds; municipal bonds of cities with a population of one hundred thousand (100,000) and over located in the states of Louisiana, Texas, Arkansas, Alabama, Georgia, Florida, and Tennessee; and provided further that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under direction of the commission.

HISTORY: *SOURCES: Codes, 1942, § 7397; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(e); Laws, 1964, ch. 448, § 1(e), eff from and after passage (approved June 6, 1964).*

ARTICLE 11. BENEFITS

§ 71-5-501. Payment

Wages earned for services defined in Section 71-5-11(I)(15)(g), irrespective of when performed, shall not be included for purposes of determining eligibility under Section 71-5-511(e) or weekly benefit amount under Section 71-5-503 nor shall any benefits with respect to unemployment be payable under Section 71-5-505 on the basis of such wages. All benefits shall be paid through employment offices or such other agency or agencies as the department may, by regulation, designate, in accordance with such regulations as the department may prescribe. The department may, by regulation, prescribe that benefits due and payable to claimants who die prior to the receipt or cashing of benefits checks may be paid to the legal representative, dependents, or next of kin, of the deceased as may be found by it to be equitably entitled thereto, and every such payment shall be deemed a valid payment to the same extent as if made to the legal representative of the decedent.

HISTORY: *SOURCES: Codes, 1942, § 7373; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2a; Laws, 1952, ch. 383, § 1a; Laws, 1956, ch. 404, § 1a; Laws, 1958, ch. 533, § 1a; Laws, 1968, ch. 561, § 1a; Laws, 1971, ch. 519, § 1; Laws, 2002, ch. 562, § 4; Laws, 2013, ch. 309, § 17, eff from and after passage (approved March 6, 2013.)*

§ 71-5-503. Weekly benefit amount

An individual's weekly benefit amount for a benefit year shall be one-twenty-sixth (1/26) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, computed to the next lower multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00).

On or before June 15 of each year, the total wages reported on contribution reports for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported on contribution reports pursuant to the regulations of the department for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. Sixty percent (60%) of this amount, rounded to the nearest dollar, shall constitute the maximum "weekly benefit amount" paid to any individual whose benefit year commences on or after July 1 of such year and prior to July 1 of the next following year; provided however, that the maximum weekly benefit amount shall not exceed Two Hundred Ten Dollars ($ 210.00) for any benefit year that begins on or after July 1, 2002, and shall not exceed Two Hundred Thirty Dollars ($ 230.00) for any benefit year that begins on or after July 1, 2008, and shall not exceed Two Hundred Thirty-five Dollars ($ 235.00) for any benefit year that begins on or after July 1, 2009. The minimum weekly benefit amount for the individual shall be Thirty Dollars ($ 30.00). If an individual's weekly benefit amount would compute to less than the said minimum, then such individual would be entitled to no benefits.

An individual's weekly benefit amount, as determined at the beginning of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.

The Mississippi Department of Employment Security, with the assistance of the United States Department of Labor, is directed to generate actuarially sound models for computation of weekly benefit amounts. Such models shall include scenarios for increasing the weekly benefit amounts at each increment from the minimum to the maximum amount and the impact such increments would have on the Unemployment Compensation Fund. Such report shall be provided to the Mississippi Legislature on or before December 31, 2008.

HISTORY: *SOURCES: Codes, 1942, § 7374; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2b; Laws, 1952, ch. 383, § 1b; Laws, 1956, ch. 404, § 1b; Laws, 1958, ch. 533, § 1b; Laws, 1968, ch. 561, § 1b; Laws, 1971, ch. 519, § 2; Laws, 1974, ch. 570, § 1; Laws, 1976, ch. 382; Laws, 1979, ch. 465, § 3; Laws, 1982, ch. 349, § 2; Laws, 1983, ch. 364, § 1; Laws, 1984, ch. 438; Laws, 1986, ch. 316, § 1; Laws, 1988, ch. 322, § 2; Laws, 1991, ch. 511, § 3; Laws, 1995, ch. 507, § 6; Laws, 1998, ch. 423, § 1; Laws, 2001, ch. 413, § 1; Laws, 2008, 1st Ex Sess, ch. 43, § 1; reenacted and amended, Laws, 2010, ch. 559, § 37; Laws, 2011, ch. 471, § 38; Laws, 2012, ch. 515, § 38, eff from and after July 1, 2012.*

§ 71-5-505. Weekly compensation for unemployment

(1) For weeks beginning on or after July 1, 1991, each eligible individual who is totally unemployed or part totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wages, if any, payable to him with respect to such week which is in excess of Forty Dollars ($ 40.00). Such individuals must have been totally unemployed or part totally unemployed for a waiting period of one (1) week during which he earned less than his weekly benefit amount plus Forty Dollars ($ 40.00). Such benefit for a benefit year effective on or after October 1, 1983, if not a multiple of One Dollar ($ 1.00), shall be computed to the next lower multiple of One Dollar ($ 1.00). Provided, however, that remuneration for "inactive duty training" or "unit training assembly" payable to such eligible individual who is a member of any of the reserve components, or remuneration for jury duty pursuant to a lawfully issued summons therefor payable to such eligible individual, shall not be considered wages which serve to reduce the otherwise payable benefit amount.

In determining whether an eligible individual is unemployed during a week, the date of commencing a shift shall determine the week for which the earnings are deducted.

(2) However, the one-week waiting period described herein shall be waived if the President of the United States declares a major disaster with regard to individual assistance in accordance with Section 401 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act. The department, in its discretion, shall have the authority to noncharge an employer account for any benefits paid for unemployment due directly to such disaster, but only in those counties and/or areas identified by the disaster area for individual assistance.

HISTORY: *SOURCES: Codes, 1942, § 7375; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2c; Laws, 1952, ch. 383, § 1c; Laws, 1956, ch. 404, § 1c; Laws, 1958, ch. 533, § 1c; Laws, 1968, ch. 561, § 1c; Laws, 1979, ch. 381; Laws, 1983, ch. 364, § 2; Laws, 1984, ch. 498, § 1; Laws, 1991, ch. 511, § 4; Laws, 1999, ch. 306, § 1; Laws, 2007, ch. 606, § 12; Laws, 2013, ch. 309, § 12, eff from and after passage (approved March 6, 2013.)*

§ 71-5-506. Advice to claimants as to taxation of benefits; change of withholding status; deduction and withholding of tax

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(a) Unemployment compensation is subject to federal, state and local income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code;

(d) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The commission shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld in accordance with the priorities established in regulations developed by the commission.

HISTORY: *SOURCES: Laws, 1996, ch. 464, § 1, eff from and after July 1, 1996.*

§ 71-5-507. Duration

Any otherwise eligible individual shall be entitled during any benefit year to a total amount of regular benefits equal to twenty-six (26) times his weekly benefit amount or one-third (1/3) of his total wages for insured work paid during his base period, whichever is the lesser. Provided, that for a benefit year effective prior to October 1, 1983, if such total amount of benefits is not a multiple of One Dollar ($ 1.00), it shall be computed to the next higher multiple of One Dollar ($ 1.00); and for a benefit year effective on or after October 1, 1983, if such total amount of benefits is not a multiple of One Dollar ($ 1.00), it shall be computed to the next lower multiple of One Dollar ($ 1.00). An individual's total amount of regular benefits as determined at the beginning of his benefit year shall constitute his total amount of regular benefits throughout such benefit year.

HISTORY: *SOURCES: Codes, 1942, § 7376; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2d; Laws, 1952, ch. 383, § 1d; Laws, 1956, ch. 404, § 1d; Laws, 1958, ch. 533, § 1d; Laws, 1968, ch. 561, § 1d; Laws, 1971, ch. 519, § 3; Laws, 1983, ch. 364, § 3, eff from and after passage (approved March 16, 1983).*

§ 71-5-509. Seasonal workers

(1) For the purposes of this section, cotton ginning and professional baseball only are classified as seasonal industries.

(2) The term "seasonal worker" means an individual who is employed in a seasonal industry, and who has base period wages paid on and after July 1, 1983, in such seasonal industry, except that the term shall not include workers in such industry where employment continues substantially throughout the year. Any individual who has earnings in a seasonal industry having a seasonal operating period within the limits shown in the first column at the end of this subsection, and who has base period wages earned in such seasonal industry in the nonoperating season of such seasonal industry in an amount equal to the amount specified on the corresponding line of the second column at the end of this subsection, shall be considered as having employment which continues substantially throughout the year and shall not be considered a seasonal worker.

Operating Period of Seasonal Industry	Wages Earned in Seasonal Industry During Nonoperating Period
27-36 Weeks	24 Times Weekly Benefit Amount
6-26 Weeks	30 Times Weekly Benefit Amount

(3) The commission shall prescribe fair and reasonable general rules consistent with this chapter which are applicable to seasonal workers for determining the period or periods during which benefits shall be payable to them. The commission may prescribe fair and reasonable general rules with respect to such other matters relating to benefits for seasonal workers as the commission finds necessary and consistent with the policy and purposes of this chapter.

HISTORY: *SOURCES: [Prior § 71-5-509, Codes, 1942, § 7377, Laws, 1940, ch. 295, repealed by implication by Laws, 1948, ch. 412, § 2] Laws, 1983, ch. 369; Laws, 1986, ch. 319, § 2, eff from and after passage (approved March 13, 1986).*

§ 71-5-511. Eligibility conditions [Repealed effective July 1, 2019]

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

(a) (i) He has registered for work at and thereafter has continued to report to the department in accordance with such regulations as the department may prescribe; except that the department may, by regulation, waive or alter either or both of the requirements of this subparagraph as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter; and

(ii) He participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by the department, it has been determined that he is likely to exhaust regular benefits and needs reemployment services, unless the department determines that:

1. The individual has completed such services; or

2. There is justifiable cause for the claimant's failure to participate in such services.

(b) He has made a claim for benefits in accordance with the provisions of Section 71-5.515 and in accordance with such regulations as the department may prescribe thereunder.

(c) He is able to work, available for work and actively seeking work.

(d) He has been unemployed for a waiting period of one (1) week. No week shall be counted as a week of unemployment for the purposes of this subsection:

(i) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(ii) If benefits have been paid with respect thereto;

(iii) Unless the individual was eligible for benefits with respect thereto, as provided in Sections 71-5-511 and 71-5-513, except for the requirements of this subsection.

(e) For weeks beginning on or before July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than thirty-six (36) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period; and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than sixteen (16) times the minimum weekly benefit amount. For benefit years beginning after July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty-six (26) times the minimum weekly benefit amount. For purposes of this subsection, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has satisfied the conditions of Section 71-5-11, subsection H, or Section 71-5-361, subsection (3), with respect to becoming an employer.

(f) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed service in "employment" as defined in Section 71-5-11, subsection I, and earned remuneration for such service in an amount equal to not less than eight (8) times his weekly benefit amount applicable to his next preceding benefit year.

(g) Benefits based on service in employment defined in Section 71-5-11, subsection I(3) and I(4), and Section 71-5-361, subsection (4) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher learning (as defined in Section 71-5-11, subsection N) with respect to service performed prior to January 1, 1978, shall not be paid to an individual for any week of unemployment which begins during the period between two (2) successive academic

years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher learning for both such academic years or both such terms.

(h) Benefits based on service in employment defined in Section 71-5-11, subsection I(3) and I(4), shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that:

(i) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual, if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and provided that subsection (g) of this section shall apply with respect to such services prior to January 1, 1978. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(ii) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two (2) successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(iii) With respect to services described in subsection (h)(i) and (ii), benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the first of such academic years or terms, or in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(iv) With respect to any services described in subsection (h)(i) and (ii), benefits shall not be payable on the basis of services in any such capacities as specified in subsection (h)(i), (ii) and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency.

For purposes of this subsection, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(v) With respect to services to which Sections 71-5-357 and 71-5-359 apply, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in subsection (h)(i), (ii), (iii) and (iv).

(i) Subsequent to December 31, 1977, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sports seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(j) (i) Subsequent to December 31, 1977, benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act).

(ii) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(iii) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made, except upon a preponderance of the evidence.

(k) An individual shall be deemed prima facie unavailable for work, and therefore ineligible to receive benefits, during any period which, with respect to his employment status, is found by the department to be a holiday or vacation period.

(l) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this paragraph unless the temporary employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(ii) That unemployment benefits may be denied if the temporary employee fails to do so.

HISTORY: *SOURCES: Codes, 1972, § 7378; Laws, 1940, ch. 295, § 2; Laws, 1948, ch. 412, § 3; Laws, 1954, ch. 353, § 1; Laws, 1958, ch. 533, § 2; Laws, 1968, ch. 561, § 2; Laws, 1971, ch. 519, § 4; Laws, 1977, ch. 497, § 7; Laws, 1978, ch. 339, § 2; Laws, 1981, ch. 466, § 1; Laws, 1982, ch. 480, § 2; Laws, 1983, ch. 358; Laws, 1984, ch. 498, § 2; Laws, 1990, ch. 417, § 1; Laws, 1994, ch. 357, § 1; Laws, 1995, ch. 507, § 7; Laws, 2004, ch. 572, § 38; Laws, 2007, ch. 606, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 38; reenacted without change, Laws, 2010, ch. 559, § 380; reenacted without change, Laws, 2011, ch. 471, § 39; reenacted without change, Laws, 2012, ch. 515, § 39; Laws, 2013, ch. 309, § 13, eff from and after passage (approved March 6, 2013.)*

§ 71-5-513. Disqualifications [Repealed effective July 1, 2019]

A. An individual shall be disqualified for benefits:

(1) (a) For the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case; however, marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. Pregnancy shall not be deemed to be a marital, filial or domestic circumstance for the purpose of this subsection.

(b) For the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(c) The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer.

(2) For the week, or fraction thereof, with respect to which he willfully makes a false statement, a false representation of fact, or willfully fails to disclose a material fact for the purpose of obtaining or increasing benefits under the provisions of this law, if so found by the department, and such individual's maximum benefit allowance shall be reduced by the amount of benefits so paid to him during any such week of disqualification; and additional disqualification shall be imposed for a period not exceeding fifty-two (52) weeks, the length of such period of disqualification and the time when such period begins to be determined by the department, in its discretion, according to the circumstances in each case.

(3) If the department finds that he has failed, without good cause, either to apply for available suitable work when so directed by the employment office or the department, to accept suitable work when offered him, or to return to his customary self- employment (if any) when so directed by the department, such disqualification shall continue for the week in which such failure occurred and

for not more than the twelve (12) weeks which immediately follow such week, as determined by the department according to the circumstances in each case.

(a) In determining whether or not any work is suitable for an individual, the department shall consider among other factors the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence; however, offered employment paying the minimum wage or higher, if such minimum or higher wage is that prevailing for his customary occupation or similar work in the locality, shall be deemed to be suitable employment after benefits have been paid to the individual for a period of eight (8) weeks.

(b) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(ii) If the wages, hours or other conditions of the work offered are substantially unfavorable or unreasonable to the individual's work. The department shall have the sole discretion to determine whether or not there has been an unfavorable or unreasonable condition placed on the individual's work. Moreover, the department may consider, but shall not be limited to a consideration of, whether or not the unfavorable condition was applied by the employer to all workers in the same or similar class or merely to this individual;

(iii) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) If unsatisfactory or hazardous working conditions exist that could result in a danger to the physical or mental well-being of the worker. In any such determination the department shall consider, but shall not be limited to a consideration of, the following: the safety measures used or the lack thereof and the condition of equipment or lack of proper equipment. No work shall be considered hazardous if the working conditions surrounding a worker's employment are the same or substantially the same as the working conditions generally prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

(c) Pursuant to Section 303(1) of the Social Security Act (42 USCS 503), the department may conduct drug tests of applicants for unemployment compensation for the unlawful use of controlled substances as a condition for receiving such compensation, if such applicant:

(i) Was terminated from employment with the claimant's most recent employer, as defined by Mississippi law, because of the unlawful use of controlled substances; or

(ii) Is an individual for whom suitable work, as defined by Mississippi law, is only available in an occupation (as determined under regulations issued by the U.S. Secretary of Labor) that requires drug testing.

The department may deny unemployment compensation to any applicant based on the result of a drug test conducted by the department in accordance with this subsection. A positive drug test result shall be deemed by the department to be a failure to accept suitable work, and shall subject the applicant to the disqualification provisions set forth in this subsection A(3). During the disqualification period imposed by the department under this subsection, the individual may provide information to end the disqualification period early by submitting acceptable proof to the department of a negative test result from a testing facility approved by the department.

(iii) Pursuant to the provisions set forth in this subsection A(3)(c) of this section, the department shall have the authority to institute a random drug testing program for all individuals who meet the requirements set forth in this section. Moreover, the department shall have the authority to create the necessary regulations, policies rules, guidelines and procedures to implement such a program.

Any term or provision set forth in this subsection A(3)(c) that otherwise conflicts with federal or state law shall be disregarded but shall not, in any way, affect the remaining provisions.

(4) For any week with respect to which the department finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at a factory, establishment or other premises at which he is or was last employed; however, this subsection shall not apply if it is shown to the satisfaction of the department:

(a) He is unemployed due to a stoppage of work occasioned by an unjustified lockout, if such lockout was not occasioned or brought about by such individual acting alone or with other workers in concert; or

(b) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; and

(c) He does not belong to a grade or class of workers of which, immediately before the commencement of stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute.

If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the

same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

(5) For any week with respect to which he has received or is seeking unemployment compensation under an unemployment compensation law of another state or of the United States. However, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment compensation benefits, this disqualification shall not apply. Nothing in this subsection contained shall be construed to include within its terms any law of the United States providing unemployment compensation or allowances for honorably discharged members of the Armed Forces.

(6) For any week with respect to which he is receiving or has received remuneration in the form of payments under any governmental or private retirement or pension plan, system or policy which a base-period employer is maintaining or contributing to or has maintained or contributed to on behalf of the individual; however, if the amount payable with respect to any week is less than the benefits which would otherwise be due under Section 71-5-501, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. However, on or after the first Sunday immediately following July 1, 2001, no social security payments, to which the employee has made contributions, shall be deducted from unemployment benefits paid for any period of unemployment beginning on or after the first Sunday following July 1, 2001. This one hundred percent (100%) exclusion shall not apply to any other governmental or private retirement or pension plan, system or policy. If benefits payable under this section, after being reduced by the amount of such remuneration, are not a multiple of One Dollar ($ 1.00), they shall be adjusted to the next lower multiple of One Dollar ($ 1.00).

(7) For any week with respect to which he is receiving or has received remuneration in the form of a back pay award, or other compensation allocable to any week, whether by settlement or otherwise. Any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly to the department by the employer for application against the overpayment and credit to the claimant's maximum benefit amount and prompt deposit into the fund; however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year and the calendar quarter in which the overpayment is transmitted to the department, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the department shall be subject to the same procedures for collection as is provided for contributions by Sections 71-5-363 through 71-5-381. Any amount of overpayment not deducted by the employer shall be established as an overpayment against the claimant and collected as provided above. It is the purpose of this paragraph to assure equity in the situations to which it applies, and it shall be construed accordingly.

B. Notwithstanding any other provision in this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the department; nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the department by reason of the application of provisions in Section 71-5-511, subsection (c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

C. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work or refusal to accept work.

For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

D. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week in which they are engaged in the Self-Employment Assistance Program established in Section 71-5-545 by reason of the application of Section 71-5-511(c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

E. Any individual who is receiving benefits may participate in an approved training program under the Mississippi Employment Security Law to gain skills that may lead to employment while continuing to receive benefits. Authorization for participation of a recipient of unemployment benefits in such a program must be granted by the department and continuation of participation must be certified weekly by the participant recipient. While participating in such program approved by the department, availability and work search requirements will be waived. No individual will be allowed to participate in this program for more than twelve (12) weeks in any benefit year. Such participation shall not be considered employment for any purposes and shall not accrue benefits or wage credits. Participation in this training program shall meet the definition set forth in the U.S. Fair Labor Standards Act.

HISTORY: *SOURCES: Codes, 1942, § 7379; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 1; Laws, 1954, ch. 353, § 2; Laws, 1958, ch. 533, § 3; Laws, 1962, ch. 564, § 1; Laws, 1971, ch. 519, § 5; Laws, 1977, ch. 497, § 8; Laws, 1982, ch. 480, § 3; Laws, 1983, ch. 364, § 4; Laws, 1984, ch. 498, § 3; Laws, 1986, ch. 316, § 2; Laws, 1988, ch. 365; Laws, 1994, ch. 303, § 4; Laws, 1996, ch. 464, § 3; Laws, 2001, ch. 405, § 1; Laws, 2004, ch. 572, § 39; Laws, 2007, ch. 606, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 39; reenacted without change, Laws, 2010, ch. 559, § 39; reenacted without change, Laws, 2011, ch. 471, § 40; reenacted and amended, Laws, 2012, ch. 515, § 40, eff from and after July 1, 2012.*

§ 71-5-515. Filing

Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the commission may by regulation prescribe. Each employer shall supply such individuals copies of such printed statements or materials relating to claims for benefits as the commission may by regulation prescribe. Such printed statements or materials shall be supplied by the commission to each employer without cost to him.

HISTORY: *SOURCES: Codes, 1942, § 7380; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4a; Laws, 1964, ch. 442, § 1a.*

§ 71-5-516. Disclosure of child support obligations on claim for benefits; deduction and withholding from benefit

(1) An individual filing a new claim for benefits shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as defined under subsection (7). If any such individual discloses that he owes child support obligations, and is determined to be eligible for benefits, the commission shall notify the child support enforcement agency that the individual has been determined to be eligible for benefits.

(2) The commission shall deduct and withhold from any benefits payable to an individual that owes child support obligations as defined under subsection (7):

(a) The amount specified by the individual to the commission to be deducted and withheld under this subsection, if neither (b) nor (c) is applicable; or

(b) The amount (if any) determined pursuant to an agreement submitted to the commission under Section 454(19)(A)and(B)(i) of the Social Security Act by the child support enforcement agency, unless (c) is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from such benefits pursuant to legal process (as that term is defined in Section 462(e) of the Social Security Act) properly served upon the commission. Transmittal of the information in subsection (b) or (c) by automated means shall constitute proper service of legal process upon the commission.

(3) Any amount deducted and withheld under subsection (2) shall be paid by the commission to the child support enforcement agency.

(4) Any amount deducted and withheld under subsection (2) shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For purposes of subsections (1) through (4), the term "benefits" means any compensation payable under this chapter (including amounts payable by the commission pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) This section applies only if appropriate arrangements have been made for reimbursement by the child support enforcement agency for the administrative costs incurred by the commission under this section which are attributable to child support obligations being enforced by the child support enforcement agency. No administrative costs of either the commission or the child support enforcement agency shall be deducted or withheld by the commission from any benefits payable, however. The amount to be deducted and withheld shall be in an even dollar amount, and the agency shall distribute the support collection in the manner prescribed by Title IV-D of the Social Security Act.

(7) The term "child support obligations" is defined for purposes of this section as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

HISTORY: *SOURCES: Laws, 1982, ch. 480, § 4; Laws, 1986, ch. 332; Laws, 1991, ch. 406, § 1; Laws, 1993, ch. 346, § 1, eff from and after July 1, 1993.*

§ 71-5-517. Initial determination [Repealed effective July 1, 2019]

Upon the taking of a claim by the department, an initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of subsection A(4) of Section 71-5-513, the examiner shall promptly transmit all the evidence with respect to that subsection to the department, which, on the basis of evidence so submitted and such additional evidence as it may require, shall make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. The claimant, his most recent employing unit and all employers whose experience-rating record would be charged with benefits pursuant to such determination shall be promptly notified of such initial determination or any amended initial determination and the reason therefor. Benefits shall be denied or, if the claimant is otherwise eligible, promptly paid in accordance with the initial determination or amended initial determination. The jurisdiction of the department over benefit claims which have not been appealed shall be continuous. The claimant or any party to the initial determination or amended initial determination may file an appeal from such initial determination or amended initial determination within fourteen (14) days after notification thereof, or after the date such notification was sent to his last known address.

Notwithstanding any other provision of this section, benefits shall be paid promptly in accordance with a determination or redetermination, or the decision of an appeal tribunal, the Board of Review or a reviewing court upon the issuance of such determination, redetermination or decision in favor of the claimant (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, as the case may be, or the pendency of any such application, filing or petition), unless and until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with such modifying or reversing redetermination or decision. Any benefits finally determined to have been erroneously paid may be set up as an overpayment to the claimant and must be liquidated before any future benefits can be paid to the claimant. If, subsequent to such initial determination or amended initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination or amended initial determination, the claimant

shall be promptly notified of the denial and the reason therefor and may appeal therefrom in accordance with the procedure herein described for appeals from initial determination or amended initial determination.

HISTORY: *SOURCES: Codes, 1942, § 7381; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4b; Laws, 1964, ch. 442, § 1b; Laws, 1972, ch. 375, § 1; Laws, 1977, ch. 352; Laws, 1986, ch. 316, § 3; Laws, 2004, ch. 572, § 40; Laws, 2007, ch. 606, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 40; reenacted without change, Laws, 2010, ch. 559, § 40; reenacted without change, Laws, 2011, ch. 471, § 41; reenacted without change, Laws, 2012, ch. 515, § 41, eff from and after July 1, 2012.*

§ 71-5-519. Appeals [Repealed effective July 1, 2019]

Unless such appeal is withdrawn, an appeal tribunal appointed by the executive director, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or reverse the findings of fact and initial determination or amended initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the executive director unless, within fourteen (14) days after the date of notification of such decision, further appeal is initiated pursuant to Section 71-5-523.

HISTORY: *SOURCES: Codes, 1942, § 7382; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4c; Laws, 1964, ch. 442, § 1c; Laws, 1977, ch. 448; Laws, 2004, ch. 572, § 41; Laws, 2007, ch. 606, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 41; reenacted without change, Laws, 2010, ch. 559, § 41; reenacted without change, Laws, 2011, ch. 471, § 42; reenacted without change, Laws, 2012, ch. 515, § 42, eff from and after July 1, 2012.*

§ 71-5-521. Appeal tribunals

To hear and decide appealed claims, the board of review shall appoint one or more impartial appeal tribunals consisting in each case of either a referee, who shall be selected in accordance with Section 71-5-121, or a body consisting of three (3) members, one (1) of whom shall be a referee, who shall serve as chairman, one (1) of whom shall be a representative of employers, and the other of whom shall serve as a representative of employees. Each of the latter two (2) members shall serve at the pleasure of the board of review and be paid a fee of not more than Twenty Dollars ($ 20.00) per day for active service on such tribunals, plus necessary expenses. Referees shall be paid such salary or per diem as may be determined by the commission, and such expenses as may be allowed by the commission. No person shall participate on behalf of the commission or the board of review in any case in which he is an interested party. The board of review may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

HISTORY: *SOURCES: Codes, 1942, § 7383; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4d; Laws, 1964, ch. 442, § 1d.*

§ 71-5-523. Board of review [Repealed effective July 1, 2019]

The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Board of Review shall permit such further appeal by any of the parties to a decision of an appeal tribunal which is not unanimous, and by the examiner whose decision has been overruled or modified by an appeal tribunal. The Board of Review may remove to itself or transfer

to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the Board of Review shall be heard by a quorum thereof in accordance with the requirements of Section 71-5-519 and within fifteen (15) days after notice of appeal has been received by the executive director. No notice of appeal shall be deemed to be received by the executive director, within the meaning of this section, until all prior appeals pending before the Board of Review have been heard. The Board of Review shall, within four (4) days after its decision, so notify the parties to any proceeding of its findings and decision.

HISTORY: *SOURCES: Codes, 1942, § 7384; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4e; Laws, 1964, ch. 442, § 1e; Laws, 2004, ch. 572, § 42; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 42; reenacted without change, Laws, 2010, ch. 559, § 42; reenacted without change, Laws, 2011, ch. 471, § 43; reenacted without change, Laws, 2012, ch. 515, § 43, eff from and after July 1, 2012.*

§ 71-5-525. Procedure [Repealed effective July 1, 2019]

The manner in which appealed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Board of Review for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with an appealed claim. The department's entire file relative to the appealed claim shall be a part of such record and shall be considered as evidence. All testimony at any hearing upon an appealed claim shall be recorded, but need not be transcribed unless the claim is further appealed.

HISTORY: *SOURCES: Codes, 1942, § 7385; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4f; Laws, 1964, ch. 442, § 1f; Laws, 2004, ch. 572, § 43; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 43; reenacted without change, Laws, 2010, ch. 559, § 43; reenacted without change, Laws, 2011, ch. 471, § 44; reenacted without change, Laws, 2012, ch. 515, § 44, eff from and after July 1, 2012.*

§ 71-5-527. Witness fees

Witnesses subpoenaed pursuant to Sections 71-5-515 through 71-5-533 shall be allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expense of administering this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7386; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4g; Laws, 1964, ch. 442, § 1g.*

§ 71-5-529. Appeal to courts [Repealed effective July 1, 2019]

Any decision of the Board of Review, in the absence of an appeal therefrom as herein provided, shall become final ten (10) days after the date of notification; and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this chapter. The department shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the department and designated by it for that purpose or, at the department's request, by the Attorney General.

HISTORY: *SOURCES: Codes, 1942, § 7387; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4h; Laws, 1964, ch. 442, § 1h; Laws, 2004, ch. 572, § 44; Laws, 2007, ch. 606, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 44; reenacted without change, Laws, 2010, ch. 559, § 44; reenacted without change, Laws, 2011, ch. 471, § 45, ; reenacted without change, Laws, 2012, ch. 515, § 45, eff from and after July 1, 2012.*

§ 71-5-531. Court review [Repealed effective July 1, 2019]

Within ten (10) days after the decision of the Board of Review has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the circuit court of the county in which the plaintiff resides, against the department for the review of such decision, in which action any other party to the proceeding before the Board of Review shall be made a defendant. In cases wherein the plaintiff is not a resident of the State of Mississippi, such action may be filed in the circuit court of the county in which the employer resides, the county in which the cause of action arose, or in the county of employment. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the department or upon such person as the department may designate, and such service shall be deemed completed service on all parties; but there shall be left with the party so served as many copies of the petition as there are defendants, and the department shall forthwith mail one (1) such copy to each such defendant. With its answer, the department shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the Board of Review's findings of fact and decision therein. The department may also, in its discretion, certify to such court questions of law involved in any decision. In any judicial proceedings under this section, the findings of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the circuit court of the county in which the plaintiff resides to the Supreme Court of Mississippi, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Board of Review, and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Board of Review shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Board of Review shall so order.

HISTORY: *SOURCES: Codes, 1942, § 7388; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4i; Laws, 1964, ch. 442, § li; Laws, 1996, ch. 464, § 4; Laws, 2004, ch. 572, § 45; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 45; reenacted without change, Laws, 2010, ch. 559, § 45; reenacted without change, Laws, 2011, ch. 471, § 46; reenacted without change, Laws, 2012, ch. 515, § 46, eff from and after July 1, 2012.*

§ 71-5-533. Appeal by commission

The commission shall be authorized to appeal from decisions of the board of review involving questions of interpretation of this chapter. Such appeals shall be served upon the other parties to the decision of the board of review and shall be heard by the courts in the manner as provided in Section 71-5-531. Such an appeal by the commission under this section shall not have the effect of denying benefits to any claimant who has been awarded benefits by virtue of the decision of the board of review from which the appeal is taken.

HISTORY: *SOURCES: Codes, 1942, § 7389; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4j; Laws, 1964, ch. 442, § 1j.*

§ 71-5-535. Waiver of rights void

Any agreement by an individual to waive, release, or commute his right to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require

or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this section shall, for each offense, be fined not less than One Hundred Dollars ($ 100.00) nor more than One Thousand Dollars ($ 1,000.00), or be imprisoned for not more than six (6) months, or both.

HISTORY: *SOURCES: Codes, 1942, § 7434; Laws, 1936, ch. 176; Laws, 1938, ch. 147.*

§ 71-5-537. Limitation of fees

No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the board of review, the commission, their representatives, or by any court or any officer thereof. Any individual claiming benefits in any proceedings before the commission, the board of review, their representatives, or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the board of review. Any person who violates any provision of this section shall, for each such offense, be fined not less than Fifty Dollars ($ 50.00) nor more than Five Hundred Dollars ($ 500.00), or imprisoned for not more than six (6) months, or both.

HISTORY: *SOURCES: Codes, 1942, § 7435; Laws, 1936, ch. 176; Laws, 1938, ch. 147.*

§ 71-5-539. No assignment of benefits; exemptions

Any assignment, pledge or incumbrance of any right to benefits which are or may become due or payable under this chapter shall be void. Such rights to benefits shall be exempt from levy, execution, attachment or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided in this section shall be void. This section does not apply to the deduction from benefits provided by Section 71-5-516.

HISTORY: *SOURCES: Codes, 1942, § 7436; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1982, ch. 480, § 5, eff from and after October 1, 1982.*

§ 71-5-541. Construction [Repealed effective July 1, 2019]

(A) (1) In the administration of this chapter, the department shall cooperate with the Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act and the Federal-State Extended Unemployment Compensation Act of 1970, all as amended.

(2) In the administration of the provisions of this section, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, the department shall take such actions as may be necessary:

(a) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States Department of Labor; and

(b) To secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal act; and also

(c) To limit the amount of extended benefits paid as may be necessary so that the reimbursement of the federal share of extended benefits paid shall remain at one-half (1/2) of the total extended benefits paid.

B. As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is a state "on" indicator; and

(b) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period.

No extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For weeks beginning after September 25, 1982, there is a "state 'on' indicator" for a week if the rate of insured unemployment under this chapter for the period consisting of such week and the immediately preceding twelve (12) weeks:

(a) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding period of thirteen (13) weeks ending in each of the preceding two (2) calendar years; and

(b) Equaled or exceeded five percent (5%).

The determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (2) did not contain subparagraph (a) thereof, and (ii) the figure "5" contained in subparagraph (b) thereof were "6"; except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a "state 'on' indicator" shall continue to be such week and shall not be determined to be a week for which there is a "state 'off' indicator."

(3) There is a "state 'off' indicator" for a week if, for the period consisting of such week and the immediately preceding twelve (12) weeks, either subparagraph (a) or (b) of paragraph (2) was not satisfied.

(4) "Rate of insured unemployment," for purposes of paragraphs (2) and (3) of this subsection, means the percentage derived by dividing:

(a) The average number of continued weeks claimed for regular state compensation in this state for weeks of unemployment with respect to the most recent period of thirteen (13) consecutive weeks, as determined by the department on the basis of its reports to the United States Secretary of Labor; by

(b) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such period of thirteen (13) weeks.

(5) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USCS Section 8501-8525) other than extended benefits.

(6) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USCS Section 8501-8525) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(7) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(8) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 USCS Section 8501-8525) in his current benefit year that includes such week.

For the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(b) Has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week, his benefit year having expired prior to such week; and

(c) (i) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965,

and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(ii) Has not received and is not seeking unemployment benefits under the Unemployment Compensation Law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee; however, the reference in this subsection to the Virgin Islands shall be inapplicable effective on the day on which the United States Secretary of Labor approves under Section 3304(a) of the Internal Revenue Code of 1954, an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

(9) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954 (26 USCS Section 3304).

C. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the department, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

D. An individual shall be eligible to receiveextended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to such week:

(1) He is an "exhaustee" as defined in subsection B(8) of this section.

(2) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(3) For a week beginning after September 25, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty- six (26) times the minimum weekly benefit amount.

E. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year; however, benefits paid to individuals during eligibility periods beginning before October 1, 1983, shall be computed to the next higher multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00); and benefits paid to individuals during eligibility periods beginning on or after October 1, 1983, shall be computed to the next lower multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00). In no event shall the weekly extended benefit amount payable to an individual be more than two (2) times the amount of the reimbursement of the federal share of extended benefits paid.

F. (1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year; however, benefits paid to individuals during eligibility periods beginning before October 1, 1983, shall be computed to the next higher multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00), and benefits paid to individuals during eligibility periods beginning on or after October 1, 1983, shall be computed to the next lower multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00); or

(b) Thirteen (13) times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

(2) The total extended benefits otherwise payable to an individual who is filing an interstate claim under the interstate benefit payment plan shall not exceed two (2) weeks whenever an extended benefit period is not in effect for such week in the state where the claim is filed.

(3) In no event shall the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year be more than two (2) times the amount of the reimbursement of the federal share of extended benefits paid.

G. (1) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection B(4) shall be made by the department, in accordance with regulations prescribed by the United States Secretary of Labor.

H. Extended benefits paid under the provisions of this section which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers.

I. (1) Notwithstanding the provisions of subsections C and D of this section, an individual shall be disqualified for receipt of extended benefits if the department finds that during any week of his eligibility period:

(a) He has failed either to apply for or to accept an offer of suitable work (as defined under paragraph (3)) to which he was referred by the department; or

(b) He has failed to furnish tangible evidence that he has actively engaged in a systematic and sustained effort to find work, unless such individual is not actively engaged in seeking work because such individual is:

(i) Before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty;

(ii) Hospitalized for treatment of an emergency or a life-threatening condition.

The entitlement to benefits of any individual who is determined not to be actively engaged in seeking work in any week for the foregoing reasons shall be decided pursuant to the able and available requirements in Section 71-5-511 without regard to the disqualification provisions otherwise applicable under Section 71-5-541. The conditions prescribed in clauses (i) and (ii) of this subparagraph (b) must be applied in the same manner to individuals filing claims for regular benefits.

(2) Such disqualification shall begin with the week in which such failure occurred and shall continue until he has been employed in each of eight (8) subsequent weeks (whether or not consecutive) and has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly extended benefit amount.

(3) For the purpose of subparagraph (a) of paragraph (1) the term "suitable work" means any work which is within the individual's capabilities to perform, if:

(a) The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in Section 501(c) (17) (D) of the Internal Revenue Code of 1954) payable to such individual for such week;

(b) The wages payable for the work equal the higher of the minimum wages provided by Section 6(a) (1) of the Fair Labor Standards Act of 1938 (without regard to any exemption), or the state or local minimum wage; and

(c) The position was offered to the individual in writing or was listed with the state employment service; and

(d) Such work otherwise meets the definition of "suitable work" for regular benefits contained in Section 71-5-513A(4) to the extent that such criteria of suitability are not inconsistent with the provisions of this paragraph (3); and

(e) The individual cannot furnish satisfactory evidence to the department that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work contained in Section 71-5-513A(4) without regard to the definition specified by this paragraph (3).

(4) Notwithstanding any provisions of subsection I to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth herein under Section 71-5-513A(4).

(5) The employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in paragraph (3).

(6) An individual shall be disqualified for extended benefits for the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause (as defined in Section 71-5-513A(1)), was discharged for misconduct connected with his work, or refused suitable work (except as provided in subsection I of this section), and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(7) The provisions of paragraphs I(1) through (6) of this section shall not apply to claims for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and during that period the provisions of this chapter applicable to claims for regular compensation shall apply.

J. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

HISTORY: *SOURCES: Codes, 1942, § 7389.5; Laws, 1971, ch. 519, § 15; Laws, 1977, ch. 497, § 9; Laws, 1981, ch. 466, § 2; Laws, 1982, ch. 480, § 6; Laws, 1983, ch. 364, § 5; Laws, 1984, ch. 498, § 4; Laws, 1986, ch. 316, § 4; Laws, 1986, ch. 335; Laws, 1993, ch. 329, § 1; Laws, 2004, ch. 572, § 46; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 46; reenacted without change, Laws, 2010, ch. 559, § 46; reenacted without change, Laws, 2011, ch. 471, § 47; reenacted without change, Laws, 2012, ch. 515, § 47, eff from and after July 1, 2012.*

§ 71-5-543. Authorization to waive recovery of benefits paid to ineligible persons under certain circumstances

(1) Except as otherwise provided in this section, the executive director of the department may waive recovery of benefits paid under this chapter to a person if the person is subsequently found to be ineligible for the benefit and the benefits were paid as a direct result of unemployment caused by a natural disaster which is declared by the President of the United States in accordance with Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. All waivers shall be granted based upon a consistent methodology and shall include consideration of ability to repay and other similar considerations.

(2) The waiver authorized in subsection (1) of this section shall not be granted if:

(a) The individual receiving the benefit is found to be guilty of fraud involving filing for, or receipt of, the benefits; or

(b) The size of fund index (as defined in Section 71-5-355) for the year in which a request for a waiver is made is less than five-tenths (.5).

(3) All waiver requests shall be considered on a case by case basis.

HISTORY: *SOURCES: Laws, 2007, ch. 606, § 2, eff from and after July 1, 2007.*

§ 71-5-545. Self-Employment Assistance Program [Repealed effective July 1, 2019]

(1) Definitions. As used in this section:

(a) "Self-employment assistance activities" means activities (including entrepreneurial training, business counseling, technical assistance and any other requirements set forth by the executive director in regulation) approved by the executive director in which an individual, identified through an established system consistent with the system requirements of Section 303(j)(1)(A) of the Social Security Act (SSA) as likely to exhaust regular unemployment benefits, participates for the purpose of establishing a business and becoming self-employed.

(b) "Self-employment assistance allowance" means an allowance, payable in lieu of, and on the same schedule as, regular benefits and from the unemployment fund established under Section 71-5-451, to an individual participating in self-employment assistance activities who meets the requirements of this section.

(c) "Regular benefits" means benefits payable to an individual under this chapter (including benefits payable to Federal civilian employees and to ex-service members pursuant to 5 USC Chapter 85) excluding emergency unemployment benefits and extended benefits.

(d) "Full-time basis" shall have the meaning contained in regulations prescribed by the executive director who has authority to set, modify and rescind such regulations as are required for the proper and efficient administration of this section.

(e) "SEAP" means the Self-Employment Assistance Program.

(2) Amount of self-employment assistance allowance. The weekly allowance payable under this section to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under Section 71-5-503.

The sum of (a) the allowance paid under this section, and (b) regular benefits paid under this chapter with respect to any benefit year shall not exceed the maximum benefit amount as established by Section 71-5-507 with respect to such benefit year.

(3) Eligibility for self-employment assistance allowance. The allowance described in subsection (1) of this section shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except that:

(a) The requirements of Sections 71-5-511 and 71-5-513 relating to availability for work, active search for work, and refusal to accept work are not applicable to an individual while engaged in establishment of a business;

(b) The requirements of Section 71-5-505 relating to other earnings are not applicable to income earned from self-employment by such individual while engaged in establishment of a business;

(c) An individual who meets the requirements of this section shall be considered to be unemployed under Section 71-5-501 et seq.; and

(d) An individual who fails to participate in self-employment assistance activities as prescribed by this section or by the executive director, or who fails to actively engage on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed, shall be disqualified for any week in which the failure occurs.

(4) Limitation on receipt of self-employment assistance allowances. The aggregate number of individuals receiving the allowance under this section at any time shall not exceed five percent (5%) of the number of individuals receiving regular benefits as defined in Section 71-5-541.

(5) Steering committee membership. The executive director shall appoint a steering committee. Each member of the steering committee shall have equal voting rights on the SEAP Steering Committee. The voting members of the board who are not state employees or state elected officials shall be entitled to reimbursement of their reasonable expenses incurred in carrying out their duties under this chapter, from any funds available for that purpose.

(6) Steering committee purpose. The steering committee shall initially adopt the rules of operation for the SEAP and shall select and certify SEAP training programs. The rules shall be enforced by the department. Rules shall include the continuing role of the steering committee. Participants in training programs that are not certified by the SEAP shall not be paid SEAP benefits and any benefits paid to them shall be considered overpaid and shall be due to be repaid to the department and the Unemployment Trust Fund.

(7) Rules and regulations for operation of SEAP by the Mississippi Department of Employment Security. The executive director shall cause regulations adopted by the SEAP Steering Committee to be adopted by the department and the executive director may adopt other regulations as necessary for proper administration of this section.

(8) Financing costs of self-employment assistance allowances. Allowances paid under this section shall not be charged to employers as provided under provisions of this chapter relating to the noncharging of regular benefits as defined in Section 71-5-541, and shall be used in the computation of the annual unemployment tax rate as noncharges for receipt of unemployment benefits paid by this chapter. Noncharging provisions do not apply to unemployment compensation for federal employees, unemployment compensation for ex-servicemen or unemployment compensation paid to individuals based upon their wages earned with reimbursing employers, except as allowed by Section 71-5-357(b)(iv). In the event federal regulations allow changes to noncharging provisions associated with the SEAP, regulations may be adopted by the SEAP Steering Committee to make such changes as are reasonable and appropriate to the Mississippi program and charging or not charging of SEAP benefits.

(9) Federal law and regulations. Nothing in this section or the rules adopted related to this section or any other provision of this chapter is intended to be inconsistent with laws and regulations prescribed by the United States Department of Labor. Any part of this section or this chapter that is determined to not be in conformity with United State Department of labor regulations and applicable federal laws will not be enforced until such time as the deficiencies can be remedied.

(10) Effective date and termination date. The provisions of this section will apply to weeks beginning on or after the first Sunday sixty (60) days following passage, or after any plan required by the United States Department of Labor is approved by such department, whichever date is later. The authority provided by this section shall terminate as of the end of the week preceding the date when federal law no longer authorizes the provisions of this section, unless such date is a Saturday in which case the authority shall terminate as of such date.

HISTORY: *SOURCES: Laws, 2012, ch. 515, § 59, eff from and after July 1, 2012.*

Mississippi Code of 1972
TITLE 7. EXECUTIVE DEPARTMENT
CHAPTER 5. GOVERNOR
DIVISION OF JOB DEVELOPMENT AND TRAINING

§ 7-1-355. Administration of specified programs

(1) The Mississippi Department of Employment Security, Office of the Governor, is designated as the sole administrator of all programs for which the state is the prime sponsor under Title 1(B) of Public Law 105-220, Workforce Investment Act of 1998, and the regulations promulgated thereunder, and may take all necessary action to secure to this state the benefits of that legislation. The Mississippi Department of Employment Security, Office of the Governor, may receive and disburse funds for those programs that become available to it from any source.

(2) The Mississippi Department of Employment Security, Office of the Governor, shall establish guidelines on the amount and/or percentage of indirect and/or administrative expenses by the local fiscal agent or the Workforce Development Center operator. The Mississippi Department of Employment Security, Office of the Governor, shall develop an accountability system and make an annual report to the Legislature before December 31 of each year on Workforce Investment Act activities. The report shall include, but is not limited to, the following:

(a) The total number of individuals served through the Workforce Development Centers and the percentage and number of individuals for which a quarterly follow-up is provided;

(b) The number of individuals who receive core services by each center;

(c) The number of individuals who receive intensive services by each center;

(d) The number of Workforce Investment Act vouchers issued by the Workforce Development Centers including:

(i) A list of schools and colleges to which these vouchers were issued and the average cost per school of the vouchers; and

(ii) A list of the types of programs for which these vouchers were issued;

(e) The number of individuals placed in a job through Workforce Development Centers;

(f) The monies and the amount retained for administrative and other costs received from Workforce Investment Act funds for each agency or organization that Workforce Investment Act funds flow through as a percentage and actual dollar amount of all Workforce Investment Act funds received.

Mississippi Code of 1972
TITLE 37. EDUCATION
CHAPTER 153. WORKFORCE TRAINING AND EDUCATION CONSOLIDATION ACT

§ 37-153-1. Short title

This chapter shall be known and may be cited as the "Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004."

§ 37-153-3. Legislative intent

It is the intent of the Legislature by the passage of Chapter 572, Laws of 2004, to establish one (1) comprehensive workforce development system in the State of Mississippi that is focused on achieving results, using resources efficiently and ensuring that workers and employers can easily access needed services. This system shall reflect a consolidation of the Mississippi Workforce Development Advisory Council and the Mississippi State Workforce Investment Act Board. The purpose of Chapter 572, Laws of 2004, is to provide workforce activities, through a statewide system that maximizes cooperation among state agencies, that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants and as a result, improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the State of Mississippi.

§ 37-153-5. Definitions

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed in this section unless the context clearly indicates otherwise:

(a) "State board" means the Mississippi State Workforce Investment Board;

(b) "District councils" means the Local Workforce Development Councils;

(c) "Local workforce investment board" means the board that oversees the workforce development activities of local workforce areas under the federal Workforce Investment Act.

§ 37-153-7. Mississippi State Workforce Investment Board; membership; duties

(1) There is created the Mississippi State Workforce Investment Board. The Mississippi State Workforce Investment Board shall be composed of forty-one (41) voting members, of which a majority shall be representatives of business and industry in accordance with the federal Workforce Investment Act.

(a) The Governor shall appoint the following members of the board to serve a term of four (4) years:

(i) The Executive Director of the Mississippi Association of Supervisors, or his/her designee;

(ii) The Executive Director of the Mississippi Municipal League;

(iii) One (1) elected mayor;

(iv) One (1) representative of an apprenticeship program in the state;

(v) One (1) representative of labor organizations, who has been nominated by state labor federations;

(vi) One (1) representative of individuals and organizations that has experience with respect to youth activities;

(vii) One (1) representative of the Mississippi Association of Planning and Development Districts;

(viii) One (1) representative from each of the four (4) workforce areas in the state, who has been nominated by the community colleges in each respective area, with the consent of the elected county supervisors within the respective workforce area;

(ix) The chair of the Mississippi Association of Community and Junior Colleges; and

(x) Twenty-one (21) representatives of business owners nominated by business and industry organizations, which may include representatives of the various planning and development districts in Mississippi.

(b) The following state officials shall be members of the board:

(i) The Executive Director of the Mississippi Department of Employment Security;

(ii) The Executive Director of the Department of Rehabilitation Services;

(iii) The State Superintendent of Public Education;

(iv) The Executive Director of the Mississippi Development Authority;

(v) The Executive Director of the Mississippi Department of Human Services;

(vi) The Executive Director of the Mississippi Community College Board; and

(vii The Commissioner of the Institutions of Higher Learning.

(c) The Governor, or his designee, shall serve as a member.

(d) Four (4) legislators, who shall serve in a nonvoting capacity, two (2) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate, and two (2) of whom shall be appointed by the Speaker of the House from the membership of the Mississippi House of Representatives.

(e) The membership of the board shall reflect the diversity of the State of Mississippi.

(f) The Governor shall designate the Chairman of the Mississippi State Workforce Investment Board from among the voting members of the board, and a quorum of the board shall consist of a majority of the voting members of the board.

(g) The voting members of the board who are not state employees shall be entitled to reimbursement of their reasonable expenses incurred in carrying out their duties under this chapter, from any funds available for that purpose.

(2) The Mississippi Department of Employment Security shall establish limits on administrative costs for each portion of Mississippi's workforce development system consistent with the federal Workforce Investment Act or any future federal workforce legislation.

(3) The Mississippi State Workforce Investment Board shall have the following duties:

(a) Develop and submit to the Governor a strategic plan for an integrated state workforce development system that aligns resources and structures the system to more effectively and efficiently meet the demands of Mississippi's employers and job seekers. This plan will comply with the federal Workforce Investment Act of 1998, as amended, the federal Workforce Innovation and Opportunity Act of 2014 and amendments and successor legislation to these acts;

(b) Assist the Governor in the development and continuous improvement of the statewide workforce investment system that shall include:

(i) Development of linkages in order to assure coordination and nonduplication among programs and activities; and

(ii) Review local workforce development plans that reflect the use of funds from the federal Workforce Investment Act, Workforce Innovation and Opportunity Act, the Wagner-Peyser Act and the amendment or successor legislation to the acts, and the Mississippi Comprehensive Workforce Training and Education Consolidation Act;

(c) Recommend the designation of local workforce investment areas as required in Section 116 of the federal Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014. There shall be four (4) workforce investment areas that are generally aligned with the planning and development district structure in Mississippi. Planning and development districts will serve as the fiscal agents to manage Workforce Investment Act funds, oversee and support the local workforce investment boards aligned with the area and the local programs and activities as delivered by the one-stop employment and training system. The planning and development districts will perform this function through the

provisions of the county cooperative service districts created under Sections 19-3-101 through 19-3-115; however, planning and development districts currently performing this function under the Interlocal Cooperation Act of 1974, Sections 17-13-1 through 17-13-17, may continue to do so;

(d) Assist the Governor in the development of an allocation formula for the distribution of funds for adult employment and training activities and youth activities to local workforce investment areas;

(e) Recommend comprehensive, results-oriented measures that shall be applied to all of Mississippi's workforce development system programs;

(f) Assist the Governor in the establishment and management of a one-stop employment and training system conforming to the requirements of the federal Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014, as amended, recommending policy for implementing the Governor's approved plan for employment and training activities and services within the state. In developing this one-stop career operating system, the Mississippi State Workforce Investment Board, in conjunction with local workforce investment boards, shall:

(i) Design broad guidelines for the delivery of workforce development programs;

(ii) Identify all existing delivery agencies and other resources;

(iii) Define appropriate roles of the various agencies to include an analysis of service providers' strengths and weaknesses;

(iv) Determine the best way to utilize the various agencies to deliver services to recipients; and

(v) Develop a financial plan to support the delivery system that shall, at a minimum, include an accountability system;

(g) Assist the Governor in reducing duplication of services by urging the local workforce investment boards to designate the local community/junior college as the operator of the WIN Job Center. Incentive grants of Two Hundred Thousand Dollars ($200,000.00) from federal Workforce Investment Act funds may be awarded to the local workforce boards where the community/junior college district is designated as the WIN Job Center. These grants must be provided to the community and junior colleges for the extraordinary costs of coordinating with the Workforce Investment Act, advanced technology centers and advanced skills centers. In no case shall these funds be used to supplant state resources being used for operation of workforce development programs;

(h) To provide authority, in accordance with any executive order of the Governor, for developing the necessary collaboration among state agencies at the highest level for accomplishing the purposes of this chapter;

(i) To monitor the effectiveness of the workforce development centers and WIN job centers;

(j) To advise the Governor, public schools, community/junior colleges and institutions of higher learning on effective school-to-work transition policies and programs that link students moving from high school to higher education and students moving between community colleges and four-year institutions in pursuit of academic and technical skills training;

(k) To work with industry to identify barriers that inhibit the delivery of quality workforce education and the responsiveness of educational institutions to the needs of industry;

(l) To provide periodic assessments on effectiveness and results of the overall Mississippi comprehensive workforce development system and district councils; and

(m) To assist the Governor in carrying out any other responsibility required by the federal Workforce Investment Act of 1998, as amended and the Workforce Innovation and Opportunity Act, successor legislation and amendments.

(4) The Mississippi State Workforce Investment Board shall coordinate all training programs and funds in the State of Mississippi.

Each state agency director responsible for workforce training activities shall advise the Mississippi State Workforce Investment Board of appropriate federal and state requirements. Each such state agency director shall remain responsible for the actions of his agency; however, each state agency and director shall work cooperatively, and shall be individually and collectively responsible to the Governor for the successful implementation of the statewide workforce investment system. The Governor, as the Chief Executive Officer of the state, shall have complete authority to enforce cooperation among all entities within the state that utilize federal or state funding for the conduct of workforce development activities.

(5) The State Workforce Investment Board shall establish a Rules Committee. The Rules Committee, in consultation with the full board, shall be designated as the body with the sole authority to promulgate rules and regulations for distribution of Mississippi Works Funds created in Section 71-5-353. The State Workforce Investment Board Rules Committee shall develop and submit rules and regulations in accordance with the Mississippi Administrative Procedures Act, within sixty (60) days of March 21, 2016. The State Workforce Investment Board Rules Committee shall consist of the following State Workforce Investment Board members:

(a) The Executive Director of the Mississippi Development Authority;

(b) The Executive Director of the Mississippi Department of Employment Security;

(c) The Executive Director of the Mississippi Community College Board;

(d) The Chair of the Mississippi Association of Community and Junior Colleges;

(e) The Chair of the State Workforce Investment Board;

(f) A representative from the workforce areas selected by the Mississippi Association of Workforce Areas, Inc.;

(g) A business representative currently serving on the board, selected by the Chairman of the State Workforce Investment Board; and

(h) Two (2) legislators, who shall serve in a nonvoting capacity, one (1) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate and one (1) of whom shall be appointed by the Speaker of the House of Representatives from the membership of the Mississippi House of Representatives.

(6) The Mississippi State Workforce Investment Board shall create and implement performance metrics for the Mississippi Works Fund to determine the added value to the local and state economy and the contribution to the future growth of the state economy. A report on the performance of the fund shall be made to the Governor, Lieutenant Governor and Speaker of the House of Representatives annually, throughout the life of the fund.

The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in (1)(b)(vi).

The 2014 amendment substituted "forty-one (41)" for "thirty-nine (39)" in (1)(a). rewrote (iv) which read: "One (1) elected county supervisor," substituted "One (1)" for "Two (2)" and made related grammatical changes in (v) and (vi). added (ix). redesignated former (ix) as (x) and therein substituted "Twenty-one (21)" for "Nineteen (1)": added (1)(b)(vii) and made related stylistic changes; deleted former (1)(h). which read: "The Mississippi Department of Employment Security shall be responsible for providing necessary administrative, clerical and budget support for the State Workforce Investment Board"; in (3), added references to "the Workforce Innovation and Opportunity Act of 2014" and "amendments and successor legislation to these acts" or similar language wherever they appear; and added (5) and (6).

§ 37-153-9. Workforce Investment Boards; District Workforce Development Councils affiliated with community colleges

(1) In accordance with the federal Workforce Investment Act of 1998, there shall be established, for each of the four (4) state workforce areas prescribed in Section 37-153-3 (2)(c), a local workforce investment board to set policy for the portion of the state workforce investment system within the local area and carry out the provisions of the Workforce Investment Act.

(2) Each community college district shall have an affiliated District Workforce Development Council. The district council shall be composed of a diverse group of fifteen (15) persons appointed by the board of trustees of the affiliated public community or junior college. The members of each district council shall be selected from persons recommended by the chambers of commerce, employee groups, industrial foundations, community organizations and local governments located in the community college district of the affiliated community college with one (1) appointee being involved in basic literacy training. However, at least eight (8) members of each district council shall be chief executive officers, plant managers that are representatives of employers in that district

or service sector executives. The District Workforce Development Council affiliated with each respective community or junior college shall advise the president of the community or junior college on the operation of its workforce development center/one-stop center.

The Workforce Development Council shall have the following advisory duties:

(a) To develop an integrated and coordinated district workforce investment strategic plan that:

(i) Identifies workforce investment needs through job and employee assessments of local business and industry;

(ii) Sets short-term and long-term goals for industry-specific training and upgrading and for general development of the workforce; and

(iii) Provides for coordination of all training programs, including ABE/ High School Equivalency Diploma, Skills Enhancement and Industrial Services, and shall work collaboratively with the State Literacy Resource Center;

(b) To coordinate and integrate delivery of training as provided by the workforce development plan;

(c) To assist business and industry management in the transition to a high-powered, quality organization;

(d) To encourage continuous improvement through evaluation and assessment; and

(e) To oversee development of an extensive marketing plan to the employer community.

The 2014 amendment substituted "High School Equivalency Diploma " for "GED" in (2)(a)(iii).

§ 37-153-11. Workforce development centers

(1) There are created workforce development centers to provide assessment, training and placement services to individuals needing retraining, training and upgrading for small business and local industry. Each workforce development center shall be affiliated with a separate public community or junior college district.

(2) Each workforce development center shall be staffed and organized locally by the affiliated community college. The workforce development center shall serve as staff to the affiliated district council.

(3) Each workforce development center, working in concert with its affiliated district council, shall offer and arrange services to accomplish the purposes of this chapter, including, but not limited to, the following:

(a) For individuals needing training and retraining:

(i) Recruiting, assessing, counseling and referring to training or jobs;

(ii) Preemployment training for those with no experience in the private enterprise system;

(iii) Basic literacy skills training and high school equivalency education;

(iv) Vocational and technical training, full-time or part-time; and

(v) Short-term skills training for educationally and economically disadvantaged adults in cooperation with federally established employment and training programs;

(b) For specific small businesses, industries or firms within the district:

(i) Job analysis, testing and curriculum development;

(ii) Development of specific long-range training plans;

(iii) Industry or firm-related preemployment training;

(iv) Workplace basic skills and literacy training;

(v) Customized skills training;

(vi) Assistance in developing the capacity for total quality management training;

(vii) Technology transfer information and referral services to business of local applications of new research in cooperation with the University Research Center, the state's universities and other laboratories; and

(viii) Development of business plans;

(c) For public schools within the district technical assistance to secondary schools in curriculum coordination, development of tech prep programs, instructional development and resource coordination; and

(d) For economic development, a local forum and resource center for all local industrial development groups to meet and promote regional economic development.

(4) Each workforce development center shall compile and make accessible to the Mississippi Workforce Investment Board necessary information for use in evaluating outcomes of its efforts and in improving the quality of programs at each community college, and shall include information on literacy initiatives. Each workforce development center shall, through an interagency management information system, maintain records on new small businesses, placement, length of time on the job after placement and wage rates of those placed in a form containing such information as established by the state council.

(5) The Mississippi Community College Board is authorized to designate one or more workforce development centers at the request of affiliated community or junior colleges to provide skills training to individuals to enhance their ability to be employed in the motion picture industry in this state.

§ 37-153-13. State Board for Community and Junior Colleges designated primary support agency; powers

The Mississippi Community College Board is designated as the primary support agency to the workforce development centers. The Mississippi Community College Board may exercise the following powers:

(a) To provide the workforce development centers the assistance necessary to accomplish the purposes of this chapter;

(b) To provide the workforce development centers consistent standards and benchmarks to guide development of the local workforce development system and to provide a means by which the outcomes of local services can be measured;

(c) To develop the staff capacity to provide, broker or contract for the provision of technical assistance to the workforce development centers, including, but not limited to:

(i) Training local staff in methods of recruiting, assessment and career counseling;

(ii) Establishing rigorous and comprehensive local preemployment training programs;

(iii) Developing local institutional capacity to deliver total quality management training;

(iv) Developing local institutional capacity to transfer new technologists into the marketplace;

(v) Expanding the Skills Enhancement Program and improving the quality of adult literacy programs; and

(vi) Developing data for strategic planning;

(d) To collaborate with the Mississippi Development Authority and other economic development organizations to increase the community college systems' economic development potential;

(e) To administer presented and approved certification programs by the community colleges for tax credits and partnership funding for corporate training;

(f) To create and maintain an evaluation team that examines which kinds of curricula and programs and what forms of quality control of training are most productive so that the knowledge developed at one (1) institution of education can be transferred to others;

(g) To develop internal capacity to provide services and to contract for services from universities and other providers directly to local institutions;

(h) To develop and administer an incentive certification program;

(i) To develop and hire staff and purchase equipment necessary to accomplish the goals set forth in this section; and

(j) To collaborate, partner and contract for services with community-based organizations and disadvantaged businesses in the delivery of workforce training and career information especially to youth, as defined by the federal Workforce Investment Act, and to those adults who are in low income jobs or whose individual skill levels are so low as to be unable initially to be aided by a workforce development center. Community-based organizations and disadvantaged businesses must meet performance-based certification requirements set by the Mississippi Community College Board.

REGULATIONS OF THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

This document reflects changes received through May 5, 2017

CONTENTS

CHAPTER 101. PART 101 - REGULATIONS OF THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

INTRODUCTION

The Mississippi Department of Employment Security (hereafter MDES) is a state agency whose primary function is to promote employment security by helping individuals find jobs and obtain necessary vocational guidance, training, and retraining. An important adjunct duty of MDES is to collect unemployment insurance taxes from employers, administer the Unemployment Insurance Benefit Trust Fund, and distribute unemployment insurance benefits to individuals who, through no fault of their own, are temporarily unemployed. This system helps to stabilize Mississippi during times of economic insecurity caused by involuntary unemployment, while at the same time providing long term benefits to the state by creating a highly trained, versatile, and overall more successful workforce.

The law that governs the duties and responsibilities of MDES is known as the "Mississippi Employment Security Law," and is set forth in Sections 71-5-1 to 71-5-541 of the Mississippi Code Annotated. From these statutes, MDES is given the power to adopt, amend, or rescind such rules and regulations as it deems necessary to administer and interpret the Mississippi Employment Security Law. Thus, the following regulations are promulgated in furtherance of this power. They are set forth into the following sections: **Benefit Payment Regulations, Tax Regulations, Benefit Payment Control Regulations, and Benefit Appeal Regulations.**

For purposes of these regulations, the following terms and definitions shall apply:

References to the word **"Agency"** shall mean the Mississippi Department of Employment Security.

References to the word **"Law"** shall mean the "Mississippi Employment Security Law," which is the law that governs the duties and powers of the Mississippi Department of Employment Security. (Sections 71-5-1 to 71-5-541 of the Mississippi Code Annotated)

"ALJ" stands for Administrative Law Judge. The ALJ is the MDES official who presides over unemployment benefit and tax rate appeals.

"WIN Job Center" stands for Workforce Investment Network Job Center. A WIN Job Center is an office that provides convenient, one-stop employment and training services to employers and job seekers. The center combines federal, state, and community workforce programs. These centers are found throughout the state.

Any reference to the word **"Department"** shall mean the Mississippi Department of Employment Security.

CHAPTER 200. BENEFIT APPEAL REGULATIONS

200.00 Administrative Law Judge Defined.

(A) For purposes of the Law, a referee shall be an Administrative Law Judge (ALJ) as used throughout the following Regulations.

(B) Pursuant to and as provided by the Employment Security Act, appealed claims shall be heard and decided by an ALJ.

(C) Pursuant to and as provided by the Law, appeals of ALJ's decisions shall be heard and decided by the Board of Review.

200.01 Filing an Appeal.

(A) Time for Filing: Pursuant to Sections 71-5-517 and 71-5-519 of the Law, an interested party must file an appeal for an initial or amended determination within fourteen (14) days of the date the determination was mailed to the last known address or delivered electronically to the email address on record. If the last day to appeal falls on a Saturday, Sunday, or other legal holiday, or day in which the Agency is closed for business, then the time allowed to appeal shall run until the end of the next business day.

(B) Method of Filing: Appeals shall be filed using methods and procedures the Agency has established. Those methods prescribed by the Agency and new methods that may develop with technological advances and specifically include the following:

(1) delivery by the United States Postal Services to the address provided on the determination or decision being appealed;

(2) faxing to the number provided in the determination or decision being appealed;

(3) in-person at any WIN Job Center;

(4) electronically at the address provided in the determination or decision being appealed; or

(5) telephonically by calling the number provided on the determination or decision being appealed.

200.02 Scheduling of Hearings before the Appeals Department.

(A) Telephone Hearings: Filed appeals will be set for a hearing to be conducted using a telephone conferencing system, unless a request for a Video Conference or In-person Hearing is made and the Department determines it necessary.

(1) In-person Factors: Factors that will be considered prior to granting a request for a Video Conference or In-person Hearing include, but are not limited to, the timeliness of the request, the location of the hearing if held in-person, cost factors for the Agency and the parties, the number of witnesses and/or exhibits to be introduced, credibility issues, sense related issues (i.e. visual appearance), interpreter issues, and any clear and present safety concerns.

(2) Scheduling of a Hearing: Within fifteen (15) days of the receipt of an appeal (barring extraordinary circumstances) the Appeals Department of the Agency (the "Appeals Department"), shall schedule the appeal for a hearing before an ALJ. At least seven (7) days prior to the scheduled hearing date, a Notice of Hearing shall be sent by regular mail or electronically to the parties interested in the determination being appealed.

(3) Contents of the Notice of Hearing:

(a) A statement of the legal authority and jurisdiction under which the proceeding is being conducted;

(b) A reference to the applicable statutes and rules;

(c) A statement of the issues to be decided;

(d) A statement of the time (and if in person the place) of the hearing;

(e) A phone number that the parties must call the day before and leave their phone contact number for the time of the hearing.

(B) Consolidation: If the Agency determines that a number of appeals cases are similar in facts and circumstances, the Agency has the discretion to consolidate the cases. The Agency shall advise the parties to select from their members an individual to act as representative for their side (a claimants' representative and an employers' representative).

(C) Exhibits: A party desiring to offer exhibits as evidence shall provide copies to the Appeals Department and the opposing party which must be post marked, faxed, hand-delivered, or sent by electronic delivery, no less than three (3) days prior to the hearing unless approval for a later date is requested and granted for good cause.

(1) Information submitted to the Agency is not part of the appeals record unless discussed at the hearing and entered in the record. See Section 200.04 (D), Page 11 of these regulations for more on exhibits, evidence, and the record.

(D) Continuances: A request for a continuance must be made no later than three (3) days prior to the scheduled date of the hearing. A request for a continuance must include reasons that constitute good cause for granting the continuance. The need to attend to other business does not constitute

good cause. A request for continuance does not grant a stay of the scheduled hearing. The Appeals Department must affirmatively grant the request or the hearing remains as scheduled. In determining whether there is good cause to grant a continuance, the following factors will be considered:

(1) The amount of time between the receipt of the Notice of Hearing and the request for continuance;

(2) What actions the party requesting the continuance has taken to attend the hearing;

(3) Whether the request for continuance is due to illness or incapacity;

(4) Whether granting the continuance would result in a decision being issued over thirty (30) days after the appeal was filed; and

(5) To the extent the reason is the unavailability of counsel and whether there are other attorneys in the firm that may represent the requesting party.

200.03 Disqualification Duties; Reports; Conflicts of Interest:.

(A) An Administrative Law Judge (ALJ) or Board of Review Member (Board Member) may not participate in the hearing of an appeal in which they have an interest. Challenges to the interest of an ALJ or Board Member who refuses to recuse themselves may be heard and decided by the Chairman of the Board of Review.

(B) Whenever an ALJ is disqualified or it becomes impracticable for the ALJ to continue the hearing, another ALJ may continue with the hearing. If it is shown that substantial prejudice to any party will result, the new ALJ shall start the hearing over with a blank record. Whenever a Board Member is disqualified or it becomes impracticable for the Board Member to continue the hearing review, the remaining Board Members may continue with the review. If it is shown that substantial prejudice to any party will result, the remaining Board of Review members shall disregard prior discussions and start the hearing review over.

(C) Ex parte Communications: An ex parte communication is an off-the- record communication between a presiding ALJ or Board Member and one party to the appeal without the other party's presence. This practice is generally not acceptable. Further, the ALJ and the Board of Review shall maintain independent decision making from one another.

(1) In any adjudicatory proceeding, no Board Member or ALJ authorized to take final action or to make findings of fact and conclusions of law shall communicate directly or indirectly in connection with any issue of fact, law, or procedure, with any party or other persons legally interested in the proceeding, except with proper notice and opportunity for all parties to participate.

(2) This subsection does not prohibit Board Members from:

(a) Communicating in any respect with other Board Members; or

(b) Having the aid and advice of their own staff, counsel or consultants retained by the Board of Review who have not participated and will not participate in the Board of Review proceeding in an advocate capacity.

(3) This subsection does not prohibit any ALJ from:

(a) Communicating in any respect with other members of the Appeals Department; or

(b) Having the aid or advice of those members of her own staff, counsel or consultants retained by the Appeals Department who have not participated and will not participate in the Appeals Department proceeding in an advocate capacity.

200.04 Conduct of Hearings.

(A) The ALJ's duties are to:

(1) preside over and control the hearing;

(2) maintain the official timepiece of the hearing;

(3) administer oaths and affirmations;

(4) rule on the admissibility of evidence;

(5) set the time and place for continued hearings;

(6) when warranted, fix the time for filing evidence, briefs, and other written submissions; and

(7) take other actions authorized by the Law and these Regulations.

(B) Every interested party shall have the right to present evidence and arguments on all relevant and noticed issues during the course of a hearing. This shall be done through the opportunity to testify, call and question witnesses, question or cross examine the other party and their witnesses that testify, present exhibits, and object to the other party's exhibits.

(C) The parties to an appeal, with the consent of the ALJ, may stipulate to facts involved in writing or on the record. The ALJ may decide the appeal on the basis of the stipulated facts or, in their discretion, may proceed with a hearing and take such further evidence as they deem necessary to determine the facts and proper decision.

(D) Evidence (Testimony and Exhibits):

(1) Hearsay evidence may be admitted and weighed accordingly. Generally, evidence will only be admitted and/or given weight if:

a. it meets a hearsay exception, or

b. is from a source normally considered reliable, or

c. is corroborated by other witnesses, or

d. the ALJ otherwise determines that, in his or her opinion, the hearsay may be relied upon considering all of the facts and circumstances.

(2) All testimony shall be under oath. The ALJ shall administer an oath to all witnesses before they testify in a proceeding.

(3) Exhibits to be offered into evidence at the hearing must be submitted as described in 200.02 (D) above. A party or witness must explain what the exhibits are, and then must request the exhibits be entered as evidence. Prior to entering exhibits into the record as evidence, the ALJ will give the other party an opportunity to object to the admission. The ALJ will then decide whether or not to enter the exhibits in as evidence.

(4) Parties should submit all relevant documents prior to the hearing date in accordance with 200.02(D). Further, parties should bring individuals with first-hand knowledge of facts and events regarding the issues to the hearing as witnesses.

(5) When the decision is made, the ALJ will consider only the evidence entered into the record during the hearing, or evidence from which judicial notice is taken.

(6) The ALJ and the Board of Review may take judicial notice of evidence, including Agency generated documents and forms, which shall then become record evidence. Judicial notice for purposes of these regulations is defined as:

(a) that which is commonly known or accepted;

(b) that which is accepted as an authority on a matter especially of a scientific or technical nature;

(c) that which is generated by a Court, Agency or other government body; or (d) that which is the best evidence available to prove or disprove a fact in the case; and (e) such evidence is admissible without being formerly explained and offered by a party.

(7) Facts entered through judicial notice will be indicated as such in the record and/or the decision.

(8) If an appeal is made to the Board of Review, only testimony and exhibits entered into evidence at the hearing, or otherwise submitted by the ALJ with the appeal, will be included in the appeals record forwarded to the Board of Review. Only the record transcript and exhibits before the Board of Review will be submitted to the Courts, including additional evidence, exhibits, and testimony taken by the Board.

(E) Sequestration of Witnesses. All witnesses present, not including any interested party or their designated representative, who has not yet testified in the proceeding before the Board of Review or Appeals Department, may be sequestered at the request of a party or the discretion of the ALJ or Board of Review. Witnesses who have testified, but who may be recalled to testify further may also be sequestered at the request of any party or upon the initiative of the Board of Review or the ALJ.

(F) Subpoenas.

(1) Subpoenas to compel the attendance of witnesses and the production of records for a hearing of an appeal may be issued by a member of the Board of Review or by the ALJ before whom the hearing is scheduled. A subpoena will only be issued if a request showing the necessity for the issuance of the subpoena is made in writing and the ALJ or Board of Review deems it necessary.

(2) Witnesses subpoenaed for hearings before an ALJ or the Board of Review shall be paid a daily witness fee amount, as well as a mileage per diem for in-person hearings according to the rates provided in Section 25-3-41 of the Law.

(3) No witness fee shall be allowed a witness who does not appear at the hearing when called or who is disqualified from testifying. No witness fees or mileage will be paid unless the ALJ or the Chairman of the Board of Review before whom the witness was called to testify certifies the attendance of the witness and the amount of witness fee to which she is entitled. One copy of such witness certificate shall be given to the witness, one transmitted to the Agency, and one copy preserved in the file of the case.

(G) Record: A record shall be kept of the proceedings, which shall include the following:

(1) All applications, pleadings, motions, preliminary and interlocutory rulings, and orders;

(2) Evidence received or considered;

(3) A statement of facts officially noticed;

(4) Offers of proof, objections, and rulings thereon; and

(5) Proposed findings and exceptions, if any;

(6) The decision of the Board of Review and the Appeals Department

The record does not include documents submitted to the Agency prior to an appeal being filed that are not either resubmitted after the appeal is filed or discussed during the hearing.

(H) Other recordings: In order to assure the confidentiality of hearings before an ALJ, no party or participant at a hearing shall be permitted to record such hearing by any means, and the recording made by the ALJ shall be the official record of the proceeding. This prohibition is pursuant to the provisions of Sections 71-5-127 and 71-5-525 of the Law.

(I) [omitted by agency]

(J) Dismissal Due To Behavior. In the event any party or party's representative during a hearing conducts themselves in a manner determined by the ALJ to be disrespectful, and who, after having been warned once to stop, fails to stop, shall be dismissed from the hearing. If, in the ALJ's opinion, justice requires that the party be granted a continuance to obtain another representative, then it shall be granted.

200.05 Disposition without full hearing.

(A) The Board of Review or the Appeals Department may make informal disposition of any adjudicatory proceeding by default when the appealing party or the party with the burden of proof fails to appear at the scheduled hearing. A party shall be deemed to have failed to timely appear at a hearing when the party fails to appear as provided in the notice of hearing, including calling an Appeals Department telephone number or providing in advance a telephone number as required by the notice of hearing, or by failing to be present at the telephone number provided by the party for ten (10) or more minutes past the scheduled start time of the hearing.

(B) Any such default may be set-aside by the Board of Review or Appeals Department for good cause shown. The procedure for good cause hearings is as follows:

(1) No later than fourteen (14) days after the date of the postal or electronic mailing of the decision, upon written request setting forth the reasons for failing to appear, the Appeals Department may provide a good cause hearing to a party that failed to appear at the hearing. If the Appeals Department determines that good cause exists, it will conduct a hearing on the underlying substantive issues. Similarly, upon written request setting forth the reasons for failing to appear at a hearing, the Board of Review may provide a good cause hearing to the appealing party. A hearing on the underlying substantive issues shall be conducted only if the Board of Review determines that good cause exists.

(2) If it is decided that a party did not have good cause for nonappearance, no evidence will be taken on the substantive issues, and the decision previously made will remain unaffected and in force.

200.06 Decisions.

(A) Every decision of the Board of Review and Appeals Department shall be in writing and shall include findings of fact sufficient to inform the parties of the basis for the conclusions of law and the decision. Findings of fact must be supported by substantial evidence in the record.

(B) A copy of the decision shall be promptly mailed via U.S. Mail or electronically to each party to the proceeding and their representative of record. Written notice of the party's rights to appeal to the Board of Review or the courts, and the time within which such action must be taken, shall be given to each party with the decision.

(C) The following statement shall appear on the ALJ's decision: "If an appeal is taken to the Board of Review, such appeal will be considered on the record previously made, and no hearing before the Board will be scheduled."

(D) The Board of Review shall maintain a record of the vote of each member of the Board of Review with respect to the Board of Review decision. If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision setting forth the reasons why it fails to agree with the majority.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

201.00 Appeals Pending before Administrative Law Judge and Removed to Board of Review.

(A) The Chairman of the Board of Review may remove to the Board of Review the proceedings on any claim pending before an ALJ.

(B) Any appeal removed to the Board of Review shall be presented, heard, and decided by the Board of Review in the manner prescribed by the Law and in the preceding and following Regulations.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

202.00 Appeals from Decisions of Administrative Law Judges to the Board of Review.

Any interested party to a decision of an ALJ, adversely affected by the decision, shall have the right to appeal to the Board of Review.

202.01 Method of Review.

(A) The Board of Review may affirm, modify, reverse, or set aside any ALJ decision based on the record previously made by the ALJ. All appeals to the Board of Review shall be heard upon the evidence in the record previously made. The Board of Review, at its discretion, may also consider written arguments or briefs filed by any of the parties.

(B) The Board of Review, in its discretion, may remand any claim that is before it to an ALJ for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the ALJ in the manner prescribed for the conduct of hearings on appeal before the ALJ. Upon the completion of the taking of evidence by an ALJ, pursuant to the direction of the Board of Review, the record of such evidence shall be returned to the Board of Review for a decision. Alternatively, the ALJ may be instructed to issue a decision and in that case, a right of appeal to the Board of Review shall be provided to the parties.

202.02 Appeals by Board of Review of its Own Motion.

(A) Within fourteen (14) days following a decision issued by an ALJ, and in the absence of filing of a notice of appeal by any of the parties, the Board of Review, on its own motion, may order the parties to appear before it for a hearing on the claim or any issue involved.

(B) Such hearing shall be held only after ten (10) days prior notice to the parties, and shall be heard in the manner prescribed for the hearing of appeals from the decision of the ALJ.

202.03 Board of Review Decision.

Any decision of the Board of Review shall become final ten (10) days after the regular U.S. Mail mailing date or electronic transmittal date of the notification. No request by any party for reconsideration by the Board of its decision, made by a standard review of an ALJ's hearing record, shall be considered by the Board.

However, in any case in which the Board of Review conducts a hearing and receives additional evidence, testimony, or hears argument on the issues, any party not present or represented at such a hearing may, not later than ten (10) days after the date of notification of the Board's decision, file with the Board a written request to set aside such decision and reopen the case for further hearings.

Such request shall state the reasons for the party's failure to appear and if the Board of Review determines that the party has made a showing of good cause for his or her failure to appear, it shall reschedule the case for further hearing and its final decision.

202.04 Appeals to Courts.

Within ten (10) days after the decision of the Board of Review has become final (see 202.4), any party who is aggrieved thereby may appeal an action in the Circuit Court of the County in which they reside against the Agency for a review of such decision. The Agency is also authorized to appeal decisions of the Board of Review involving questions of interpretation of the Law. The Agency will provide notice to the parties to the decision, and such an appeal shall not have the effect of denying benefits to any claimant who has been awarded benefits by virtue of the decision of the Board of Review from which the appeal is taken.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

203.00 Requests to Supply Information from the Records of the Department of Employment Security.

Requests for information from the records of the Agency by a party to an appeal, or their representative, shall be complied with to the extent necessary for the proper disposition of the claim, in accordance with Section 71-5-127 of the :Law, All such requests shall state the nature of the information desired. Such compliance may include the furnishing of a copy of the record on appeal to a party, which will generally be a recorded copy of the hearing.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

204.00 Representation before Administrative Law Judges and Board of Review.

(A) Any individual may represent themselves, or have a duly authorized representative or counsel in any evidentiary hearing before an ALJ or the Board of Review. Any partnership may be represented by any of its members or its duly authorized representative. Any corporation or association may be represented by an officer or its duly authorized representative.

(B) All fees for representation that are charged to claimants must be approved by the ALJ or the Board of Review, as the case may be, for representation in hearings before them. No fee shall be allowed unless request for such fee shall have been filed with the ALJ or the Board of Review, as the case may be, prior to the adjournment of the hearing.

(C) As authorized in Section 71-5-537 of the Law, the Board of Review hereby approves, subject to the provisions of subsection (4) below, the following charges for representing claimants by persons entitled to charge for such representation by the laws of this State:

(1) For representation in proceedings before an ALJ, not to exceed eighty (80%) per centum of the claimant's weekly benefit amount or thirty dollars ($ 30.00), whichever is greater.

(2) For representation in proceedings before the Board of Review, not to exceed one hundred twenty (120%) per centum of the claimant's weekly benefits amount or fifty dollars ($ 50.00) whichever is greater.

(3) For representation in proceedings in the Circuit Court or the Supreme Court, such fee as may be approved by the Court.

(4) In any case in which the claimant and his or her counsel believe the fee as approved in subsection (1) or (2) above for representation in proceedings before the ALJ or the Board of Review is insufficient, the amount of the fee may be appealed by giving notice in writing to the ALJ or the Board of Review at the hearing and filing within ten (10) days. A sworn statement, signed by the claimant and the counsel, of the facts upon which they base their contention must be presented. The Board of Review will render its final decision on any such appeal on the amount of fee at its next regular meeting after receipt of the sworn statement. In appeals on the amount of fee for representation in proceedings before the ALJ, the Board of Review may request a statement from the ALJ on the reasonableness of the fee being requested.

(5) An appeal on the amount of fee for representation of a claimant shall be entirely separate and apart from and shall have no bearings whatsoever upon the appeal proceedings on the merits of the pertinent claim, decisions, or appeals.

(6) If a party is represented by more than one duly authorized representative at a hearing, only one of them may participate in the hearing. Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

205.00 Waiver of Notice and Entry of Appearance.

Interested parties to whom a notice of any hearing on appeal is required by these Regulations to be given, whether before an ALJ or the Board of Review, may, prior to or at such hearing, waive the requirement of such notice and enter their appearance at such hearing for all purposes. Such waiver and entry of appearance is evidenced by a statement in writing to that effect, or a statement duly recorded, which is made part of the record of the hearing.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

206.00 Records of Decisions of Administrative Law Judges and Board of Review to be Kept.

(A) All decisions of any ALJ and of the Board of Review shall be listed in a minute book and /or electronic file provided for such purpose. Decisions of any ALJ shall be signed by the individual rendering the same, and decisions of the Board of Review shall be signed as "The Board of Review." The minute book or electronic file shall be kept by the Chairman of the Board of Review.

(B) Copies of all decisions of the ALJ and the Board of Review shall be kept on file, via either paper file or electronic file, at the Agency in Jackson, Mississippi. Such decisions shall be open for inspection, without in any manner without revealing the names of any of the parties or witnesses involved. The said decisions shall be numbered, codified, or identified by the Board of Review, or its authorized representative, and in such manner as it shall determine.

(C) For purposes of these regulations, "parties in interest", "interested parties", and "parties interested" shall mean, unless otherwise indicated, the claimant, the Agency, the Claims Examiner whose determination has been appealed, and the claimant's last employer, and any other person whose interests may be proximately affected.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

207.00 Precedent Decision.

(A) The Board of Review, by unanimous vote, may designate all or part of a decision as a precedent decision if it contains a significant legal or policy determination of general application that is likely to recur.

(B) A legal or policy determination is significant if it establishes a rule of law or policy, resolves an unsettled area of law or overrules, modifies, refines, clarifies, or explains a prior precedent decision.

(C) A legal or policy determination is of general application if the facts are sufficiently common to give guidance to future cases, clearly illuminate the legal or policy determination, and are significant to the parties, the public, the taxpayers, or the operation of the Agency.

(D) A precedent decision shall be clearly identified as such and published in such a manner as to make it available for public use. Information identifying any party shall be removed prior to the publications.

(E) The Board shall maintain an index of significant legal and policy determinations made in precedent decisions.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

208.00 Responsibility of Parties to Notify the Appeals Department of Address Change.

(A) It is the responsibility of each party to an appeal before the ALJ or the Board of Review to notify the Appeals Department of any change of name or address. If any party to an appeal has reason to believe that it will be difficult to receive mail or email at the address or email address provided to the Appeals Department, the party shall make the necessary arrangements to insure timely receipt of all correspondence from the Agency.

(B) In any instance where a party alleges failure to receive timely notice of a hearing, or of a decision from the ALJ or Board of Review, it shall be the burden of such party to prove compliance with subsection (A) above.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

209.00 Notices from the Appeals Department.

Any notice of hearing, decision, or continuance properly named, addressed, and mailed or electronically delivered by the Appeals Department and Board of Review to any interested party, and not returned by the U.S. Postal Service or as undeliverable through email, shall create a rebuttable presumption of proper delivery and receipt of such notice or decision.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 300. BENEFIT REGULATIONS

300.00 Filing Initial, Additional and Reopened Claims.

The effective date of an initial claim will be the Sunday preceding the date on which the individual files a claim for benefits by any method provided by the Agency.

If the claim is filed on a Sunday, then the claim will be effective on the Sunday it is filed. If the Agency determines that an individual filed their initial claim at the first available opportunity, the effective date of the claim will be the Sunday prior to the date they became unemployed.

An initial claim for benefits may be backdated to the Sunday proceeding the date the individual became unemployed provided good cause is established, and the individual reports within seven (7) calendar days of the date the first opportunity was afforded by the Agency.

Good cause will be defined as circumstances beyond the control of the person. For the purposes of this paragraph, the first day of unemployment for an individual whose unemployment begins on Saturday or Sunday shall be the following Monday.

In case of a catastrophic occurrence, the Agency will have the authority to waive the time afforded the applicant to file a claim.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

301.00 Reconsideration of Initial Determination.

An initial determination may for good cause be reconsidered if the request is filed within fourteen (14) days from the date such notification was mailed or electronically delivered to an individual's last known address or email address. The Agency has the discretionary authority to consider untimely filed requests made under this regulation if it can be shown there are compelling circumstances which justify a reconsideration such as fraud, misconception of facts or any other reason the Agency deems compelling.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

302.00 Filing Mass Lay-off Initial Claims.

Initial claims for benefits for individuals may be filed in groups for a layoff from the same employer for the same time period of unemployment. The effective date of the claims will be determined by the Agency based on the first day of unemployment, provided the person files in the specified manner, at a designated time, date, and place agreed on by the employer and the Agency.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

303.00 Filing Weekly Certifications for Benefits.

A claim for waiting period credit or benefits must be filed by the Friday following the week being claimed, using methods prescribed by the Agency. An exception to this rule can be considered if the individual files their claim within fourteen (14) days of the week being filed, provided no availability issue exists.

If an individual is in a claim series and makes no attempt to file a continued claim for three (3) or more consecutive weeks, no claim for benefits will be allowed until the claim is reopened. A reopened claim is an additional claim without interim employment with a new effective date. The effective date of the reopened claim will be the Sunday prior to the date in which the individual attempted to file another claim.

The Agency will have the authority to deny benefits or waiting period credit for any week which is not properly filed within set guidelines.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

304.00 Reporting Requirements.

Individuals must report to the Agency as directed. Such reporting may be in person or by other methods established by the Agency. Failure to report may result in a denial of benefits.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

305.00 Eligibility for Unemployment Benefits.

An individual must follow the requirements in Mississippi Code Annotated Section 71-5.511 to be eligible for unemployment benefits and to maintain their ongoing eligibility.

305.01 Registering for Work.

In order to receive unemployment benefits an individual must be registered for work through the Agency unless they fall within one the following categories of workers:

1. Temporary layoff of less than four (4) weeks;

2. In Agency approved training;

3. Unemployed due to a Labor Dispute; and/or

4. Individuals who have a specific return to work date.

305.02 Work Search.

In accordance with Mississippi Code Annotated Section 71-5-11, individuals must make an active search for full-time (35 hours or more) work in order to receive unemployment insurance benefits. The Agency defines “actively seeking work” as follows:

1. The individual must register for employment services as prescribed by MDES.

2. The individual must engage in an active weekly search for full-time work and include an appropriate number of employer contacts as prescribed by MDES and make contact with at least three (3) employers each week. At least one (1) employer contact must include the submission of an application for employment. Additionally, the work applied for must be appropriate in light of the labor market and the individual’s skills and capabilities. An “application for employment” is defined as any completed application or resume submitted to an employer that may reasonable be expected to have an opening for for suitable work, either in-person, via mail, or via electronic communication; or any telephonic or in-person interview with an employer that may reasonably expected to have an opening for suitable work.

3. The individual must maintain and provide a record of his/her work search including the name, address and phone number of the employer contacted, if contacted via electronic means, the website, email address or fax number of the employer, the name of the individual contacted, method of contact, and date of contact.

4. The individual cannot report the same employer contact until three (3) weeks after it was first reported to MDES, unless the employer contact is part of a progressive hiring process.

   If an individual fails to comply with any of the above stated requirements, the individual shall be disqualified from receiving unemployment benefits for the week or weeks in which the violation or violations occurred. The agency may impose more stringent penalties in situations in which an individual is shown to be a habitual violator of the requirements contained in this regulation. Acceptable employer contacts may include, but are not limited to:

   a. Making a self-referral for job openings via the MDES Online Employment Services System.

   b. Visiting a local WIN Job Center for staff-assisted job referrals and making employer contacts based on those referrals.

   c. Completing a job application with employers who may reasonably be expected to have openings for suitable work. The job application may be submitted in person, online, by fax or in any other manner directed by the employer and appropriate for the type of work the individual is seeking.

   d. Mailing a job application and/or resume as instructed by a job notice.

   e. Making in-person visits with employers that may reasonably be expected to have openings for suitable work.

   f. Interviewing with potential employers in person, by telephone or in any other manner directed by the employer and appropriate for the type of work the individual is seeking.

   g. Attending a job fair and submitting an application or providing a resume to employers in attendance.

The work search requirements for certain individuals may be waived by the Agency for the following reasons: job attached (as defined by the Agency), Jury Duty, Approved Training, and Approved Self-Employment Assistance Program, individuals who are members in good standing of a union that maintains a nondiscriminatory hiring hall, as that term is defined by the Landrum- Griffin Act, and who maintain contact with and use the placement services of the hiring hall. The Agency may also waive this requirement due to other extenuating circumstances as determined by the Agency.

305.03 Able and Available.

Individuals must be able to work and available for work to be eligible for unemployment benefits with respect to any week. If the Department finds that an individual may not be able to work and available for work due to a medical condition, illness or disability, that individual will be required to provide the Department certification from a physician, medical facility, medical practice, physician assistant, or nurse practitioner that includes the following:

1. Whether the individual was advised to leave work;

2. Whether the individual is released to return to their usual work, and if so, the date of release;

3. If the individual is not released to return to their usual work, an explanation of their restrictions.

After the certification is received, the Department will investigate to determine whether the individual is able to work and available for work. If the Department finds that the individual is not able to work and available for work, an appealable decision outlining the Department's decision will be sent to the individual. If the individual fails to return the medical certificate within time period prescribed by the Department, the Department has the discretion to disallow benefits to the individual for failure to return the requested information.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

306.00 Lifting Disqualification.

Some disqualifications require that an individual return to work and earn eight times the Weekly Benefit Amount (8XWBA) in covered employment. The WBA of the benefit year in which the separation occurred must be used to remove this disqualification.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

307.00 Approved Training.

An individual is considered to be in approved training if they are participating in training which will enhance their chances of obtaining employment. Usually, the individual is referred to such training through the Agency. However, if the training is self-funded, and is identical to the training to which applicants are normally referred, they will be considered to be in approved training.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

308.00 Misconduct Defined.

A. For purposes of Mississippi Code Section 71-5-513, misconduct shall be defined as including but not limited to:

1. The failure to obey orders, rules or instructions, or failure to discharge the duties for which an individual was employed;

a. An individual shall be found guilty of employee misconduct for the violation of an employer rule only under the following conditions:

i. the employee knew or should have known of the rule;

ii. the rule was lawful and reasonably related to the job environment and performance; and

iii. the rule is fairly and consistently enforced.

2. A substantial disregard of the employer's interests or of the employee's duties and obligations to the employer;

3. Conduct which shows intentional disregard -or if not intentional disregard, utter indifference - of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of the employee; or

4. Carelessness or negligence of such degree or recurrence as to demonstrate wrongful intent.

However, mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief or the law is not misconduct. Conduct mandated by the law does not include court ordered conduct resulting from claimant's illegal activity; this may be considered misconduct

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

309.00 Good Cause Defined.

If the employment conditions or circumstances leading to claimant's voluntary separation from employment are such that an ordinary prudent employee would leave their employment, the claimant has demonstrated good cause, for the purpose of Mississippi Code Annotated Section 71-5-513. Additionally, claimant must show that after exploring alternatives to quitting, and after making reasonable efforts to preserve their employment, an ordinary prudent person would be compelled to voluntarily quit their employment.

309.01 Domestic Violence Exception.

An individual is disqualified for leaving employment for marital, filial, or domestic circumstances. However, the claim may be allowed if sufficient evidence shows that continuing in the employment would be a detriment to the welfare of the claimant, or the claimant's under-aged dependents, due to domestic violence.

309.02 Military Exception.

An individual is disqualified for leaving employment for marital, filial, or domestic circumstances, however, leaving an employer to accompany a spouse who is on active duty, and has been reassigned from one military assignment to another shall be deemed to be for good cause; provided, however, that a rated employer's account shall not be charged for benefits paid. Reimbursing employers are not entitled to an non-charge under the law.

309.03 Temporary Agencies.

The Agency will have sole discretion to determine if a temporary employer or employee has met the requirements of Section 71-5-511(l) of the Law. In making its determination, the Agency may consider the following factors:

(1) the policy of the temporary agency;

(2) the reasonableness of the policy;

(3) the actions of the temporary agency; and

(4) the actions of the temporary employee.

Upon the completion of an assignment, if the temporary employee contacts the temporary employer and is given a new job assignment, the Agency may examine the suitability of the new assignment under Section 71-5-513 (A)(3)(a) of the Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

310.00 Refusal of Work Disqualification.

An individual is disqualified for the week in which the failure to accept work occurred, and for not more than twelve (12) weeks immediately following such week, as determined by the Agency according to the circumstances in each case. The Agency has the discretion of issuing varying lengths of disqualification. However, a disqualification for refusing an offer of suitable work should not exceed the length of the available suitable work.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

311.00 New Benefit Year Requalification Provision.

An individual who established one (1) benefit year, and received benefits, is not eligible for benefits in the second benefit year unless they have returned to work and earned eight (8) times their previous weekly benefit amount (WBA). These wages must be in covered employment and must be earned after the effective date of the prior benefit year.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

312.00 School Employee Designated Vacation or Holiday.

School employees who are off work for a designated vacation period, such as Christmas holiday or spring break are subject to denial under Section 71-5-511(k) of the Law which provides for denial of benefits during a designated holiday or vacation period. However, if claims are filed by school employees between academic years or terms, such as summer break, they must be adjudicated under Section 71-5-511(h) of the Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

313.00 Total Unemployment Definition.

An individual is considered totally unemployed during any week in which they perform no services and in which no wages are payable to him or her. They are considered part totally unemployed if wages are less than their weekly benefit amount plus forty dollars ($ 40.00) or if they work less than full time. Employment less than thirty-five (35) hours per week will not be considered full time, unless industry standards are considered. Such consideration will be at the discretion of the Agency.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

314.00 Claim Week.

An individual's week of total or part-total unemployment shall consist of a calendar week (Sunday through Saturday). If any part of a week falls within a benefit year, the entire week is considered to be in that benefit year.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

315.00 Change of Address.

Each claimant or employer must notify the Agency immediately of any change in their address.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

316.00 Employers' responsibility to furnish separation information.

Upon request of the Agency, each employer or employing unit shall furnish to the Agency information concerning any worker separated from their work with such employer or employing unit, including:

(1) the last day on which such worker was employed;

(2) the reason for their separation from work; and

(3) such other matters as may be requested. Such information shall be furnished to the Agency within the specified time. It will be presumed that employers who fail to furnish such information within the time required have admitted that the individual claiming benefits is not subject to disqualification.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

317.00 Employers Required to Report Labor Disputes.

An employer is required to notify the Agency of cases of unemployment due to a strike, lockout. or other labor dispute. This may be through the WIN Job Center nearest to their place of business or to the state office of the Agency. The notification by employer should include the circumstances surrounding the dispute, including the number of workers affected and a list of workers ordinarily attached to the business or the establishment where such unemployment exists.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

318.00 Payment of Benefits to Interstate Claimants.

Regulations 318.01 through 318.07 shall govern the Agency in its administrative cooperation with other states adopting similar regulations for the payment of benefits to interstate claimants.

318.01 Definitions.

As used in this Regulation, unless the context clearly requires otherwise:

(A) Interstate Benefit Payment Plan means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(B) Interstate claimant means an individual who claims benefits under the unemployment insurance law of one or more liable states, through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Agency finds that this exclusion would create undue hardship on such claimant in specified areas.

(C) State includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(D) Agent State means any state in which an individual files a claim for benefits from another state.

(E) Liable State means any state against which an individual files a claim for benefits through another state.

(F) Benefits mean the compensation payable to an individual, with respect to their unemployment under the unemployment insurance law of any state.

(G) Week of Unemployment includes any week of unemployment as defined in the Law of the liable state from which benefits with respect to such week are claimed.

318.02 Registration for work.

(A) Each interstate claimant shall be registered for work, through any public employment office in the agent state as required by the Law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state provided Mississippi is the liable state and such requirements are not contrary to the provisions of the Mississippi Employment Security Law.

(B) Each agent state shall duly report to the liable state, whether each interstate claimant meets the registration requirements of the agent state.

318.03 Benefit Rights for Interstate Claimants.

If a claimant files a claim against a state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

318.04 Claims for Benefits.

(A) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the reporting period used by the agent state. Any adjustments required to fit the reporting period used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(B) Claims shall be filed in accordance with agent state regulations for intrastate claims by established agency methods.

(1) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one (1) week, or one (1) reporting period, late. If a claimant files more than one (1) reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(2) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state, provided the same is not inconsistent with the provisions of the Mississippi Employment Security Law.

318.05 Determination of Claims.

(A) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state such facts relating to the claimant's availability for work and eligibility for benefits as are readily determined in and by the agent state.

(B) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

318.06 Appellate Procedure.

(A) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(B) With respect to the time limits imposed by the law of the liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

318.07 Extension of interstate benefit payments to include claims taken in and for Canada.

As part of the interstate agreement, the regulations regarding interstate claims shall apply to claims taken in and for Canada.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

319.00 Benefits - Deceased Claimants.

In order to provide for the payment of benefits in cases where the claimant has filed a valid claim and has died before receiving payment, the Agency adopts the following regulations:

(A) Wholly or partially paid benefits due at the time of the claimant's death will be paid to the duly qualified administrator or executor of the estate of the deceased claimant. If an administrator or executor is not appointed, the benefits will be paid to the claimant's heir or heirs at law as determined by the laws of descent and distribution in the State of Mississippi, and supported by appropriate affidavit.

(B) Any benefit checks that have not been cashed that were issued directly to the deceased claimant shall be returned to the Agency for cancellation before any funds shall be paid in lieu of such check.

(C) Any claim for benefits due a deceased claimant by any person as herein provided must be filed with the Agency within ninety (90) days following the death of the claimant; provided, however, the Executive Director, may extend said period.

(D) It is the responsibility of the person claiming payment of benefits due a deceased claimant to request payment of such benefits, and must provide an affidavit setting forth facts upon which the claim is based.

(E) Payments due a deceased claimant that are made by electronic processes will only be issued to the individual requesting said benefits under the guidelines established by the banking industry.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

320.00 Seasonal Industry.

(A) Definitions:

(1) Seasonal industry is

(a) that group of employers classified as "cotton gins" under the four-digit Industrial Classification Code based on the Standard Industrial Classification Manual. If an employer with a different classification has a cotton ginning operation, the Agency will assign such unit a sub-classification for cotton gins.

(b) that group of employers who employ vendors, concessionaires, and people working at jobs providing services at professional baseball stadiums.

(2) Seasonal employment is employment in a seasonal industry within the seasonal operating period, as determined by the Agency.

(3) Seasonal wages are wages paid in seasonal employment as above defined.

(4) Seasonal benefits are benefits based on seasonal wages as above defined.

(5) Non-seasonal employment is employment for which wages paid in such employment carry no seasonal restrictions. This employment may consist of :

(a) Employment in the seasonal industry for which wages are paid outside the seasonal operating period (employment in the seasonal industry and in no other part of an employer's operations).

(b) Employment in any other covered employment as defined in the Law.

(6) Non-seasonal wages are wages paid in non-seasonal employment as defined above.

(7) Non-seasonal benefits are benefits based on non-seasonal wages as defined above.

(B) The seasonal operating period, as determined by the Department:

(1) for the cotton ginning industry, shall be from September 1 through December 31 of each year.

(2) for the professional baseball industry, as defined in A(1)(b), above shall be from April 1 through September 15 of each year.

(C) Employer quarterly reports- Each employer in the cotton ginning industry shall keep separate accounts of wages paid to employees so that the following separate quarterly reports may be made to the Department if appropriate.

(1) Wages paid in the cotton ginning industry inside the seasonal operating period.

(2) Wages paid in the cotton ginning industry outside the seasonal operating period.

(3) Wages paid in any other covered employment.

(D) Professional Baseball Industry Report - Each employer in the professional baseball industry, as defined in A(1)(b) above, shall, within fourteen (14) days from the mailing date or date of electronic delivery of the Notice to Employer of Claim Filed and Request for Information (Form UI-21A) submit to the Agency information as to the type of service performed by the individual, and the period of employment, in order for the Agency to properly administer the seasonal provision of the Law.

(E) (1) Payment of benefits to Seasonal Workers. The weekly benefit amount and the maximum benefit amount of any claimant who is a seasonal worker shall be calculated in the usual manner as prescribed by the Law. Seasonal benefit rights shall be used in payment of such worker's benefits only when the benefits accrue during weeks of unemployment within the seasonal operating period as defined above. Any week which begins within the seasonal operating period shall be deemed to be within the seasonal operating period.

(2) The calculation of a benefit determination for individuals with seasonal cotton ginning wages shall include the amount of "seasonal" benefits which may be payable only for weeks of unemployment occurring within the seasonal operating period, and the amount of benefits based on wages with no seasonal restrictions, if any. Benefits with no seasonal restrictions shall be payable to cotton gin workers for a week of unemployment during the season only if their seasonal benefits have previously been exhausted. Seasonal benefits and benefits with no seasonal restrictions may be payable for weeks of unemployment occurring during the seasonal operating period. Benefits with no seasonal restrictions shall be payable to a seasonal worker for weeks of unemployment occurring outside such period, but shall be based only on wages earned in employment with no seasonal restrictions.

(3) Benefits paid to a seasonal worker and a non-seasonal worker shall be charged to an employer's experience rating in the usual manner as prescribed by Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

321.00 Charging and Non-Charging of Benefits.

(A) Benefits paid to a claimant will be charged or non-charged as set forth in Section 71- 5-355(2) (b)(ii) the Law.

(B) An employer shall be eligible for non-charging as provided in (A) above only when they have furnished the Agency with notice regarding the separation from work or refusal to accept an offer of suitable work, whichever is applicable, in the manner and within the time required, by one of the following methods:

(1) The employer has, within ten (10) days from the mailing date or date of electronic delivery of Notice to Employer of Claim Filed and Request for Information (Form UI-21A) to submit to the Agency a written statement showing the date and detailed reason for the separation or the date and details with respect to the refusal of an offer of suitable employment from such employer, whichever is applicable, identifying the individual involved by name and Social Security account number. Failure to furnish such information within the time required will result in the employer being denied eligibility for the relief of charges as provided in the referenced section of the Law.

(2) The employer has ten (10) days from the date of the refusal of an offer of suitable employment to notify the Agency in writing of such refusal, giving the date and details with respect thereto.

(C) When an employer has furnished the Agency with notice regarding the separation from work or refusal to accept an offer of suitable work, within the time and in the manner prescribed, a decision regarding the chargeability to the employer's experience rating record will be issued. This determination will be final unless the employer files an appeal within fourteen (14) days from the regular mailing or electronic mailing date or notification of the decision.

The appeal will be heard in accordance with Section 71-5-519 of the Law. After affording all interested parties an opportunity for a fair hearing, a decision will be issued to affirm, modify or reverse the determination. That decision will become final unless within fourteen (14) days after the mailing or notification of such decision an appeal is filed to the Board of Review.

Any decision of the Board of Review will become final ten (10) days after the date of mailing or notification of that decision. Any party may secure judicial review in accordance with Section 71-5-531 of the Law by commencing action in the circuit court. The circuit court to which action should be pursued is that of the county in which the plaintiff resides, or the county in which the action occurred.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

322.00 Vacation and Holiday Pay.

The legislative definition of unemployment specifies that an individual shall be deemed "unemployed" in any week during which they perform no services, and with respect to which no wages are payable to him or her. Vacation and holiday wages flow from services rendered prior to being laid off temporarily or released from employment, and are earned prior to such action. Vacation and holiday pay shall not be deducted from unemployment insurance benefits to which an individual is otherwise entitled.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 400. BENEFIT PAYMENT CONTROL REGULATIONS

400.00 Overpayments Generally.

Any benefits erroneously paid to claimant pursuant to the provisions of Section 71-5-517 of the Law may be set up as an overpayment to the claimant; and must be liquidated before any future benefits can be paid to the claimant. Further, the Agency shall be entitled to reimbursement or repayment of overpayments when benefits were paid to a claimant erroneously for any reason, including but not limited to a re-determination or reversal due to an appeal. However, the Agency shall have the discretion not to setup an overpayment when the Agency deems the overpayment amount to be too small to offset, recoup, or otherwise justify the administrative costs of doing so. The Agency may also have the discretion to write-off an overpayment when the claimant proves total disability according to the Agency's rules and regulations or the Social Security Administration, and in the event of proof of death.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

401.00 Reporting Earnings While Filing for Benefits.

For purposes of determining entitlement to benefits, an individual must report wages as defined by the Law payable to him or her in any week, regardless of whether compensation has been received.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

402.00 Criteria for Determining Overpayments (Fraud and Non- Fraud).

An overpayment of benefits occurs when a person receives benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his/her case, while the claimant was disqualified from receiving benefits, or when the claimant receives benefits and is later found to be disqualified or ineligible due to any reason. Reasons for disqualification and ineligibility may include but are not limited to a re-determination or reversal by the Agency or the courts of a previous decision to award the claimant benefits or failure by the claimant to properly report his/her earnings during the week earned when filing a weekly certification.

For purposes of determining unreported earnings, the Agency will consider the claim week to be Sunday through Saturday. The Agency will not consider holiday pay, vacation pay, severance pay, bonus pay, jury duty, reserve components (week-end drill), unit training assembly (summer camp), loans, cash advances and retroactive wages in the computation of unreported earnings overpayments.

Any person determined to have received an overpayment of benefits for any reason may be liable to the Agency for the repayment of those benefits. The Agency shall also determine whether the overpayment was received by the claimant through fraud committed by the claimant and assess appropriate penalties under such circumstances.

For the purpose of determining fraud, the Agency will consider that (1) a person received benefits, (2) at a time when he/she was ineligible, (3) by reason of a nondisclosure or misrepresentation of a material fact, (4) made by that person or another, and/or (5) had the willful intent to commit fraud or had knowledge of the omitted or misrepresented fact. Fraud may be implied or presumed from the circumstances, such as but not be limited to, failure to report earnings on weekly claims forms, or falsification of any documents. This inference may be overcome by the introduction of contrary evidence. Fraud shall include, but not be limited to the claimant's actual falsification of any documents which will include but not be limited to certification or proof of earnings and doctor's statements.

If the claimant does not report his earnings correctly, but does report at least fifty percent (50%) of his earnings for a particular week, the week would be considered non-fraudulent with a non-fraud overpayment established.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

403.00 Collection of Overpayments.

Pursuant to the authority granted to the Agency by Section 71-5-19(4) of the Law, the Agency shall have the authority or discretion to pursue repayment and collection of overpayments that occurred due to any reason, including overpayments that result from a re-determination by the Agency, or that occur as the result of an appeal within the Agency or to the courts, and irrespective of whether said overpayment resulted from fraud, non.disclosure, or misrepresentation by the claimant. The Agency shall have the authority to pursue collection of all overpayments, including overpayments that result from a re.determination or reversal from an appeal, by the methods or manner as provided in Sections 71-5-363 through 71-5-383 of the Law, for the collection of past-due contributions, also authorized by Section 71-5-19 of the Law. Methods of collection shall include, but not be limited to, cash repayment, offset of future benefits, filing liens, warrants, or suit, garnishment, and interception of state income tax refunds.

Any such judgment, lien or warrant against a person for collection of an overpayment shall be in the form of a seven (7) year renewable lien. Unless action is brought thereon prior to expiration of the lien, the Agency must refile the notice of the lien prior to its expiration at the end of seven (7) years. There shall be no limit upon the number of times the Agency may refile notices of liens for collection of overpayments. The Agency will participate in the Interstate Reciprocal Overpayment Recovery Arrangement, which will include withholding benefits in order to assist other states in collecting overpayments.

Overpayments must be liquidated in accordance with specific program restrictions before future benefits can be paid to the individual.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

404.00 Disqualification Period Assessed for Fraud.

The Agency has the authority to assess disqualifications for a period up to 52 weeks, according to the circumstances of each case. Under this authority the Agency shall impose the following penalties under the stated conditions:

1. For the first fraudulent overpayment received by a claimant a six week disqualification is established for each week up to a total of four such weeks. For five or more fraudulent weeks a fifty-two (52) week disqualification is assessed.

2. For the second or greater fraudulent overpayment received by a claimant within three years of the establishment date of a previous fraudulent overpayment, a twelve week disqualification is established for each week up to a total of four such weeks. For five or more fraudulent weeks a fifty-two (52) week disqualification is assessed.

The disqualification period shall start no later than the week during which the initial determination of such fraudulent overpayment is made.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

405.00 Interest Accrual.

Interest accrues at the rate of one per centum (1%) per month on the unpaid principal balance beginning with the month following the month in which the overpayment is established.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

406.00 Prosecution of Fraudulent Overpayments.

The Agency has the authority to prosecute overpayments due to fraud as defined in Subsection 402.00 above and Section 71-5-19(4) of the Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 500. LEGAL

No applicable Administrative Regulations as of July, 2011.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 600. CONTRIBUTIONS

600.00 First Contribution Payment.

The first contribution payment of an employer who is newly liable for contribution in any year will become due and be payable on or before the last day of the month immediately following the calendar quarter the individual or employing unit became a liable employer.

600.01 Payment of Contribution.

(A) Each quarterly contribution payment shall be based upon wages paid for employment in all pay periods (weekly, biweekly, monthly, semimonthly) ending within the quarter.

(B) The first contribution payment of an employer who becomes newly liable for contributions in any year because of employment performed for such employer within such a year shall include contributions with respect to all wages paid for employment from the first day of the calendar year. Such wages shall be reported in the calendar quarter in which the wages were paid and contributions shall be paid for the quarter in which the wages were paid.

(C) The first contribution payment of an employer who becomes newly liable for contributions by any of the three following methods is due for the quarter in which the wages were paid. Employers establish liability by:

(1) Acquiring the business of an employer;

(2) Employer and/or employer's predecessor(s) who employed one or more workers, acquiring the business of an employing unit whose employment record together with his or her own employment record totals one or more employees on one or more days in each of twenty (20) weeks of the current or last calendar year, regardless of whether the workers were the same person or different in each of the different weeks; and/or

(3) Affiliation with one or more other employing units whose employment record together with his or her employment record totals one or more employees on one or more days in each of twenty (20) weeks of the current or last calendar year.

(D) Contributions shall be due for all wages paid that are subject to this chapter in the calendar year if contributions are due on any part of the wages paid in the calendar year.

(E) With respect to employment, the measure of the contribution is the total amount of wages paid by an employer during each calendar quarter.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

600.02 Transmittal of Contributions Payments.

Payment of contributions sent through the United States mail shall be deemed to have been made as of the date shown by the postmark thereon. All other payments of contributions shall be considered to have been made on date received by the Agency.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

600.03 Overpayment of Contributions.

Overpayment of contributions by an employer for one period may be credited on subsequent contributions due.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

601.00 Wages Defined.

(A) Definition

"Wages" means all remuneration for personal services, including commissions and bonuses, and the value of all remuneration in any medium other than cash. The name by which such remuneration is designated is immaterial. Thus, salaries, commissions on sales or on insurance premiums, fees, and bonuses are wages within the meaning of the Law if they are, in fact, remuneration or compensation for services not excluded by the Law. The basis upon which the remuneration is payable or paid, the amount of remuneration, and the time of payment are immaterial in determining whether the remuneration constitutes "wages". Thus it may be paid or payable on the basis of piecework or a percentage of profits; and it may be paid or payable hourly, daily, weekly, monthly, or annually. Facilities or privileges (such as entertainment, cafeterias, restaurants, medical services, so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees, generally are not considered as remuneration for services if such facilities or privileges are offered or furnished by the employer merely as a convenience to the employee or as a means of promoting the health, good will, contentment, or efficiency of his employees.

(B) Definition of Wages for Tax Purposes

Wages paid in any calendar quarter shall include wages actually or constructively paid for all pay periods ending within the quarter and wages paid during the quarter for services performed in prior quarters or prior years. Wages constructively paid means payments credited to the account of, or set apart for, the wage earner so that they may be drawn upon by him or her at any time although not then actually reduced to possession.

601.01 Exclusions.

Certain exclusions apply as directed by Section 71-5-11 of the Law, however, the plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items.

It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or implied, by the contract of service.

601.02 Items Included.

The total wages paid by an employer to his or her employees with respect to employment during any calendar year, or any pay period thereof, shall include items actually or constructively paid during that calendar year, or any part thereof.

(A) Items actually paid shall include:

(1) Cash; and

(2) The fair market value, at the time of payment, of all items other than money. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him or her at any time although not then actually reduced to possession.

(B) Items actually or constructively paid shall include:

(1) Cash; and

(2) The fair value, at the time of actual or constructive payment, or all items other than money.

(3) Vacation allowances - Payment to an employee's so-called vacation allowances constitute wages.

(4) Traveling and other expenses - Amounts paid to traveling salespersons or other employees as allowances or reimbursements for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee.

(5) Premium on life insurance - Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee constitute wages if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his or her employees are not wages, if the employee has no option to take the amount of premiums instead of accepting

the insurance and has no equity in the policy (such as the right of assignment or the right to surrender value on termination of his employment).

(6) Deductions - Amounts deducted from the remuneration of an employee by an employer constitute wages paid to the employee at the time of such deduction. It is immaterial that the Law, or any Act of Congress or the law of any state, requires or permits such deduction and the payment of the amount thereof to the United States, a state, or any political subdivision thereof.

(7) Payments by employers into stock bonus or profit-sharing funds -Payments made by an employer into a stock bonus or profit-sharing fund constitute wages if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time or upon resignation or dismissal, or if the contract of employment requires such payment as part of the compensation. Whether or not under other circumstances such payments constitute wages depends upon the particular facts of each case.

(8) Hiring of individual with his or her equipment - Only remuneration employment is the basis of contributions. Equipment is only rented and its rental value should not be included in the basis for contributions, provided it is accounted for separately. Contributions should be based on the remuneration for services only. In the case of hiring an individual and his or her equipment, such as a truck driver who owns his or her truck, the employer may differentiate between the fair value of the wages and the rental value of the equipment and pay contributions only on the wages.

(9) Pensioned employees-Retirement Pay - Contributions are based only on wages of employees arising out of the performance of service. Employees who have been pensioned or retired by an employer and who perform no service for such former employer are pensioned or retired employees and the remuneration or compensations received by them as pension or retirement pay is not considered wages and should not be included in the payroll upon which contributions are based. However, if a pensioned or retired employee receives any compensation or remuneration distinct from such pensions or retirement pay for any employment, whether occasional, temporary or permanent, such pensioned or retired employee is covered by the Law and his or her earnings must be included in the payroll upon which contributions are based.

C. For all political subdivisions that elect to make contributions under the provisions of either Section 71-5-559 (2)(j), or Section 71-5-357 (b)(iv), the Law provides that the rates specified in those sections, i.e., two percent (2%) and five tenths percent (.5%) respectively, shall be applied to the first seven thousand dollars ($ 7,000) of remuneration paid to each employee in the calendar year, from and after January 1, 1983.

601.03 Private Unemployment Benefit Plans.

Employees covered by private unemployment benefit plans are not thereby excluded from the requirement to be reported and their wages taxed as all other employees described in the Law.

601.04 Reduction of Commissions, Sales Cancelled in Later Years.

Commission on sales made in one calendar year constitutes wages with respect to employment during the calendar year. When a sale made in one calendar year is cancelled in a subsequent calendar year and the commission is deducted from the earnings of the salesperson during the calendar year in which the sale is cancelled, such a reduction in commission is a reduction of the wages of the salesperson for the calendar year in which the services were performed and not for the year in which the sale is cancelled.

601.05 Bonuses in the Form of Securities.

Bonuses in the form of securities are wages and contributions are payable on the fair market value of such securities at the time of transfer.

601.06 Sales Contest Prize Awards.

The cash or fair market value of prizes awarded to salespersons as winners of contests conducted by their employer for the purpose of stimulating the sales of certain products constitute wages upon which contributions are required, and shall be included in the total amount of wages paid, as additional compensation or remuneration, in computing contribution liability.

601.07 Gifts.

Gifts from employers to employees, such as Christmas gifts, directly or indirectly based upon or related to services rendered, constitute wages upon which contributions are payable.

601.08 Gift to Spouse of Deceased Employee.

An amount paid to the widow or widower of a deceased employee in excess of the compensation earned by the decedent in the course of his or her employment and for which the widow or widower renders no services does not constitute wages.

601.09 Spouse Employed by Corporation Wholly or Principally Owned by Other Spouse.

Services performed by the spouse of the sole or principal stockholder of a corporation are not exempt since the corporation and its stockholders are entirely separate and distinct legal entities.

601.10 Spouse Employed by Partnership in Which the Other Spouse Is Partner.

Although the Law excludes from its operation services performed by a spouse in the employ of the other spouse, the exclusion does not apply to the services performed by a spouse of a member of a partnership in the employ of such partnership, since the partnership is a legal entity separate and distinct from the individuals who comprise it.

601.11 Trustees in Bankruptcy-Compensation Paid To.

Compensation paid to trustees in bankruptcy is not subject to the contribution liability imposed under the Law.

601.12 Payments Made to Labor Union Representatives for Lost Wages.

Payments made to labor union representatives for lost wages will not be considered wages for unemployment insurance purposes provided the individual is not otherwise employed by the labor union.

601.13 "Idle Time" Payments under Minimum Number of Hours Guarantee.

Payments made to an employee for "idle time" by a company which guarantees to its employees a minimum number of hours of employment per week and makes payments to them for "idle time" when they do not render services for the minimum number of hours, constitutes wages with respect to employment and the total of such remuneration should be included in the computation of wages for the purpose of determining the amount of contributions.

601.14 Tips.

Tips accounted for by an employee to his or her employer are wages on which contributions are payable.

601.15 Remuneration Covering Salary and Expenses.

Where an employee, such as a salesperson, is paid an amount to cover salary and expenses incurred in the employer's business, the amount constituting wages subject to contribution liability is the total amount paid minus the expenses actually incurred by the salesperson in the employer's business and is accounted for as such by him or her. It is, therefore, necessary for the salesperson to maintain such records as will enable accountability to the employer for the amount of expenses actually incurred, and the employer must keep such records as will show the portions of the total amount paid to the salesperson which represent, respectively, expenses and remuneration for services.

601.16 Training Courses.

Expenses for employees' training courses, paid by the employer, do not constitute wages on which contributions are payable.

601.17 Use of Employer's Car by Employee.

Where an employee keeps a car belonging to his or her employer and at times uses same for his or her own personal use, such use of the car does not constitute wages or remuneration.

601.18 Payments to Employees Absent on Account of Sickness.

Where an employee is absent on account of sickness and he or she is kept on the payroll and wages are paid to him or her, such wages must be reported and contributions paid thereon.

601.19 Cash Value of Certain Remunerations.

If board, lodging, or any other payment in kind, considered as payment for services performed by an employee, is in addition to (rather than a deduction from) monetary wages, or wholly comprises an employee's wages, the Agency may determine the cash value of such board and lodging in individual cases for the purpose of computing contributions due under the Law. The cash value for such board and lodging furnished an employee as agreed upon shall be deemed the value of such board and lodging.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

602.00 Employer.

(A) Proprietors
A proprietor of a business is not considered an employee even though a salary may be paid for services performed.

(B) Partners
Partners are not considered employees of the partnership, and the income of partners from the business whether recorded as salary or drawings, is considered a distribution of profits, and not wages.

(C) Officers of Corporations
Corporate officers, who perform services for wages or under any contract of hire, written or oral, expressed or implied, are employees.

(D) Directors of Corporations
A director of a corporation, who performs no service for the corporation except as director in the usual and ordinary sense of the term, is not an employee and the compensation paid as a director is not subject to contributions. A director, who performs services for the corporation other than as a director, is an employee, and the compensation paid him therefore is subject to contributions.

602.01 Demonstrators.

A demonstrator, who is placed by a manufacturer in department and specialty stores to aid in the sale of the specialized products of such a manufacturer, and who is engaged by the manufacturer, who are paid directly or indirectly by the manufacturer, and who work under the direction which may be delegated to the retailer, is an employee of the manufacturer. If the retailer, not acting as an agent for the manufacturer, engaged a demonstrator and the demonstrator works under the direction of the retailer and receives the salary directly from the retailer, the retailer is the employer. If the wages are paid in part by the manufacturer and in part by the retailer, the demonstrator is an employee of both manufacturer and retailer and each is required to pay contributions on that part of the salary that he pays.

602.02 Employers Disposing of Business Assets Thereof, Ceasing Business, Etc.

Every employer who shall sell, convey, or otherwise dispose of his or her business or any part of the assets of the business, or who shall cease business for any reason, whether voluntary by being in bankruptcy, or otherwise, shall no less than thirty (30) days prior to such sale or conveyance of business, report such fact in writing to the Agency, stating the name, address and telephone number of the person, firm or corporation, or other entity to whom such business or all of any part of the assets thereof shall have been conveyed. In cases of bankruptcy, receivership, or similar situations, such employer shall report the name address and telephone number of the trustee, receiver, or other official placed in charge of the business.

602.03 For Profit Corporation Owned by Non-Profit Charitable Organization.

Services performed in the employ of a corporation operated as a business enterprise but wholly owned by a non-profit charitable organization are not exempt under the Law. Such organizations are separate legal entities and must be considered separately.

602.04 Payroll Records of Predecessor "Employer" Modified Rate of Contribution for Successor.

In determining "modified" rates of contributions, under Section 71-5-355 of the Law, for an employer who succeeds, or has succeeded, or acquires, or has acquired the organization, trade, separate establishment (provided separate payroll records have been kept and maintained for such separate establishment by the predecessor and are clearly identifiable and segregable), or business, or substantially all the assets thereof, or another, the payroll records of the predecessor may be used only if such predecessor was an "employer" as defined and subject to the Law at the time of such acquisition. The term "separate establishment," as used herein, means a distinct and separate portion of the business.

602.05 Successors to Reimbursable Employer Who Become Tax Paying (contributory) Employers by Requirements of the Law.

When a successor employer becomes a contributory employer (pursuant to requirements defined by the Law) by acquiring the business of a reimbursing employer, then such successor shall be considered a newly subject employer, within the meaning of Section 71-5-353 of the Law.

602.06 Reimbursable Employers Who Elect to Become Tax Paying (Contributory).

When an employer elects to change from reimbursing status to contributory status, the employer shall be considered a newly subject employer, within the meaning of Section 71-5-353 of the Law.

602.07 Predecessor Employers Who Resume Employment.

In any case in which the account of an employer is terminated (inactivated) by the Agency because the employer sold the business and the experience was transferred to the successor, and the predecessor resumes employment, he or she shall be considered a newly subject employer, within the meaning of Section 71-3-353 of the Law.

602.08 Status by Voluntary Election.

An employing unit not otherwise subject to the Law that elects voluntarily to become subject thereto must furnish the Agency detailed data sufficient in the opinion of the Agency to warrant approval of such election.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

603.00 Employment.

(A) Independent Contractors

The Law provides that the relationship of employer and employee shall be determined in accordance with the principles of the common law governing the relation of master and servant. Generally, the relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done, but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he or she has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer Other factors characteristic of an employer are the furnishing of tools and the furnishing of a place to work to the individual who performs the service. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he or she is an independent contractor, not an employee.

If the relationship of employer and employees exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if two (2) individuals in fact stand in relation of employer and employee to each other, it is of no consequence that the employee is designated as a partner, co-adventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

Generally, physicians, lawyers, dentists, veterinarians, contractors, sub-contractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether or not persons performing services, directly or indirectly, for an employing unit are employees depends upon the particular facts in each case. No single test is conclusive and every employing unit claiming the existence of a relationship other than that of employer-employee shall make application to the Agency for determination of its status. They shall furnish to the Agency a full and complete statement of all facts concerning its relationship with the person claimed to be an independent contractor, together with a copy of the contract existing between them. All persons performing services for any employing unit shall be deemed employees unless and until this rule shall have been complied with and their status shall have been otherwise determined by the Agency after a decision has been made by the Agency relative to the employer-employee relationship, and the business has been notified by mail or electronically. The business has the right within ten (10) days from the transmittal date of this decision to protest the decision and request a hearing before the Agency, as provided in Section 71-5-355(2)(b)(ix) of the Law.

(B) Employed Individuals

The words “employ”, “employer”, and “employee”, as used herein, are to be taken in their ordinary meaning. An employer, however, may be an individual, a corporation, partnership, a limited liability company, trust, estate, association, joint-stock company, insurance company, or corporation, or other recognized business organization, whether domestic or foreign, syndicate group, or entity. An employer may be a person acting in a fiduciary capacity or on behalf of another, such as a guardian, committee, trustee, executor or administrator, trustees in bankruptcy, receiver, assignee, for the benefit of creditors, or conservator.

An individual is in the employment or employ of another within the meaning of the Law if he performs a service, including service in interstate commerce, for such other, for wages or under any contract of hire, written or oral, expressed, or implied. The relationship between the individual who performs such service and the person for whom such service is rendered must be the legal relationship of employer and employee. The Law makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees within the meaning of the Law.

Whether the relationship of employer and employee exists, will in questionable cases be determined upon examination of the particular facts of each case.

603.01 Service in Usual Trade or Business.

An employing unit which contracts with or has under it any contractor or sub-contractor for any employment which it claims is not part of its usual trade, occupation, profession, or business shall submit to the Agency a complete, detailed written statement of facts in support of such claim. No such claim shall be recognized until and unless the Agency is satisfied of its validity and correctness.

603.02 Services Excluded from the Definition of Employment (Generally).

(A) To constitute "employment" within the meaning of the Law the services performed by the employee must be performed, in whole or in part, primarily or incidentally, within the State of Mississippi; or if performed elsewhere, must be incidental to service in the United States for a Mississippi based employer. To the extent that an employee performs services wholly or outside of the State of Mississippi for the person who employs him or her, he or she is not in "employment" within the meaning of the Law unless such services are incidental to service in this state, or unless such services are performed outside the United States for a Mississippi based employer.

Furthermore, the employee's remuneration for services that he or she performs wholly outside the State of Mississippi, and that are in no way incidental to services in this state, is excluded from the computation of wages upon which his or her employer's contribution is based, except that wages paid by a Mississippi based employer for services performed outside the United States must be included in the computation of wages upon which the employer's computation is based. However, if any services are performed by the employee within the State of Mississippi, such services, unless specifically excluded by the Law, constitute "employment."

In such cases the employee is counted for the purpose for determining whether the person who employs him or her is an "employer," within the meaning of the Law and his wages on account of such employment are included in the computation of wages for the purpose of determining the amount of the employer's contribution. The place where the contract for services is entered into and the citizenship or residence of the employee or of the person who employs him or her is immaterial.

Thus, the employee and the person who employs him or her may be citizens and residents of a foreign country or a foreign state and the contract for the services may be entered into in a foreign country or foreign state, and yet, if the employee under such contract actually performs services within the State of Mississippi, there is an "employment" within the meaning of the Law, and the person who has employed such individual may be an "employer" within the meaning of the Law.

(B) Even though the services of the employee are performed within the State of Mississippi, if they are in a class which is excluded by the Law, they are excluded for the following purposes:

(1) In determining whether a person employs a sufficient number of individuals to be an employer subject to contribution; or

(2) In computing the employer's total wages with respect to employment during the calendar year.

The exclusion is attached to the services performed by the employee and not to the employee as an individual; and the exclusion applies only for the period during which the individual is rendering services in an excluded class.

603.03 Officers and Members of Crews.

The expression "navigable waters within, or within and without the United States" means such waters are navigable in fact and which by themselves or in connection with other waters form a continuous channel for commerce with foreign countries or among the states.

The word "vessel: includes every description of watercraft or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual subject to his or her authority serving on board and contributing in any way to the operation and welfare of the vessel. The expression extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids and by seal hunters and fishermen on sealing and fishing vessels.

603.04 Family Services.

Under Section 71-5-11 J (15) (d) of the Law, certain services are excluded because of the existence of family relationship between the employee and the person for whom he or she performs the services. The exclusions are as follows:

(A) services performed by a husband for his wife, or by a wife for her husband;

(B) services performed by a father or mother for a son or daughter, or for a partnership composed of sons and/or daughters only; or

(C) services performed by a son or daughter under twenty-one (21) years of age for the father or mother, or for a partnership composed of the father and mother only.

(D) The term "child" shall mean and include adopted or stepchild. Under (A) and (B) above, the exclusion is conditioned solely upon the relationship of the

employer to the employee. Under (C), in addition to the relationship of parent and child, there is a further requirement that the child shall be under the age of twenty-one (21) and the exclusion continues only during the time that such child is under the age of twenty-one (21).

The exclusions do not extend to services performed by an employee for a corporation or other entity except such family partnerships as are set forth in (B) and (C) above.

603.05 Religious, Charitable, Scientific, Literary, and Educational Exemption.

Any organization claiming an exemption under Section 71-5-11 J (4) of the Law must provide a copy of Internal Revenue Service documents that show exemption under Section 501 (c) (3) of the Internal Revenue Code.

603.06 Aliens, Non-Residents and Minors.

Aliens, non-residents, and minors are employees if they are performing any service for an employer within the State of Mississippi and come within the definition of employee and employment.

603.07 Newspaper and Magazine Distributor.

A newspaper distributor who owns his own truck, hires or discharges his or her own employees or helpers, distributes newspapers or magazines in his own territory, and keeps track of his or her own records as to sales and collections, with all sales to such distributor by the publisher and all magazines or newspapers returned within certain limited period being credited to the distributor, who receives no salary, wages or other remuneration from the publisher, no record being kept on where the distributor disposes of the magazines or newspapers which are taken by him or her, is not an employee of the publisher for the reason that the distributor's remuneration for his or her services or activities in distribution of magazines or newspapers is derived solely from the resale of magazines or newspapers to customers.

603.08 Temporary, Casual and Training Period Workers.

The length of employment of an individual employee, however short, and the amount of remuneration paid to him or her, however small, does not affect the employer's liability to pay contributions. Contributions are required to be paid on wages of temporary employees as well as on wages of permanent employees.

The term "casual labor" exempted under Section 71-5-11 J (15) (c) of the Law includes labor, which is occasional, incidental, and irregular. The expression "not in the usual course of the employing unit's trade or business" includes labor that does not promote or advance the trade or business of the employing unit.

603.09 Pieceworkers.

Persons who are paid on the basis of the amount of work accomplished are employees, especially where they are subject to the direction or control of the employer.

603.10 Non-resident Employers.

Non-resident employers may be subject to Mississippi Law and the employer's citizenship or residence is immaterial.

603.11 Services Performed for the United States.

Service performed in the employ of the United States or of an instrumentality wholly owned by the United States is excluded. The exemption of federal instrumentalities is restricted to those instrumentalities:

(A) wholly owned by the United States; and/or

(B) exempt from the Law by virtue of some federal statutory provision.

603.12 Dredges.

Services are exempt that are performed on dredges used for navigation and transportation in carrying on the work of deepening and removing obstructions from channels and harbors which are navigable waters of the United States are exempt.

603.13 Concessionaires on Vessels on Navigable Water of the United States.

Services performed in the employ of concessionaires on vessels on the navigable waters of the United States are not exempt under the Law.

603.14 Book Publishing Establishment Owned and Operated by Religious Organizations.

Services performed in the employ of a book publishing establishment owned by a church or convention or association of churches, or that is owned by an organization that is operated primarily for religious purposes, or that is operated, supervised, controlled, or principally supported by a church or convention or association of churches primarily for religious purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, are exempt from the Law.

603.15 Privately Owned Hospitals.

Services performed in the employ of privately owned hospitals are not exempt under the Law. If they are organized and operated exclusively for charitable purposes and no part of the net earnings inures to the benefit of any private shareholder or individual, they come under the "four (4) or more in twenty (20) weeks" provision of Section 7-1-5-11 J (4) of the Law.

603.16 Privately Owned Colleges.

Services performed in the employ of privately owned institutions of higher learning are not exempt, but if the institution is a non-profit organization it is not a covered employer unless it employs four (4) or more employees for some day in each of twenty (20) different weeks in the current or preceding calendar year.

603.17 Newspaper Correspondents.

Newspaper correspondents who contribute items subject to acceptance for publication by the newspaper at a stipulated remuneration per item or per inch for news items accepted and published, but who are not employed full time and whose time and effort are not subject to the control of the newspaper, are not employees of the newspaper under the Law.

603.18 Newspaper Carrier.

Section 71-5-11 J (15) (m) of the Law, exempts services performed by a person under the age of eighteen (18) in making street sales of newspapers and in making house-to-house delivery of newspapers or shopping news, including handbills and other similar types of advertising material. This exemption does not apply to the handling of newspapers and advertising material prior to the time they are turned over for subsequent delivery or distribution.

603.19 Traveling Salesperson.

The Law covers individuals performing services for another as salespersons and remunerated on a commission basis and contributions are required on their commissions. Section 71-5-11 J (2) of the Law specifically covers certain agent-drivers and commission-drivers and certain traveling or city salespersons.

603.20 Agents of Magazine Publishing and Distributing Companies.

Salespersons and collectors for publishing companies engaged in selling magazines and other publications of such company and collecting for same on a commission basis are employees of the company.

603.21 Officers of Parent Corporation Serving Subsidiary Corporation.

Officers of a parent corporation serving as officers of a subsidiary corporation, whether they receive remuneration as such or not, are to be included and counted as employees for the purpose of determining whether such subsidiary corporation employs a sufficient number of employees to be subject to the payment of contributions.

603.22 Voluntary Coverage of Exempted Employments.

An employer may, under certain circumstances, waive his or her exemption and voluntarily become subject to the Law, thereby covering and entitling to benefits his or her employees who would otherwise be exempt.

603.23 Beneficiaries Employed by Administrator.

Beneficiaries of an estate employed by the administrator of the estate in the operation of the business previously conducted by the decedent are employees of the estate.

603.24 Trustees and Estate-Fiduciaries, Receivers, Trustee, Trustees in Bankruptcy,

Administrators of Estates, Guardians and Liquidators of Banks. Trusts or estates managed and conducted by a fiduciary, such as a receiver, trustee, trustee in bankruptcy, administrator of an estate, guardian, or liquidator of a bank, are held generally to the employer of persons employed to render and rendering services in connection with the trust, estate, or bank. This construction is applicable not only to strict trusts but also to corporations and estates whose affairs are being administered or liquidated by trustees in bankruptcy and state and federal estates should be filed by the fiduciary. The fiduciary, whether receiver, trustee, trustee in bankruptcy, administrator of an estate, guardian, or liquidator of a bank, is not himself or herself considered an employee of the trust or estate.

603.25 Banks Acting as Trustee, Receiver, Administrator, or Guardian.

Where a bank acts in the capacity of trustee, receiver, administrator, or guardian and employs persons to render services for the corporation in receivership or the estate being administered, paying such persons out of the funds of such trust or estate, the services performed by such persons are not exempt. The trust, company in receivership, or estate, as the case may be, is the employer. Returns and reports must be made in the name of the trust, company in receivership, or estate, by the bank in its fiduciary capacity.

603.26 Real Estate Agents Managing Real Estate for Owner.

Where a real estate agent or company manages improved real estate for the owner thereof under an agency contract and in accordance with such contract and as agent of the owner, employs, supervises, directs, controls, and discharges building managers, janitors, maids, and other help, but is not responsible for the payment of their wages except from the funds of the owner in its possession that are deposited in a special account un-comingled with the company's fund, the owner of the real estate, and not the real estate agent or company, who is an independent person, is the employer of such individuals.

603.27 Self-Employed Fishermen.

Certain fishermen who work on a fishing boat are considered self-employed.

A fisherman is considered self-employed if he meets all of the following:

1. The amount received is based on a share of the catch or a share of the proceeds from the sale of the catch;

2. The share received depends on the amount of the catch:

3. He receives his share from a boat (or from each boat in the case of a fishing operation involving more than one boat) with an operating crew that is normally made up of fewer than ten (10) individuals. This requirement is considered to be met if the average number of crew members on the trips the boat made during the last four (4) calendar quarters was less than ten (10);

4. Any money received other than for a share of the catch or a share of the proceeds from the sale of the catch is less than one hundred dollars ($ 100.00) per trip, paid only if there is some minimum catch and paid solely for additional duties (such as services performed as mate, engineer, or cook).

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

604.00 Records.

(A) Each employing unit shall keep a true, accurate and complete record which shall show:

(1) all disbursements by items;

(2) the amount of each disbursement;

(3) to whom each disbursement is made;

(4) for what each disbursement is made; and

(5) the number of employees on that day in each week in which it employed the highest number.

(B) For each individual worker and each pay period the records shall show:

(1) employee's Social Security account number;

(2) employee's name;

(3) employee's place of employment within the state;

(4) period covered by each payment;

(5) number of hours worked for each pay period;

(6) employee's wages for employment under this act, showing separately

(a) cash wages and

(b) the cash value of any other remuneration;

(7) any special payments for services other than those rendered exclusively in a given quarter such as annual bonuses, gifts, prizes, etc., showing separately

(a) cash payments and

(b) any other remuneration and the nature of said payment; and

(8) number of hours worked and wages payable in each week (except for workers paid on a salary or fixed stipend).

604.01 Reporting.

(A) Each employer shall report to the Agency at the time of paying each contribution upon a form or any type of media, and in such a format as prescribed by the Agency, all information concerning the number of employees, total wages paid and total other remuneration paid, if any, for employment for each pay period covered by the contribution, together with such other information as may be prescribed on the report forms or requested by the Agency. He or she shall also furnish quarterly, when and as directed and upon such forms or format as the Agency may prescribe, a report showing for each of his employees during the quarter:

(1) Social Security Account Number;

(2) employee name;

(3) wages paid for employment;

(4) amount of other compensation paid for employment, during the quarter; and

(5) such other information as may be prescribed on the report forms or requested by the Agency.

604.02 Reports of Subsidiary Employing Units.

Any employing unit that owns or controls another separate employing unit within this State may, with the approval of the Agency, designate such separate employing unit as its agent or attorney for the purpose of keeping records and making reports or contributions with respect to employment performed for such separate employing unit. Such designation, however, shall not subrogate the primary liability of the controlling employing unit.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

605.00 Determining the Number of Employees.

One or more individuals must be employed on any days within the weeks used to calculate the number of employees. The days used to calculate the number of employees does not need to be consecutive. It is not necessary that the individuals so employed be the same individuals; they may be different individuals on each such calendar day. It is also not necessary that the one or more individuals be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient that one or more individuals be employed during the twenty-four (24) hours of a calendar day, regardless of the period of service during that day or the basis of compensation.

In determining whether a person employs a sufficient number of individuals to be an employer subject to the contribution, no individual is counted unless he is engaged in the performance, in whole or in part, primarily, or incidentally, within the State of Mississippi, of services not excluded by Section 71-5-11 (J) of the Law; or is engaged in the performance elsewhere of services which are incidental to such services in this state, and which are not excluded by Section 71-5-11 (J). Any individuals who perform services outside the United States for a Mississippi based employer are counted.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

606.00 Computation of Employer Tax Rates.

All components of the general experience rate and the employers individual experience rate involving the accumulation of data shall be computed for each rate year independent of previous computations. The Agency will utilize the Cost Rate Criterion (CRC) computations provided by the

Unemployment Insurance Service of the U.S. Department of Labor Employment and Training Administration for each period, ending with the CRC computation for December 2001. Computations of CRC for periods subsequent to December 2001 will be made by the Agency from data accumulated through the Agency's reporting processes.

Under no circumstances will the Agency computations specified in this regulation in any manner change or affect the general experience rating of any period prior to the computation for the 2004 calendar year.

This regulation will be effective with the computation of the 2004 annual rates and for all subsequent years.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

607.00 Political Subdivision Surety Bond.

Reimbursing Political Subdivisions may execute a Surety Bond in lieu of establishing a revolving fund as provided in Section 71-5-355 9 (2)(f) of the Law. The bond shall be executed annually, and shall be for less than two percent (2%) of the covered wages paid during the next preceding year. This bond shall be submitted to the Agency for approval. Failure to submit an approved renewal bond in the allotted time will automatically place the political subdivision under the revolving fund requirement of the Law. Any Surety Bond approved under this regulation shall remain effective according to its terms regardless of the continuation of a contractual relationship between the Political Subdivision and any company providing unemployment insurance services to it.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

608.00 Reimbursing Employer Payment Liability.

Reimbursing employers who elect to become contributory, whether political subdivisions or non-profit employers defined by the Law, are liable for reimbursements which may accrue, until such time as wages paid by such employer as a reimbursing employer are no longer in the base period of a claim or in the case of extended benefits, the parent claim.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

609.00 Funding Options.

Any political subdivision rated at two percent (2%), reimbursing, or rated at five tenths of one percent (.5%) and reimbursing, may elect to change its funding option from reimbursing to rate paying in accordance with Section 71-5-359 of the Law provided the requested information is delivered to the Agency on or before December 1 of the year immediately prior to January 1 of the year for which the election is made. The election will be in effect and in force for no less than two (2) calendar years and the first election shall be made effective the first day of employment and subsequent elections will be made effective January 1 of the year. In the event an employer does not make an election within thirty (30) days of registration, the employer will become a reimbursable employer but will be allowed to make an election for the next calendar year provided the election is received by the Agency as described.

Any IRS 501(C)(3) exempt nonprofit organization that is paying contributions or reimbursing under the authority of the Law may elect to change its funding option by filing a written notice of election with the Agency not later than thirty (30) days prior to the election. Such election shall not be terminable by the organization for that and the next tax year. Any nonprofit organization which makes an election in accordance with 71-5- 357(a)(i) of the Law will continue to be liable for contributions unless it files with the Agency a written termination notice not later than thirty (30) days immediately following the date of determination of such subjectivity. In the event the non-profit employer chooses to give up its right to be a reimbursing employer, such employer must give written notification to the Agency no later than November 30 of the year preceding the year for which it will again become liable for contributions. Any reimbursements that accrue following such election will continue to be the responsibility of the non-profit employer.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

610.00 Temporary Help Firm.

A temporary help firm is any individual or organization who recruits and hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

A temporary help firm is presumed to be the employer for unemployment insurance purposes of a temporary employee assigned to a client for up to one (1) year of continuous service with that client from the last day of the first quarter in which the worker was assigned, irrespective of the number of hours the temporary employee works at the client's place of business. Continuous service means service to the same client with less than thirty (30) consecutive days break in service. After a temporary employee has completed one (1) year of continuous service with the same client, the relationship of employer and employee shall be determined in accordance with the principles of a common law governing the relation of master and servant and a temporary help firm may be required to demonstrate that it is an employer consistent with such principles.

Provided however that any temporary help firm will be considered prima facia in compliance with this regulation if at least ninety percent (90%) of the total number of individuals working for the temporary help firm on any day has been assigned to all clients for a period not exceeding twelve (12) months from the last day of the first calendar quarter in which the worker was assigned.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

611.00 Power of Attorney.

Any individual or organization providing representation to any employer or claimant, in any unemployment issues in the absence of the client, must provide a power of attorney signed by the entity they will represent. A power of attorney is not required if the individual is a Certified Public Accountant who is a member of the AICPA, or an attorney who is a member of the Mississippi Bar Association or another Bar Association of equal status in another state or jurisdiction of the United States of America; or an Enrolled Agent who is a federally-authorized tax practitioner and is a member of the National Association of Enrolled Agents.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

612.00 Tax Appeal Regulation.

1. Any employer who appeals a determination or redetermination of his or her unemployment tax liability, hereinafter called tax protest, shall have such tax protest heard by a hearing officer designated for that purpose by the Agency.

2. Any tax protest filed by an employer under the provisions of Section 71-5-355 of the Law shall be promptly forwarded to the MDES Appeals Department for processing purposes.

3. The ALJ who has been assigned the tax protest shall notify the employer of the scheduling of a hearing thereon, and a notice shall be mailed or electronically delivered to the employer not later than fourteen (14) days prior to the date set for the hearing.

4. Prior to the hearing, the ALJ shall obtain from the Contributions and Status Department of the Agency the complete file pertaining to the employer filing the protest, as well as any claim file appertaining thereto, in order that he or she may prepare for the hearing. The complete files shall be made available to the employer at the hearing so that they may have an opportunity to review same at the time. The files shall be made a part of the record that is made at the hearing.

5. The Agency shall have the discretion to set the time and place of the hearing, and shall designate whether the hearing will be in-person or by telephone.

6. The employer may be represented at the hearing by an attorney or any other representative he or she has authorized.

7. Any testimony received shall be under oath, and the hearing shall be recorded by the ALJ, but need not be transcribed unless there is a further appeal.

8. The rules of evidence shall be relaxed.

9. The ALJ, upon a showing of the necessity, may issue subpoenas at the request of either party, or may subpoena any individual, including a claimant and any records maintained by either party or their agents which the ALJ believes may contain information relevant to the tax protest being heard.

10. The ALJ, at his or her discretion, may elect to continue a hearing for the purpose of securing testimony of a witness or for other purposes.

11. The hearing may be postponed or adjourned for good cause, within the discretion of the ALJ. If, at any time prior to an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, as provided by the Law, it should appear to the ALJ that the record should be perfected or completed, then a hearing may be reopened or reconvened for that purpose.

12. As soon as reasonably possible after the hearing has been concluded the ALJ shall issue his or her written decision, which shall in concise form state the findings of fact, and the conclusions based on such findings. The decision shall be mailed or electronically delivered to the employer and delivered to the Contributions and Status Department of the Agency.

13. There shall appear in bold face type upon the transmittal letter the following language: THIS DECISION SHALL BECOME FINAL UNLESS WITHIN TEN (10) DAYS AFTER DATE OF MAILING OR ELECTRONIC DELIVERY HEREOF THERE SHALL BE AN APPEAL TO THE MDES BOARD OF REVIEW.

14. An appeal to the Board of Review may be taken by either the employer or by the Contributions and Status Department of the Agency.

15. Upon an appeal to the Board of Review, there may be oral argument, or briefs filed, within the discretion of the Agency.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

613.00 Contractors and Sub-contractors Must be Reported.

Whenever and as an employing unit contracts with or has under it any contractor or sub-contractor for any employment which is part of its usual trade, occupation, profession, or business, such employing unit may be required to furnish in writing to the Agency:

(A) name and address of each such contractor or sub-contractor;

(B) date of commencement of the work under such contract;

(C) place or places at which the work is to be performed;

(D) whether such contractor of sub-contractor is registered as an employer under the Employment Security Law; and

(E) if registered, the registration number of the employing unit.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

614.00 Establishment of Employer Contribution Rate during Pendency of Appeal on Liability Questions.

During the period an appeal is pending the agency will take no collection action regarding taxes. First and final notices, as required by sections 71-5-365 and 71-5-367, will be issued and transmitted to the employer and wage information (workers' names, social security numbers and payments to workers) will be required by the Department. Wage information will consist of any payments the Department has determined to be wages paid by the employer even though the appeal is still active. Payment of taxes will be required once liability has been determined, and no further appeal rights exist under the Mississippi Employment Security Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 700. FINANCIAL

700.00 Combining Securities.

The agency shall have the discretion to combine all securities/collateral held in separate accounts for the purposes of fulfilling the requirements set forth in Miss. Code Ann. 71-5-455. The securities, once combines, can be pledged against all other similar accounts; provided these separate accounts reside at the same bank.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 800. EMPLOYMENT SERVICES

800.00 Mississippi First Initiative (Senate Bill 2662).

The Mississippi Jobs First Bill (SB NO. 2622 of the 2012 Legislative Session and any future corresponding citation in the Mississippi Code of 1972) requires contractors that are awarded bids for public works projects that utilize funds received by State or Local governmental entities resulting from a federally declared disaster or a spill of national significance to register and list job opportunities with the Mississippi Department of Employment Security (MDES). This initiative will ensure that Mississippians have an opportunity to apply for jobs created by a disaster.

NOTE: The following rules (800.01-800.04) concerning the Mississippi Jobs First Bill pertain only to contracts executed after the law went into effect on May 1, 2012. All contracts existing before the effective date are not subject to these provisions.

800.01 Responsibility of State and Local Government.

(A) It is the responsibility of state and local government entities soliciting bids for public works projects that utilize funding resulting from a federally declared disaster or spill of national significance to ensure that all contractors submit, with their bid, a completed employment plan which shall include the following information: the type of jobs involved in the project; the skill level of the jobs involved in the project; wage information on the jobs involved in the project; the number of vacant positions that the contractor needs to fill; how the contractor will recruit low wage and unemployed individuals for job vacancies; other information that may be required by MDES; and proof of registration with MDES for taxation in accordance with provisions of Title 71.

(B) When a contractor's bid is accepted, the state or local government entity shall enter into an agreement with the contractor that requires the contractor to only hire personnel referred from MDES for a period of ten (10) days from when the contract is awarded.

800.02 Contractor Responsibilities.

(A) Contractors that are awarded bids for public works projects that utilize funds received by State and Local Governmental entities resulting from a federally declared disaster or spill of national significance must submit an employment plan that includes the following information: the type of jobs involved in the project; the skill level of the jobs involved in the project; wage information on the jobs involved in the project; the number of vacant positions that the contractor needs to fill; how the contractor will recruit low wage and unemployed individuals for job vacancies; other information that may be required by MDES; and proof of registration with MDES for taxation in accordance with provisions of Title 71 with their bid to the entity requesting the solicitation of services.

(B) When a contractors bid is accepted, the contractor shall enter into an agreement with the entity that accepted the bid that requires the contractor to only hire personnel referred from MDES for a period of ten (10) days from when the contract is awarded. Contractors must place a job order with MDES to receive a list of qualified individuals. The contractor is required to review the applicants submitted by MDES before hiring individuals who were not referred.

MDES shall define the ten (10) days as follows: The time period for the ten (10) days shall begin to run on the first day the job order is opened with MDES. The ten (10) days shall be considered working days and weekends and official state holidays shall not be counted. If the tenth (10th) day shall fall on a weekend or holiday, then the following Monday or the next day that MDES is open for business shall be deemed the tenth (10th) day.

The ten (10) day rule shall apply to any entity charged with hiring personnel under the awarded contract. For example, if the contractor enlists a temporary agency to hire employees for the project, the ten (10) day rule shall apply to the temporary agency, or any subcontractor the contractor may utilize for the project.

NOTE: The contractor is not prohibited from hiring MDES referrals during the ten (10) day time period and may hire employees referred by MDES immediately.

(C) The contractor is required to register his/her business online in the Workforce Investment Network Global System (WINGS) by visiting Wings.mdes.ms.gov. The following information is needed to register:

Register in the Workforce Investment Network Global Systems (WINGS) and create a username and password.

Employer Federal ID #

Company Name

Company (Corporate) Physical address if applicable

Company (Corporate) Mailing address for E-Verify notices (if applicable)

Company telephone number and fax number

Company contact name, title, phone number and email address

In order to create a job order the contractor must provide the WIN Job Center or Call Center Representative with the following information (Call Center information and a complete list of WIN Job Centers can be found on MDES's website: www.mdes.ms.gov):

Job title

Job physical location (Worksite)

Number of openings

Job description Job qualifications (level of education, months of experience, driver's license if required)

Duration of the position (less than 3 days, 4 to 150 days, more than 150 days)

Temporary, permanent position or seasonal position

Full time or Part time

Number of hours to work per week

Days to work and shifts

Referral instructions (how the applicant will apply)

Job Order contact person if different from the Contractor registration contact.

800.03 Role of the MDES WIN Job Center.

MDES will designate sites to assist contractors according to location of the federally declared disaster. After the job order(s) have been finalized and opened for recruitment, the MDES WIN Job Centers will begin the process of referring qualified applicants to the contractor to consider for the vacant positions.

800.04 Reporting Requirement.

In accordance with the act, MDES will provide the Mississippi Legislature with an annual report ending June 30, 2013, and w))ill follow each year thereafter. MDES will develop procedures to track and report relevant information received from contractors. The annual report will detail data received from contractors that were awarded contracts under this act throughout the year.

STATUTORY AUTHORITY

Miss. Code Ann. §§ 71-5-115, -117 & 71-5-117 (Rev. 2004)

HISTORY

EFFECTIVE DATE:

Original effective date not provided.

AMENDED:

July 1, 1993; March 28, 1997; November 15, 1997; March 26, 1999; February 4, 2000; November 17, 2000; April 13, 2001; January 1, 2003 [TR-79 filed July 17, 2003, effective retroactive to January 1, 2003]; February 12, 2004 [TR-80]; July 6, 2004 [TR-78]; December 1, 2007 Secretary of State Document #14802 [compilation as of December 1, 2007]; November 19, 2009 Secretary of State Document #16543; January 26, 2012 Secretary of State Document #18341 [amendment and compilation, Title 20, Part 101]; October 18, 2012 Secretary of State Document #19129 [Chapter 800]; December 2014 [renumbered from 49 000 to match state's numbering system.]; December 17, 2014 Secretary of State Administrative Bulletin #20905; January 18, 2015 Secretary of State Administrative Bulletin #20954

Annotations

NOTES

EDITOR'S NOTE:

20.101.200.0 to 20.101.800.0 MISS ADMIN CODE

CODE OF MISSISSIPPI RULES

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY DEFINITIONS AND PRECEDENT CASES OF THE MISSISSIPPI SUPREME COURT

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Able and Available

Individuals must be able to work and be available for work to be eligible for unemployment benefits with respect to any week. MDES Regulation 305.03

A terminated employee is afforded protection under the Mississippi Employment Security Law when he is ready, willing, and able to work, but when through no fault of his own, he is unable to do so. Coleman v. Miss. Emp. Sec. Comm'n & Natchez Democrat, 662 So. 2d 626 (Miss. 1995).

A discharged employee need only show that he has been paid wages during a base period for insured work, is unemployed and registered for work, and "is able to work and is available for work" in order to establish entitlement to state unemployment benefits. Coleman 662 So. 2d 626 (Miss. 1995), Huckabee v. Miss. Emp. Sec. Comm'n, 735 So. 2d 390 (Miss. 1999). Mickle v. Miss. Emp. Sec. Comm'n, 765 So. 2d 1259 (Miss. 2000).

Claims involving whether employees are able and available to work must be considered on a case-by-case basis. The test of availability is subjective in nature and must depend in part on the facts and circumstances of each case. Mickle, 765 So. 2d 1259 (Miss. 2000).

A Claimant's mental attitude, that is, whether he wants to go to work or is content to remain idle, is a factor to be considered in determining whether he is able and available to work, for the purpose of entitlement to unemployment compensation benefits. Id.

In the Mississippi Supreme Court Case of Mickle v. Mississippi Employment Security Commission, the Court found that Claimant was not required to submit a medical release before there could be a finding that she was able and available to work to demonstrate entitlement to unemployment compensation benefits, as a new requirement would be created that was not contemplated by statute. Id.

The Claimant in Mickle was entitled to unemployment compensation benefits, despite her failure to produce medical documentation that she had been unconditionally released to return to work, as no medical evidence was presented which indicated that she was not able and available to work, the Claimant stated that there was no reason she could not accept full-time work, and the referee made no finding that Claimant's injury prevented her from working. Inconsistency created by the employer's acknowledgement that the Claimant was

no longer injured and could return to work when it ceased paying workers' compensation with argument that she did not show that she was able to work and available for work for denying unemployment compensation claim was not compatible with the intent of workers' compensation and unemployment compensation statutes. Id.

The test to be used in determining whether the distance to be traveled renders available work "unsuitable," for unemployment compensation purposes, is whether it is unusual or uncommon for employees in a claimant's occupation or in the area in which the claimant resides to drive that distance to work. South Central Bell Telephone Company v. Miss. Emp. Sec. Comm'n, 357 So. 2d 312 (Miss. 1978).

In South Central Bell Telephone Co. v. Miss. Emp. Sec. Comm'n, et. al., 357 So. 2d 312 (1978), South Central Bell closed its office in Cleveland, Mississippi, and twenty-six employees were offered the opportunity to relocate to other offices. South Central Bell, 357 So. 2d at 314. Ten employees declined to transfer and filed unemployment claims. Id. On appeal, the Supreme Court found that distances of 35, 38, and 43 miles from city, in which long-distance telephone operators had been employed, to cities wherein they could have obtained the same type of employment after their positions were phased out, were not so great distances as to render such available work "unsuitable." Id. at 318. Specifically, the Court noted that "[t]here is nothing to support a view that traveling to Greenwood, Clarksdale or Greenville from Cleveland would so substantially increase the degree of risk to health, safety or morals . . . or that the commuting contemplated was so unusual or uncommon as to make the offered work 'unsuitable.'" Id. at 318. Thus, the operators' refusal to accept that work disqualified them from receiving unemployment benefits. S. Cent. Bell Tel. Co. v. Miss. Emp. Sec. Comm'n, 357 So. 2d 312 (Miss. 1978).

Burden of Proof

The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer. Mississippi Code Annotated § 71-5-513.

In unemployment compensation cases, the employer bears the burden to prove by "substantial, clear, and convincing evidence" that former employee's conduct warrants disqualification of benefits. Shannon Engineering and Construction, Inc. v. Miss. Emp. Sec. Comm'n and Berry, 549 So. 2d 446 (Miss. 1989), Miss. Emp. Sec. Comm'n v. McLane Southern, 583 So. 2d 626 (Miss. 1991), Daniel E. Foster v. Miss. Emp. Sec. Comm'n & United Parcel Service, 632 So. 2d 926 (Miss. 1994), Coleman 662 So. 2d 626 (1995), McClinton v. Miss. Dept. of Emp. Sec., 949 So. 2d 805 (Miss. Ct. App. 2006).

A rebuttable presumption exists in favor of the administrative agency, and the challenging party has the burden of proving otherwise. Sprouse v. MESC, 639 So. 2d 901 (Miss. 1994), Allen v. Mississippi Employment Sec. Commission, 639 So. 2d 904 (Miss. 1994).

In the Mississippi Supreme Court case of Little v. Mississippi Employment Security Commission, the Court found that the requirement by an appeals referee that an unemployment compensation claimant offer evidence to rebut the employer's allegation of misconduct, when no evidence of misconduct had been offered, was an improper shifting of the burden of proof. The employer totally failed to appear for the hearing and expressed no interest in even participating in the hearing, and thus claimant was not required to submit evidence to rebut claim of misconduct, as no evidence of misconduct was offered by employer. Little v. Miss. Emp. Sec. Comm'n, 754 So.2d 1258 (Miss. 1999).

Unemployment benefit claimants satisfy their burden of proof of good cause for leaving work, when they voluntarily leave employment rather than violate a statute, which is a question of law. Sherman v. Mississippi Employment Security Commission, 989 So. 2d 398 (Miss. 2008).

Hearsay

In the Mississippi Supreme Court case of Williams v. Mississippi Employment Security Commission & Anderson-Tully Company, the Court found that hearsay testimony to the effect that the claimant refused an offer of suitable work did not constitute substantial evidence sufficient to support the administrative decision denying the claimant unemployment compensation benefits. Williams v. Miss. Emp. Sec. Comm'n & Anderson-Tully Co., 395 So. 2d 964 (Miss. 1981).

In Mississippi Employment Security Commission v. McLane Southern, the Court found that the uncorroborated hearsay testimony presented by the employer was not "substantial evidence" of employee misconduct, such as would disqualify employee from receiving unemployment compensation benefits. McLane Southern, 583 So. 2d 626 (1991).

More recently in the case of McClinton v. Mississisippi Deptartment of Employment Security, the Court ruled that if hearsay, even if not corroborated in the traditional sense, is highly probative because it has strong indicia of reliability, it can at least in many situations be substantial evidence to support an administrative decision. McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

Affidavits and other hearsay that constitute more than mere rumor and are not simply idle comments by an absent speaker, but are the kind of evidence that may be found sufficiently reliable to constitute substantial evidence by itself and support an administrative agency adjudication. Id.

The indicia of trustworthiness that allows the evidence to be admitted through a hearsay exception is the equivalent of "corroboration." Id.

Leave of Absence

For unemployment compensation purposes, an employee who voluntarily takes a leave of absence is not "unemployed" for the period of time during which his work is temporarily suspended. S. Cent. Bell Tel. Co., 357 So. 2d 312 (Miss. 1978).

In South Central Bell Telephone Company v. Mississippi Employment Security Commission, the Mississippi Supreme Court ruled that long-distance telephone operators, whose positions were phased out and who were given the option of 1. transferring to other offices, 2. terminating employment, or 3. taking leaves of absence, and who elected to take leaves of absence, were not "unemployed," and, thus, were disqualified from receiving unemployment benefits. Id.

The Mississippi Supreme Court found in the case of Curtis v. Mississippi Employment Security Commission, that where employees lost their jobs by technological advances, and were thereby placed involuntarily in position of choosing termination of employment with lump-sum payment of money, transfer to another job in another office of employer, or technological leave of absence, and transfers offered were to offices either 218 miles from employees' homes, 90 miles from their homes, or 81 miles from their homes, election of a leave of absence was not voluntary, and hence, employees were "unemployed" within the plain meaning of the unemployment compensation statute. Curtis v. Miss. Emp. Sec. Comm'n, 451 So. 2d 736 (Miss. 1984).

In Mississippi Employment Security Commission v. Woods, the Supreme Court found that a claimant's failure to contact his employer for five months while on medical leave, in violation of company policy, did not constitute misconduct because the employer failed to enforce the policy until after it was told by the insurer that the claimant was no longer covered, and the payment for the claimant's treatments would be terminated. Miss. Emp. Sec. Comm'n v. Woods, 938 So. 2d 359 (Miss. Ct. App. 2006).

Misconduct

General

For purposes of Mississippi Code Section 71-5-513, misconduct shall be defined as including but not limited to:

1. The failure to obey orders, rules or instructions, or failure to discharge the duties for which an individual was employed;
    a. An individual shall be found guilty of employee misconduct for the violation of an employer rule only under the following conditions:
        i. the employee knew or should have known of the rule;
        ii. the rule was lawful and reasonably related to the job environment and performance; and
        iii. the rule is fairly and consistently enforced.

2. A substantial disregard of the employer's interests or of the employee's duties and obligations to the employer;

3. Conduct which shows intentional disregard – or if not intentional disregard, utter indifference – of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of the employee; or

4. Carelessness or negligence of such degree or recurrence as to demonstrate wrongful intent.

However, mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief or the law is not misconduct. Conduct mandated by the law does not include court ordered conduct resulting from claimant's illegal activity; this may be considered misconduct. MDES Regulation 308.00, Wheeler v. Arriola, 408 So. 2d 1381 (1982).

When analyzing misconduct not only the violation in question should be assessed, but all actions or inactions expected of the employee that affect the reasonable interest of the employer. Miss. Emp. Sec. Comm'n. v. Percy, 641 So. 2d 1172 (Miss. 1994).

An employee's termination for cause does not necessarily mandate that unemployment benefits be denied. Gordon v. Miss. Emp. Sec. Comm'n, 864 So. 2d 1013 (Miss. Ct. App. 2004).

In Campbell v. Mississippi Employment Security Commission, the Mississippi Court of Appeals found that the Claimant did not engage in misconduct by secretly recording a conference with his employer for his protection as matter of law, so as to preclude his receipt of unemployment compensation. Campbell v. Miss. Emp. Sec. Comm'n, 782 So. 2d 751 (Miss. Ct. App. 2000).

The effort to protect oneself is not conduct evincing such willful and wanton disregard of the employer's interest as found in deliberate violation or disregard of standards of behavior so as to preclude entitlement to unemployment compensation. Id.

Employee's conduct may be harmful to employer's interests and justify the employee's discharge, but it evokes the disqualification for unemployment insurance benefits only if it is wilful, wanton or equally culpable. Acy v. Mississippi Employment Sec. Commission, 960 So. 2d 592 (Miss. Ct. App. 2007).

In Mississippi Employment Security Commission and Jackson Municipal Separate School District v. Deborah V. McGlothin, the Mississippi Supreme Court held that a public school teacher's wearing of a head wrap as an expression of her religion was constitutionally protected religious and cultural expression, and thus the Employment Security Commission had no authority to deny her claim for unemployment compensation benefits, even though wearing the head wrap may have constituted misconduct had it not been constitutionally

protected expression. Miss. Emp. Sec. Comm'n and Jackson Municipal Separate School District v. McGlothin, 556 So. 2d 324 (Miss. 1990).

The State may not deny unemployment benefits on the grounds that an individual has refused to abandon sincerely held religious beliefs. Id.

In City of Corinth, Mississippi v. Earnest E. Cox, a city fire fighter who pled nolo contendere to the charge of the sale of cocaine was guilty of misconduct connected with his employment that disqualified him from receiving unemployment compensation benefits. City of Corinth, Miss. v. Cox, 565 So. 2d 1142 (Miss. 1990).

If the misbehavior causing termination is within the capacity and control of the employee; it is a serious disregard of work-related duties and constitutes misconduct. *See* Henry v. Miss. Dept. of Emp. Sec., 962 So. 2d 94 (Miss. Ct. App. 2007) (security guard's disregard of duties justified termination for misconduct); Sojourner v. Miss. Emp. Sec. Comm'n., 744 So. 2d 796 (Miss. Ct. App. 1999) (security guard's failure to follow policy prohibiting remaining on property after shift hours constituted misconduct); Miss. Emp. Sec. Comm'n. v. Ratcliff, 754 So. 2d 595 (Miss. Ct. App. 2000) (failure to disclose most recent previous employer on job application violated employer's policy and was misconduct).

Absenteeism

An employee's unreasonable failure to notify the employer of reasons for absence may constitute misconduct if the employer has a policy requiring such notification. Barnett v. Miss. Emp. Sec. Comm'n, 583 So. 2d 193 (Miss. 1991).

In the case of Mississippi Employment Security Commission v. Bettie G. Bell, the Mississippi Supreme Court stated that an employer has the right to expect an employee to report for work as scheduled on a regular and timely basis and give proper notification when absent. However, in this case, the Court found that an employee terminated for absenteeism after 13 years of satisfactory employment was entitled to benefits because her absences were due to child care problems rather than disregard of her employer's interests. Miss. Emp. Sec. Comm'n v. Bell, 584 So. 2d 1270 (Miss. 1991).

In the case of Trading Post, Inc. v. Nunnery, the Mississippi Supreme Court held that the claimant's absence from work did not constitute "misconduct," and thus, the claimant was not disqualified from receiving benefits, where the referee and the Employment Security Commission Board of Review found that the denial of permission to be absent was not clearly conveyed to the claimant. Trading Post, Inc. v. Nunnery, 731 So. 2d 1198 (Miss. 1999).

In Booth v. Mississippi Employment Security Commission, the Court found that evidence supported the employee's disqualification from receipt of unemployment compensation benefits for misconduct based on excessive absenteeism during a 90-day probationary period following his reinstatement from an earlier dismissal pursuant to an agreement which required that he not be absent during probationary period, and based on his threats of bodily harm to supervisors and his unauthorized use of employer's vehicle while his license was suspended. Booth v. Miss. Emp. Sec. Comm'n, 588 So. 2d 422 (Miss. 1991).

The Court found in Broome v. Miss. Emp. Sec. Comm'n, that a college employee hired to perform housekeeping tasks was terminated for misconduct, thus supporting denial of unemployment benefits, where the employment record reflected a pattern of excessive absenteeism, the employee had received warnings, the employee was on notice of the protocol to follow if he was to be absent from work, the employee failed to comply with protocol when he missed work due to his arrest, and the employee deceived the college as to the reason for his absence. Broome v. Miss. Emp. Sec. Comm'n, 921 So. 2d 334 (Miss. 2006).

Absence from work due to treatment for alcoholism constitutes "misconduct" so as to disqualify an employee from unemployment compensation benefits. Miss. Emp. Sec. Comm'n v. Martin, 568 So. 2d 725 (Miss. 1990).

A lack of transportation to and from work is a personal matter to be resolved by the employee. Miss. Emp. Sec. Comm'n v. Pulphus, 538 So. 2d 770 (Miss. 1989). Generally, absenteeism due to a lack of transportation is considered misconduct connected with the work.

In Mississippi Employment Security Commission v. Pennington, 720 So. 2d 954 (Miss. Ct. App.1998) the Court of Appeals also held that an employee's three consecutive absences constituted misconduct.

In McNeil v. Mississippi Employment Security Comm'n, 875 So. 2d 221(Miss. Ct. App. 2004), the Court of Appeals held that violation of an employee's "no fault" absenteeism policy constituted misconduct.

Insubordination

The definition of "insubordination" as a constant or continuing intentional refusal to obey direct or implied order, reasonable in nature, and given by and with proper authority, should be extended to unemployment cases and is included within the scope of "misconduct." Shannon Engineering, 549 So. 2d 446 (1989).

In Shannon Engineering, the Court found that the Employer failed to meet its burden to show that employee's actions constituted insubordination or any other type of misconduct and, thus, the employee was entitled to unemployment benefits upon discharge. Ample evidence

supported the employee's contention that he was merely standing up for his rights because he believed the employer was trying to take advantage of him. Id.

Insubordination may be grounds for discharge of a public school teacher. Miss. Emp. Sec. Comm'n and Jackson Municipal Separate School District v. McGlothin, 556 So. 2d 324 (1990).

A single incident of insubordination is usually insufficient to disqualify a claimant from eligibility for unemployment compensation. McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

In McClinton, the Mississippi Court of Appeals found that substantial evidence supported the finding that a former employee was terminated for misconduct due to insubordination, as grounds for denial of application for unemployment benefits. The employee, an x-ray technician, had attempted to have a student x-ray technician ejected from the hospital after explicitly being told not to do so. The employee continually refused to comply with the hospital policy allowing for exceptions during an emergency to the requirement that requests for information be input in a computer data base, and the employee was unable to adapt his personal conduct to the demands of his supervisors that he get along with his coworkers. Id.

In Gordon v. Mississippi Employment Security Commission, the Court of Appeals ruled that a Claimant's single incident of cursing his supervisor did not rise to the level of insubordination sufficient to constitute misconduct, as grounds to deny application for unemployment benefits. Gordon v. Miss. Emp. Sec. Comm'n, 864 So. 2d 1013 (Miss. Ct. App. 2004).

In Campbell, the employer failed to produce evidence that the claimant refused to obey a reasonable order given by and with proper authority, so as to support a finding of misconduct on the mistaken presumption that the employer had the authority and right to ask whether the claimant had recorded their meeting, and to expect an answer, particularly where the claimant testified that the recordation was made as a matter of protection. Campbell, 782 So. 2d 751 (Miss. Ct. App. 2000).

Negligence/Isolated Incidents

Ordinary negligence in isolated incidents, and good faith errors in judgment or discretion are not considered disqualifying misconduct within the meaning of the unemployment compensation statute. SkyHawke Techs., LLC v. Miss. Dept. of Emp. Sec., 110 So. 3d 327 (Miss. Ct. App. 2012).

The Mississippi Supreme Court found in Sprouse v. Mississippi Employment Security Commission, that an employee's act in backing a forklift over the foot of a co-worker following his reprimand for similar behavior at one time in the past was not "misconduct" disqualifying him from receiving unemployment benefits, where there was no indication whatsoever that the employee's

negligence would import wanton disregard of his employer's interests in mind of a reasonable person and, at worst, the acts were inadvertences or isolated instances of ordinary negligence. Sprouse, 639 So. 2d 901 (Miss. 1994).

In Allen v. Mississippi Employment Security Commission, the Court ruled that an employee's acts of "grinding parts undersize," failing to send parts to proper station, and improperly placing parts on a rack were inadvertences or isolated instances of ordinary negligence, and not misconduct such as would disqualify him from unemployment benefits, absent evidence of wrongful intent or evil design. Allen, 639 So. 2d 904 (Miss. 1994).

In McLane Southern, the Court found that the fact that an employee had been involved in an isolated fight with a fellow employee at the workplace, standing alone, was not "misconduct" such as would disqualify an employee from receiving unemployment compensation benefits, especially where the employee was not the aggressor, and merely acted in self-defense. McLane Southern, 583 So. 2d 626 (Miss. 1991).

The Mississippi Court of Appeals ruled in Acy v. Mississippi Department of Employment Security, that even if a store employee's conduct of cursing in the presence of a customer was a violation of the employer's policies and procedures, thus justifying her termination, the employee's actions did not amount to misconduct disqualifying her from receipt of unemployment compensation benefits. The found that an isolated incident of misconduct by the employee did not generally disqualify the employee from receiving the benefit of unemployment compensation. Acy, 960 So. 2d 592 (Miss. Ct. App. 2007).

In Shavers v. Mississippi Department of Employment Security, the Court of Appeals held that the Claimant's repeated failure to clean silk screening equipment in accordance with the employer's instructions was misconduct, and was not due to the claimant's inability or incapacity to perform her duties, so the claimant was thus ineligible for unemployment compensation benefits following her termination. Shavers v. Miss. Dept. Emp. Sec., 763 So.2d 183 (Miss. Ct. App. 2000).

Policy/Rule Violation

The Mississippi Court of Appeals ruled that in SkyHawke v. Mississippi Department of Employment Security, the Agency did not abuse its discretion in finding that the claimant's act of sending vulgar text messages to his co-worker was an isolated incident of poor judgment and not misconduct, and therefore, he was not disqualified from receiving unemployment compensation. The claimant testified that he was unaware of any policy against the use of foul language, and foul language was often used by many employees without repercussion. The Court found that the record showed that the employer's policy against the use of foul language was not consistently enforced, as it was the co-worker's use

of an obscenity that precipitated employee's remarks. SkyHawke, 110 So. 3d 327 (Miss. Ct. App. 2012).

In Gordon, the Court of Appeals ruled that the evidence did not support a finding that the claimant was terminated for misconduct arising from a violation of the hospital employer's policy regarding the handling of dirty linen and cursing his supervisor, as grounds for denying application for unemployment compensation. In this case, there was no evidence showing that the claimant received training in the handling of dirty linen, that he ever received a copy of the infection control manual detailing the procedure for handling linen, or that he was fired for cursing. The Court found that the claimant was fired after a single incident, despite the supervisor's testimony that the employee would not be fired for a single violation of moving dirty linen through the clean linen area. Gordon, 864 So. 2d 1013 (Miss. Ct. App. 2004).

In McGlothin, the Mississippi Supreme Court held that public schools have authority to promulgate and enforce a reasonable dress code for faculty, staff, and students, provided only that it does not infringe on the rights otherwise protected, and even then, schools may enforce such a code when undergirded by some compelling governmental interest reasonably related to their educational mission, so far as the least restrictive means reasonably available be employed. Miss. Emp. Sec. Comm'n and Jackson Mun. Sep. Sch. Dist. v. McGlothin, 556 So. 2d 324 (Miss. 1990).

The Mississippi Supreme Court ruled in Coahoma County. v. Mississippi Employment Security Commission that the claimant's failure to report a co-employee for covering up a monitoring camera in the county jail did not rise to the level of misconduct necessary to disqualify her from receiving unemployment benefits. The Court found that there was evidence that the monitoring rule was not fairly and consistently enforced, and the claimant had not been informed that failure to detect an incident such as this would result in immediate termination for such first offense. Coahoma Cty. v. Miss. Emp. Sec. Comm'n, 761 So. 2d 846 (Miss. 2000).

In Acy, the Court of Appeals stated that even if the store employee's conduct of cursing in the presence of a customer was a violation of the employer's policies and procedures, thus justifying her termination, the employee's actions did not amount to misconduct disqualifying her from receipt of unemployment compensation benefits. The Court found that an isolated incident of misconduct by the employee did not generally disqualify the employee from receiving the benefit of unemployment compensation. Acy, 960 So. 2d 592 (Miss. Ct. App. 2007).

Unsatisfactory Work Performance

In Ray v. Bivens, the Mississippi Supreme Court found that the evidence supported the Agency's decision denying unemployment benefits to a worker, on grounds that his dismissal for allegedly sleeping on several occasions during his shift as an environmental technician in the water treatment area of a factory was a discharge for misconduct disqualifying the worker from unemployment benefits. Ray v. Bivens, Miss. Emp. Sec. Comm'm & E. I. Dupont Co., 562 So. 2d 119 (Miss. 1990).

In Foster, the Mississippi Supreme Court held that a former employee's conduct in backing delivery trucks into stationary objects on five occasions in six months did not rise to level of employee misconduct precluding unemployment compensation benefits. Foster, 632 So. 2d 926 (Miss. 1994).

Mere ineptitude cannot disqualify terminated employee from receiving unemployment compensation benefits. Id.

Notice

An administrative board must afford minimum procedural due process under the Fourteenth Amendment of the United States Constitution and under the Mississippi Constitution, consisting of notice and opportunity to be heard in cases in which the right or interest requiring constitutional protection is involved. Booth, 588 So. 2d 422 (Miss. 1991).

In the Williams case, the Mississippi Supreme Court found that the claimant was entitled to notice prior to the administrative decision to reconsider the reversal of her disqualification from benefits. Williams, 395 So. 2d 964 (Miss. 1981).

There is no constitutional requirement for notice to the attorney for unemployment compensation claimant of the employer's administrative appeal from a referee decision as long as notice to the claimant is "reasonably calculated" to apprise the claimant of the necessary information. Booth, 588 So. 2d 422 (Miss. 1991).

Procedural Issues

The procedure in an unemployment compensation case is governed by the regulations prescribed by the Mississippi Employment Security Commission. Booth, 588 So. 2d 422 (Miss. 1991).

In Coleman, the Mississippi Supreme Court Court said that, pursuant to statute, the claimant was exempted from court costs in pursuing his appeal in his unemployment compensation case. Coleman, 662 So. 2d 626 (1995).

Administrative agency hearings are not limited to strict rules of evidence. McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

While the rules of evidence are relaxed in administrative settings, ideas of fundamental fairness should still prevail. SkyHawke Techs., LLC v. Miss. Dept. of Emp. Sec., 110 So. 3d 327 (Miss. Ct. App. 2012).

In cases where substantial evidence supportive of an administrative agency's fact-finding exists and relevant law was properly applied to facts, appellate courts are without the authority to disturb the agency's conclusion. Shannon Engineering, 549 So. 2d 446 (Miss. 1989).

In Little v. Mississippi Employment Security Commission, the Supreme Court found that the requirement by the appeals referee that the unemployment compensation claimant offer evidence to rebut the employer's allegation of misconduct, when no evidence of misconduct had been offered, was an improper shifting of the burden of proof. The employer totally failed to appear for the hearing and expressed no interest in even participating in the hearing, and thus the claimant was not required to submit evidence to rebut the claim of misconduct, as no evidence of misconduct was offered by employer. Little, 754 So.2d 1258 (1999).

In SkyHawke, the Court of Appeals held that the trial court did not act improperly by reviewing the record for fraud, and did not impermissibly require that employer prove fraud to succeed in its appeal of Department of Employment Security's award of unemployment benefits to discharged claimant, when, following statutory direction, the court ruled that it did not find any evidence of fraud and that the findings were supported by evidence. SkyHawke, 110 So. 3d 327 (Miss. Ct. App. 2012).

The Court of Appeals also found that the administrative law judge's (ALJ) exclusion of the employee handbook in the unemployment compensation hearing did not affect a substantial right of the employer, and thus, exclusion did not amount to error. Although the employer contended that had the handbook been admitted into evidence, the ALJ would have found that the employee was terminated for sexual harassment, justifying a denial of unemployment benefits, the ALJ allowed testimony on the employer's sexual harassment policy, curing any possible prejudice from exclusion of the handbook itself. Id.

If an administrative agency exercises power that is not expressly granted or necessarily implied, the agency's decision is void. Wilkerson v. Mississippi Employment Sec. Comm'n, 630 So. 2d 1000 (Miss. 1994).

Scope of Review

An Order of Board of Review based on facts is conclusive upon a lower court if it is supported by substantial evidence and there is no fraud, and the scope of review requires

determination of sufficiency of evidentiary basis of the decision. Wheeler, 408 So. 2d 1381 (1982).

The Supreme Court gives great deference to an administrative agency's findings and decisions. Trading Post, Inc., 731 So. 2d 1198 (Miss. 1999).

The Agency's conclusion must remain undisturbed unless the agency's order is not supported by substantial evidence; is arbitrary or capricious; is beyond scope or power granted to agency; or violates one's constitutional rights. Sprouse, 639 So. 2d 901 (1994), McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

Where an administrative agency errs as a matter of law, courts of competent jurisdiction should not hesitate to intervene. Sherman, 989 So. 2d 398 (Miss. 2008).

The Supreme Court must not reweigh facts of a case or insert its judgment for that of the agency in reviewing the agency's decision. Sprouse, 639 So. 2d 901 (Miss. 1994).

The Supreme Court's scope of review in an unemployment compensation case is limited to the findings of the Board of Review, and an order by the Board on the facts is conclusive if supported by substantial evidence; hence, judicial review is limited to questions of law. Coleman, 662 So. 2d 626 (1995).

Substantial Evidence

The findings of fact of the Board of Review are conclusive if supported by substantial evidence and without fraud; appellate court must not reweigh the facts of the case or insert its judgment for that of the agency. Broome, 921 So. 2d 334 (Miss. 2006).

The Supreme Court should review the record of the Board of Review to determine whether as a matter of law, the Board's fact-finding in an unemployment compensation case is supported by substantial evidence. If the evidence is sufficient, the Supreme Court should determine whether, as matter of law, the employee's actions constituted misconduct disqualifying him from receipt of unemployment compensation. Booth, 588 So. 2d 422 (Miss. 1991).

The Mississippi Supreme Court found in McLane Southern, that the uncorroborated hearsay testimony presented by the employer was not "substantial evidence" of employee misconduct, such as would disqualify the employee from receiving unemployment compensation benefits. McLane Southern, 583 So. 2d 626 (Miss.1991).

If hearsay, even if not corroborated in the traditional sense, is highly probative because it has strong indicia of reliability, it can at least in many situations be substantial evidence to support an administrative decision. McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

Affidavits and other hearsay that constitute more than mere rumor and are not simply idle comments by an absent speaker, but are the kind of evidence that may be found sufficiently reliable to constitute substantial evidence by itself and support an administrative agency adjudication. Id.

In Little v. Mississippi Employment Security Commission, the Supreme Court of Mississippi found that there was no substantive evidence to support denial of unemployment compensation benefits based on the claimant's alleged misconduct where the employer totally failed to appear for hearing and expressed no interest in even participating in the hearing. Little, 754 So.2d 1258 (Miss. 1999).

Timeliness

The State unemployment compensation scheme does not give the Commission the power to modify a statute governing time in which to appeal a decision absent either a written rule relaxing the standard or the showing of good cause for an extension of time. Wilkerson, 630 So. 2d 1000 (Miss. 1994).

An employee or employer has fourteen days from the time that the notification of unemployment compensation is mailed to appeal to the Board of Review; time begins to run on notification of a claim only if the notification is by means other than mail to a party's last known address. Id.

The fourteen day period for an employer to file an appeal of an initial determination of unemployment benefits is strictly construed. Wilson v. MDES, 32 So. 3d 1230 (Miss. Ct. App. 2010).

The Agency is not authorized to accept an employer's appeal of a claims examiner's finding of eligibility for unemployment compensation after the fourteen-day appeal period has expired. Id.

Voluntary Quit

General

Mississippi Code Annotated Section 71-5-513 (A)(1)(a) provides for disqualifying persons from benefits otherwise eligible for such acts as leaving work voluntarily without good cause.

Mississippi Code Annotated Section 71-5-513 (A)(1)(a) also states that "marital, filial and domestic circumstances and obligations" shall not be deemed good cause for voluntarily leaving employment.

A terminated employee is afforded protection under the Mississippi Employment Security Law when he is ready, willing and able to work, but when through no fault of his own, he is unable to do so. An employee who quits his job also may be entitled to unemployment compensation benefits. Coleman, 662 So. 2d 626 (1995).

In Coleman, the Mississippi Supreme Court found that an employee who submitted his letter of intent to resign effective March 31, but who was terminated by the employer on March 22, was entitled to unemployment compensation benefits. The ruled that the case was a "firing case," not a "quitting case." Id.

Unemployment benefit claimants satisfy their burden of proof of good cause for leaving work when they voluntarily leave employment rather than violate a statute, which is a question of law. Sherman, 989 So. 2d 398 (Miss. 2008).

Belief of Termination

An employee who leaves work under the reasonable belief that she has been fired has not voluntarily terminated her employment, and thus, the employee is not disqualified from receiving unemployment compensation. Barbara Huckabee v. Miss. Emp. Sec. Comm'n, 735 So. 2d 390 (Miss. 1999).

The reasonableness of an unemployment compensation claimant's belief that she has been discharged turns on the surrounding facts and circumstances. Id.

In Huckabee, the Supreme Court of Mississippi found that substantial evidence failed to support the Board of Review's finding that a claimant voluntarily quit employment without good cause. In this case, the claimant informed her supervisor that she would have to find another job if the working conditions did not improve but assured the supervisor that she

would stay as long as possible. The claimant alleged that the supervisor stated that she would have to find someone else, and when the claimant asked the supervisor if she was trying to get rid of the claimant, the supervisor giggled, threw up her hands, and stated "I'm hiring somebody else." Id.

Good Cause

Regarding the issue of good cause, the applicable statute provides that a claimant has the burden of proving good cause for quitting his/her employment. Miss. Code Ann. Section 71-5-513(A)(1)(c) (Rev. 2007).

It will be the employee's, and not the employer's, duty to prove that the reason for the separation from employment amounted to good cause. Further, the question of whether the claimant voluntarily quit or was terminated is a question of fact to be determined by the ALJ and Board of Review. Miss. Emp. Sec. Comm'n. v. Fortenberry, 193 So. 2d 142, 143 (Miss. 1966).

"[M]arital, filial and domestic circumstances and obligations shall not be deemed good cause" for voluntarily leaving employment; however, "[p]regnancy shall not be deemed to be a marital, filial or domestic circumstance." Miss. Code Ann. Section 71-5-513(A)(3)(a) (Revised 2000).

Mississippi Employment Security Commission v. Pulphus, 538 So.2d 770 (Miss. 1989)(lack of transportation to and from work is personal circumstance to be resolved by the worker; and thus, not good cause for quitting).

In Pulphus, supra, the Court stated that even though the Employer may have incidentally caused the lack of transportation problem, lack of transportation to and from work was a personal matter, to be resolved by the employee. In this case, Ms. Pulphus apparently traveled approximately 60 miles round trip to work. Shortly prior to Christmas in 1986, the Employer, Harlow Furniture, closed its plant and laid off its employees. However, subsequently the Employer recalled Ms. Pulphus to work, but not the co-workers with whom she rode. Ms. Pulphus apparently worked at the plant a few times, but then quit due to transportation problems. In affirming the Commission's decision disqualifying her from receiving benefits, the Court stated that the Employer was under no obligation to recall Ms. Pulphus's co-workers with whom she rode; and absent an Employer obligation, the Employer was under no obligation to insure transportation of its employees.

Sexual harassment in the workplace constitutes good cause for voluntarily leaving employment in context of unemployment compensation benefit claims. Hoerner Boxes, Inc. v. Miss. Emp. Sec. Comm'n, 693 So. 2d 1343 (Miss. 1997).

If an employee is sexually harassed to such degree that an ordinary prudent employee would leave the ranks of the employed for that of the unemployed, then the employee should not be denied unemployment compensation benefits. Id.

In Sherman, the Court ruled that a former employee who quit her job as a desk clerk at a motel because she refused to engage in price-gouging following a hurricane had good cause for voluntarily leaving her employment, and thus, she was entitled to unemployment benefits. Sherman, 989 So. 2d 398 (Miss. 2008).

Additional case law: Mississippi Employment Security Commission v. Ballard, 252 Miss. 418, 174 So.2d 367 (Miss. 1965)(hardship caused by lack of transportation is not a condition of eligibility); Mississippi Employment Security Commission v. Phillips, 562 So. 2d 115 (Miss. 1990)(claimant failed to establish that job was a risk to his health or safety); Mississippi Employment Security Commission et al vs. Lee, 674 So.2d 512 (Miss. 1996)(quitting work because of disciplinary demotion is not good cause); Mississippi Employment Security Commission vs. Rakestraw, 179 So.2d 830 (Miss.1965)(quitting work in a moment of pique is not good cause); Daniels v. Mississippi Employment Security Commission, 904 So. 2d 1195 (Miss. Ct App 2004)(employer's refusal to pay claimant time and one-half pay for working Thanksgiving Day, was not good cause for quitting).

Job Abandonment

NCI Building Components v. Berry, 811 So. 2d 321 (Miss Ct. App. 2001). In Berry, the issue was whether Mr. Berry voluntarily quit or was discharged. The facts indicated that Mr. Berry had been disciplined for excessive absenteeism. Subsequently, his supervisor allowed him to take a couple of days off, but he was nevertheless required to call in those absences according to company policy. Mr. Berry did not call in; and the policy called for termination after three successive absences without calling in. On the day following these two absences, Mr. Berry came into the office to pick up his paycheck. He was scheduled to work the night shift. Mr. Berry then spoke to the personnel administrator about two items of business that were apparently somewhat contentious. Mr. Berry then asserted that he was terminated. The supervisor denied he was terminated, stating that he did not have the authority to do so. Mr. Berry apparently did not return to work after that.

In Berry, supra, based on these facts, the Court held that the evidence was that work was still available to Mr. Berry; and the evidence supported the Department's determination that Mr. Berry voluntarily quit. The Court further held that he did not take reasonable steps to protect his job by discussing his employment with his supervisors further. He also did not return to work thereafter.

Also see: Mississippi Department of Employment Security v. Shields, 42 So. 3d 1204 (Miss. Ct. App. 2010)(employee on leave of absence due to pregnancy was found to have abandoned her job, and not terminated, when she failed to return to work the day after her leave of absence ended, when she also did not request an additional leave of absence)(case reverses Circuit Court and also discusses Circuit Court's abuse of discretion).

Temporary Help Firm Rule

Miss. Code Ann. Section 71-5-511(I) of the law provides that a temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected to the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left voluntarily without good cause connected with the work under this paragraph unless the temporary employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(ii) That unemployment benefits may be denied if the temporary employee fails to do so.

Code of Mississippi Rules > AGENCY 20. LABOR > SUB-AGENCY 201. STATE WORKFORCE INVESTMENT BOARD > CHAPTER 001. PART 201:

MISSISSIPPI WORKS FUND RULES & REGULATIONS

This document reflects changes received through May 5, 2017

CONTENTS

PART 201 CHAPTER 1. STATUTORY AUTHORITY

Rule 1.1 Statutory Authority.

The MS Works Fund was created through MS Works Funds created in Mississippi Code Annotated § 71-5-353.

The rules for the MS Works Fund are promulgated in accordance with Senate Bill 2808, which empowers and requires the State Workforce Development Board (the Board) to:

A. Establish a Rules Committee that in consultation with the full board shall be designated as the body with the sole authority to promulgate rules and regulation for distribution of MS Works Funds created in Mississippi Code Annotated §71-5-353; and to

B. Create and implement performance metrics for the MS Works Fund to determine added value to the local and state economy.

Source: Miss. Code Ann. §71-5-353 §37-153-7

Rule 1.2 Rules Committee.

The Rules Committee shall consist of State Workforce Development Board members:

A. The Executive Director of the Mississippi Development Authority;

B. The Executive Director of the Mississippi Department of Employment Security;

C. The Executive Director of the Mississippi Community College Board;

D. The Chair of the Mississippi Association of Community and Junior Colleges;

E. The Chair of the State Workforce Development Board;

F. A representative from the workforce areas selected by the Mississippi Association of Workforce Areas, Inc.;

G. A business representative currently serving on the board, selected by the Chairman of the State Workforce Development Board; and

H. Two (2) legislators, who shall serve in a nonvoting capacity, one (1) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate and one (1) of whom shall be appointed by the Speaker of the House of Representatives from the membership of the Mississippi House of Representatives.

Source: Miss. Code Ann. §§71-5-353 & 37-153-7

PART 201 CHAPTER 2 MS WORKS FUND PROJECTS

Introduction.

The Rules Committee has approved funding for two types of projects:

Job Creation Projects (JCP); and Work Ready Projects (WRP). The Mississippi public community college system and its partners shall be the primary entities to facilitate the training associated with both types of projects. Eligible applicants are community and junior colleges, state institutions of higher learning, Workforce Investment Network job centers, and other training providers, as approved (referred to in this document as Training Providers).

Applications are accepted year-round, as funds are available. Training Providers must apply on behalf of the Benefitting Business through the Mississippi Development Authority (MDA) and complete the MS Works Fund proposal package to include:

A. Business Description

B. Project Description

C. Detailed Job and Wage Information

D. Consent to Release Employment Data (UI Wage Record)

E. Certification

F. Vendor Registration

Rule 2.1 Job Creation Projects.

Job Creation Projects (JCP) must result in net new jobs and meet retention requirements.

Source: Miss. Code Ann. §71-5-353

Rule 2.2 JCP Eligible Projects.

Eligible projects for JCP must meet the critical training needs of a specific Benefitting Business to train new employees in skills necessary for the operation of the business, or to support subsidized On-the-Job training for new employees. MS Works Fund grants should be used to maximize existing training resources available through the Workforce Enhancement Training Funds, the Workforce Innovation and Opportunity Act and other sources. The Training Provider must demonstrate that the Benefitting Business is not eligible for, or has exhausted funding through, these or other existing programs.

A. The Benefitting Business should be targeted towards, but not limited to, high growth target industry sector, as identified by MDA;

B. The Benefitting Business shall create at least 10 net new full-time permanent jobs within two years of completion of training under the MS Works grant;

C. Retention of trained employees is extremely important.MDA will not commit funds towards training for any job that is known to be short-term (a year or less). Furthermore, MDA will not commit future funds toward training for a Benefitting Business that has a poor history of job retention.

Source: Miss. Code Ann. §71-5-353

Rule 2.3 JCP Eligible Applicants.

The applicable Training Provider will apply on behalf of a Benefitting Business, as indicated below, to receive training funds.

A. Existing - For-profit businesses that have been in operation for a minimum of one year prior to the application date, are expanding the number of full-time employees at the Mississippi location, are current on all federal and state tax obligations, and are financially viable are eligible to apply.

B. New - For-profit businesses that have been recruited to the state by MDA or in consultation with MDA, are current on all federal and state tax obligations, and are financially viable.

Source: Miss. Code Ann. §71-5-353

Rule 2.4 JCP Allowable Use of Funds.

MS Works Funds may only be used for immediate training needs for the net new jobs created and retained. Not more than five hundred thousand dollars ($ 500,000) may be awarded annually for the training needs of any one employer. Eligible projects must meet critical training needs of a specific business (Benefitting Business) to train new or existing employees in skills necessary for the operation of the business. When applicable, MS Works funds should be aligned with the WIOA state plan.

A. The MS Works Fund grants shall be available for, but not limited to high growth industry sectors as designated by MDA.

B. These funds shall place a special emphasis and priority on skill, aptitude, and physical assessments such as ACT WorkKeys) and Job PASS. When possible, MS Works Funds shall be used to increase the number of certificated employees in the state.

C. Educational training including, but not limited to: workplace literacy, basic skills, soft skills, and English as a second language

D. Subsidized On-the-Job training for new employees

E. Priority for training shall be given to improving the skills of unemployed and underemployed individuals

F. Training in operational strategies to improve efficiency of business operations connected to an expansion

G. Training Providers may request administrative cost recovery and MDA may approve on a case by case basis. Administrative costs will be capped at 5 percent but the negotiated amount will be approved based on the justifiable costs associated with each project.

MDA will take wage rates into consideration when making a determination on the amount of grant funds to make available to the Benefitting Business. Higher wage rates are a factor in MDA's recruitment of industries and as such will be a factor in the determination of how MS Works Funds will be allocated.

Source: Miss. Code Ann. §71-5-353

Rule 2.5 JCP Unallowable Use of Funds.

Funds approved for JCP projects may not be used to pay training costs of a company that relocates the company's worksite from one community in Mississippi to another. In no case shall MS Works Funds be used to supplant workforce funds available from any other source, including but not limited to local, state, or federal sources that are available for workforce training and development. Applicants must disclose other funds sought or awarded for workforce training.

MS Works Fund grants may not be used to provide the following:

A. Proprietary management training packages such as: VitalEdu, AchieveGlobal, Plexus, Zig Ziglar, Phi Theta Kappa Leadership, Stephen Covey and similar packages;

B. Training to a gaming enterprise; and

C. Training for service sector businesses.

Source: Miss. Code Ann. §71-5-353

Rule 2.6 JCP Application Process.

The applicable Training Provider, in partnership with the Benefitting Business, must submit electronic copies of the application according to the appropriate format.

A. The application must be complete, with all information supplied;

B. The application must clearly describe the training to be delivered, state the training objectives, and describe how the funds will be used to meet the objectives;

C. The application must document that the training is needed and that other resources are not available to meet the need; and

D. Any additional criteria required by MDA.

Source: Miss. Code Ann. §71-5-353

Rule 2.7 JCP Sub Grant Agreement.

Upon approval of the application by the MDA, Training Providers must enter into a sub grant agreement with the MDA to facilitate training related to the JCP activity.

Source: Miss. Code Ann. §71-5-353

Rule 2.8 JCP Disbursement and Reimbursement of Funds.

All funds deposited into the Mississippi Department of Employment Security (MDES) MS Works Fund shall be disbursed exclusively by the Executive Director of the MDES, in accordance with the rules and regulations promulgated by the State Workforce Development Board Rules Committee. The MDES upon approval by the MDA will make all disbursements to the Training Provider.

The Training Provider will be reimbursed upon completion of a participant's training. Reimbursement requests may be submitted no more frequently than on a monthly basis.

Source: Miss. Code Ann. §71-5-353

Rule 2.9 Work Ready Projects.

Work Ready Projects must result in a trained and work ready applicant pool. Training must comply with the Workforce Innovation and Opportunity (WIOA) plan and meet targeted sector, credential, middle skill job requirements. When possible, MS Works Funds shall be used to increase the number of certificated employees in the state.

Source: Miss. Code Ann. §71-5-353

Rule 2.10 WRP Eligible Projects.

Eligible projects for WRP must either:

A. Meet the critical training needs of a specific Benefitting Business to train existing employees in skills necessary for the retention of jobs, or

B. Support implementation of the WIOA state plan to result in a trained and work-ready applicant pool, with a special emphasis and priority on certificate-based skill, aptitude, and physical assessments such as ACT WorkKeys) and Job PASS applicable to middle skill jobs.

For projects under Part B above, MDA shall make grants to the appropriate Training Provider after consultation with the State Workforce Development Board to ensure that the project adheres to the WIOA state plan. MS Works Fund grants should be used to maximize existing training resources available through the Workforce Enhancement Training Funds, the Workforce Innovation and Opportunity Act and other sources. For retention projects, the Training Provider must demonstrate that the Benefitting Business is not eligible for, or has exhausted funding through, these or other existing programs.

Source: Miss. Code Ann. §71-5-353

Rule 2.11 WRP Eligible Applicants.

Applications for WRPs for the purpose of building a quantifiable and certifiable applicant pool must be submitted by a Training Provider. Applications for WRPs for retention purposes must be submitted in partnership with a Benefitting Business.

A. Training Providers -community and junior colleges, state institutions of higher learning, Local Workforce Development Board, and other training providers, as approved.

B. WRP Benefitting Business - For-profit businesses that have been in operation for a minimum of one year prior to the application date, are current on all federal and state tax obligations, and are facing market conditions that require skills upgrades to prevent layoffs.

Private non-profit entities and public agencies (excluding Training Providers) cannot receive training assistance through a WRP.

Source: Miss. Code Ann. §71-5-353

Rule 2.12 WRP Allowable Use of Funds.

MS Works Funds for WRP may not account for more than twenty-five percent of the total allocation in any one year. Eligible projects must meet critical training needs of specific Benefitting Business to train existing employees in skills necessary for the retention of jobs, or result in a trained and work-ready applicant pool with a special emphasis and priority on certificate-based training applicable to middle skill jobs. MS Works funds should be aligned with the WIOA state plan.

A. The MS Works Fund grants shall be targeted towards, but not limited to, high growth industry sectors as designated by MDA.

B. These funds shall place a special emphasis and priority on skill, aptitude, and physical assessments such as ACT WorkKeys) and Job PASS.

C. Educational training including, but not limited to: workplace literacy, basic skills, soft skills, and English as a second language

D. Training in operational strategies to improve efficiency of business operations

E. Priority for training not related to retention projects shall be given to improving the skills of unemployed and underemployed individuals

F. MS Works Training Grants may be used for Lean Manufacturing training and customized training, only to match the contribution to the cost of such training made by the company or group of companies, and may be subject to the 25% cap on retention related projects.

G. Training Providers may request administrative cost recovery and MDA may approve on a case by case basis. Administrative costs will be capped at 5 percent but the negotiated amount will be approved based on the justifiable costs associated with each project.

MDA will take wage rates of the Benefitting Business into consideration when making a determination on the amount of grant funds to make available for retention.

Source: Miss. Code Ann. §71-5-353

Rule 2.13 WRP Unallowable Use of Funds.

In no case shall MS Works Funds be used to supplant workforce funds available from any other source, including but not limited to local, state, or federal sources that are available for workforce training and development.

Funds approved for WRP may not be used to pay training costs for a company that relocates the company's worksite from one community in Mississippi to another.

Trainee wages are not allowable expenditures. In addition, the purchase of proprietary or production equipment is not an allowable expenditure.

MS Works Fund grants may not be used to provide the following:

A. Proprietary management training packages such as: VitalEdu, AchieveGlobal, Plexus, Zig Ziglar, Phi Theta Kappa Leadership, Stephen Covey and similar packages;

B. Training to a gaming enterprise; and

C. Training for service sector businesses.

Source: Miss. Code Ann. §71-5-353

Rule 2.14 WRP Application Process.

The applicable Training Provider, in partnership with a Benefitting Business if applicable, must submit electronic copies of the application according to the appropriate format.

A. The application must be complete, with all information supplied;

B. The application must clearly describe the training to be delivered, state the training objectives, and describe how the funds will be used to meet the objectives;

C. The application must document that the training is needed and that other resources are not available to meet the need; and

D. Any additional criteria required by MDA.

Source: Miss. Code Ann. §71-5-353

Rule 2.15 WRP Sub Grant Agreement.

Upon approval of the application by the MDA, Training Providers must enter into a sub grant agreement with the MDA to facilitate training related to the WRP activity.

Source: Miss. Code Ann. §71-5-353

Rule 2.16 WRP Disbursement and Reimbursement.

All funds deposited into the Mississippi Department of Employment Security (MDES) MS Works Fund shall be disbursed exclusively by the Executive Director of the Mississippi Department of Employment Security, in accordance with the rules and regulations promulgated by the State Workforce Development Board Rules Committee. The MDES upon approval by the MDA will make disbursements.

The Training Provider will be reimbursed upon completion of a participant's training. Reimbursement requests may be submitted no more frequently than on a monthly basis.

Source: Miss. Code Ann. §71-5-353

PART 201 CHAPTER 3. PERFORMANCE METRICS

The Mississippi State Workforce Development Board has created performance metrics for the MS Works Fund to determine the added value to the local and state economy and the contribution to the future growth of the state economy.

Rule 3.1 Required Performance Metrics for Job Ready Projects.

The State Longitudinal Data System (SLDS) will be used to calculate performance. Performance metrics for Job Ready Projects will at a minimum include:

A. Jobs Created

B. Jobs Retained

C. Wages / Personal Income

D. National Career Readiness Certificates and other Job Preparedness Certifications Granted (geo-located)

E. Private training funds committed

Source: Miss. Code Ann. §71-5-353

Rule 3.2 Required Performance Metrics for Work Ready Projects.

The State Longitudinal Data System (SLDS) will be used to calculate performance. Performance metrics for Work Ready Projects will at a minimum include:

A. Training Enrollments

B. Training Completion

C. National Career Readiness Certificates and other Job Preparedness Certifications Granted (geo-located)

D. Entered Employment

E. Wages Earned

The Training Providers will be required to input data associated with each JCP and WRP activity using appropriate mechanisms to incorporate that data into SLDS.

Source: Miss. Code Ann. §71-5-353

PART 201 CHAPTER 4. RECONCILIATION & REPORTING

Rule 4.1 Reconciliation of Performance and Financial Measures.

The State Longitudinal Data System (SLDS) will be used to generate quarterly performances and annual performance reports. Specific reporting requirements will be included in sub grant agreements between MDA and the Training Provider which will describe the process for collecting, transmitting, validating, and reporting data in compliance with SLDS Governing Board rules and regulations on training expenditures and participant results.

For training provided by the community and junior colleges, the MCCB assumes responsibility for demographic data validation. MDA assumes responsibility for financial validation. Upon validation of demographics and financial reports by the appropriate parties, MCCB will make the submission to SLDS. The community and junior college training provider assumes responsibility for collecting accurate data as required and submitting the data to MCCB by the designated deadline.

Source: Miss. Code Ann. §71-5-353

Rule 4.2 Required Reports.

The MDES in conjunction with MDA will generate quarterly and annual financial reports by project and in the aggregate. Financial reports will include:

A. Collections

B. Expenditures

C. Obligations

D. Plan versus Actual

A report on the performance of the fund shall be made to the Governor, Lieutenant Governor, and Speaker of the House of Representatives annually, throughout the life of the fund.

Source: Miss. Code Ann. §71-5-353

Rule 4.3 Reporting Schedule.

Quarterly financial reports will be submitted for review and approval to the MDA and the SWIB 45 days after the end of each quarter. Annual financial reports will be submitted to MDA and the SWIB 45 days after the end of the calendar year.

Source: Miss. Code Ann. §71-5-353

STATUTORY AUTHORITY:
Miss. Code Ann. §71-5-353

HISTORY
EFFECTIVE DATE:
September 9, 2016 Secretary of State Administrative Bulletin #22156

CODE OF MISSISSIPPI RULES

Code of Mississippi Rules > AGENCY 20. LABOR > SUB-AGENCY 101. DEPARTMENT OF EMPLOYMENT SECURITY > CHAPTER 102.

WORKFORCE INVESTMENT ACT POLICIES AND PROCEDURES

This document reflects changes received through May 5, 2017

CONTENTS

Policy Number 1. Standard Policy and Procedure.

I. SCOPE AND PURPOSE

This policy sets forth the standard format to be followed by the staff of the Employment Training Division when drafting policies and procedures related to the administration of the Workforce Investment Act.

To ensure uniformity in the policies and procedures issued by the Employment Training Division, this standard for the format of all policies and procedures has been adopted. The local workforce investment area entities receiving policies should maintain the policies in an official file.

II. REQUIREMENTS

A. Outline

All policies and procedures shall be written according to the following standard accepted outline format:

I.

II.

A.

B.

1.

2.

a.

b.

(1)

(2)

(a)

(b)

i.

ii.

B. Title Heading

1. All policies and procedures shall use the following format for the subject heading to be centered on the first page of the policy:

MISSISSIPPI
State Policy Number
TITLE
Workforce Investment Act
Employment Training Division

2. Policies shall be numbered sequentially. Policy numbers shall be assigned upon signature by the director. Any policy which replaces an existing policy shall take that policy's number.

C. Subject Headings

1. Primary Headings
All policies and procedures shall use the following primary subject headings:

I. SCOPE AND PURPOSE
II. REQUIREMENTS
III. OTHER HEADINGS AS REQUIRED
IV. EFFECTIVE DATE

2. Secondary Headings
All policies and procedures that include text that is subdivided under the Primary heading shall provide short descriptive heading at least through the second level. The following example illustrates:

II. REQUIREMENTS
A. State
B. Service Delivery Areas
C. Subrecipients
3. Paragraphs

All text shall be presented in block paragraphs.

D. Table of Contents

All policies and procedures ten pages or more in length shall have a table of contents. The table of contents shall be completed with heading at least through the second level as necessary. An example of the standard table of contents format to be used is Attachment A.

E. Page Numbering and Headers

All policies and procedures shall include a header in the upper right corner of the page that includes the title of the policy and the page number. Pages shall be numbered starting with page two (2). See this policy for an example.

F. Attachments

1. Policies and procedures may include attachments to provide examples, forms and other information for clarification purposes.

2. Attachments shall be lettered in the upper right corner of each page.

3. All multiple-page attachments shall be numbered in the upper right corner of the page.

4. Attachments shall be listed at the end of the policy as illustrated in this policy.

G. Effective Date

All policies shall have an effective date and shall be signed by the Director of the Employment Training Division.

If a policy or procedure replaces or supersedes a policy previously issued by the Employment Training Division, the policy or procedures shall so state in this section.

H. Maintenance

1. Employment Training Division
All policies and procedures bearing the original signature of the Director shall be maintained in an official policy binder to be housed in the Director's office.

2. Local Workforce Investment Areas
Policies will be issued via the WIA Communication system. Local areas should maintain all policies in an official policy file.

III. EFFECTIVE DATE

This policy shall be effective immediately.

ATTACHMENTS: A - TABLE OF CONTENTS EXAMPLE

STANDARD POLICY AND PROCEDURE FORMAT

Workforce Investment Act

Employment Training Division

Table of Contents

Policy Number 2. Local Workforce Investment Board Appointment and Certification Policy.

I. SCOPE AND PURPOSE

Section 117 of the Workforce Investment Act (WIA) requires the establishment of a local workforce investment board. According to subsection (c), the Governor shall certify a local board if the Governor determines that its composition and appointments are consistent with the provisions of Section 117(b) and, for a second or subsequent certification, the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures. The purpose of this policy is to provide local workforce investment area chief elected officials with the specific requirements and standards for nomination, appointment and certification of local workforce investment boards in the State of Mississippi.

All local workforce investment boards (LWIB's) shall comply with Federal, State and local conflict of interest requirements including opinions issued by the Mississippi Ethics Commission. Ethics Commission Advisory Opinion 04-076-E, issued on October 4, 2004, forbids LWIB members from having an interest in funds subject to LWIB oversight. Change 2 incorporates that opinion's requirements into Section II.F of this policy.

II. REQUIREMENTS

A. APPOINTMENT

1. SINGLE CHIEF ELECTED OFFICIAL

According to the WIA, section 117(c)(1)(A), the chief elected official in a local area is authorized to appoint the members of the local board.

2. MULTIPLE UNITS OF LOCAL GOVERNMENT IN AREA

a. According to the Act, section 117(c)(1)(B), in a case in which a local area includes more than one unit of general local government, the chief elected officials of such units may execute an agreement that specifies the respective roles of the individual chief elected officials

(1) In the appointment of the members of the local board from the individuals nominated or recommended; and

(2) In carrying out any other responsibilities.

State law permits local governmental units to enter into agreements and prescribes minimum requirements and the approval process. Therefore, multiple units of general local government must execute an agreement in accordance with the WIA and either Cooperative Service Districts, Section 19-3-101-through 19-3-115, Mississippi Code of 1972 or the

Interlocal Cooperation Act of 1974, Sections 17-13-1 through 17-13-17 of the Mississippi Code of 1972 as amended

b. Lack of Agreement

The Act, section 117(c)(1)(B)(ii), prescribes that if, after a reasonable effort, the chief elected officials are unable to reach agreement, the Governor may appoint the members of the local board from individuals so nominated or recommended.

B. COMPOSITION

1. REPRESENTATIVE OF BUSINESS

a. Requirements of Section 117(b)(2)(A) and (B) of the Act

The local board shall include representatives of business in the local area, who:

(1) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policy-making or hiring authority;

(2) Represent businesses with employment opportunities that reflect the employment opportunities of the local area;

(3) Are appointed from among individuals nominated by local business organizations and business trade associations; and

(4) Make up a majority of the local board.

b. State Requirements and Recommendations

(1) The local board is encouraged to include representatives of business in the local area who represent diverse businesses from throughout the area and employ individuals.

(2) The chief elected official is encouraged to consider business representative nominations who serve or have served on a District Workforce Development Council established pursuant to the Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004.

2. REPRESENTATIVES OF LOCAL EDUCATIONAL ENTITIES

a. To comply with 20 CFR section 661.315(a), the local board shall include at least two representatives of local educational entities. Also, special consideration must be given to representatives of local educational agencies, local school boards, entities providing adult education and literacy activities,

and postsecondary educational institutions (including representatives of community colleges, where such entities exist) in the selection of members representing educational entities. These members must be selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities.

b. The nomination requirements for educational representatives described above must be met even if a one-stop partner is selected as an educational representative.

3. REPRESENTATIVES OF LABOR ORGANIZATIONS

a. According to 20 CFR 661.315(a), the local board shall include at least two representatives of labor organizations for a local area in which employees are represented by labor organizations.

b. According to Section 117(b) (2)(A)(iii) of the Act and 20 CFR 661.315(e), these representative must be nominated by local labor federations, or for a local area in which no employees are represented by such organizations, other representatives of employees.

4. REPRESENTATIVES OF COMMUNITY-BASED ORGANIZATIONS

a. According to 20 CFR 661.315(a), the local board shall include at least two representatives of community-based organizations. Also, special consideration must be given to organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present, in the selection of members representing community based organizations.

b. The chief elected official is encouraged to solicit nominations from a wide variety of community-based organizations.

c. The chief elected official is encouraged to appoint community-based organization representatives from organizations that serve a large portion of the workforce investment area.

5. REPRESENTATIVES OF ECONOMIC DEVELOPMENT

a. According to 20 CFR 661.315(a), the local board shall include at least two representatives of economic development agencies. Also, special consideration must be given to private sector economic development entities in the selection of members representing economic development entities.

b. The chief elected official is encouraged to solicit nominations from economic development organizations.

c. The chief elected official is encouraged to appoint economic development representatives from agencies that serve a large portion of the workforce investment area and that represent the diverse aspects of the local economy.

6. REPRESENTATIVES OF ONE-STOP PARTNERS

a. According to 20 CFR 661.315(a), the local board shall include at least one representative from each of the following one-stop partners where applicable:

(1) Programs authorized under the Workforce Investment Act;

(2) Programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(3) Adult education and literacy activities authorized under title II;

(4) Programs authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

(5) Programs authorized under section 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5)) (as added by section 5001 of the Balanced Budget Act of 1997), Welfare-to-Work;

(6) Activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.);

(7) Postsecondary vocational education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.);

(8) Activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(9) Activities authorized under chapter 41 of title 38, United States Code, Veterans' Programs;

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.);

(11) Employment and training activities carried out by the Department of Housing and Urban Development; and

(12) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law).

b. An entity that administers two or more of the programs and activities carried out by the one-stop partners may be represented on the local workforce investment board by a single individual.

c. The chief elected official is encouraged to solicit nominations or recommendations from applicable entities.

d. The chief elected official may appoint representatives from other one-stop partners if that partner and the local workforce investment board have negotiated and signed a memorandum of understanding.

7. OTHER INDIVIDUALS

According to 20 CFR 661.315(b), the membership of the local board may include individuals or representatives of other appropriate entities, including entities representing individuals with multiple barriers to employment and other special populations, as determined by the chief elected official.

C. GENERAL MEMBERSHIP PROVISIONS

1. Except for one-stop partners, a local workforce investment board member may represent only one category of membership.

2. According to 20 CFR 661.315(c), members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

3. CHAIRPERSON
As required by Section 117(b)(5) of the WIA, the local board shall elect a chairperson for the local board from among the representatives of business.

D. GENERAL APPOINTMENT PROVISIONS

1. DOCUMENTATION

a. All nominations shall be solicited in writing.

b. All nominations shall be received in writing.

c. Copies of each nomination shall be maintained in an official local workforce investment board certification file.

2. TERMS
Local workforce investment board members may be appointed for fixed and staggered terms as prescribed by the chief elected official(s).

3. VACANCIES
Any vacancy in the membership of the local workforce investment board shall be filled in the same manner as the original appointment.

4. REMOVAL
Any member of a local workforce investment board may be removed for cause in accordance with procedures established by the local workforce investment board and the chief elected official.

E. LOCAL WORKFORCE INVESTMENT BOARD CERTIFICATION

1. REQUIREMENTS

a. The Governor shall certify a local workforce investment board if the Governor determines that the board's composition and appointments are consistent with

the provision of Section 117(b) of the Workforce Investment Act. For a second or subsequent certification, the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures shall be considered.

b. No newly formed local workforce investment board shall be convened prior to receipt of written certification from the Governor by the chief elected official.

c. The Governor shall certify or deny certification within 30 days after the date on which a list of members and necessary supporting documentation are submitted to the Governor.

2. FAILURE TO ACHIEVE CERTIFICATION
Failure of a local board to achieve certification shall result in reappointment and certification of another local board for the local area pursuant to the process described in this policy.

3. DOCUMENTATION REQUIREMENTS

a. Initial Certification
The chief elected official(s) shall submit a request for local workforce investment board certification in the event the local workforce investment area is newly designated by the Governor at a time to be determined by the Governor.

b. Biennial Review
The Governor shall certify the local workforce investment board once every two years.

c. Format
Documentation of local workforce investment board selection for certification purposes shall be provided in accordance with the attached Certification Package and review of local performance versus measures.

d. Updates The chief elected official shall advise the Governor of all appointments, new and replacements, and reappointments to the local workforce investment board as they occur. Such updates shall include a complete revised Local Workforce Investment Board Roster and a Local Workforce Investment Board Appointee Profile for all affected members. Updates shall be provided to the Governor no later than 30 days following any appointment or reappointment. Updates will be reviewed to ensure that all appointments are made in accordance with the Act.

4. MONITORING
It is the responsibility of the chief elected official to monitor the local workforce investment board membership on a yearly basis to ensure that all members remain representative of the geographic and private or public sector for which they were nominated and appointed.

F. CONFLICT OF INTEREST

1. No WIB member shall have an interest in funds subject to WIB oversight. A prohibited interest includes but is not limited to 1) a WIB member whose business receives a contract or subcontract funded in whole or in part by WIA, 2) a WIB member whose business offers training on the Eligible Training Provider List, and 3) a WIB member who is employed by or who is a director of a nonprofit organization receiving a contract or subcontract subject to WIB over-sight. The prohibition lasts for one year after the interested WIB member's term ends.

2. The above listed prohibition is further explained in Mississippi Ethics Commission Advisory Opinion 04-076-E that states that the ethics violation may not be cured by declaring an interest and declining to vote ("recusal"). The opinion does not extend to WIB members representing the public sector, such as community college and State agency representatives, since these agencies and their representatives do not have a "pecuniary interest" in contracts as determined by Advisory Opinion 85-18-E issued on August 26, 1985.

3. All WIB members having an interest prohibited by Advisory Opinion 04-076-E shall no longer be considered members and shall be replaced forthwith. All WIB certifications shall be contingent upon compliance with this section and with all other Federal, State and local conflict of interest requirements.

4. Due to the unique nature of on-the-job and customized training contracts, these conflict of interest provisions do not apply to such contracts with businesses that are represented on the Board, unless it is the common practice of the Board to consider and approve each such contract.

III. EFFECTIVE DATE

This policy shall be effective immediately upon signature.

Wanda Land

Director Employment Training Division

Mississippi Development Authority

ATTACHMENTS

LOCAL WORKFORCE INVESTMENT BOARD (LWIB) CERTIFICATION PACKAGE

I. Specify the local workforce area name:

II. Specify the name of the chief elected official(s) who appoints the Local Workforce Investment Board. If the Lo-cal Workforce Investment Board was appointed pursuant to an agreement among local units of government, attach a copy of the official agreement.

III. Identify Local Workforce Investment Board members by representative category: Display Table

IV. Identify local business organizations and business trade associations from which business representative nominations were solicited:

V. Describe how the business membership represents businesses with employment opportunities that reflect the employment opportunities of the local area.

VI. Identify the regional or local educational agencies, institutions, or organizations representing local educational entities from which education representative nominations were solicited.

VIII. Identify the local labor federations from which organized labor representatives' nominations were solicited. If no employees in the local area are represented by such organizations, describe how other representatives of employee were selected.

IX. Describe the system for terms of member developed by the chief elected official.

X. Describe procedures to ensure the timely appointment of local workforce investment board members to fill vacancies.

XI. List all local board appointees/members on the attached roster. Submit a complete appropriate Appointee Pro-file for each member.

XII. Assurances
The chief elected official shall provide the following assurances:

A. Copies of all correspondence soliciting nominations and/or recommendations for local workforce investment board membership are on file and available for review.

B. Copies of all correspondence nominating or recommending individuals for local workforce investment board membership are on file and available for review.

C. The local workforce investment board has been established in accordance with Section 117 of the Workforce In-vestment Act.

D. The Chairperson of the local workforce investment board shall be elected by the members of the local workforce investment board from members representing the private sector.

E. All business representatives meet the requirements of Section 117(b)(2)(A)(i) of the Act.

_____
Signature of the Chief Elected Official

_____
Name and Title of the Chief Elected Official

Date

LOCAL WORKFORCE INVESTMENT BOARD ROSTER Display Table

LOCAL WORKFORCE INVESTMENT BOARD ROSTER Instructions

I. NAME
List members in alphabetical order, last name, first name and middle initial.

II. BUSINESS ADDRESS & TELEPHONE NUMBER
Give the business mailing address and telephone number.

III. REPRESENTATIVE GROUP
Indicate appropriate representative group and subgroup:

A. Business

B. Local Education Entities

C. Labor Organizations

D. Community-Based Organizations

E. Economic Development Agencies

F. Other - Specify

IV. TERM
Provide the beginning and ending dates for each member's appointed term.

V. RACE
Indicate the race (Black, White or Other) of each member.

VI. SEX
Indicate the sex (Male or Female) of each member.

BUSINESS REPRESENTATIVE APPOINTEE PROFILE

I. NAME:

II. BUSINESS REPRESENTED: TITLE/POSITION:

III. BUSINESS ADDRESS AND TELEPHONE NUMBER:

IV. DESCRIPTION OF BUSINESS (Including product, number of employees, employment opportunities):

V. TERM

BEGINNING DATE:

ENDING DATE:

VI. RACE:

VII. SEX:

VIII. NOMINATED BY:

PUBLIC SECTOR APPOINTEE PROFILE

I. NAME:

II. ORGANIZATION REPRESENTED:

TITLE/POSITION:

III. BUSINESS ADDRESS AND TELEPHONE NUMBER:

IV. ORGANIZATION DESCRIPTION: (Check One)

A. LOCAL EDUCATION ENTITY

B. LABOR ORGANIZATION

C. COMMUNITY-BASED ORGANIZATIONS

D. ONE-STOP PARTNER

E. ECONOMIC DEVELOPMENT

G. OTHER - SPECIFY

V. TERM

BEGINNING DATE;

ENDING DATE:

VI. RACE:

VII. SEX:

VIII. NOMINATED BY (If applicable):

Policy Number 3. WIA Board Operating Requirements.

I. SCOPE AND PURPOSE

The purpose of this policy is to provide the local elected official boards, Local Workforce Investment Boards (LWIBs), youth councils and other similar public bodies (hereafter referred to as boards/councils) with requirements for conducting open meetings, maintaining open records and filing statements of economic interest according to the Work-force Investment Act (WIA) and state law. The requirements set forth in this policy shall also apply to the State Work-force Investment Board as appropriate.

II. REQUIREMENTS

A. OPEN MEETINGS
All meetings of the boards/councils supported wholly or in part by WIA funds shall be conducted according to § 25-41-1 through 17 of the Mississippi Code, Annotated, as applicable (Attachment A).

The following standards shall apply to all public bodies supported wholly or in part by WIA funds.

1. Bylaws or Operating Procedures
Each board/council shall adopt bylaws or operating procedures to govern the conduct of meetings. By-laws/operating procedures should make and provide for the enforcement of reasonable rules and regulations to govern the conduct of persons attending the meetings and regulations by which all meetings are to be held.

2. Notice of Meetings
   a. Each board/council shall have procedures in place to describe the public announcement of all meetings. The procedures shall address public notice of emergency meetings.

   b. Each board/council shall, at its first regular or special meeting of the program year, July 1 through June 30, include in its minutes the times and places and the procedures by which all of its meetings are to be held.

   c. For the purpose of WIA meeting notices, public notice shall mean publication in a generally circulated newspaper. Other methods of public notice may be allowed if described and justified in the board/council bylaws/operating procedures.

   d. Each board/council shall maintain documentation of public notice of all meetings in an official file.

e. The board/council shall provide prior written notification to the Employment Training Division of the date, time and location of all meetings of the board/council in which WIA-related issues may be discussed or decided.

3. Telephone Conference Call Meetings
The board/council may meet using telephone conference calls if the following provisions are made:

a. The conference call meeting is publicly announced according to the standard procedures required by section 1.b. of this policy, and

b. Accommodations are made for interested parties to attend and hear meeting proceedings.

4. Executive Sessions
A board/council may enter into executive session only according to § 25-41-7 of the Mississippi Code.

5. Minutes
The board/council shall maintain copies of the minutes of all meetings in an official file. Minutes shall be prepared according to the bylaws/operating procedures and the Open Meetings Law § 25-41-11 of the Mississippi Code.

Minutes for all meetings, whether open, telephone conference call or executive session, shall include, at a mini-mum, the following:

a. The members present and absent;

b. The date, time and place of the meeting;

c. An accurate recording of any final actions taken at the meeting;

d. A record, by individual member, of any votes taken; and

e. Any other information that the body requests be included or reflected in the minutes.

The minutes shall be recorded within a reasonable time not to exceed 30 days after recess or adjournment and shall be open to public inspection during regular business hours.

B. PUBLIC ACCESS TO PUBLIC RECORDS
Section 25-61-5 of the Mississippi Code states that all public records are public property; therefore, any person has the right to have access to them. Section 25-62-11 of the Mississippi Code explains that some records may be exempted or privileged by law. Each

board/council shall comply with all appropriate sections of § 25-61-1 through 15 of the Mississippi Code (Attachment B).

C. CONFLICT OF INTEREST
In regard to conflict of interest, each board/council shall comply with Mississippi State Law (reference Mississippi Code of 1972 Annotated, Title 25-4-105, Attachment C) regarding conflict of interest and Section 111(f) or 117(g) of the Workforce Investment Act.

Mississippi State Law clearly describes those activities and actions that constitute a conflict of interest. For example, the law states that no public servant shall use his position to obtain pecuniary benefit (benefit in the form of money, property, commercial interest or anything else that results in economic gain) for himself other than compensation pro-vided for by law or to obtain pecuniary benefit for any relative or any business with which he is associated.

The bylaws/operating procedures for a board/council must state that no member or his representative shall vote on an issue in which he has a direct personal or pecuniary interest. It is the responsibility of the member or his representative to notify the presiding officer at a meeting of the conflict of interest and to abstain from voting. Such abstentions are recorded in the Board minutes.

D. STATEMENTS OF ECONOMIC INTEREST
Each board/council member shall file a statement of economic interest with the Ethics Commission in accordance with Section 25-4-25 through 29 of the Mississippi Code as appropriate. See Attachment D.

III. EFFECTIVE DATE

This policy is effective immediately.

ATTACHMENTS:

A § 25-41-1 through 17 (incorporated by reference)

B § 25-61-1 through 15 (incorporated by reference)

C § 25-4-105 (incorporated by reference)

D § 25-4-25 through 29 (incorporated by reference)

Policy Number 4. One-Stop Certification Procedures and Minimum Certification Standards for Local Sites.

I. SCOPE AND PURPOSE

The purpose of this policy is to restate selected passages from the Workforce Investment Act (WIA) and its implementing regulations that define the one-stop service delivery system. The Local Workforce Investment Boards, the chief elected officials, the WIA fiscal agents, the one- stop operators, the one-stop partners, and any other entities associated with the implementation or administration of the one-stop system are required to comply with all mandates of the WIA, its implementing regulations, subsequent amendments and revisions of the WIA and its implementing regulations, and all other applicable laws and regulations.

II. REQUIREMENTS

A. MISSISSIPPI ONE-STOP SYSTEM PARTNERS

Section 121(b)(1)(A) of the WIA states that entities that carry out the specified programs and activities shall make those services and activities available through the one-stop system. Also, the section states that those entities shall com-ply with the memorandum of understanding and with the requirements of the Federal laws authorizing those services and activities.

Section 121(b)(1)(B) of the WIA lists the programs and activities referenced above. These programs and activities consist of the following:

1. Programs authorized under Title I of the WIA;
2. Programs authorized under the Wagner-Peyser Act;
3. Adult Education and literacy activities authorized under Title II;
4. Programs authorized under Title I of the Rehabilitation Act of 1973;
5. Programs authorized under Section 403(a)(5) of the Social Security Act;
6. Activities authorized under Title V of the Older Americans Act of 1965;
7. Postsecondary vocational education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act;
8. Activities authorized under Chapter 2 of Title II of the Trade Act of 1974;
9. Activities authorized under Chapter 41 of Title 38, United States Code;
10. Employment and training activities carried out under the Community Services Block Grant Act;

11. Employment and training activities carried out by the Department of Housing and Urban Development; and

12. Programs authorized under State unemployment compensation laws.

B. LOCAL ONE-STOP SITE DESIGN OPTIONS

Section 134(c)(2) of WIA allows various configurations of one-stop service delivery sites. As stated in 20 CFR 662.100(e), the design of the local area's one-stop delivery system, including the number of comprehensive centers and supplementary arrangements, must be described in the local plan and be consistent with the Memorandum of Under-standing executed with the One-Stop partners.

In 20 CFR 662.100, the one-stop delivery system is described as a seamless system of service delivery that is created through the collaboration of entities responsible for separate workforce development funding streams. The one-stop system is designed to enhance access to services and improve outcomes for individuals seeking assistance. The regulation specifically defines the system as consisting of one or more comprehensive, physical one-stop center in a local area. In addition to the comprehensive center, the regulation notes that WIA allows for three other arrangements to supplement the comprehensive center. The four arrangements are listed:

1. Comprehensive Center
   As defined in WIA Section 134(c)(2), at a minimum, the one-stop delivery system shall make the following pro-grams, services, and activities accessible at not less than one physical center in each local area of the State:

   a. Provision of core services described in WIA Section 134(d)(2);

   b. Access to intensive services and training services as described in WIA Section 134(d)(3) and (4), including access to individual training accounts for training services to participants in accordance with WIA Section 134(d)(4)(G);

   c. Access to activities carried out under WIA Section 134(e), if any;

   d. Access to programs and activities carried out by one-stop partners described in WIA Section 121(b); and

   e. Access to the information described in Section 15 of the Wagner-Peyser Act and all job search, placement, recruitment, and other labor exchange services authorized under the Wagner-Peyser Act.

2. A Network of Affiliated Sites
   As stated in WIA Section 134(c)(2)(B)(i), an affiliated site can provide one or more of the programs, services, and activities to individuals.

3. A Network of One-Stop Partners
   As stated in WIA Section 134(c)(2)(B)(ii), the programs, services, and activities may be available to individuals through a network of eligible one-stop partners-.

a. In which each partner provides one or more of the programs, services, and activities to individuals and is accessible at an affiliated site that consists of a physical location or an electronically or technologically linked access point; and

b. That assures individuals that information on the availability of the core services will be available regardless of where the individuals initially enter the statewide workforce investment system, including information made available through an access point described in Subpart a. above.

4. Specialized Centers
As stated in WIA Section 134(c)(3), the centers and sites described may have a specialization in addressing special needs, such as the needs of dislocated workers.

C. SELECTION or DESIGNATION of ONE-STOP OPERATORS

1. Eligible Entities
As stated in WIA Section 121(d)(1), the local board, with agreement of the chief elected official, is authorized to designate or certify the one-stop operator. In Section 121(d)(2)(B), the WIA defines the one-stop operator as a public or private entity, or consortium of entities, of demonstrated effectiveness, located in the local area, which may include:

a. A postsecondary educational institution;

b. An employment service agency established under the Wagner-Peyser Act;

c. A private, nonprofit organization (including a community based organization);

d. A private for-profit entity;

e. A government agency; and

f. Another interested organization or entity, to include a local chamber of commerce or other business organization.

2. Selection Process
According to WIA Section 121(d)(2)(A), there are two options for designating or certifying an entity or a consortium of entities as the one-stop operator:

a. Through a competitive process; or

b. In accordance with an agreement reached between the local board and a consortium of entities that, at a mini-mum, includes three or more of the one-stop partners described in Section 121(b)(1).

As stated in 20 CFR 662.400(b), one-stop operators may be a single entity or a consortium of entities and may operate one or more one-stop centers. In addition, there may be more than one one-stop operator in a local area.

According to Section 184(b)(1) of WIA, if, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this Title, and corrective action has not been taken, the Governor shall:

a. Issue a notice of intent to revoke approval of all or part of the local plan affected; or

b. Impose a reorganization plan, which may include:

(1) Decertifying the local board involved;

(2) Prohibiting the use of eligible providers;

(3) Selecting an alternative entity to administer the program for the local area involved;

(4) Merging the local area into one or more other local areas; or

(5) Making other changes as the Secretary of Labor or the Governor determines necessary to secure compliance.

3. Local Board as a One-Stop Provider
As stated in WIA Section 117(f)(2) and in 20 CFR 661.310, a local board may provide core services described in WIA Section 134(d)(2) or intensive services described in WIA Section 134(d)(3) through a one-stop delivery system or be designated or certified as a one-stop operator only with the agreement of the chief elected official and the Governor. A local board is prohibited from providing training services unless the Governor grants a waiver in accordance with the provisions in WIA Section 117(f)(1)(B). Also, Section 117(f)(1)(A) states that except as provided in the waiver provisions, no local board may provide training services described in Section 134(d)(4) of the Act.

D. CERTIFICATION PROCESS
As stated in Section 121(d)(1) of WIA, the local board, with agreement of the chief elected official, is authorized to designate and certify one-stop operators.

E MINIMUM CERTIFICATION STANDARDS
Based on the WIA and its implementing regulations, minimum standards have been identified:

1. Required Partners
Section 121(b)(1)(B) of WIA lists the programs and activities to be included in the one-stop system. At a minimum, access to the services from the following programs shall be available through the one-stop system:

a. Programs authorized under Title I of the WIA;

b. Programs authorized under the Wagner-Peyser Act;

c. Adult Education and literacy activities authorized under Title II;

d. Programs authorized under Title I of the Rehabilitation Act of 1973;

e. Programs authorized under Section 403(a)(5) of the Social Security Act;

f. Activities authorized under Title V of the Older Americans Act of 1965;

g. Postsecondary vocational education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act;

h. Activities authorized under Chapter 2 of Title II of the Trade Act of 1974;

i. Activities authorized under Chapter 41 of Title 38, United States Code;

j. Employment and training activities carried out under the Community Services Block Grant Act;

k. Employment and training activities carried out by the Department of Housing and Urban Development; and

l. Programs authorized under State unemployment compensation laws.

2. Additional Partners
Section 121(b)(2) of WIA lists additional entities that carry out human resource programs that-.

a. May make available to participants, through the one-stop delivery system, the services described in WIA Section 134(d)(2) that are applicable to such programs; and

b. May participate in the operation of the one-stop system consistent with the terms of the memorandum of under-standing and with the requirements of the Federal law in which the program is authorized if the local board and chief elected official involved approve participation.

These programs may include:

a. Programs authorized under Part A of Title IV of the Social Security Act;

b. Programs authorized under Section 6(d)(4) of the Food Stamp Act of 1977;

c. Work programs authorized under Section 6(o) of the Food Stamp Act of 1977;

d. Programs authorized under the National and Community Service Act of 1990; and

e. Other appropriate Federal, State, or local programs, including programs in the private sector.

3. Decision-Making Process
As described in 20 CFR 661.300, the local board, in partnership with the chief elected official, sets policy for the portion of the statewide workforce investment system within the local area. The local board and the chief elected official may enter into an agreement that describes the respective roles and responsibilities of the parties. The local board, in partnership with the chief elected official, develops the local workforce investment plan and performs the functions described in WIA Section 117(d).

4. Customer Feedback
As required by WIA Section 118(b)(2)(A), the local board will ensure the continuous improvement of eligible providers of services through the system and ensure that the providers meet the employment needs of local employers and participants. In WIA Section 136, the performance accountability system is described. Section (a) states that the purpose of the section is to describe activities to assess the effectiveness of States and local areas in achieving continuous improvement of workforce investment activities. Section 136(b)(2)(B) states that customer satisfaction indicators of performance shall consist of customer satisfaction of employers and participants with services received from the workforce investment activities. The section states that customer satisfaction may be measured through surveys conducted after the conclusion of participation in the workforce activities.

5. Reporting
As stated in WIA Section 185(a)(1), recipients of WIA funds shall keep records that are sufficient to permit the preparation of reports required by WIA and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully. Subsection (2) adds that the Secretary of Labor will designate the form and content of the reports requiring information about the performance of programs and activities carried out. Subsection (3) requires standardized records for all individual participants.

6. Core Services
The core services listed in Section 134(d)(2) of the Workforce Investment Act shall be provided to adults and dislocated workers through the one-stop delivery system. In 20 CFR 662.230, all required partners must make available to participants through the one-stop delivery system the core services that are applicable to the partner's programs. In the Preamble to 20 CFR Part 652, under Subpart B -One Stop Partners, there is a statement about avoiding duplication of services traditionally provided under the Wagner-Peyser Act. The Preamble explains that the requirement to provide core services at a minimum of one comprehensive center is limited to those applicable core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program. While a partner would not, for example, be required to duplicate an assessment provided under the Wagner-Peyser Act, the partner would be expected to be responsible for any needed assessment that includes additional elements specifically tailored to participants under the partner's program. However, the adult and dislocated worker program partners are required to make all of the core services available at the comprehensive center.

As stated in 20 CFR 662.250(b), the applicable core services may be made available by the provision of appropriate technology at the comprehensive one-stop center, by co-locating personnel at the center, cross-training of staff, or through a cost reimbursement or other agreement between service providers at the comprehensive one-stop center and the partner, as described in the memorandum of understanding.

The core services as listed in WIA Section 134(d)(2), at a minimum, include:

a. Determinations of whether individuals are eligible to receive assistance from WIA Title I Adult or Dislocated Worker funding;

b. Outreach, intake (which may include worker profiling), and orientation to the information and other services available through the one-stop system;

c. Initial assessment of skill levels, aptitudes, abilities and supportive service needs;

d. Job search and placement assistance, and where appropriate, career counseling;

e. Employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including (i) job vacancy listings in such labor market areas; (ii) information on job skills necessary to obtain the vacant jobs; and (iii) information relating to local occupations in demand and the earnings and skill requirements for such occupations;

f. Performance information and program cost information on eligible providers of training services as described in WIA Title I Section 122, provided by program, and eligible providers of youth activities described in WIA Title I Section 123, providers of adult education described in WIA Title II, providers of post secondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.), and providers of vocational rehabilitation program activities described in Title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

g. Information regarding how the local area is performing on the local performance measures and any additional performance information with respect to the one-stop delivery system in the local area.

h. Information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such services, as appropriate;

i. Information regarding filing claims for unemployment compensation;

j. Assistance in establishing eligibility for Welfare-to-Work activities authorized under Section 403(a)(5) of the Social Security Act (as added by Section

50001 of the Balanced Budget Act of 1997) available in the local area and for programs of financial aid assistance for training and education programs that are not funded under the Workforce In-vestment Act that are available in the local area;

k. Follow up services for customers registered for intensive and/or training services, including counseling regarding the workplace, for customers in WIA Title I activities who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

7. Intensive Services
Intensive services listed in WIA Section 134(d)(3)(C) shall be provided through the one-stop delivery system.

As stated in WIA Section 134(d)(3)(A), minimally, the following customer groups may be afforded access to intensive services available within funding constraints and based on eligibility:

a. Adults and dislocated workers who are unemployed and are unable to obtain employment through core services and who have been determined by a one-stop operator to be in need of intensive services to obtain employment; or

b. Adults and dislocated workers who are employed, but who are determined by a one-stop operator to be in need of intensive services to obtain or retain employment that allows for self-sufficiency.

Section 134(d)(4)(E) of WIA states that in the event that funds allocated to a local area for adult employment and training activities are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate local board and the Governor shall direct the one-stop operators in the local area with regard to making determinations related to priority.

As stated in WIA Section 134(d)(3)(C), intensive services may include the following:

a. Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include (1) diagnostic testing and use of other assessment tools and (2) in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

b. Development of an individual employment plan to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve the employment goals;

c. Group counseling;

d. Individual counseling and career planning;

e. Case management for participants seeking training services; and

f. Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training.

g. According to 20 CFR 663.200, out-of area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience based on an assessment or individual employment plan are allowable.

8. Training Services
As described in WIA Section 134(d)(4)(A), WIA funds shall be used to provide training services to adults and dislocated workers. Minimally, the following customer groups may be afforded access to training services available within funding constraints and based on eligibility:

a. Adults and dislocated workers who have met the eligibility requirements for intensive services and who are un-able to obtain or retain employment which provides for self-sufficiency through such services; and

b. Adults and dislocated workers who after an interview, evaluation, or assessment, and case management, have been determined by a one-stop operator or one-stop partner, as appropriate, to be in need of training services and to have the skills and qualifications to successfully participate in the selected program of training services; and

c. Adults and dislocated workers who select programs of training services that are directly linked to the employ-ment opportunities in the local area involved or in another area in which the adults or dislocated workers receiving ser-vices are willing to relocate;

d. Adults and dislocated workers who are unable to obtain grant assistance for services, including federal Pell Grants or who require assistance beyond the assistance made available under other grant assistance programs, including federal Pell Grants; and

e. Adults and dislocated workers who are determined to be eligible in accordance with the priority system, if any, established under WIA Section 134(d)(4)(E).

To customers who are included in one of the above-mentioned customer groups, the following training services listed WIA Section 134(d)(4)(D) may be available:

a. Occupational skills training, including training for nontraditional employment;

b. On-the-job training;

c. Programs that combine workplace training with related instruction, which may include cooperative education programs;

d. Training programs operated by the private sector;

e. Skill upgrading and retraining;

f. Entrepreneurial training;

g. Job readiness training;

h. Adult education and literacy activities provided in combination with the services described above; and

i. Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

9. Follow Up Services
As required by 20 CFR 663.150(b), follow up services must be made available, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment. Follow up is also a core service described in WIA Section 134(d)(2)(K).

10. Self-Service, Facilitated Self-Help, and Staff-Assisted Services
According to 20 CFR 652.207, labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farm workers, and individuals with disabilities. In each Workforce Investment Area, in at least one physical center, staff funded under the Wagner-Peyser Act must provide core and applicable intensive services including staff-assisted labor exchange services. According to 20 CFR 652.208, core and intensive services may be delivered through any of the three methods of service delivery:

a. Self-service,

b. Facilitated self-help services, and

c. Staff-assisted service.

According to 20 CFR 663.105(b), adults and dislocated workers who receive services funded under Title I other than self-service or informational activities must be registered and determined eligible. Also, 20 CFR 666.140(a) states that the core indicators of performance apply to all individuals who are registered under 20 CFR 663.105 and 664.215 for the adult, dislocated worker and youth programs, except for those adults and dislocated workers who participate exclusively in self-service or informational activities.

11. Rapid Response Activities
As indicated in WIA Section 118(e)(5) in the list of elements for the local plan, the local board will coordinate workforce investment activities carried out in the local area with statewide rapid response activities, as appropriate.

12. Americans with Disabilities Act (ADA) Compliance
As stated in 20 CFR 667.275(a)(1), recipients, States, Local Workforce Investment Boards, one-stop operators, ser-vice providers, vendors, and sub-recipients must comply with the nondiscrimination and equal opportunity provisions of WIA Section 188 and its implementing regulations. As described in 20 CFR 667.275(a)(3), WIA funds may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation in regard to the WIA program as required by Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

13. Child Care
One of the core services listed in WIA Section 134(d)(2)(H) is the provision of information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such ser-vices, as appropriate.

F. DECERTIFICATION PROCESS
As stated in WIA s 117(d)(2)(ii), a Local Workforce Investment Board may terminate a one-stop site for cause.

G. OVERSIGHT by the STATE LEVEL
As stated in WIA Section 184(a)(4), on an annual basis, the Governor of a State shall conduct on-site monitoring of each local area within the State to ensure compliance with the uniform administrative requirements for grants and agreements applicable for the type of entity receiving the WIA funds. If the Governor determines that a local area is not in compliance, in accordance with WIA Section 184(a)(5), the Governor shall:

1. Require corrective action to secure prompt compliance; and

2. In the event of failure to take the required corrective action, impose sanctions described in Section 184(b)(1) of WIA:

a. Issue a notice of intent to revoke approval of all or part of the local plan affected; or

b. Impose a reorganization plan, which may include

(1) Decertifying the local board involved;

(2) Prohibiting the use of eligible providers;

(3) Selecting an alternative entity to administer the program for the local area involved;

(4) Merging the local area into one or more other local areas; or

(5) Making other changes as the Secretary of Labor or Governor determines necessary to secure compliance.

III. EFFECTIVE DATE

This policy shall be effective immediately.

TECHNICAL ASSISTANCE AND GUIDANCE FOR POLICY NUMBER 4

ONE-STOP CERTIFICATION PROCEDURES AND MINIMUM CERTIFICATION STANDARDS FOR LOCAL SITES

I. SCOPE and PURPOSE

The purpose of this technical assistance and guidance (TAG) is to provide additional comments and suggestions for certifying the one-stop sites. This TAG does not have the force of law or of a State policy. It is based on the Workforce Investment Act (WIA), its implementing regulations, recommendations of the One-Stop Task Force, and a survey of best practices.

Policy Number 4 restates selected passages from the WIA and its implementing regulations that define the one-stop service delivery system. The sections from the policy are shown in bold type. Thus, the sections in bold are mandated requirements. The Local Workforce Investment Boards, the chief elected officials, the WIA fiscal agents, the one-stop operators, the one-stop partners, and any other entities associated with the implementation or administration of the one-stop system are required to comply with all mandates of the WIA, its implementing regulations, subsequent amendments and revisions of the WIA and its implementing regulations, and all other applicable laws and regulations. All mandates and regulations are not repeated in the policy or in this TAG.

The goal of the Mississippi Workforce Investment System is to provide easy access to quality services for all customers. To achieve this goal, co-location of service providers and the integration of services to the fullest extent possible are the priorities of this system. The State recommends that every element of the Mississippi Workforce Investment System be designed to enable our customers, both job seekers and employers, to compete successfully and achieve economic security. The comprehensive strategy should break down barriers, respond to the needs of our customers, and integrate services from the State's major workforce development programs into a seamless package for the customer.

The Mississippi Workforce Investment System should provide services to all employers and all job seekers. Employers, students, persons with disabilities, veterans, welfare recipients, unemployed, underemployed and employed individuals will all have equal access to services. A core set of services will be available, free of charge, to all who seek them.

The purpose of this TAG is to recommend a framework for the certification process and the minimum standards for the one-stop sites. Within the mandates of the WIA and its implementing regulations, the Local Workforce Investment Board has discretion to determine the local service delivery structure. This guidance is intended to assist each local board to meet the challenge and the opportunity to establish the appropriate network of service delivery to every community and to every customer.

II. REQUIREMENTS

A. VALUES and GUIDING PRINCIPLES

The Mississippi Workforce Investment System will be built and operated at the State and local levels on the following values and guiding principles. These values and guiding principles have been recommended by the Strategic Planning Task Force and approved by the State Workforce Investment Board:

1. Provide results-oriented services;

2. Provide value-added services for employers and job seekers;

3. Maximize synergism and teamwork among all partners to reduce duplication of effort;

4. Provide customer-driven, comprehensive, fair and honest service throughout the State;

5. Be simple and user-friendly;

6. Be flexible and responsive to all customers and their needs in a timely manner;

7. Be innovative;

8. Continuously improve the quality of the system;

9. Collaborate and bring all possible resources to bear on workforce development;

10. Provide services to promote individual self-worth, to prepare workers for jobs statewide, and to result in an empowered workforce;

11. Ensure accessibility for persons with disabilities;

12. Ensure universal acceptance by the customers and the communities within the state; and

13. Encourage a work-first approach understanding that additional services and/or training may be required to pro-mote individual self-worth, employability and career potential and/or to fulfill employer hiring needs.

B. MISSISSIPPI ONE-STOP SYSTEM PARTNERS

Section 121(b)(1)(A) of the WIA states that entities that carry out the specified programs and activities shall make those services and activities available through the one-stop system. Also, the section states that those entities shall com-ply with the memorandum of understanding and with the requirements of the Federal laws authorizing those services and activities.

Section 121(b)(1)(B) of the WIA lists the programs and activities referenced above. These programs and activities consist of the following:

1. Programs authorized under Title I of the WIA;

2. Programs authorized under the Wagner-Peyser Act;

3. Adult Education and literacy activities authorized under Title II;

4. Programs authorized under Title I of the Rehabilitation Act of 1973;

5. Programs authorized under Section 403(a)(5) of the Social Security Act;

6. Activities authorized under Title V of the Older Americans Act of 1965;

7. Postsecondary vocational education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act;

8. Activities authorized under Chapter 2 of Title II of the Trade Act of 1974;

9. Activities authorized under Chapter 41 of Title 38, United States Code;

10. Employment and training activities carried out under the Community Services Block Grant Act;

11. Employment and training activities carried out by the Department of Housing and Urban Development; and

12. Programs authorized under State unemployment compensation laws.

The following agencies are program partners in the Mississippi Workforce Investment System:

1. Mississippi Development Authority,

2. Mississippi Employment Security Commission,

3. Mississippi Board for Community and Junior Colleges,

4. Mississippi Department of Education,

5. Mississippi Department of Rehabilitation Services, and

6. Mississippi Department of Human Services.

C. LOCAL ONE-STOP SITE DESIGN OPTIONS

Section 134 (c) (2) of WIA allows various configurations of one-stop service delivery sites. As stated in 20 CFR 662.100(e), the design of the local area's one-stop delivery system, including the number of comprehensive centers and supplementary

arrangements, must be described in the local plan and be consistent with the memorandum of under-standing executed with the one-stop partners.

In 20 CFR 662.100, the one-stop delivery system is described as a seamless system of service delivery that is created through the collaboration of entities responsible for separate workforce development funding streams. The one-stop system is designed to enhance access to services and improve outcomes for individuals seeking assistance. The regulation specifically defines the system as consisting of one or more comprehensive, physical one-stop center in a local area. In addition to the comprehensive centers, the regulation notes that WIA allows for three other arrangements to supplement the comprehensive center. The four arrangements are listed:

1. Comprehensive Center
   As defined in WIA Section 134(c)(2), at a minimum, the one-stop delivery system shall make the following programs, services, and activities accessible at not less than one physical center in each local area of the State:

   a. Provision of core services described in WIA Section 134(d)(2);

   b. Access to intensive services and training services as described in WIA Section 134(d)(3) and (4), including access to individual training accounts for training services to participants in accordance with WIA Section 134(d)(4)(G);

   c. Access to activities carried out under WIA Section 134(e), if any;

   d. Access to programs and activities carried out by one-stop partners described in WIA Section 121(b); and

   e. Access to the information described in Section 15 of the Wagner-Peyser Act and all job search, placement, recruitment, and other labor exchange services authorized under the Wagner-Peyser Act.

   The State recommends that “access” be defined as the ability to obtain and make use of. For example, “access” to individual training accounts will mean more than having information available. To meet the definition, the site will assist the customer with the application process and ensure that the customer follows through with the process and enters training, as appropriate.

2. A Network of Affiliated Sites
   As stated in WIA Section 134(c)(2)(B)(i), an affiliated site can provide one or more of the programs, services, and activities to individuals.

   The State suggests that each affiliated site be required to provide all the WIA core services and all the Wagner-Peyser services, to provide information about unemployment insurance, to file unemployment insurance claims, and to ensure access to all the WIA Title I services for adults and dislocated workers. Any program services beyond these services should be determined by local need.

The State suggests that the distinguishing characteristic between the comprehensive and the affiliate site is the scope of services being provided or facilitated. The State suggests that the affiliate site be linked with the full-service site electronically or technologically. And, most importantly, the State recommends that the services of the affiliate site be integrated with a full-service site.

3. A Network of One-Stop Partners As stated in WIA Section 134(c)(2)(B)(ii), the programs, services, and activities may be available to individuals through a network of eligible one-stop partners-.

   a. In which each partner provides one or more of the programs, services, and activities to individuals and is accessible at an affiliated site that consists of a physical location or an electronically or technologically linked access point; and

   b. That assures individuals that information on the availability of the core services will be available regardless of where the individuals initially enter the statewide workforce investment system, including information make available through an access point described in a. above.

   The State emphasizes that this option is open to all eligible one-stop partners. The required partners are listed in WIA Section 121(b)(1)(B) and the additional partners are listed in WIA Section 121(b)(2).

   The State suggests that the comprehensive, affiliate, and speciality sites be the foundation for the one-stop system. However, there may be many other links to the system. The local boards may designate access points to increase universal access and to streamline service delivery. The State recommends that an access point have internet capability and meet the minimum requirements to interface with the State's electronic network. An access point may be a public library or any of the eligible entities.

4. Specialized Centers
   As stated in WIA Section 134(c)(3), the centers and sites described may have a specialization in addressing special needs, such as the needs of dislocated workers.

   The State recommends that the speciality site provide specific services in a specific geographic location for a target group designated by the Local Workforce Investment Board. For examples, dislocated workers, parolees, or individuals with disabilities may be provided specialized services designed for their needs. In addition, the speciality site may pro-vide a temporary office facility for itinerant staff from other partner agencies or meet other special needs deemed necessary by the Local Workforce Investment Board.

D. SELECTION or DESIGNATION of ONE-STOP OPERATORS

1. Eligible Entities
As stated in WIA Section 121(d)(1), the local board, with agreement of the chief elected official, is authorized to designate or certify the one-stop operator. In Section 121(d)(2)(B), the WIA defines the one-stop operator as a public or private entity, or consortium of entities, of demonstrated effectiveness, located in the local area, which may include:

a. A postsecondary educational institution;

b. An employment service agency established under the Wagner-Peyser Act;

c. A private, nonprofit organization (including a community based organization);

d. A private for-profit entity;

e. A government agency; and

f. Another interested organization or entity, to include a local chamber of commerce or other business organization.

2. Selection Process
According to WIA Section 121(d)(2)(A), there are two options for designating or certifying an entity or a consortium of entities as the one-stop operator:

a. Through a competitive process; or

b. In accordance with an agreement reached between the local board and a consortium of entities that, at a mini-mum, includes three or more of the one-stop partners described in Section 121(b)(1).

As stated in 20 CFR 662.400(b), one-stop operators may be a single entity or a consortium of entities and may operate one or more one-stop centers. In addition, there may be more than one one-stop operator in a local area.

As a reminder, the State emphasizes that the competitive process will reflect the applicable State and local laws, regulations, and Office of Budget and Management (OMB) circulars regarding competitive procurement.

In addition, the State suggests that the selection of the one-stop operator should demonstrate a good faith effort to view the one-stop system holistically and to respect the partner agencies. The governing guidelines require the process to be impartial.

According to Section 184(b)(1) of WIA, if, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this Title, and corrective action has not been taken, the Governor shall:

a. Issue a notice of intent to revoke approval of all or part of the local plan affected; or

b. Impose a reorganization plan, which may include:

(1) Decertifying the local board involved;

(2) Prohibiting the use of eligible providers;

(3) Selecting an alternative entity to administer the program for the local area involved;

(4) Merging the local area into one or more other local areas; or

(5) Making other changes as the Secretary of Labor or the Governor determines necessary to secure compliance.

3. Local Board as a One-Stop Provider
As stated in WIA Section 117(f) (2) and in 20 CFR 661.310, a local board may provide core services described in WIA Section 134(d)(2) or intensive services described in WIA Section 134(d)(3) through a one-stop delivery system or be designated or certified as a one-stop operator only with the agreement of the chief elected official and the Governor. A local board is prohibited from providing training services unless the Governor grants a waiver in accordance with the provisions in WIA Section 117(f)(1)(B). Also, Section 117(f)(1)(A) states that except as provided in the waiver provisions, no local board may provide training services described in Section 134(d)(4) of the Act.

E. CERTIFICATION PROCESS
As stated in Section 121(d)(1) of WIA, the local board, with agreement of the chief elected official, is authorized to designate and certify one-stop operators.

The State recommends that the Local Workforce Investment Board develop a written certification process. Also, the State recommends that the certification process for the comprehensive center and the affiliate sites be more detailed than the process for the other sites. Because the mandated criteria for the comprehensive site are extensive, the State believes a thorough review of this type site is prudent. Considering that the number of programs available at an affiliated site may vary, the State suggests that a separate application be submitted for each physical location.

Based on a review of best practices, the State offers the following certification process as a recommendation for comprehensive and affiliate sites:

1. Step 1
   The operator of the site will prepare an application request and a self-evaluation to compare the current site functions or functions to be implemented by July 1, 2000, with the standards outlined. These documents will be submitted to the appropriate Local Workforce Investment Board. Documentation will be provided to illustrate the standards that are being met. Comments and explanations will be included for standards that need improvement. (A suggested application request form and a self-evaluation tool are attached.)

2. Step 2
   Phase one of the evaluation will be the responsibility of the Local Workforce Investment Board, with agreement of the chief elected official. Using the standards as an evaluation guide, the board will consider the application and the self-evaluation submitted by the one-stop operator. A representative of the board may make a site visit or conduct a telephone interview to clarify any elements of the application or self-evaluation. The certifying body will have the authority to issue any one of the following decisions:

   a. Certify the site pending peer review.

   b. Conditionally certify the site contingent upon enhancements or corrections by a specified date, not to exceed 90 days following the date of the local board's decision.

   c. Deny certification.

3. Step 3
   If the Local Workforce Investment Board issues the decision to certify pending peer review, the site may proceed to operate using WIA funds. Also, the peer review will be conducted within three months of the submission of the application request. A team of a minimum of two individuals will conduct a peer review on-site. The two members will represent different workforce investment areas and the two areas will be outside the workforce investment area being re-viewed. No more than one of the peer review team members will be from the same type agency as the one-stop operator. The one-stop operator of the site being reviewed will select the members of the review team and make the logistical arrangements.

   The peer review team will present its findings to the appropriate Local Workforce Investment Board within two weeks of the site visit. (A suggested peer review instrument is attached.) Records of the peer review will be maintained by the Local Workforce Investment Board for State review.

If the Local Workforce Investment Board issues the decisions to conditionally certify, the site may proceed to operate using WIA funds. The site that is conditionally certified will repeat the application request and self-evaluation steps by the specified date, not to exceed 90 days following the board's decision. A site is limited to only two consecutive conditional certifications. At the end of the second conditional certification, the Local Workforce Investment Board will either certify the site pending peer review or deny certification.

If a site is denied certification, then the site can receive no WIA funds. The decision of the Local Workforce In-vestment Board is final. If a site is denied certification, the one-stop operator will not be allowed to reapply for that site for a period of twelve months following the date of the decision.

4. Step 4
Phase two of the evaluation will be the responsibility of the Local Workforce Investment Board, with agreement of the chief elected official, after the peer review is conducted and submitted. Using the standards as an evaluation guide, the board will consider the information provided by the peer review team. The certifying body will have the authority to issue any one of the following decisions:

   a. Certify the site for two years.

   b. Conditionally certify the site contingent upon enhancements or corrections by a specified date, not to exceed 90 days following the date of the local board's decision.

   c. Deny certification.

5. Step 5
If the Local Workforce Investment Board issues the decision to certify, the site may proceed to operate using WIA funds for a period of two years.

   If the Local Workforce Investment Board issues the decision to conditionally certify after the peer review, the site may continue to operate using WIA funds. The site that is conditionally certified will provide additional information as requested by the local board by the specified date, not to exceed 90 days following the board's decision. A site is limited to only one conditional certification following the peer review. At the end of the conditional certification, the Local Workforce Investment Board will either certify or deny certification.

   If a site is denied certification after the peer review, then the site can receive no WIA funds. The decision of the Local Workforce Investment Board is final. If a site is denied certification, the one-stop operator will not be allowed to reapply for that site for a period of twelve months following the date of the decision.

6. Step 6
A certified site will repeat the certification process during the last quarter of the certification period to be recertified and to continue WIA operations. However, a new application and new self-evaluation are not required when the following conditions are met:

   a. The one-stop site is meeting its performance standards, and

   b. The one-stop site has no unresolved monitoring or audit findings.

F. MINIMUM CERTIFICATION STANDARDS
To ensure the delivery of quality services, the State has developed recommended minimum standards for one-stop sites based on recommendations of the One-Stop Task Force. Unless otherwise stated within the description of the standard, the State recommends applying all standards to the comprehensive and affiliate sites. Local Workforce Investment Boards are encouraged to add to these minimum standards:

1. Leadership
The Mississippi vision for workforce development is a competitive, robust, fully employed workforce that adds value for existing employers and for potential employers competing to come to Mississippi and that improves the quality of life for all Mississippians. This vision will be accomplished through the Mississippi Workforce Investment Sys-tem, cohesive public/ private collaboration with strong local input built on the effective and efficient interaction of Workforce Investment System Partners and the employers of the State's workforce.

   The Mississippi Workforce Investment System should be modeled and shaped by strong public and private leader-ship and supported by the integration and co-location principles. Local communities are encouraged to demonstrate effective private sector-led governance conducted by the Local Workforce Investment Board. As a result, professional and customer-friendly service will be in place.

   The vision of the Mississippi Workforce Investment System will guide the development of the local one-stop system. The one-stop operator will provide examples of the following initiatives:

   a. Demonstrated concern for best interests of all partners,

   b. Public/private collaboration,

   c. Local input into the development of the system, and

   d. Strategic goals supporting the achievement of the Mississippi vision.

2. Management
It is recommended that each comprehensive and affiliated site one-stop operator establish and maintain sound management practices. The State suggests that the site management employ a collaborative decision-making process that is documented in writing.

a. Required Partners
Section 121(b)(1)(B) of WIA lists the programs and activities to be included in the one-stop system. At a minimum, access to the services from the following programs shall be available through the one-stop system:

(1) At a minimum, access to the services from the following programs shall be available at the comprehensive site:

(a) Programs authorized under Title I of the WIA;

(b) Programs authorized under the Wagner-Peyser Act;

(c) Adult Education and literacy activities authorized under Title II;

(d) Programs authorized under Title I of the Rehabilitation Act of 1973;

(e) Programs authorized under Section 403(a)(5) of the Social Security Act;

(f) Activities authorized under Title V of the Older Americans Act of 1965;

(g) Postsecondary vocational education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act;

(h) Activities authorized under Chapter 2 of Title II of the Trade Act of 1974;

(i) Activities authorized under Chapter 41 of Title 38, United States Code;

(j) Employment and training activities carried out under the Community Services Block Grant Act;

(k) Employment and training activities carried out by the Department of Housing and Urban Development; and

(l) Programs authorized under State unemployment compensation laws.

The State provides the following specific examples of the programs listed in the WIA as services to be accessed at the comprehensive site:

(a) WIA Title I Adult and Dislocated Worker;

(b) WIA Title I Job Corps, if available;

(c) WIA Title I Veterans, if available;

(d) WIA Title I Native American, if available;

(e) WIA Title I Youth Opportunity Grants, if available;

(f) WIA Title I funded Migrant Seasonal Farm Workers, if available;

(g) Welfare-to-Work, if available;

(h) Employment Service;

(i) Veterans Employment Service, Chapter 41 of Title 38 US Code;

(j) Adult Education and Literacy under WIA Title II;

(k) Vocational Rehabilitation;

(l) Senior Community Service Employment Program, Older Americans Act;

(m) Vocational Education;

(n) North American Free Trade Agreement / Transitional Adjustment Assistance;

(o) Trade Adjustment Assistance;

(p) Community Services Block Grant Employment and Training, if available; and,

(q) Housing and Urban Development Employment and Training, if available; and

(r) Unemployment Insurance.

(2) At a minimum, the State recommends that access to the services from the following programs be available at the affiliate sites:

(a) WIA Title I Adult and Dislocated Worker;

(b) Employment Service;

(c) Unemployment Insurance.

b. Additional Partners
Section 121(b)(2) of WIA lists additional entities that carry out human resource programs that-.

(1) May make available to participants, through the one-stop delivery system, the services described in WIA Section 134(d)(2) that are applicable to such programs; and

(2) May participate in the operation of the one-stop system consistent with the terms of the memorandum of under-standing and with the requirements of the Federal law in which the program is authorized if the local board and chief elected official involved approve participation.

These programs may include:

(1) Programs authorized under Part A of Title IV of the Social Security Act;

(2) Programs authorized under Section 6(d)(4) of the Food Stamp Act of 1977;

(3) Work programs authorized under Section 6(o) of the Food Stamp Act of 1977;

(4) Programs authorized under the National and Community Service Act of 1990; and

(5) Other appropriate Federal, State, or local programs, including programs in the private sector.

At the comprehensive and affiliate sites, the State encourages access to the services from the following ser-vices/programs:

(1) Community college and secondary vocational education placement services, job search classes, pre-employment, financial aid, and related services;

(2) Community mental health programs, particularly those related to job training/placement;

(3) Substance abuse services;

(4) Economic development services;

(5) Homeless programs;

(6) AmeriCorps program;

(7) Child Care;

(8) Housing Assistance;

(9) Temporary Assistance for Needy Families (TANF);

(10) Transportation systems and service providers; and

(11) All local employment and training programs and sources of funds.

c. Decision-Making Process
As described in 20 CFR 661.300, the local board, in partnership with the chief elected official, sets policy for the portion of the statewide workforce investment system within the local area. The local board and the chief elected official may enter into an agreement that describes the respective roles and responsibilities of the parties. The local board, in partnership with the chief elected official, develops the local workforce investment plan and performs the functions described in WIA Section 117(d).

The State recommends that the staff at the comprehensive and affiliate sites be responsible for implementing the policies and serving the customers. Thus, day-to-day administrative and operational decisions need to be made at the one-stop sites to ensure that quality services are delivered expediently. In fact, much authority will be delegated to the front line staff to empower them to make decisions that impact the quality and timely delivery of services to customers.

It is recommended that each comprehensive and affiliate site have a written decision-making process.

d. Customer Feedback
As required by WIA Section 118(b)(2)(A), the local board will ensure the continuous improvement of eligible providers of services through the system and ensure that the providers meet the employment needs of local employers and participants. In WIA Section 136, the performance accountability system is described. Section (a) states that the purpose of the section is to describe activities to assess the effectiveness of States and local areas in achieving continuous improvement of workforce investment activities. Section 136(b)(2)(B) states that customer satisfaction indicators of performance shall consist of customer satisfaction of employers and participants with services received from the workforce investment activities. The section states that customer satisfaction may be measured through surveys conducted after the conclusion of participation in the workforce activities.

The State suggests that information and data collection related to customer satisfaction be key elements of continuous improvement and management decisions in a customer-driven system. It is recommended that the comprehensive and affiliate sites have a system of collecting feedback from customers, reviewing feedback, responding to comments, as appropriate, and incorporating feedback into the operation of the site.

It is recommended that each comprehensive and affiliate site have a plan for continuous improvement, performance evaluation, and staff training. The State plans to put more emphasis on continuous improvement after the initial round of certifications.

e. Organization / Staffing
The State recommends that efforts to streamline services and to focus on the needs of the customer be reflected by the comprehensive, affiliate, and speciality site's organizational chart.

(1) It is recommended that each comprehensive, affiliate, and speciality site have an organizational chart designed by functions or service activities. The titles of positions should be shown, not the names of individuals or agencies.

(2) It is recommended that each comprehensive, affiliate, and speciality site have written job descriptions to identify the required credentials for each staff person.

f. Reporting
As stated in WIA Section 185(a)(1), recipients of WIA funds shall keep records that are sufficient to permit the preparation of reports required by WIA and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully. Subsection (2) adds that the Secretary of Labor will designate the form and content of the reports requiring information about the performance of programs and activities carried out. Subsection (3) requires standardized records for all individual participants.

The State will issue instructions and formats for financial, participant, and performance reporting with due dates. It is anticipated that these reports will be done electronically.

g. Self-Service, Facilitated Self-Help, and Staff-Assisted Services
According to 20 CFR 652.207, labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farm workers, and individuals with disabilities. In each Workforce Investment Area, in at least one physical center, staff funded under the Wagner-Peyser Act must provide core and applicable intensive services including staff-assisted labor exchange services. According to 20 CFR 652.208, core and intensive services may be delivered through any of the three methods of service delivery:

(1) Self-service,

(2) Facilitated self-help services, and

(3) Staff-assisted service.

According to 20 CFR 663.105(b), adults and dislocated workers who receive services funded under Title I other than self-service or informational activities must be registered and determined eligible. Also, 20 CFR 666.140(a) states that the core indicators of performance apply to all individuals who are registered under 20 CFR 663.105 and 664.215 for the adult, dislocated worker and youth programs, except for those adults and dislocated workers who participate exclusively in self-service or informational activities.

The State suggests that the employers have self-service access to labor force data, job descriptions, data on people looking for jobs, information on skills, resume' service, and related information. This service may be part of the reception area or the resource room. It is recommended that self-service be required at the comprehensive sites. Affiliate sites may have self-service features if this standard supports the purpose and function of the site. Also, it is suggested that any customer using the self-service option be able to request facilitated self-help.

Furthermore, the State recommends that the comprehensive and affiliate sites have staff to assist employers with all of the services listed in Section II.F.4.c, WIA Supported Services / Employer Core Services.

3. Job Seeker Processes

a. Reception
The State recommends that the reception area for the comprehensive and affiliate sites set the stage for universal access and integration of services. It is suggested that the use of technology be maximized to enhance service delivery.

(1) The State suggests that each comprehensive and affiliate site have a common entry that is welcoming and friendly. In addition, the reception area should provide access to job search activities that can begin immediately either by self-service or by minimal assistance. Efforts may be made to facilitate easy and quick initiation of services.

(2) Job search materials, labor market information, newspapers, resume' examples, and other printed and/or electronic information may be available.

(3) Each site may have a greeter to evaluate needs and to direct customers appropriately and immediately upon en-try.

(4) Telephone greetings may incorporate the identity of the local workforce investment system, not the name of any specific agency.

(5) The certification certificate or seal for the site may be displayed in the reception area.

b. Customer-Flow
At the individual sites, procedures may be developed to ensure timely services for all customers. At the comprehensive and affiliated network sites, the following elements may be developed to ensure efficient customer flow:

(1) A menu of services may be available for the customers' information and inspection,

(2) Procedure for customer registration;

(3) Procedure for providing core services;

(4) A flowchart showing the steps the customers follow from entry through core, intensive, and training services;

(5) Description of the referral process;

(6) Confidentiality policy for customer information;

(7) Description of the grievance procedures; and

(8) Reasonable accommodations to meet special needs of customers.

c. Levels of Service

(1) Job Seeker Core Services
The core services listed in Section 134(d)(2) of the Workforce Investment Act shall be provided to adults and dislocated workers through the one-stop delivery system. In 20 CFR 662.230, all required partners must make available to participants through the one-stop delivery system the core services that are applicable to the partner's programs. In the Preamble to 20 CFR Part 652, under Subpart B -One Stop Partners, there is a statement about avoiding duplication of services traditionally provided under the Wagner-Peyser Act. The Preamble explains that the requirement to provide core services at a minimum of one comprehensive center is limited to those applicable core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program. While a partner would not, for example, be required to duplicate an assessment provided under the Wagner-Peyser Act, the partner would be expected to be responsible for any needed assessment that includes additional elements specifically tailored to participants under the partner's

program. However, the adult and dislocated worker program partners are required to make all of the core services available at the comprehensive center.

As stated in 20 CFR 662.250(b), the applicable core services may be made available by the provision of appropriate technology at the comprehensive one-stop center, by co-locating personnel at the center, cross-training of staff, or through a cost reimbursement or other agreement between service providers at the comprehensive one-stop center and the partner, as described in the memorandum of understanding.

The core services as listed in WIA Section 134(d)(2), at a minimum, include:

(a) Determinations of whether individuals are eligible to receive assistance from WIA Title I Adult or Dislocated Worker funding;

(b) Outreach, intake (which may include worker profiling), and orientation to the information and other services available through the one-stop system;

(c) Initial assessment of skill levels, aptitudes, abilities and supportive service needs;

(d) Job search and placement assistance, and where appropriate, career counseling;

(e) Employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including (i) job vacancy listings in such labor market areas; (ii) information on job skills necessary to obtain the vacant jobs; and (iii) information relating to local occupations in demand and the earnings and skill requirements for such occupations;

(f) Performance information and program cost information on eligible providers of training services as described in WIA Title I Section 122, provided by program, and eligible providers of youth activities described in WIA Title I Section 123, providers of adult education described in WIA Title II, providers of post secondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.), and providers of vocational rehabilitation program activities described in Title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

(g) Information regarding how the local area is performing on the local performance measures and any additional performance information with respect to the one-stop delivery system in the local area.

(h) Information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such services, as appropriate;

(i) Information regarding filing claims for unemployment compensation;

(j) Assistance in establishing eligibility for Welfare-to-Work activities authorized under Section 403(a)(5) of the Social Security Act (as added by Section 50001 of the Balanced Budget Act of 1997) available in the local area and for programs of financial aid assistance for training and education programs that are not funded under the Workforce In-vestment Act that are available in the local area;

(k) Follow up services for customers registered for intensive and/or training services, including counseling regarding the workplace, for customers in WIN Title I activities who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

(2) Job Seeker Intensive Services
Intensive services listed in WIA Section 134(d)(3)(C) shall be provided through the one-stop delivery system.

As stated in WIA Section 134(d)(3)(A), minimally, the following customer groups may be afforded access to intensive services available within funding constraints and based on eligibility:

(a) Adults and dislocated workers who are unemployed and are unable to obtain employment through core services and who have been determined by a one-stop operator to be in need of intensive services to obtain employment; or

(b) Adults and dislocated workers who are employed, but who are determined by a one-stop operator to be in need of intensive services to obtain or retain employment that allows for self-sufficiency.

Section 134(d)(4)(E) of WIA states that in the event that funds allocated to a local area for adult employment and training activities are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate local board and the

Governor shall direct the one-stop operators in the local area with regard to making determinations related to priority.

As stated in WIA Section 134(d)(3)(C), intensive services may include the following:

(a) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include (1) diagnostic testing and use of other assessment tools and (2) in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(b) Development of an individual employment plan to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve the employment goals;

(c) Group counseling;

(d) Individual counseling and career planning;

(e) Case management for participants seeking training services; and

(f) Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training.

(g) According to 20 CFR 663.200, out-of area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience are allowable based on an assessment or individual employment plan.

(3) Job Seeker Training Services
As described in WIA Section 134(d)(4)(A), WIA funds shall be used to provide training services to adults and dis-located workers. Minimally, the following customer groups may be afforded access to training services available within funding constraints and based on eligibility:

(a) Adults and dislocated workers who have met the eligibility requirements for intensive services and who are un-able to obtain or retain employment which provides for self-sufficiency through such services; and

(b) Adults and dislocated workers who after an interview, evaluation, or assessment, and case management, have been determined by a one-stop operator or one-stop partner, as appropriate, to be in need of training services and to have the skills and qualifications to successfully participate in the selected program of training services; and

(c) Adults and dislocated workers who select programs of training services that are directly linked to the employment opportunities in the local area involved or in another area in which the adults or dislocated workers receiving ser-vices are willing to relocate;

(d) Adults and dislocated workers who are unable to obtain grant assistance for services, including federal Pell Grants or who require assistance beyond the assistance made available under other grant assistance programs, including federal Pell Grants; and

(e) Adults and dislocated workers who are determined to be eligible in accordance with the priority system, if any, established under WIA Section 134(d)(4)(E).

To customers who are included in one of the above-mentioned customer groups, the following training services listed WIA Section 134(d)(4)(D) may be available:

(a) Occupational skills training, including training for nontraditional employment;

(b) On-the-job training;

(c) Programs that combine workplace training with related instruction, which may include cooperative education programs;

(d) Training programs operated by the private sector;

(e) Skill upgrading and retraining;

(f) Entrepreneurial training;

(g) Job readiness training;

(h) Adult education and literacy activities provided in combination with the services described above; and

(i) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

d. Follow Up Services
As required by 20 CFR 663.150(b), follow up services must be made available, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment. Follow-up is also a core service described in WIA Section 134(d)(2)(K).

e. Rapid Response Activities
As indicated in WIA Section 118(e)(5) in the list of elements for the local plan, the local board will coordinate workforce investment activities carried out in the local area with statewide rapid response activities, as appropriate.

The state suggests that each comprehensive site develop a rapid response system to address needs of dislocated workers in the local area. At the affiliate site, the rapid response system may be either available or accessible. The State is responsible for providing rapid response activities. However, these activities are carried out in the local areas in con-junction with the local boards and the chief elected officials. The State recommends a comprehensive and systematic plan to allow core services to be an integral part of rapid response assistance, preferably on-site, if the size of the dislocation or other factors warrant it. Also, the State suggests that a timely system be established to determine the use of intensive and training services for dislocated workers.

4. Employer Processes

a. Reception
The State recommends that the reception area at the comprehensive and affiliate sites set the stage for universal access and integration of services.

(1) Each site may have a common entry that is welcoming and friendly. In addition, the reception area may provide access to job search activities that can begin immediately either by self- service or by minimal assistance.

(2) Labor market information and other printed and/or electronic information may be available.

(3) Each site may have a greeter to respond to employers appropriately and immediately upon contact. The greeter may be able to direct the employer to the appropriate staff member or set an appointment.

(4) Telephone greetings may incorporate the identity of the local workforce investment system, not the name of any specific agency.

(5) The certification certificate or seal for the site may be displayed in the reception area.

b. Employer Contact / Reporting
The State suggests that employers who contact or who are contacted by any of the partner agencies may be provided a common menu of employer services.

Each comprehensive and affiliate site may develop written procedures to ensure that employer contacts are coordinated and nonduplicative and to ensure that information about employer contacts is shared among the partners. The sites are encouraged to assign a single point of contact to each employer and to develop a format for recording contacts with employers.

Marketing efforts for the comprehensive and affiliate sites may be joint efforts of the participating local programs and agencies to employers. The State suggests that the marketing package be a combined concept of the employment, education, and training services offered by the site.

c. WIA Supported Services / Employer Core Services
The State recommends that the comprehensive and affiliate sites provide the following integrated services to all employers, at their request, at no cost, through a single point of contact, or other method, to support workforce development efforts. These services, at a minimum, include:

(1) Assistance in finding qualified workers;

(2) Labor exchange information;

(3) Interview facilities at service centers;

(4) State and/or federally generated Labor Market Information (LMI);

(5) State and/or federally generated information on Americans with Disabilities Act;

(6) Information regarding consultations on workplace accommodations for persons with disabilities;

(7) Information on and referral to sources for developing customized training programs;

(8) Rapid response to mass layoffs and plant closings;

(9) Information about training incentives such as on-the-job training programs (based on worker eligibility); and,

(10) State and/or federally generated information on tax credits for new hires.

5. Facility Standards
The State suggests that the facility for the one-stop site be designed to support the delivery of services. The design may address the needs of both the job seeker and the employer and may provide a safe, functional, accessible, and flexible work environment. As required for any public facility, all sites will comply with applicable codes for health and safety. Some examples of considerations in the facility design process are the number of staff; customer-flow, storage space; file areas; equipment; reception area; child care facilities; special activities such as group intake, classrooms, and resource rooms; restrooms, breakroom, and signs. In general, the floor space may be designated as three types:

C Customer space used by job seekers and employers,

C Common space used by all partners, and

C Dedicated space used by specific agencies or programs.

Both comprehensive and affiliated sites may incorporate the following elements into the site selection and design of the facility. All public sites are required to comply with the Americans with Disabilities Act. The State recommends that the sites comply with any of the other elements appropriate for the target group:

a. Americans with Disabilities Act (ADA) Compliance
As stated in 20 CFR 667.275(a)(1), recipients, States, Local Workforce Investment Boards, one-stop operators, ser-vice providers, vendors, and subrecipients must comply with the nondiscrimination and equal opportunity provisions of WIA Section 188 and its implementing regulations. As described in 20 CFR 667.275(a)(3), WIA funds may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation in regard to the WIA program as required by Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

The State recommends that all sites give priority to assuring that persons with disabilities are provided with assistive devices to ensure easy access to all services. The State recommends that an acessibility assessment be performed at each comprehensive, affiliated network, and speciality site. An appropriate, qualified ADA specialist may be contacted to make the assessment. The Mississippi Department of Rehabilitation Services will provide technical assistance and consultation for ADA compliance. The State suggests that the one-stop operator attach a statement of compliance or a corrective action plan to the application.

b. Signage
The State suggests that each comprehensive and affiliate site display the Mississippi Workforce Investment System name and logo as a common statewide identifier for all locations that meet the standards established

by the State policy entitled "One-Stop Certification Procedures and Minimum Certification Standards for Local Sites." The State suggests that this signage be sufficiently prominent to assure customer recognition of the location. Also, the State suggests that the sign be larger than the signage of any of the partner programs. The State also recommends that the name and logo be included on various forms, communications, and publicity media to ensure consistent identification.

The State suggests that the Mississippi Workforce Investment System name and logo be displayed at the speciality sites, but need not be the predominant signage.

c. Equipment
The State recommends that comprehensive and affiliate sites have adequate equipment and furnishings on site to ensure that the staff can perform and that the customers can fully benefit from the services and activities offered. The State suggests the facility be attractive and comfortable. In addition, the items shown in Paragraph d, Layout, should be available, to the extent possible to assist customers with job search activities. To meet the requirements of the WIA regarding provision of information and reporting, each site needs adequate hardware and software to participate in the electronic network.

Equipment resources may currently exist in one or more of the partner agencies. Under the State's One-Stop Implementation grant, the Mississippi Employment Security Commission (MESC) is implementing a project to improve the electronic connectivity among the one-stop partners. Phase I of this project includes updating MESC's data network and linking it with the state's frame relay backbone. Phase II is the staged installation of the local area networks.

d. Layout
The State recommends that the layout be designed to facilitate ease of access to customers and to reflect the integration of services.

The State recommends that the comprehensive sites have all the following areas and that affiliate sites have the areas, as appropriate, to meet their objectives:

(1) Areas to serve and counsel individual customers,

(2) Area to serve groups of customers,

(3) Common reception area, (4) Self-serve resource room, (5) Space for itinerant staff, and

(6) Office for employer interviews.

The State recommends that the resource rooms feature a variety of tools for job seekers and employers. To the ex-tent possible, the following resources are suggested for public access:

(1) Telephones,

(2) Fax machine,

(3) Photocopier,

(4) TV/VCR,

(5) Telecommunications Device for the Deaf (TDD),

(6) Internet linked computers,

(7) Appropriate software for career search, aptitude tests, and employability skills,

(8) Printer,

(9) Typewriter,

(10) Tables and/or desks for customers,

(11) Reference materials on jobs, training, and related information. Other special features are encouraged to support a customer-friendly system.

e. Parking
The State recommends that comprehensive and affiliate sites have adequate parking space to facilitate access by the job seeker and the employer. First, the Americans with Disabilities Act applies to the parking area. Second, the State suggests that efforts be made to provide ample, free parking space available in the proximity of the facility. Safety is an important factor to consider.

f. Population Centers
The State recommends that the comprehensive and affiliate site locations be based on factors that make locations convenient for customers to access. The primary factor in determining site locations may be population density. In short, the site may be located where the most customers are. Special consideration may be given to the needs of the individuals needing the one-stop services. Some factors to consider are public transit routes, commuting patterns for jobs, acceptable travel distance for services, proximity of ancillary services, safety, parking, unemployment level, poverty level, and others.

g. Geographic Access
The State recommends that comprehensive and affiliated network

site locations be based on factors that make locations convenient for customers to access. After consideration is given to population centers, geographic access by the customers may be analyzed. Commuting patterns and reasonable travel time may be considered in developing a network of sites to serve the entire workforce investment area.

h. Child Care
One of the core services listed in WIA Section 134(d)(2)(H) is the provision of information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such ser-vices, as appropriate.

The State suggests that child care service may be implemented to facilitate access by the job seeker to services. Each comprehensive and affiliate site is encouraged to have a designated area within the facility for children of job seekers. If the area is designated, it should be safe, should include materials and activities to entertain the children, and should meet applicable child care certifications and regulations.

i. Hours of Operation
The State recommends that the hours of operation of comprehensive and affiliated network sites facilitate access by the job seeker and the employer. Flexible schedules may be considered to make allowances for customers who need to access services before or after the traditional workday. In addition, the State strongly encourages the staff to be available during the lunch hour.

G. DECERTIFICATION PROCESS
As stated in WIA s 117(d)(2)(ii), a Local Workforce Investment Board may terminate a one-stop site for cause.

The State recommends that the Local Workforce Investment Board develop written decertification procedures. The State suggests that the following reasons for decertification be included in the procedures:

1. Failure to meet performance measures for two consecutive years,

2. Failure to collect customer satisfaction information and to demonstrate a positive response to customer needs, feedback, and ratings, or

3. Failure to comply with any other term of the memorandum of understanding.

Also the State suggests that the following terms be included in the procedures:

1. If a site is decertified, the one-stop operator will not be allowed to reapply for that site for a period of twelve months.

2. When a site is decertified, the WIA funds to that site are stopped.

H. OVERSIGHT by the STATE LEVEL
As stated in WIA Section 184(a)(4), on an annual basis, the Governor of a State shall conduct onsite monitoring of each local area within the State to ensure compliance with the uniform administrative requirements for grants and agreements applicable for the type of entity receiving the WIA funds. If the Governor determines that a local area is not in compliance, in accordance with Section 184(a)(5) of WIA, the Governor shall:

1. Require corrective action to secure prompt compliance; and

2. In the event of failure to take the required corrective action, impose sanctions described in Section 184(b)(1) of WIA:

   a. Issue a notice of intent to revoke approval of all or part of the local plan affected; or

   b. Impose a reorganization plan, which may include

      (1) Decertifying the local board involved;

      (2) Prohibiting the use of eligible providers;

      (3) Selecting an alternative entity to administer the program for the local area involved;

      (4) Merging the local area into one or more other local areas; or

      (5) Making other changes as the Secretary of Labor or Governor determines necessary to secure compliance.

ATTACHMENT A

LOCAL ONE-STOP SITE APPLICATION for CERTIFICATION

Date of Application:

I. Identification of One-Stop Operator:
   - A. Name of One-Stop Operator(s):
   - B. Type of Entity:
   - C. Name of Contact Person:
   - D. Address of Contact Person:
   - E. Phone Number of Contact Person:

II. Identification of Site:
   - A. Type of Site: (Circle one.)
     1. Comprehensive
     2. Affiliated Network
     3. Speciality
     4. Partner Network
   - B. Address of One-Stop Site:
   - C. Name of Local Workforce Area:
   - D. Geographic Area to be Served:

III. Statement of Readiness:
   - A. Starting Date for Serving Customers:
   - B. Brief Statement of Current Status of Site in regard to Service Delivery:

IV. Standard Descriptions for Speciality Site Applicants Only:
   - A. Target Group
   - B. Characteristics of Site to Enhance Services to Target Group
   - C. Follow-Up Procedures for Customers Receiving Intensive or Training Services
   - D. Compliance with the Americans with Disabilities Act
   - E. Information on Child Care Services for Customers
   - F. Comprehensive Description of Services to be Offered and the Delivery Approaches

V. Standard Descriptions for Network of One-Stop Partners:
   - A. Program, Service, or Activity Provided:
   - B. Target Group:
   - C. Site or Access Point:
   - D. Method of Providing Information on Core Services:

VI. Self-Evaluation to be Completed and Submitted by Comprehensive and Affiliated Network Sites

ATTACHMENT B.

LOCAL ONE-STOP COMPREHENSIVE or AFFILIATE SITE CERTIFICATION / SELF.EVALUATION

NAME of OPERATOR:

ADDRESS of SITE:

DATE of SELF-EVALUATION:

TYPE of SITE (Circle One.): COMPREHENSIVE or AFFILIATE

Display Table

Attach documentation as referenced.

ATTACHMENT C / PEER REVIEW

LOCAL ONE-STOP COMPREHENSIVE or AFFILIATE SITE

CERTIFICATION / PEER REVIEW

NAME of OPERATOR:

ADDRESS of SITE:

DATE of SELF-EVALUATION:

TYPE of SITE (Circle One.): COMPREHENSIVE or AFFILIATEDisplay Table

Attach a brief overview of the potential of the site to deliver quality services through the Mississippi Workforce In-vestment System. Include descriptions of the strengths and weaknesses of the site.

Display Table

Policy Number 5. Eligible Training Provider Certification Policy.

I. SCOPE AND PURPOSE:

This Policy sets forth the State's requirements for application to and inclusion on the Mississippi Eligible Training Provider List. It also prescribes how the State and the Local Areas should compile and maintain the list. The Mississippi Eligible Training Provider Certification Policy will operate under a set of guiding principles as adopted by the State Workforce Board. This set of guiding principles for the training procedures is as follows:

A. It is the responsibility of each Local Workforce Investment Board to determine the eligibility and suitability of training providers and to monitor their effectiveness.

B. The policies and procedures established by each Local Board must meet the minimum requirements of the guidelines set by the State. Local Boards may adopt more restrictive policies.

C. Each Local Board will provide training only in demand occupations.

D. The Employment Training Division, working with the Labor Market Information Division of the Mississippi Employment Security Commission, will establish a list of demand occupations for the State. Each Local Board will establish and maintain a list of local demand occupations, in response to local labor market needs.

E. The determination of initial and subsequent eligibility for training providers will include these minimum criteria:

1. The provider will be bonded, registered by the applicable state agency, and licensed to do business in Mississippi.

2. The provider will have a two-year history of providing the training program. Exceptions shall be made by the Local Area Workforce Board.

3. WIA-supported trainees shall make up no more than 75% of each class/course's total enrollment, on an annualized basis.

4. The provider will provide performance and cost information in the application according to a prescribed format.

5. The duration of WIA-supported training will be for no more than two years unless the merits of the course require otherwise or unless deemed justifiable by the Local Area Workforce Board.

6. The cost of training will be no more than $ 6,000 annually.

F. Every Eligible Training Provider will be monitored annually. Prior to removing any provider from the Eligible Training Provider List, an onsite visit will be made.

G. If there is a shortage of training funds, the Local Board should have a set of priorities for referring individuals to training. These priorities should include the current income of the individual, the potential for the training to lead to a permanent job that significantly increases the individual's income, and any other criteria that the Local Board establishes.

H. There is no inherent guarantee or entitlement to any individual that training will be provided.

II. REQUIREMENTS

A. Background

The Workforce Investment Act (WIA) emphasizes informed customer choice, system performance, and continuous improvement. The Local Workforce Investment Boards (LWIBs), in partnership with the State, identify training providers whose performance qualifies them to receive WIA funds to train adults and dislocated workers. WIA section 122 requires the Governor to establish a policy for determining eligible training providers. The WIA also mandates that LWIBs, in conjunction with the State, develop and disseminate an eligible provider list that allows customers to make an informed decision in selecting a training provider. The Act describes three levels of eligibility for training entities: automatic, "other," and subsequent. The Mississippi Eligible Training Provider Certification Policy addresses:

1. Initial eligibility procedures for training providers.

2. Procedures for use by the LWIBs to determine the subsequent eligibility of a provider to continue to be eligible to receive funds available under WIA section 133 (b) for the provision of training services described in WIA section 134(d)(4).

3. Procedures for providers of training services to appeal the following:

   a. A denial of eligibility by the LWIB or the designated State agency under subsection (b), (c) or (e) of WIA section 122.

   b. A termination of eligibility or other action by the LWIB or the designated State agency under subsection (f) of WIA section 122.

B. Identification of Eligible Providers of Training Programs

1. Eligible providers of training programs shall be:

   a. Postsecondary educational institutions that:

      1) are eligible to receive Federal funds under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); and

      2) provide a program that leads to an associate degree, baccalaureate degree, or certificate; OR

b. Entities that carry out programs under the Act commonly known as the National Apprenticeship Act; OR

c. Other licensed public or private providers of training programs, including faith-based and non.profit providers. Other public or private providers are defined as follows:

1) Public or private providers of training programs that are not:

a) Postsecondary education institutions eligible to receive Federal funds under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) that provide a program leading to an associate degree, baccalaureate degree or certificate; OR

b) Entities that carry out programs under the Act commonly know as the National Apprenticeship Act;

- OR .

2) Postsecondary educational institutions that seek to receive WIA funding for a program that does not lead to an associate degree, baccalaureate degree or certificate;

- OR .

3) Providers that carry out programs under the Act commonly known as the National Apprenticeship Act that seek to receive funding for a program not covered by the National Apprenticeship Act.

2. A training program is defined as:

a. One or more courses or classes that, upon successful completion, lead to:

1) A certificate, an associate degree, or baccalaureate degree, OR

2) A competency or skill recognized by employers;

- OR .

b. A training regimen that provides individuals with additional skills or competencies generally recognized by employers.

3. Training programs should be directly linked to occupations in demand in the local area as determined by the LWIB, or in another area to which a participant is willing to relocate. The Local Board should compile a local Demand Occupation List to assist in determining provider eligibility and to provide guidance to the WIN Job Center staff for student placement. The State will assist each local board in compiling this list.

4. A training program must be occupational skills training for employment. Therefore, programs of basic and literacy skills such as Adult Basic Education (ABE), General Educational Development (GED), and pre-employment skills training are to be offered as intensive services and are NOT to be included on the Eligible Provider List.

C. Exceptions to the Mississippi Eligible Training Provider Certification System

1. On-the Job Training and Customized Training
Providers of on-the-job training (OJT) and customized training are not subject to the Mississippi Eligible Training Provider Certification System. The One-Stop operator in the local area shall: (1) collect the performance information from OJT and customized training providers; (2) determine whether the providers meet such performance criteria; and, (3) identify eligible OJT and customized training providers, and disseminate performance information, through the One-Stop service delivery system. Each area should set acceptable levels of performance.

a. Suggested performance indicators for OJT training providers include:

-- wage at completion of training;

-- percentage of program completers who obtain unsubsidized employment in the industry/occupation in which they were trained; and

-- percentage of program completers who obtain unsubsidized employment in the industry/occupation in which they were trained and who are still employed at six months post-placement.

b. Suggested performance indicators for customized training providers include:

-- entry wage of program completers who obtain unsubsidized employment in the industry/occupation for which training was delivered;

-- number of trainees/students by industry/occupation;

-- percentage of program completers;

-- percentage of program completers who obtain unsubsidized employment in the industry/occupation for which training was delivered; and -- percentage of program completers who obtain unsubsidized employment in the industry/occupation in which they were trained and who are still employed at six months post-placement.

2. Eligible Youth Activities Providers

-- Each area should set acceptable performance indicators for youth providers.

-- Providers of youth activities are not subject to the Mississippi Training Provider Certification System or its policies.

3. Basic and Literacy Skills Providers

-- Each area is encouraged to set acceptable performance indicators for programs of basic and literacy skills.

-- As noted above in B.4, programs of basic and literacy skills such as Adult Basic Education (ABE), General Educational Development (GED), and pre-employment skills training are to be offered as intensive services and are not to be included on the Eligible Provider List and are not subject to the Mississippi Training Provider Certification System or its policies.

III. INITIAL ELIGIBILITY DETERMINATION POLICY

A. Initial Eligibility Application Process

1. Initial Application Process for Eligible Training Providers that are:

a. Postsecondary educational institutions that:

1) are eligible to receive Federal funds under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); AND

2) provide a program leading to an associate degree, baccalaureate degree, or certificate; - OR .

b. Entities that carry out programs under the Act commonly known as the National Apprenticeship Act.

-- The uniform application form is attached as Attachment B.

-- Applications should be sent to the appropriate local board or its designee as prescribed in the application form.

-- The local board will review applications received, assure that the providers meet the requirements of WIA, including required performance data, and will forward the approved programs to the Employment Training Division (ETD) of the Mississippi Development Authority (MDA) for inclusion on the Eligible Provider List.

-- A State review to verify performance data may be required.

2. Initial Application Process for Eligible Training Providers that are other public and private providers of a training program.

The State has developed the following initial eligibility procedures for use by the LWIB in determining the eligibility for other public and private providers of training services as described in WIA section 134(d)(4).

a Using the uniform application form (Attachment B) applicants shall provide the information outlined below to the LWIB:

1) Program Information

a) Name, mailing address, and physical address of the training facility;

b) Name of the program of training services submitted approval;

c) Total hours of instruction associated with the program of training services;

d) Cost of the training program, including tuition, fees, books, and any required tools, uniforms, equipment or sup-plies;

e) Brief description of the training program;

f) Information on whether students in the program are eligible for Title IV of the Higher Education Act funding (e.g., Pell Grant);

g) Signed assurance that no more than 75% of your class/course enrollment are WIA-funded, on an annualized basis;

i. Providers with greater than 75% of their class/course annual enrollment being funded by WIA must show justification and an action plan to correct the imbalance to the LWIB,

ii. The LWIB may issue an exception to the provider, if it feels the imbalance is justified.

iii. The LWIB may choose to locally increase the ratio of non-WIA to WIA-funded participants.

h) Documentation of licensure to provide training or instruction and to do business in the state in which the training will be provided, from the appropriate oversight agency or department, if required;

i. This includes, but is not limited to, the Bureau of Apprenticeship and Training, the Southern Association of Colleges and Schools, the Mississippi Commission on Proprietary School and College Registration, the Mississippi Department of Education, the Mississippi State Boards of Nursing, Cosmetology, Massage Therapy, or Barber Examiners, and/or other generally recognized national, regional, state, or local certifying bodies.

ii. Non-Profit training providers, Community-Based Organizations (CBOs), Faith-Based Organizations (FBOs), or any other provider not otherwise licensed or certified as

required above in paragraph a, must be registered with the Mississippi Commission on Proprietary School and College Registration (CPSCR), a division of the State Board for Community and Junior Colleges.

-Minimum requirements for registration shall include:

-- Submitting Federal Tax Identification Number,

-- Posting of bond as prescribed by CPSCR,

-- Having a refund policy in place that conforms to the minimum standards set forth by law (75.60-18, MS Code of 1972), or adopting the refund policy developed by the State. (Attachment C)

-- Other requirements as prescribed by CPSCR.

iii. Registration with the Secretary of State.

i) Documentation of Certification to teach the subject matter for the program of training, if required, i.e. Microsoft, ISO9000, or similar certification generally recognized by employers; and j) Any additional information required by the LWIB. 2) Performance Data a) Standard Performance Data The following verifiable performance information or appropriate portion of performance information for the pro-gram of training services, for the most recent 12-month period available, must be included in the application:

i. The program completion rates for individuals participating in the program(s);

ii. The percentage of individuals participating in the program(s) who obtained unsubsidized employment; and

iii. Wages at placement in employment of individuals participating in the program(s).

b) Alternate Performance Data
If the required performance information is not available or not verifiable the LWIB may require a provider submit an electronic record to the State of training participant names, Social Security numbers and the date completed (or left) training, and request a match against the Unemployment Insurance Wage Records in order to secure Item 2) a) iii, above. The information must be provided in a format specified by the State. Participants within the performance pool must have completed or ended training at least five (5) months prior to submission to be matched against the Wage Re-cords. If the provider fails to submit the information, the application may be denied.

3) Assurances
No Training Provider will be placed on the Eligible Training Provider List until signed assurance is received that they will comply fully with all nondiscrimination and equal opportunity provisions of the laws listed below:

a. WIA section 188, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity;

b. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;

c. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

d. The Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination against qualified people with disabilities based on disability;

e. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age;

f. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs;

g. 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

h. WIA trainees shall make up no more than 75% of each class.

B. Initial Application Timeline and Requirements

1. Advertisement: Local Areas shall provide adequate notice of upcoming application periods through public advertisement.

2. State of Mississippi Community and Junior Colleges

a. Applications will only be accepted April 1-15 and October 1-15 of each year, beginning in the fall of 2003.

b. In those local areas in which the local board has designated the Employment Training Division to be its agent for this matter, applications for initial eligibility determination of Community and Junior Colleges shall be submitted directly to the Employment Training Division of the Mississippi Development Authority.

c. The State will provide a written determination of acceptance or denial to the applying entity.

d. During the review period, the State or its designated representative(s) may make an on-site visit to the training provider program sites.

3. HEA and/or National Apprenticeship Act Providers and Other Public and Private Training Providers Other than State Community and Junior Colleges:

a. Applications will only be accepted April 1-15 and October 1-15 of each year, beginning in the fall of 2003.

b. Applications for initial eligibility determination of other public and private providers of training services shall be submitted to the LWIB of each local area in which the provider desires to provide training.

c. The LWIB will provide a written determination of acceptance or denial to the applying entity.

d. During the review period, the LWIB or its designated representative(s) may make an on-site visit to the training provider program sites.

e. The LWIB shall forward the approved applications to the State for review and inclusion on the statewide list.

4. State Acceptance:

a. For applications from Community and Junior Colleges, the State's approval is the final decision, and the eligible training provider program(s) will be placed on the Statewide Eligible Training Provider List. The State will notify the Provider of their placement on the Eligible Provider list.

b. For applications from all other public and private providers of a training program, the State may verify the performance data after the applications are forwarded by the local boards. The State will provide a written determination of acceptance or denial to the LWIB. The State will then add those approved providers to the statewide Eligible Training Provider List.

IV. SUBSEQUENT ELIGIBILITY DETERMINATION POLICY

A. Subsequent Eligibility Determination Process
Applications must be submitted to the LWIB at such time, in such a manner, and containing such information as necessary to adequately fulfill the LWIB's performance information requirements for each training program.

1. All training providers, regardless of their previous eligibility status, who wish to apply for subsequent eligibility must meet the initial eligibility criteria as previously stated in this policy. Failure to meet the revised criteria for initial eligibility will result in that provider's removal from the Eligible Training Provider List.

2. To remain eligible, all training providers must undergo an annual eligibility determination. This determination will include a review of program-specific performance and cost information as well as a review of actual performance compared to performance levels established by the Governor (See Attachment A). An onsite review may be part of the process.

3. The training provider shall submit to the LWIB the verifiable program-specific performance information listed below. This information must be provided for each program to be considered for continued eligibility:

   a. Outcomes for individuals participating in the program:

      1) Program completion rates;

      2) Percentage who obtained unsubsidized employment; and

      3) Average wage at placement in employment.

      4) Signed assurance that no more than 75% of your class/course participants are WIA-funded, on an annualized basis;

         -- Providers with greater than 75% of their course's annual participants being funded by WIA must show justification and an action plan to correct the imbalance to the LWIB, -- The LWIB may issue an exception to the provider, if they feel the imbalance is justified; and will forward the exception to ETD for final approval.

         -- The LWIB may choose to locally increase the ratio of non-WIA to WIA-funded participants.

   b. Outcomes for WIA participants in the program:

      1) Percentage who have completed the program and are placed in unsubsidized employment;

      2) Retention rates in unsubsidized employment of participants who completed the program, six (6) months after the first day of the employment;

3) Average wages received by participants who completed the program, six (6) months after the first day of the employment; and

4) Where appropriate, the rates of licensure or certification, attainment of academic degrees or equivalents, or attainment of other measures of skills of the graduates of the program.

c. Information on program costs (e.g., tuition, fees, books, supplies, tools) for each program. Each LWIB will determine which elements of program cost, other than tuition and fees, may be covered by an Individual Training Account.

4. The LWIB and the State may accept program-specific performance information consistent with the requirements for eligibility under title IV of the Higher Education Act of 1965 from the provider for purposes of enabling the provider to fulfill the requirements for subsequent eligibility determination if the information is substantially similar to the information required.

5. Alternate procedures may be used to collect and verify supplemental performance information.

B. Performance Measures
The LWIB shall annually adopt its standards within 90 calendar days after the State issues its standards of performance. LWIB standards must meet or exceed the standards adopted by the State. The baseline State Performance Measures are included as Attachment A.

C. Subsequent Eligibility Timeline

1. Subsequent eligibility certification will be performed annually at the anniversary of the initial eligibility application. If a provider initially applies in April or October, they apply for subsequent eligibility in the following April or October, respectively. Failure to apply for re-certification will result in the expiration of the current certification and removal from the statewide approved training provider list.

2. Service providers seeking subsequent eligibility certification shall submit the required performance data for the most recent 12-month period to the LWIB with their application for subsequent eligibility certification.

3. The LWIB shall review and certify the performance data of all applicants as soon as possible following the close of the application period and provide a written determination of acceptance or denial for continued eligibility to the eligible training provider.

4. During the review period, the LWIB or its designated representative(s) may, as determined reasonable by the LWIB, make an on-site visit to the eligible training provider program sites for the purpose of confirming information.

5. The LWIB will forward to the State at the end of the review period those eligible training providers approved for continued eligibility. The State may verify the

performance data. The State will provide a written determination of acceptance or denial to the LWIB.

D. LWIB Considerations in Determining Subsequent Eligibility
The local board should have established criteria for determining subsequent eligibility, so that decisions are not arbitrary. [20 CFR 663.535(f)(1)&(2).] Such factors may include, but are not limited to:

a. Specific economic, geographic, and demographic factors in the local area(s) in which the provider seeking eligibility is located;

b. Characteristics of the population(s) served by the provider seeking eligibility, including the demonstrated difficulties in serving such population(s), where applicable;

c. Current and projected occupational demand within the local area;

d. Performance of a provider of a program(s) of training services, including the extent to which the annual standards of performance established by the LWIB have been achieved;

e. Cost of training services;

f. Involvement of employers in the establishment of skill requirements for the training program;

g. Feedback of employers who employ individuals who recently completed WIA-supported training to verify that the training provided produced the expected skills; and,

h. Number of individuals considered in calculated percentages for performance measures.

3. The LWIB may require enhancements to programs or courses to meet local industry needs as a contingency for subsequent eligibility.

V. DENIAL AND APPEAL PROCESSES

A. Denial Process

1. LWIB Denials

a. Upon a determination by the LWIB that an application by a training provider for a specific program does not meet the eligibility requirements set forth in WIA or State/local policy, the LWIB shall issue a determination denying the applicant.

b. A separate denial notice will be issued for each training program denied and shall comply with the following requirements:

1) Be mailed to the training provider at the address listed on the application and to the attention of the contact per-son identified on the application;

2) Indicate the "date mailed" on the denial notice;

3) Identify the program that was denied;

4) Describe the specific reason for the denial; and

5) Inform the training provider of the appeal process as outlined below.

c. LWIB policy shall determine the circumstances under which reconsideration may be afforded to a provider that was denied initial eligibility determination. An entity whose initial application for certification was denied may not re-apply until the next round of initial applications.

2. State Denials

a. The State, upon receipt of the LWIB training provider list and after appropriate evaluation of such lists, shall promptly issue a determination denying any training provider that the State removes from the LWIB training provider list.

b. In denying or removing a training program from the eligible training provider list, the State shall follow the guidelines as outlined in the federal regulations.

c. Upon denial of a program or provider the State shall provide the denial and justification directly to the LWIB.

B. Appeal Process

1. The training provider has ten (10) working days from the mailing of a denial notice in which to file an appeal to the originator of the notice (LWIB or State).

2. The request for appeal must clearly indicate that the training provider wants to appeal the denial and must clearly identify the training program being denied.

3. The request for appeal must be submitted in writing, signed, and must include a factual basis for the appeal.

4. The LWIB or State (as appropriate) will review the request for appeal and, based on this review, may reverse their original decision if an administrative error was made or if additional information submitted by the training provider changes the basis on which the original decision was issued.

5. Decision Reversals

a. If the LWIB reverses a prior decision, the LWIB will forward the request with a copy of the appeal file for inclusion on the statewide list and will also notify

the training entity in writing that they have reversed their original decision and have forwarded the request to the State.

b. If the State reverses a prior decision, the State will notify both the LWIB and the training provider of the reversal and will follow the appropriate procedures to incorporate the training provider into the statewide list.

VI. COMPLIANCE AND REQUIREMENTS

A. Local
The Local Areas shall be responsible for:

1. accepting, reviewing, and accepting or denying Provider Applications;

2. compiling a Local Eligible Training Provider List from the approved training providers;

3. compiling a Local Demand Occupation List, based on the Statewide Demand Occupation List;

4. monitoring of the Eligible Training Providers to ensure compliance with WIA Rules and Regulations, including Program Performance information, with applicable OMB Circulars, and with the Performance and Enrollment requirements as stated in this and other State Policies.

B. Statewide
The State shall compile a single Eligible Training Provider List from all local areas in the State and disseminate such list, and the performance information and program cost information, to the One-Stop service delivery systems within the State. This List and information shall be made widely available to participants in employment and training activities and other customers through the One-Stop service delivery system.

C. Regulatory Requirements

1. Accuracy of information:
If the designated State agency, after consultation with the local board involved, deter-mines that an eligible provider or individual supplying information on behalf of the provider intentionally supplies inaccurate information under this section, the agency shall terminate the eligibility of the provider to receive funds described in subsection (a) for any program for a period of time, but not less than two years.

2. Noncompliance:
If the designated State agency, or the local board working with the State agency, determines that an eligible provider described in subsection (a) substantially violates any requirement under this Act, the agency, or the local board working with the State agency, may terminate the eligibility of such provider to receive

funds described in subsection (a) for the program involved or take such other action as the agency or local board determines to be appropriate.

3. Repayment:
A provider whose eligibility is terminated under paragraph (1) or (2) for a program shall be liable for repayment of all funds described in subsection (a) received for the program during any period of noncompliance described in such paragraph.

4. Conflict of Interest:

   a. As stated in 20 CFR 667.200(a)(4)(i), a Local Board member or Youth Council member must neither cast a vote on, nor participate in, any decision-making capacity on the provision of services by the member (or any organization the member directly represents), nor on any matter that would provide direct financial benefit to the member or a member of his immediate family.

   b. As stated in 20 CFR 667.200(a)(4)(ii), neither membership on the Local Board or the Youth Council nor the receipt of WIA funds to provide training and related services, by itself, violates the conflict of interest provisions.

VII. EFFECTIVE DATE

This policy is effective immediately.

ATTACHMENT A.

STATE PERFORMANCE MEASURES -- PY 2002 DISPLAY TABLE

Display Table

ATTACHMENT B.

TRAINING PROVIDER ELIGIBILITY APPLICATION (REVISED)

Eligible Training Provider Application for Adults and Dislocated Workers
Instructions

The training provider shall:

1. Complete the transmittal and attestation document as prescribed below;

2. Complete the application(s) as prescribed below (see page 3);

3. Attach all requested documentation and certification; and

4. Submit the completed package to the Local Workforce Investment Board or its designee (see addresses listed be-low).

A separate completed application must be submitted for each training program as instructed.

Definition: A program of training services is one or more courses or classes that, upon successful completion, leads to a certification, an associate or baccalaureate degree, or skills and competencies recognized by employers.

Display Table

INSTRUCTIONS FOR COMPLETING THE TRANSMITTAL AND ATTESTATION FORM

* Many of the fields in the applications that follow the Transmittal and Attestation forms are self- populating when completed electronically. This means that data you enter on one form will populate the corresponding fields on following forms. This is a time-saving measure for you when completing the forms.

1) Fill in the Application Package Number boxes above Part A. For each set of 10 applications a new package is submitted. Each package of ten applications will be accompanied by a signed Transmittal and Attestation Form, and should be sequentially numbered.

   le: A school sending 1-10 applications will fill in Application Package Number 1 of 1.

   A school sending 11-20 applications will fill in Application Package Numbers 1 of 2 and 2 of 2.

   A school sending 21-30 applications will fill in Application Package Numbers 1 of 3, 2 of 3, and 3 of 3.

2) Part A - Training Provider Information should be completed as follows:

   Training Provider Legal Name: Fill in the complete legal name of the training provider.

   Training Provider Primary Address Line 1: Fill in the mailing address for the primary location or headquarters of the school or training provider.

   Training Provider Primary Address Line 2: To continue long addresses.

   City: City of mailing address.

   County: Name of the Mississippi county the school is located in. A list of Mississippi counties, grouped by the WIA Area in which they are located, is provided above on

pages 1 & 2 of the instructions. Out-of-state providers should provide the county or parish in which school is located.

County Code: A 2-digit code identifying Mississippi counties. The County Codes are listed above on pages 1 & 2, with the list of counties. Out-of-state locations use county code 99.

State: State of mailing address.

Zip Code: Zip code of mailing address.

Federal Tax Identification Number: Please provide your Federal Tax ID Number.

Contact Person's Name and Title: Name and title of your school's WIA contact person.

Contact Telephone Number : Telephone number for your school's WIA contact person.

Contact Fax Number: Fax number for your school's WIA contact person.

Contact E-mail Address : E-mail address (if applicable) for your school's WIA contact person.

Training Provider Web Site Address: Internet address (if applicable) for your institution.

Provider Type: Please check the box which corresponds to your training institution type.

3) Part B - Transmittal Identification should be completed as follows:

Each Catalog Course description to be offered must be listed separately. If a course is taught as separate classes on different campuses of the same institution, they are considered as separate course locations and must be listed separately, even if the separate campuses are located in the same city/town.

List the program name, the city in which the program is taught, the state in which it is taught, and corresponding zip code in the spaces provided. As these are entered on this page, the information is populating the corresponding fields on the following 10 application forms, in order.

4) Page 2 of this document is the Attestation Page. This must be printed out and Part C then completed by hand and signed.

INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

Page 1 of the Application

1) Part A - Training Provider Information: If you are completing this form electronically this section should already be completed with the correct information. It was populated with the data that was entered in the Transmittal Page.

   * If you are completing this form by hand or on a typewriter, (any method other than electronically) you must fill in the name and address information of the training institution and check the provider type that corresponds to your school. Also indicate in the boxes at the top right of Part A to which package (batch of 10) of applications this application be-longs.

2) Part B - Program Information:

   Program Name (line 1) should already be completed.

   Classification of Instructional Programs (CIP) Code for the program:
   The CIP Codes may be found on the Internet by clicking: CIP CODES or by going to the Internet address: www.nces.ed.gov/pubsearch/ pubsinfo.asp?pubid=2002165

   Month/Year Program Established:
   This is the month and year that this course or program of study was implemented at your training Institution.

   Training Location:
   (line 4) should already be completed.

   Training Location Street Address:
   This is especially important to differentiate between courses taught at different campuses within the same city or town.

   Program Length In Hours:
   Please state the program's length in hours of instruction for programs that are currently stated in days, weeks, semesters, etc.

   The chart on the following page may be of some assistance.

   Program Description:
   Please give a brief description of the program. Including such things as concepts to be taught and skills obtained upon completion.

   Program Award:
   State whether the student may expect to receive a baccalaureate degree, an associate degree, or an industry recognized certification upon completion of the program. If "other," please explain the skills or competencies gained from the program.

Please state whether the program is also being, or has already been submitted to another local workforce area to be approved for that area's eligible training provider list. You may apply to as many of the 6 areas as you wish. If the pro-gram is approved in any 1 of the 6 areas it will be included on the statewide list. However, some local areas' policies restrict their sending students to only those providers that were approved by their board.

Please state to which other areas you have sent an application for this program.

The following chart is to give basic guidance on the program length equivalents. This can give limited assistance in completing the Program Length In Hours field. [See table in Attachment C.]

Page 2 of the Application

3) Program Offerings:
Please check with an "x" all of the options which apply to the program.

Training Schedule: Circle the days of the week (after printing) on which the program is offered, then indicate the time of day the classes will meet. If there are multiple training/ class time options offered for this course at this campus please attach a separate class schedule.

4 Prerequisites / Entry Level Requirements of the Training:
Check with an "x" all prerequisites that the student must complete before entering the training. Please specify the type of exam or screening required (where requested) or the proficiency level required (where requested).

5) Demand Occupation:
Please provide the specific name of up to three occupations* for which the training/ education institution will prepare an individual for employment opportunities and for which trainees will be qualified after completion of this training program or course of study, with the corresponding North American Industry Classification System (NAICS) Code (see below). Indicate the certification, licensing, credentials by boards, or other approval required prior to employment.

NAICS Codes may be accessed by clicking this link: NAICS CODE or by visiting the following internet address: http://www.census.gov/epcd/www/naics.html

*Occupations for which training is allowed must be identified as "demand occupations" as defined by the Local Workforce Area's Demand Occupation List. List are available from each local area.

6) Total Training Cost to Individual:
List all costs associated with training that are to be paid, even in part, by WIA funds. The first column should include only the portion of Tuition and other costs that will be fully paid by WIA funds. The second column should include the full cost from your catalog for Tuition and other costs. The difference in cost between column 1 and column 2 will need to be paid by the student through other funding sources.

Page 3 of the Application

Part C -Performance Information:

Please use the most recent 12-month period which is available. Please specify what 12-month period is used. For those completing this form on computer, formulas are built into this section to fill fields which use figures from other fields and to calculate the percentages in column 3.

7) Section 1: All Participants Section - To be completed for all participants in the program, whether they receive WIA funds or not.

In all of the following performance measures the percentage or ratio in column 3 is calculated by dividing column 2 by column 1.

Column 2 is the Numerator and Column 1 is the Denominator.

1] Period from which program information is derived: Please state the beginning and ending dates of the 12-month period from which the performance data is derived.

2] Program Completion Rate: In the 1st box put the total number of participants who should have complete or graduated. In the 2nd box put the number of participants who completed the program. The third box is the percentage or ratio of Completers to Participants. Calculate by dividing Completers by Participants.

3] Employment Rate: In the first box put the total number of participants who should have completed the program. The second box is the number of participants who obtained unsubsidized employment. The third box is the ratio of Employed to Participants, stated as a percentage. Calculate by dividing Employed by Participants.

4] Training Related Employment Rate: This is a ratio of the total participants to the total number of those who obtain unsubsidized employment in a training related job. Again, this is calculated by dividing Employed by Participants.

5] Average Monthly Wage at Placement: In the first box put the total number who obtained unsubsidized employment of any type. This is the same number as in column 2 of the above Employment Rate measure. For those completing electronically, this field was self-populated.

6] WIA-Funded Participants Percentage Rate: This is a ratio of total participants to those who are WIA-funded. Box 1 is the same total participants number as in box 1 of the first 3 measures listed above. This field is self-populated on the computer. Box 2 is the number of participants in the program who are at least partly funded by WIA funding.

8) Section 2: WIA Participants Section - To be completed for only those participants whose training is at least partly funded by WIA funding.

In all of the following performance measures the percentage or ratio in column 3 is calculated by dividing column 2 by column 1.

Column 2 is the Numerator and Column 1 is the Denominator.

1] Completion Rate for WIA Participants: Box 1 is the total number of WIA-Funded students who should have completed, and Box 2 is the total number of them who actually did complete. Box 3 is the ratio of those students who should have completed the program that session to those who did complete. Calculate Box 3 by dividing Box 2 by Box 1.

2] Employment Rate of WIA Participants: This is a measure of those WIA-funded participants who completed the program who retained unsubsidized employment longer than 6 months from the first date of employment. Box 1 is the same data as in Box 1 above. Box 2 is the number of WIA participants who have retained unsubsidized employment at 6-months after hire. Box 3 is the Total Employed (Box 2) divided by the Total WIA Participants (Box 1).

3] Training Related Employment Rate: This is a ratio of the total WIA participants to the total number of those who obtain unsubsidized employment in a training related job. Again, this is calculated by dividing Employed by Participants.

4] Average Wage Rate: This is a measure of average wage earned after 6 months of employment from the first date of employment for those WIA Participants who completed the program. Box 1 is the figure from “Total Employed After 6 Months” box in Column 2 of the “Employment Rate of WIA Participants,” above. This field should be self-populated on the computer. Box 2 is the total of the monthly wages earned by people in box 1, in month 6 after employment. Box 3 is the Wages (Box 2) divided by the Total Employed (Box 1).

5] Rates of Licensure: This is a measure of the Rates of licensure or certification, attainment of academic degrees or equivalents, or of other measures of skills for WIA Participants who graduated from the training program. Box 1 is Total WIA Participants who should have completed. Box 2 is the Total who obtained licensure or certification. Box 3 is Box 2 divided by Box 1.

ATTACHMENT B.

TRAINING PROVIDER ELIGIBILITY APPLICATION (REVISED)

Fields in RED are REQUIRED FIELDS

State of Mississippi - Workforce Investment Act
Eligible Training Provider Application
For Adults and Dislocated Workers

TRANSMITTAL AND ATTESTATION

Application Package Number: ____ Of ____

Part A - Training Provider Information					
Training Provider Legal Name:					
Training Provider Primary Address Line 1:					
Training Provider Primary Address Line 2:					
City:		County:		County Code:	
State:		Zip Code:			
Federal Tax Identification Number:					
Contact Person's Name and Title:					
Contact Telephone Number:					
Contact Fax Number:					
Contact E-mail Address:					
Training Provider Web Site Address:					

Provider Type: (Check ONLY One)	
	Postsecondary educational institution eligible to receive funds under Title IV of the Higher Education Act.
	Registered Apprenticeship Program under the National Apprenticeship Act.
	Proprietary School. (Must attach certification and names and addresses of any certifying or accrediting body.)
	Other. (Must meet Commission on Proprietary School and College Registration criteria and attach registration certificate.)

Part B - Transmittal Identification

Applications for the following programs of training services are submitted for consideration to be included on the Mississippi WIA Eligible Training Providers List for Adults and Dislocated Workers:

* Number	Program Name	Location *(List Each Location Of A Program Separately)*			For Local Use Only		For State Use Only	
		City	State	Zip	APPROVE	REJECT	APPROVE	REJECT
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

* Additional Applications should be submitted in groups of 10 or less accompanied by the appropriately completed Transmittal and Attestation Forms. Each additional Transmittal and Attestation form must be properly signed by a representative of the training institution.

ATTACHMENT C.

STATE REFUND POLICY: REFUND POLICY FOR WIA ELIGIBLE TRAINING PROVIDERS

State of Mississippi - Workforce Investment Act
Eligible Training Provider Application
For Adults and Dislocated Workers

Training Provider Name:	
Application Package Number:	Of

Part C - Attestation		
To Be Completed by Eligible Providers: **"I HEREBY CERTIFY THAT** all information contained on this Transmittal and Attestation Form and all information on each of the attached Applications for Inclusion on the Eligible Training Provider (ETP) List, including all required program information and the requirement that no more than 75% of the enrollment of each class be WIA-funded, is true and accurate to the best of my knowledge. I also certify that the institution has acquired a Surety Bond as required and that such bond can be produced upon demand. I understand that false, erroneous, or misleading information on these documents can result in sanctions against the training institution, up to and including removal from the ETP List for up to two (2) years and repayment of Training Funds received."		
Printed Name of Representative	Signature of Representative	Date Signed

Part D - Review			
(To be completed by the Local Workforce Investment Board)	**YES**		**NO**
Verified the application is complete. *(documentation of any required certification is attached)*			
Verified the training program supports the demand occupations for the area.			
Verified application meets the established level of performance for the local area and documentation of performance data is attached. *(when available)*			
Verified any other requirement established at the local level.			
Printed Name of Representative	Signature of Representative		Date Signed

Part E - State Review			
(To be completed by the Employment Training Division)	**YES**		**NO**
Verified the application is complete. *(documentation of any required certification is attached)*			
Verified the training program supports the demand occupations for the area.			
Verified application meets the established level of performance for the local area and documentation of performance data is attached. *(when available)*			
Verified any other requirement established at the local and state levels.			
Printed Name of Representative	Signature of Representative		Date Signed

WIA TRAINING PROVIDER ELIGIBILITY APPLICATION
AUTOMATIC AND OTHER

PART A - TRAINING PROVIDER INFORMATION

Package #:	
of:	

Training Provider Name:	
Training Provider Primary Address Line 1:	
Training Provider Primary Address Line 2:	
City, State, Zip Code:	

Provider Type: (Check ONLY One)

	Postsecondary educational institution eligible to receive funds under Title IV of the Higher Education Act.
	Registered Apprenticeship Program under the National Apprenticeship Act.
	Proprietary School . (Must attach certification and names and addresses of any certifying or accrediting body.)
	Other. (Must meet Commission on Proprietary School and College Registration criteria and attach registration certificate.)

PART B - PROGRAM INFORMATION **PROGRAM NUMBER:** 1

Program Name:			
Classification of Instructional Programs (CIP) Code for the program: *(see instructions)*			
Month/Year Program Established:			
Training Location: *(only 1 per application)*			
Training Location **Street Address:**			
Program Length in Hours: *(see instructions)*			
Program Description: *(less than 50 words)*			
Program Award: *(If "other," explain skills of competencies gained from program)*			
Has this program been submitted on an application to another Workforce Area?		YES or NO:	
If "yes," state to which area(s) application was submitted:			

Program Offerings: *(check all that apply)*			
	Full Time Enrollment		English as Second Language Instruction
	Part Time Enrollment		Instruction Provided in Classroom Setting
	Daytime Classes		Instruction Provided Over the Internet
	Evening Classes		Labs
	Weekend Classes		Open Entry/Exit
	Other Options (specify):		

Training Schedule: *(for multiple training time options, please attach separate course schedule)*	Days of Week *(please circle)*:	Time of Day:
	M T W Th F S	

Prerequisites / Entry Level Requirements for the Training (Check all that apply):		
	Reading (specify level):	
	Math (specify level):	
	Language skills (specify):	
	Writing skills (specify):	
	Specific skills or competencies (specify):	
	Physical exam (specify):	
	Medical screening (i.e., drug or alcohol)	
	High school diploma or GED	
	Pre-apprenticeship program	
	Prerequisite courses (specify names of courses):	
	Other educational requirements (specify):	

Demand Occupation:

Please provide the specific name of **up to** three occupations for which the training/education institution will prepare an individual for employment opportunities and for which trainees will be qualified after completion of this training program or course of study, with the corresponding North American Industry Classification System (NAICS) Code (see instructions). Indicate the certification, licensing, credentials by boards, or other approval required prior to employment.

Occupation Name	NAICS Code	Required Certification

Total Training Cost to Individual: *(Include WIA tuition cost & Catalog listed cost, fees, books, supplies, and other costs necessary to complete training program.)* **** See Instructions for local limits. In no circumstance will WIA costs be allowed that total more than $6,000 annually.***	**WIA-funded Costs:**		**Catalog Listed Cost:**		
	Tuition:		Tuition:		
	Fees:		Fees:	$0.00	
	Books:		Books:	$0.00	
	Supplies:		Supplies:	$0.00	
	*Other:		*Other:	$0.00	*SEE
	Total:	**$0.00**	**Total:**	**$0.00**	***BELOW***

***PLEASE SPECIFY "OTHER" COSTS:**	

PART C - PERFORMANCE INFORMATION (From the most recent 12-month period available - state which period)

Section 1: ALL Participants Section *(Complete for ALL Participants)*

Period from which program information is derived:			
Program Completion Rate for **all** individuals participating in the applicable program conducted by the provider:	Total Participants: (who should have completed session)	Completers:	Percentage:
Employment Rate of **all** individuals who participated in the training program (whether they completed or not) who obtained unsubsidized employment:	Total Participants:	Total Employed:	Percentage:
Training Related Employment Rate:	Total Participants:	Total Employed in Training Related Job:	Percentage:
Average Monthly Wage at placement of all individuals who participated in the training program (whether they completed or not):	Total Employed:	Total **Monthly** Wages of Those Employed:	Average **Monthly** Wage Rate:
WIA-Funded Participants Percentage Rate:	Total Participants:	Total WIA-Funded:	Percentage:

Section 2: WIA Participants Section *(Complete for WIA Participants Only)*

Period from which program information is derived:			
Completion Rate for **WIA Participants** who should have completed the program that session:	Total WIA Participants: (who should have completed session)	Completers:	Percentage:
Employment Rate of **WIA Participants** who completed the program who retained unsubsidized employment longer than 6 months from the first date of employment:	Total WIA Participants:	Total Employed After 6 months:	Percentage:
Training Related Employment Rate:	Total WIA Participants:	Total Employed in Training Related Job:	Percentage:
Average Wage Rate after 6 months of employment from the first date of employment for those **WIA Participants** who completed the program:	Total Employed After 6 months:	Total **Monthly** Wages of Those Employed:	Average **Monthly** Wage Rate After 6 Months:
Rates of Licensure or certification, attainment of academic degrees or equivalents, or of other measures of skills for **WIA Participants** who graduated from the training program:	Total WIA Participants:	Total Who Attained Licensure:	Percentage:

This refund policy shall apply to entities requesting and receiving approval as a Workforce Investment Act Eligible Training Provider as allowed by PL 105-220 Section 122 and its regulations.

If the Eligible Training Provider (ETP) already has a refund policy in place through its accrediting entity, in its standard catalog, or in other widely distributed official form, the existing policy will be used. In the absence of an existing refund policy, the ETP shall adopt the following refund policy based on MS Code Sec. 75-60-18 regarding proprietary schools as follows. The following policy will not summarily supercede an existing policy; rather the following policy will be implemented if the ETP does not have a refund policy.

I. The tuition refund policy for the first term or quarter of any program at ETPs relevant to this policy shall be as follows:

   A. For programs that are divided into quarters of up to fourteen (14) weeks, the ETP shall evenly divide the total tuition charges among the number of quarters. After instruction is begun at an ETP, if a student withdraws or is discontinued, the school may retain no more than:

      1. Zero percent (0%) of the quarter's tuition if the termination is during the first week of instruction; or

      2. Twenty-five percent (25%) of the quarter's tuition if the termination is during the second week of instruction; or

      3. Fifty percent (50%) of the quarter's tuition if the termination is during the third week of instruction; or

      4. Seventy-five percent (75%) of the quarter's tuition if the termination is during the fourth week of instruction; or

      5. One hundred percent (100%) of the quarter's tuition if the termination occurs after the fourth week of instruction.

   B. For programs organized by terms of fifteen (15), sixteen (16), seventeen (17), or eighteen (18) weeks each, the ETP shall evenly divide the total tuition charges among the number of terms. After instruction is begun at an ETP, if a student withdraws or is discontinued, the school may retain no more than:

      1. Zero percent (0%) of the term's tuition if the termination is during the first week of instruction; or

      2. Twenty percent (20%) of the term's tuition if the termination is during the second week of instruction; or

      3. Thirty-five (35%) of the term's tuition if the termination is during the third week of instruction; or

4. Fifty percent (50%) of the term's tuition if the termination is during the fourth week of instruction; or

5. Seventy percent (70%) of the term's tuition if the termination is during the fifth week of instruction.

6. One hundred percent (100%) of the term's tuition if the termination occurs after the completion of the fifth week of instruction.

II. The tuition refund policy for the second, third, and subsequent term(s) or quarter(s) of any program at ETPs relevant to this policy shall be as follows:

A. For programs that are divided into quarters of up to fourteen (14) weeks, the ETP shall evenly divide the total tuition charges among the number of quarters. After instruction is begun at an ETP, if a student withdraws or is discontinued, the school may retain no more than:

1. Twenty-five (25%) of the quarter's tuition if the termination is during the first week of instruction; or

2. Fifty percent (50%) of the quarter's tuition if the termination is during the second week of instruction; or

3. Seventy-five percent (75%) of the quarter's tuition if the termination is during the third week of instruction; or

4. One-hundred percent (100%) of the quarter's tuition if the termination occurs after the third week of instruction.

B. For programs organized by terms of fifteen (15), sixteen (16), seventeen (17), or eighteen (18) weeks each, the ETP shall evenly divide the total tuition charges among the number of terms. After instruction is begun at an ETP, if a student withdraws or is discontinued, the school may retain no more than:

1. Twenty percent (20%) of the term's tuition if the termination is during the first week of instruction; or

2. Thirty-five (35%) of the term's tuition if the termination is during the second week of instruction; or

3. Fifty percent (50%) of the term's tuition if the termination is during the third week of instruction; or

4. Seventy percent (70%) of the term's tuition if the termination is during the fourth week of instruction.

5. One hundred percent (100%) of the term's tuition if the termination occurs after the completion of the fourth week of instruction.

III. Other Requirements

A. No program/course shall have a term in excess of eighteen (18) weeks.

B. The amount of the refund shall be calculated based on the last day of student class attendance.

C. Any refund due shall be paid by the ETP within forty-five (45) days of the date on which the student withdraws from the program. For the purposes of this policy, such date shall be the earliest of (1) the date on which the student gives written notice to the ETP or (2) the date on which the student is deemed to have withdrawn, as herein provided.

D. If a student has failed to attend classes for a period of thirty (30) calendar days, the ETP shall send by regular mail a notice to the student, and a copy to MDA, that the student shall be deemed to have withdrawn from the program if the student does not notify the school to the contrary within twelve (12) days from the date on which the letter is sent. If the student fails to respond within such twelve-day period, the student shall be deemed to have withdrawn and the appropriate refund shall be made.

E. The Local Workforce Area and the State of Mississippi reserve the right to negotiate a provider's existing refund policy or enforce the standard policy if such existing policy is found to be excessive.

TRAINING LENGTH EQUIVALENTS

The following table gives the guidelines for determining the length of a training program when the duration as listed on the Eligible Training Provider List does not conform to the standard school semester format. Any training length as shown on the eligible training provider list that is not included in this table shall be referred to the fiscal agent for definition.

Display Table

Policy Number 6. Individual Training Account Policy.

I. SCOPE AND PURPOSE

The Workforce Investment Act (WIA) sect. 134(d)(4)(G) authorizes the use of Individual Training Accounts (ITAs). ITAs are to be used by customers, after consultation with a case manager, to purchase approved training pro-grams, delivered through "eligible training providers." Approved programs are maintained on a statewide listing of training providers known as the "Statewide Eligible Training Provider List." This policy establishes the minimum requirements Local Workforce Investment Boards (LWIBs) must follow to develop a local area ITA policy. From time to time, the Mississippi Department of Employment Security (MDES) or the local areas may request and be granted waivers applicable to ITAs. Those waivers may override this policy.

II. REQUIREMENTS

An ITA is an account established on behalf of an eligible WIA participant. ITAs are funded with adult and dislocated worker funds as authorized under Title I of WIA. ITAs are to be used to purchase training services for skills in demand occupations from training providers on the statewide eligible training provider list.

A. The LWIB must establish written procedures that address conditions for the receipt of ITAs. At a minimum these conditions must include:

1. Training services may be made available to employed and unemployed adults who have met the eligibility requirements for core and intensive services, have received at least one intensive service, and have been determined to be unable to obtain or retain employment providing a self- sufficient wage through such services. Intensive services are listed in WIA section 134(d)(3)(C). The list in the Act is not all-inclusive. Other intensive services, such as out-of-area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided based on an assessment or individual employment plan.

2. The One-Stop operator or One-Stop partner, as appropriate, must determine and document in the individual employment plan that the individual is in need of training services and has the skills and qualifications to successfully complete the selected training program.

3. The participant seeking training must agree to apply for Pell Grant or other available financial assistance aid.

4. The participant seeking training services must certify commitment to attend classes and complete the training.

5. The participant seeking training must select a training provider from the state list of eligible training providers for training in a demand occupation with employment opportunities in the local workforce investment area or be willing to relocate.

6. The participant seeking training must agree to provide attendance information, grades and/or progress reports while enrolled in WIA- approved training activities or agree to allow the training provider to release such information to the One-Stop operator.

7. Upon completion of training the participant must agree to provide or authorize the provision of documentation of completion of training and, when hired, provide name of employer and wage/salary information to the One-Stop operator.

8. The participant must agree to participate in follow-up activities to determine employment retention and wages at designated intervals.

B. Limitations on ITAs

An ITA may pay for a narrow or broad range of services, but not for intensive services prior to the determination of need for training and selection of a training program. Tuition and fees can be funded by ITAs. LWIBs may also permit the use of ITAs for equipment, tools, books, or other costs that increase the probability of successful completion of training.

The LWIB may establish limitations on ITAs. They may not be limited in a manner that undermines the Act's requirement that training services are provided in a manner that maximizes customer choice in the selection of an eligible training provider. Limitations to ITAs may be established in different ways.

1. Based on needs identified in the individual employment plan, the LWIB may impose limits on ITAs, such as limitations on the dollar amount and/or duration.

2. There may be a policy decision by the LWIB to establish a range or amounts and/or a maximum amount applicable to all ITAs.

C. Internal Procedures for ITAs

Payments from ITAs may be made in a variety of ways, including electronic transfer, vouchers, or other appropriate methods. Payments may also be made incrementally through payment of a portion of the costs at different points in the training course. The LWIB must establish internal procedures for the issuance of ITAs that include an approval process for ITAs, application process, description of disbursement procedures, description of a mechanism for tracking expenditures, and a refund policy.

D. Coordination of WIA Training Funds

WIA funding for training is limited to participants who are unable to obtain grant assistance from other sources to pay for their training or who require assistance beyond that available under grant assistance from other sources. The LWIB must develop procedures to ensure that training providers consider the availability of Pell Grants and other sources of grants to pay for training.

A WIA participant may enroll in WIA-funded training while his/her application for Pell Grant is pending, as long as the One-Stop operator has made arrangements with the training provider and the WIA participant regarding allocation of the Pell Grant if it is subsequently awarded. In that case, the training provider must reimburse the One-Stop operator the WIA funds used to underwrite the training for the amount subsequently covered by the Pell Grant. Reimbursement is not required from the portion of the Pell Grant assistance disbursed to the WIA participant for educated related expenses.

III. EFFECTIVE DATE

This revised policy is effective immediately and is in effect until rescinded or replaced.

Policy Number 7. Local Workforce Investment Areas' Procurement.

I. SCOPE AND PURPOSE

The Workforce Investment Act references fiscal and administrative procedures needed by both the State and local levels to implement the workforce investment system. The purpose of this document is to list the broad requirements related to the procurement process. Local workforce investment areas have the authority and responsibility for establishing procurement procedures.

II. REQUIREMENTS

A. Uniform Fiscal and Administrative Requirements
As stated in 20 CFR 667.200(a)(1) and (2), except for four situations, State, local and Indian tribal government organizations that receive grants or cooperative agreements under WIA Title I must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" that is codified at 29 CFR Part 97. With the four exceptions, institutions of higher education, hospitals, and other non-profit organizations must follow the common rule implementing OMB Circular A-110 that is codified at 29 CFR Part 95. The exceptions are described below:

1. Transactions between Local Boards and Units of Government
As stated in 20 CFR 667.200(a)(3), in addition to the requirements at 29 CFR 95.48 or 29 CFR 97.36(i), all procurement contracts and other transactions between Local Boards and units of State or local governments must be con-ducted only on a cost reimbursement basis. No provision for profit is allowed. (Also see WIA Section 184(a)(3)(B).)

2. Code of Conduct

   a. As stated in 20 CFR 667.200(a)(4)(i), a Local Board member or Youth Council member must neither cast a vote on, nor participate in, any decision-making capacity on the provision of services by the member (or any organization the member directly represents), nor on any matter that would provide direct financial benefit to the member or a member of his immediate family.

   b. As stated in 20 CFR 667.200(a)(4)(ii), neither membership on the Local Board or the Youth Council nor the receipt of WIA funds to provide training and related services, by itself, violates the conflict of interest provisions.

3. Program Income / Addition Method
As stated in 20 CFR 667.200(a)(5), the addition method, described in 29 CFR 95.24 or 29 CFR 97.25(g)(2), must be used for all program income earned under WIA Title I grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However,

the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program.

4. Program Income / Excess Revenue
As stated in 20 CFR 667.200(a)(6), any excess of revenue over costs incurred for services provided by a govern-mental or nonprofit entity must be included in program income. (Also see WIA Section 195(7)(A) and (B).)

B. WIA References to Procurement Activity

1. WIA Section 117(d)(2)(B) states that consistent with Section 123, the local board shall identify eligible providers of youth activities in the local area by awarding grants or contracts on a competitive basis, based on the recommendations of the youth council.

2. WIA Section 117(h)(4)(B) specifies that one duty of the local board is to recommend eligible providers of youth activities to be awarded grants or contracts on a competitive basis to carry out the youth activities.

3. WIA Section 118(b)(9) requires the local plan to include a description of the competitive process to be used to award the grants and contracts in the local area.

4. WIA Section 121(d)(1)(A) describes the two options for designation or certification of a one- stop operator. One option is through a competitive process.

5. WIA Section 123 deals with the identification of eligible providers of youth activities. The regulation requires the local board to identify eligible providers of youth activities by awarding grants or contracts on a competitive basis, based on the recommendations of the youth council and on the criteria contained in the State plan, to the providers to carry out the activities, and shall conduct oversight with respect to the providers, in the local area.

6. WIA Section 134(d)(3)(B) states that intensive services shall be provided through the one-stop delivery system directly through one-stop operators or through contracts with service providers, which may include contracts with pub-lic, private for-profit, and private nonprofit service providers, approved by the local board.

C. Nonduplication
As stated in WIA Section 195(2), funds provided under Title I of WIA shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds.

D. Allowable Cost / Cost Principles
As stated in 20 CFR 667.200(c), each subrecipient must follow the Federal allowable cost principles that apply to its type of organization. The Department of Labor regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable

costs that each type of subrecipient must follow. The applicable Federal principles are shown below:

1. Allowable costs for State, local, and Indian tribal government organizations must be determined under OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

2. Allowable costs for nonprofit organizations must be determined under OMB Circular A-122, "Cost Principles for Nonprofit Organizations."

3. Allowable costs for institutions of higher education must be determined under OMB Circular A-21, "Cost Principles for Educational Institutions."

4. Allowable costs for hospitals must be determined in accordance with Appendix E of 45 CFR Part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

5. Allowable costs for commercial organizations and those nonprofit organizations listed in Attachment C to OMB Circular A-122 must be determined under the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR Part 31.

6. In addition to the allowable cost provisions listed in II.D. 1-5, the cost of information technology --computer hardware and software --will only be allowable under WIA Title I grants when the computer technology is "Year 2000 compliant."

E. Debarment and Suspension / Drug-Free Workplace
As stated in 20 CFR 667.200(d), all WIA Title I subrecipients must comply with the government-wide require-ments for debarment and suspension, and the government-wide requirements for a drug-free workplace codified at 29 CFR Part 98.

F. Lobbying
As stated in 20 CFR 667.200(e), all WIA Title I subrecipients must comply with the restrictions on lobbying that are codified in the DOL regulations at 29 CFR Part 93.

G. Nondiscrimination
As stated in 20 CFR 667.200(f), all WIA Title I recipients, as defined in 29 CFR 31.2(h), must comply with the nondiscrimination and equal opportunity provisions of WIA Section 188 and its implementing regulations.

H. Cost Limitations

1. As required in 20 CFR 667.210(a)(2), local area expenditures for administrative purposes under WIA formula grants are limited to not more than ten percent of the amount allocated to the local area under Sections 128(b) and 133(b) of the Act.

2. As stated in 20 CFR 667.210(a)(3), the ten percent of the amount allotted that may be reserved for local administrative costs need not be allocated back to the individual funding streams.

3. As stated in 20 CFR 667.210(c), the costs of information technology --computer hardware and software --needed for tracking and monitoring of WIA program, participant, or performance requirements; or for collecting, storing and disseminating information under the core services provisions are excluded from the administrative cost limit calculation.

4. As stated in 20 CFR 667.210(d), in a one-stop environment, administrative costs borne by other sources of funds, such as Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities are chargeable to its own grant and subject to its own administrative cost limitations.

I. Administrative Cost Classifications
WIA Title I functions and activities that constitute the costs of administration subject to the administrative cost limit are defined in 20 CFR 667.220.

J. American-Made Equipment and Products
As required by Section 505 of WIA, each subrecipient shall comply with the Buy American Act (41 U.S.C. 10a et seq.).

K. State, Local, and Other Federal Procurement Rules
Applicable State, local, and other federal procurement rules shall also be followed.

III. OTHER CONSIDERATIONS

A. State Oversight
The oversight activities of the Employment Training Division include a review of locally-established, written, procurement procedures and procurement activities.

B. Local Procurement Activities
Prior to initiating local procurement activities, each local workforce investment areas should establish a written, procurement procedure.

IV. EFFECTIVE DATE

This policy shall be effective July 1, 2000.

Policy Number 8. Modification of Local Five-Year Plans.

I. SCOPE AND PURPOSE

The purpose of this policy is to provide the Local Workforce Investment Boards (LWIBs) and local elected officials boards with requirements and procedures governing the modification of local area five-year workforce investment plans in compliance with Section 118 of the Workforce Investment Act (WIA) of 1998 and 20 CFR 661.345, 350 and 355.

II. REQUIREMENTS

A. CONDITIONS
The conditions under which a modification to the local five-year workforce investment plan may be necessary include:

1. Completion of a basic plan which received transitional approval according to 20 CFR 661.350 (d);

2. Significant changes to local economic conditions;

3. Changes in financing to support WIA Title I and partner-provided WIA services;

4. Changes to local boards structure; or

5. The need to revise strategies to meet performance goals.

B. PUBLIC COMMENT
All plan modifications are subject to the review and public comment stipulations described in 20 CFR 661.345 (b) and (c):

(b) "The Local Board must provide an opportunity for public comment on and input into the development of the lo-cal workforce investment plan prior to its submission, and the opportunity for public comment on the local plan must:

(1) Make copies of the proposed local plan available to the public (through such means as public hearings and local news media);

(2) Include an opportunity for comment by members of the Local Board and members of the public, including members of business and labor organizations;

(3) Provide at least a 30 day period for comment, beginning on the date on which the proposed plan is made avail-able, prior to its submission to the governor; and

(4) Be consistent with the requirement, in WIA section 117(e), that the Local Board make information about the plan available to the public on a regular basis through open meetings.

(c) The Local Board must submit any comments that express disagreement with the plan to the Governor along with the plan.

C. SUBMISSION

1. This policy provides that modified plans be completed and submitted to the Employment Training Division (ETD) no more frequently than quarterly or as instructed by ETD.

2. This policy provides that modified plans should include a formatted summary sheet listing the modification number, date of submission, effective date, detailed description of the conditions necessitating the modification, the page number, section and paragraph (if appropriate) locating the changes being made, and a brief summary description of the changes being made (Attachment B).

3. This policy provides that modified plans and their attachments should contain the local area name, modification number and sequential numbering in either the header or footer on each page. Additionally, the modification number should appear at the top center of the cover page just under the words “LOCAL PLAN.”

4. This policy provides that modified plans display proper signatory approval in the same format as the original plan, listing the original signatures of the local chief elected official, the local workforce investment board chair, the county official with fiscal authority (for interlocal agreement areas) and the fiscal agent.

5. This policy provides that at least three (3) copies of modified plans shall be submitted to ETD, and that all copies shall display original signatures of all proper signatories. The three originals are filed with the ETD, the grant manager, and the grant recipient. The local area may submit more than three originals in order that each signatory may also receive an original.

III. EFFECTIVE DATE

This policy is effective immediately.

ATTACHMENT A.

20 CFR 661.345, 661.350, 661.355 (Incorporated by reference)

The regulations referenced, 20 CFR 661.345, 350 and 355 can be viewed at the following sites:

http://www.usworkforce.org/finalrule.txt for the plain text version, or

http://www.usworkforce.org/finalrule.pdf for the adobe acrobat version

ATTACHMENT B.

SUMMARY OF CHANGES FORMAT.

ATTACHMENT B

SUMMARY OF CHANGES

1. Local Workforce Investment Area:	2. Modification Number:
	3. Effective Date of Modification:
	4. Page 2 of
5. **Reason for this Modification:**	
6. **Purpose and location of Changes:**	
CHANGE #1	
a. **PURPOSE:**	
b. **PAGE NUMBER (S):** **SECTION:** **PARAGRAPH:**	
CHANGE #2	
a. **PURPOSE:**	
b. **PAGE NUMBER (S):** **SECTION:** **PARAGRAPH:**	
CHANGE #3	
a. **PURPOSE:**	
b. **PAGE NUMBER (S):** **SECTION:** **PARAGRAPH:**	

ATTACHMENT C.

SAMPLE COVERSHEET SHOWING MODIFICATION NUMBER.

ATTACHMENT C

Workforce Investment Act of 1998
Local Plan
Plan Modification number _____

_____ Workforce Investment Area
Serving the Following Counties of Mississippi:

Submitted By:
Name
Address
Telephone Number
Fax Number

Date

ATTACHMENT D. SAMPLE SIGNATURE PAGES.

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Policy Number 9. Subgrantee Closeout Procedures.

I. PURPOSE

This policy sets forth the procedures for closing out grants and subgrants. This policy applies to local workforce in-vestment areas, state subgrantees and other entities that receive Workforce Investment Act funds by the allocation, pass-through and subgrant award methods unless otherwise instructed by the Employment Training Division.

II. REQUIREMENTS

A. FORMAT
The standard form to be complete to closeout a subgrant is included with this policy as the attached subgrantee closeout form.

B. DUE DATE
For all allocated grant funds (Administration, Adult, Youth, Dislocated Worker and Incentive), three (3) closeout packages bearing original signatures shall be submitted to the Employment Training Division no later than 60 days fol-lowing the end or termination date of the subgrant or grant, the reported expenditure of all funds allocated for a program year; the end of the time period of availability of funds, or as directed by the Employment Training Division.

One copy should be retained by the subgrantee.

C. REVISIONS
The grantee or subgrantee may revise the closeout package no more than once after the initial package is received by the Employment Training Division. This revision will be accepted no later than 45 days after the approval of the initial closeout However, additional refunds, rebates, or credits received after this point will be processed. In this case, a revised final reporting worksheet will be required.

III. INSTRUCTIONS FOR COMPLETING THE CLOSEOUT

A. Grantee/Subgrantee's Closeout Checklist
Every item must be completed and the form must be signed by an authorized signatory official or duly authorized representative. An explanation must accompany any item that is checked "To Be Sent Separately" or "Unable to Furnish."

1. Grant/Subgrant Compliance

a. Release
The purpose of the Grantee/Subgrantee's Release is to release the unexpended/unobligated balance of the grant/subgrant to the Employment Training Division.

The figure entered as the "Total amount paid and payable by Employment Training Division" must reflect the final allowed total actual expenditures. The amount shown must agree with the amount of cumulative costs reported on the final worksheet. (Do not round off expenditures.) The closeout process cannot be completed when there are accrual estimates of costs remaining against the grant/subgrant budget.

b. Assignment of Refunds, Rebates and Credits
Execution of the assignment guarantees immediate remittance to the Employment Training Division any subsequent refunds or credits applicable to the subgrant. Examples are telephone and insurance refunds.

c. Inventory Certification
The purpose of the Inventory Certification is to account for all items of materials and equipment purchased and/or furnished in accordance with the terms and conditions of the subgrant. Complete the certification as required. If no equipment was furnished or acquired, so indicate.

d. Certification of Cash Balance
The purpose of the Cash Balance Certification is to provide a statement accounting for the balance of funds on hand applicable to the subgrant in question.

NOTE: Only a zero (-0-) cash balance will be accepted.

e. General Statement of Compliance
The statement of compliance ensures that all other terms and conditions of the grant/subgrant have been met.

NOTE: Two individuals must witness the signature of the authorized signatory official. If the signature is not witnessed, the forms will be returned to the grantee/subgrantee.

2. Final Worksheet
Prepare the final reporting worksheet in accordance with established Employment Training Division procedures. The final worksheet should contain no accruals, and be clearly marked FINAL. Do not round off expenditures.

Attach an original and/or copies of the final reporting worksheet to the closeout packages to be sent to the Employment Training Division.

3. Outstanding Claimants List
This section and all related sections of the closeout package do not apply to allocated grant funds (Adult, Youth, Dislocated Worker, and Incentive) for which the closeout is completed after the end of availability or when all funds have been expended. All related sections of the completed closeout packages should be marked "Not Applicable."

When unclaimed funds are returned, a list of all possible claimants of these funds shall be prepared and attached to the closeout package as a supplement to the release statement. The list shall include the following pertinent data:

a. Claimant's name, last known address, amount of money due, and social security number (if claimant is a program enrollee) for each individual to whom checks for wages (or other outstanding checks) are due.

b. For employee (enrollee) checks, indicate the pay period during which the money was earned, including the number of hours, hourly rate of pay, and dates worked.

c. Check number, date of issuance, and amount of each uncashed check.

d. Name, address, and telephone number of the staff member to contact in connection with any claim which may arise.

6. Refund Check
The total amount of unused advanced funds and any outstanding claims must be refunded by check with the close-out package. Refund checks shall be made payable to the State of Mississippi and shall include a reference to the sub-grantee, subgrant number, funding source and program year.

7. Other Documents (Specify)
Include with the closeout package any other additional documents or information as deemed necessary.

B. Deobligation Authorization
This section is for the use of the Employment Training Division only and is not to be complete by the subgrantee.

C. Identification
Each completed closeout package must include a header in the upper-right corner to include the subgrantee's name and the source and program year of the applicable funds.

III. EFFECTIVE DATE

This policy shall be effective immediately.

IV. APPROVAL

James R. Lott

Director

Employment Training Division

ATTACHMENT

SUBGRANTEE CLOSEOUT FORM

In compliance with the requirements of the Employment Training Division (ETD) Subgrantee Closeout Procedures and the terms and conditions of the subgrant, the following closeout documents are enclosed: (Check the appropriate boxes concerning each of the closeout documents. Explain fully any item not submitted or any item to be sent separately. Use separate sheet, if necessary.)

Display Table

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SUBGRANT COMPLIANCE

A. RELEASE

Pursuant to the terms of said subgrant and in consideration of the sum of:

Display Table
which has been or is to be repaid to the Subgrantee or to its assignees, if any, the Subgrantee, upon payment of the said sum does remise, release, and discharge the ETD its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said subgrant, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Subgrantee, as follows. (If none, so state.)

   a.

   b.

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Subgrantee to third parties arising out of the performance of the said subgrant, which are not known to the Subgrantee on the date of execution of this release and of which the Subgrantee gives notice in writing to the Employment Training Division within the period specified in the said subgrant.

3. Claims, after closeout, for costs which result from the liability to pay Unemployment Insurance costs under a re-imbursement system or to settle Workers' Compensation claims.

B. ASSIGNMENT OF REFUNDS, REBATES AND CREDITS

Pursuant to the terms of said subgrant and in consideration of the reimbursement of costs and payment of fees as provided in the said subgrant and any assignment thereunder, the Subgrantee does hereby:

1. Assign, transfer, set over and release to the ETD all rights, titles and interests to all refunds, rebates, credits or other amounts (including any interest thereon) arising or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all such refunds, rebates, credits or other amounts (including interest thereon due or which may become due, and to forward promptly to the ETD) for any proceeds so collected. The reasonable costs of any such action to affect collection shall constitute allowable costs when approved by the ETD as stated in the said subgrant and may be applied to reduce any amounts otherwise payable to the ETD under the terms hereof.

3. Agree to cooperate fully with the ETD as to any claim or suit in connection with such refunds, rebates, credits or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney or other papers in connection therewith; and to permit the ETD, the State Attorney General's Office or the Federal Grantor Agency to represent it at any hearing, trial or other proceeding arising out of such claim or suit.

C. INVENTORY CERTIFICATION (Select One)

1. ___ The Subgrantee hereby certifies that all items of materials and equipment purchased, furnished or transferred for or to said Subgrantee were done so in accordance with the terms and conditions of said subgrant.

2. ___ The Subgrantee hereby certifies that no equipment was furnished or acquired under the terms and conditions of said subgrant.

D. CERTIFICATION OF CASH BALANCE

The Subgrantee hereby certifies that the cash balance applicable to said subgrant as of the date of the execution of this document is:

Display Table

E. GENERAL STATEMENT OF COMPLIANCE

The Subgrantee further certifies that all other terms and conditions of said subgrant have been met. IN WITNESS THEREOF, this Certification of Subgrant Compliance has been executed this day of ___, 20__.

SUBGRANTEE AGENCY

BY SIGNATORY OFFICIAL (Signature)

TITLE WITNESSED BY:

1. _____

   (Signature and date)

2. _____

   (Signature and date)

   LIST OF OUTSTANDING CLAIMANTS
   This section does not apply to allocated grant funds (Adult, Youth, Dislocated Worker, and Incentive) for which the closeout is completed after the end of availability or when all funds have been expended.

   Display Table

Policy Number 10. Waivers and Work-Flex Workforce Investment.

I. SCOPE AND PURPOSE

On September 30, 2005, the United States Department of Labor (DOL) granted Mississippi's request to waive many Workforce Investment Act (WIA) rules and requirements. A copy of the DOL approval is attached to this policy. Mississippi also became the first state to be granted work-flex authority, permitting the State to waive additional rules at the request of local workforce areas. The purpose of this policy is two-fold: 1) to provide notice of the waivers already granted and 2) to establish the process for the granting of additional waivers using work-flex authority. This policy overrides a host of WIA rules and requirements, including provisions and requirements in other State policies.

II. REQUIREMENTS

A. Waivers Granted

The following waivers have been granted by DOL.

1. Common Performance Measures

Effective Statewide on July 1, 2005

Mississippi has replaced the old 17 WIA performance standards with nine new Common Measures, three each for the WIA adult, dislocated worker and youth programs. Exits as far back as October 1, 2004 will factor into Common Measure retention, earnings gains and degree attainment scores.

No incentives or sanctions will result from the coming year's performance scores. Scores achieved during the second year, July 1, 2006 through June 30, 2007, will trigger incentives and sanctions. Exits after October 1, 2005 will affect PY 2006 scores. Reporting instructions, training and technical assistance on the Common Measures will be pro-vided and updated throughout the next two years.

2. Hurricane Katrina Performance Exception

Individuals who relocated due to Hurricane Katrina or who are unable to participate in planned training or employment activities due to Hurricane Katrina must remain included in all performance reports, but may be excluded from performance calculations. The mechanics for implementing this exclusion will be developed and communicated to the local workforce areas.

3. 100% OJT Reimbursement Due to Adverse Hurricane Katrina Impact

Effective October 1, 2005 through March 31, 2006.

Local areas are encouraged to immediately to establish or revise policies and procedures to allow for reimbursing businesses up to 100% of trainee wages if the business or the trainee has been adversely impacted by Katrina. Each lo-cal area should adopt a brief policy or procedure implementing this waiver which provides equitable treatment for similarly situated businesses and trainees, specifying the criteria for determining reimbursement rates. Such criteria should include but not be limited to the measurable extent to which the business and/or were adversely affected by Hurricane Katrina and demonstrated need. All criteria considered in applying the sliding scale for reimbursement of more than 50% should be documented.

Local areas shall also take immediate steps to aggressively market on-the-job-training (OJT) to employers and potential trainees, to simplify forms and paperwork, to reduce process time and to provide technical assistance to service providers, WIN Job Center staff and partners.

4. Reduced Employer Match for Customized Training

Effective October 1, 2005 through June 30, 2007

Local areas are encouraged to immediately adopt procedures with a sliding scale, varying from 0% to 50%, for employer match for customized training. The match rate may be zero percent for businesses or trainees adversely impacted by Katrina. The local area should also consider other criteria in setting the sliding scale including but not limited to whether the employer is in a high growth sector targeted by the State's or the local area's strategic two-year WIA plan. All criteria considered in applying the sliding scale should be documented.

Again, local areas shall take immediate steps to aggressively market customized training to employers and potential trainees, to streamline forms and paperwork, to reduce process time and to provide technical assistance to service providers, WIN Job Center staff and partners.

5. Small Business Capitalization

Effective October 1, 2005 through June 30, 2007

Local areas may use WIA funds to capitalizing small businesses destroyed by Hurricane Katrina and to help individuals create new self-employment opportunities. Capitalization of up to $ 5000 may be provided using WIA funds with the following stipulation:

a. The business must employ twenty for fewer individuals and have participated in concurrent micro-enterprise or entrepreneurial training,

b. the items purchased must reasonably relate to the conduct of the business, and

c. the business shall not use the funds for the purchase of alcohol, entertainment expenditures, foreign travel or for the payment of fines.

Businesses, individuals, counties and communities directly and adversely impacted by Hurricane Katrina should be targeted, but other criteria for business capitalization may also be approved by the local WIB. Marketing, streamlining and technical assistance strategies, similar to those for OJT and customized training, should begin as soon as possible.

6. Increased Training Flexibility

Effective October 1, 2005 through June 30, 2007

The period of initial eligibility for all training programs on the State's eligible training provider list is extended through June 30, 2007. Programs will not be removed from the state-wide list for failure to report or for low performance during the next two years. A local area may, however, elect to discontinue funding Individual Training Accounts (ITA's) if a given training program performs poorly.

Older and out-of-school youth, in addition to adults and dislocated workers, may continue to access ITA's at the discretion of the local area, as justified by an Individual Service Strategy (ISS).

Trainees whose programs were disrupted by Hurricane Katrina may access training necessary to complete their program, whether or not the successor training program is on the Eligible Training Provider List. Cost reasonableness should be considered, along with individual participant and community circumstances.

7. More Flexible Youth Programs

Effective October 1, 2005 through June 30, 2007

Youth who are members of families who moved from their homes due to Katrina may be considered homeless pursuant to WIA section 101(25) and, therefore, are considered low income and having barriers for eligibility purposes. A credible applicant statement constitutes sufficient verification of homelessness.

Local areas may elect not to require that all ten youth program elements be offered in areas, counties or communities adversely impacted by

Hurricane Katrina. Follow-up services are not required if a given youth moves out of the local area due to Hurricane Katrina.

Youth providers need not be competitively selected if the number or capacity of local providers has been significantly diminished due to Hurricane Katrina. Non-competitive youth provider selection shall be justified by a brief sole source rationale and a cost reasonableness determination. Cost reasonableness is based upon a careful review of the provider's line item budget, statement of work and performance expectations.

8. Unlimited Fund Transfer Between the Adult and Dislocated Worker Programs

   Effective October 1, 2005 through June 30, 2007

   Local areas may submit fund transfer requests to MDES at any time through June 30, 2007. Fund transfer between the adult and dislocated worker programs is unlimited and notices of fund availability will be adjusted as transfers occur. Funds may not be transferred into or out of the youth program. All the rules, performance and reporting requirements of the program into which funds are transferred will apply.

9. Local Areas May Serve Incumbent Workers, Assist with Rapid Response and Conduct Other WIA Section 134, Statewide Activities, Using Formula Adult, Dislocated Worker and Youth Funds

   Effective October 1, 2005 through June 30, 2007

   The South-central Mississippi Works and Twin Districts local workforce areas may elect to utilize all or a portion of their formula funds to conduct any of the WIA section 134 statewide activities, including incumbent worker and rapid response services. The other two local areas may utilize up to 25% of their formula funds for statewide activities. For the purposes of this waiver, "incumbent worker" means any individual who is employed at the time their eligibility is determined or at the time services are initiated. All incumbent workers must be legally able to work and must have dealt with selective service requirements. Incumbent workers need not meet other adult, dislocated worker or youth requirements. The primary purpose of this waiver is to allow local areas greater flexibility in meeting the training and employment needs of expanding Mississippi businesses and to facilitate post-Katrina growth and recovery. Use of local area formula funds for statewide activities will not remove performance and reporting requirements.

10. Relief From the 10% Administrative Cost Limit

    Effective October 1, 2005 through March 31, 2006

    Local areas may request permission from MDES to exceed the normal 10% administrative cost limit due to extra Hurricane Katrina related administrative expenditures. Applications must be received prior to March 31, 2006, must state the rationale for the administrative cost increase, must propose movement of a specified sum into the local administrative cost pool and will not take effect until approved in writing by MDES.

11. Flexible Fund Recapture and Reallocation

    Effective January 1, 2006 through June 30, 2007

    MDES may elect to recapture and reallocate local area formula or Hurricane Katrina National Emergency Grant (NEG) funds which are significantly under spent. Formula funds are considered to be significantly under spent when mid-year accrued expenditures are below 35% in any program or when year end accrued

expenditures are below 80%. NEG expenditure levels will be evaluated monthly and are subject to recapture on a case-by-case basis when expenditures lag behind planned levels.

Recaptured funds will go first to local areas whose accrued expenditures exceed planned levels and second to fund statewide activities.

B. Work-Flex Requests

Each local area may submit work-flex requests to MDES at any time through June 30, 2007. Work-flex requests are in addition to the waivers already granted and described in section II.A. of this policy.

Local areas should regularly review http://waivers.doleta.gov/lettersState.cfm, which lists all waivers granted to states. Any of these waivers can be implemented by your area, if approved by MDES, pursuant to work-flex authority. Other waivers should also be considered, but may require DOL permission prior to implementation.

Examples of local area waivers which could be granted include 1) cash incentives for adults or dislocated workers who achieve training, employment or post-placement goals, 2) elimination of barriers restricting customer movement between core, intensive and training services, and 3) expanded business services. Participant eligibility rules may not be waived.

Each work-flex waiver request should:

-- List the WIA law, rule or State requirement to be waived;

-- Include a brief rationale for the waiver, including the expected benefit for customers and increased program effectiveness; and

-- State the waiver's effective and end date. Work-flex waivers will take effect when approved by MESD unless a later date is proposed by the local area.

III. EFFECTIVE DATE

This policy shall is effective October 1, 2005 and shall remain in effect until it is rescinded or modified.

Policy Number 11. Mississippi Policy Oversight and Monitoring.

I. SCOPE AND PURPOSE

This policy sets forth requirements for oversight and monitoring of all entities receiving Workforce Investment Act (WIA) funds in accordance with Sections 117(d)(4) and 184(b)(3&4) of the Act and Federal Regulations 20 CFR Part 652 Subparts D-G, 667.400-667.740 of the Final Rule.

Each Local Workforce Investment Area and Substate Grantee (LWIA/SSG) shall develop a policy to govern its oversight and monitoring activities. This policy provides guidelines for developing the policy and describes the mini-mum elements to be included in the policy.

II. STATE REQUIREMENTS

A. State Oversight and Monitoring

The State Monitoring Unit is responsible for monitoring all Local Workforce Investment Areas and Substate Grantees (LWIAs/SSGs). On-site reviews will be conducted pursuant to established standard operating procedures to ensure compliance with the Act, Federal Regulations, State laws, contractual agreements, state policies, OMB Circulars, Cost Principles, and also, when applicable, Federal Acquisition Regulations (FAR). Refer to the table below to determine applicability of OMB Circulars, Cost Principles and audit requirements.

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1. Scope

The following systems or areas of LWIA/SSG operations are included within the scope of the on-site monitoring reviews, as appropriate: --Administrative Procedures --Assessment --Audit/Audit Resolution System --Eligibility Verification System --Equal Opportunity --Financial Management System --Management Information System --Monitoring System/Internal Monitoring/In-House Operated Programs and/or Services --LWIB Certification (Biennially)

-- Procurement System

-- Programmatic Areas (such as, but not limited to, capacity building and technical assistance, Individual Training Accounts (ITAs), On-the-Job Training (OJT), customized training, program quality, rapid response, youth services and program and Property Management System).

The State Monitoring Unit will review all aspects of the LWIA/SSG monitoring process to ensure compliance. Such reviews may require the LWIA/SSG to submit its monitoring instruments and/or copies of monitoring reports, corrective action

plans and records of follow-up activities to the State Monitoring Unit of the Employment Training Division for review.

2. Frequency

WIA Section 184(A)(4) requires each LWIA/SSG be monitored by the State annually during the program year. On-site reviews will be conducted and where practicable, state reviews of LWIA subcontractors such as WIN Job Centers or youth services providers will be conducted in conjunction with the LWIAs in a joint monitoring effort unless circum-stances deem it necessary for the State to conduct unannounced visits. The State will at a minimum review one comprehensive JOB WIN Center and one youth services provider per LWIA/SSG per program year.

B. State Monitoring Procedures

1. Monitoring Schedule

A tentative State monitoring review schedule shall be prepared and published annually by September 1. On-site re-views for the current program year will be scheduled to begin at the start of the 2nd quarter on or after October 1. The monitoring review schedule will be updated on a quarterly basis.

2. Monitoring Instrument

Standardized monitoring instruments and/or program-specific monitoring instruments shall be forwarded to the LWIAs/SSGs two weeks in advance of the on-site visit, when appropriate. The monitoring instruments, which include the major systems or areas to be reviewed, are completed by the LWIAs/SSGs and returned to the Monitoring Unit for review prior to the on-site visit. If monitoring instruments have already been completed by the LWIA/SSG and returned to the Monitoring Unit, the monitoring instruments will be updated during the on-site visit.

3. Review Notification

Written notification of the scheduled on-site review shall be provided to the appropriate entities at least two weeks in advance of the actual review, except when unannounced monitoring visits are deemed necessary.

4. Desk Review Instrument

Written desk review instruments are prepared prior to monitoring to ensure that all pertinent records are reviewed prior to each visit.

5. On-site Review Process

An on-site review is conducted consisting of:

-- An entry conference to brief agency officials on the scope of the review and to make appropriate arrangements;

-- A review of administrative, fiscal and/or programmatic systems and transactions;

-- Performance of testwork, based on a review and examination of WIA records and/or interviews, to determine if adequate internal controls and procedures are in place; and

-- An exit conference to apprise agency officials of probable findings.

6. Monitoring Report

After each review, a written report is prepared detailing any significant findings and recommending the appropriate corrective action or to indicate there are no findings within three weeks of completion of the review. Indexed working papers are prepared to provide supporting documentation for each finding, the systems reviewed and all testwork per-formed. The report is transmitted to the entity reviewed and appropriate corrective action is requested. A corrective action response will be required within 45 days from date of the report. If the review resulted in no findings, a letter to that effect is sent to the LWIAs/SSGs and State-supported program subgrantees.

7. Corrective Action Response

Upon receipt of the entity's corrective action plan, the monitors review the response and comment on the accept-ability of proposed corrective action. If the corrective action plan is deemed acceptable, the file is closed. If the corrective action plan or any part thereof is unacceptable, additional corrective action is requested. The file remains open until all corrective action has been accepted.

8. Acceptance/Non-acceptance of Corrective Action

Notice of acceptance or non-acceptance of the proposed corrective action plan will be forwarded within 30 working days of receipt of the plan. If the proposed plan is not accepted, the state may require submission of a subsequent plan to be received within 30 days from the date of the notice. If the subsequent plan is deemed unacceptable, the State may again request submission of a new plan within a specified timeframe or take other action in accordance with the law, federal regulations, and administrative requirements as deemed appropriate relevant to the circumstances.

9. Monitoring Files

10. Follow-up Visits/Verification of Corrective Action Follow-up visits are conducted, if deemed necessary.

11. Unannounced Visits

Files are maintained which contain all records related to each monitoring visit.

Unannounced visits are conducted, if deemed necessary or on a randomly selected sample basis.

III. LOCAL WORKFORCE INVESTMENT AREA/SUBSTATE GRANTEE REQUIREMENTS

A. LWIA/Subgrantee Monitoring and Oversight

WIA Act Section 117(d)(4) requires the local board, in partnership with the chief elected official, shall conduct oversight with respect to local programs of youth activities authorized under section 129, local employment and training activities authorized under section 134, and the one-stop delivery system in the local area.

WIA Act Section 184(b)(3 & 4) and 20 CFR part 667.410(a)(1-3) of the federal regulations further requires each recipient and subrecipient of funds under WIA Title I must conduct regular oversight and monitoring of its WIA activities and those of its subrecipients and contractors in order to:

-- Determine that expenditures have been made against the cost categories and within the cost limitations specified in the Act and Federal Regulations;

-- Determine whether or not there is compliance with uniform administrative requirements as applicable and other provisions of the Act and Federal Regulations and State law, policy and guidelines and other applicable laws and regulations; and

-- Provide technical assistance as necessary and appropriate.

1. Scope

The LWIA/Subgrantee shall develop a local monitoring policy which shall describe the monitoring procedures that will be implemented to ensure compliance with the Act; federal regulations; OMB Circulars, Cost Principles and FARS (See Table at page 4 under II.A of this document.); subgrant agreements; State laws and other applicable State policies and guidelines. Procedures for monitoring the following shall be addressed, as applicable:

-- program goals and objectives,

-- program quality,

-- procurement,

-- fiscal accountability,

-- labor standards,

-- audit/audit resolution,

-- an examination of actual expenditures against the cost categories and cost limitations, grievance procedures,

-- equal opportunity,

-- provisions of the Americans with Disabilities Act,

-- assessment,

-- eligibility verification as applicable,

-- property management,

-- internal monitoring,

-- administrative procedures,

-- program performance (actual versus planned),

-- programmatic areas such as individual training accounts (ITAs), on-the-job training (OJT), basic skills training, or other customized training activities,

-- programmatic accountability

2. Frequency

The policy shall include procedures to ensure monitoring is completed in a timely manner to address the following. Each subgrantee shall be monitored during the program year or during the subgrant period if the duration of the contract is less than one year (e.g. OJT contracts).

B. LWIA/Substate Grantee Monitoring Procedures

1. Monitoring Schedule

A monitoring schedule for all monitoring activities shall be prepared. The schedule is to list, at a minimum, subcontractors' names and addresses, contract numbers and terms of contracts, planned date(s) of reviews, and name(s) of individual(s) to perform the review. The State will reference these schedules when planning and preparing it's monitoring schedules.

The LWIAs/SSGs shall submit quarterly monitoring schedules to the State Office. With the exception of the first quarter, the LWIAs/SSGs shall submit quarterly monitoring schedule(s) to ETD by the 25th of the month prior to the beginning of each quarter. The first quarter schedules will be due by August 31.

2. Review Notification

The LWIA shall make every effort to provide advance notification to each of its subgrantees prior to the on-site re-view (preferably two weeks), except when unannounced visits are conducted.

3. Desk Review Instrument

The policy shall describe the procedures for completing a desk review instrument prior to the on-site visit.

4. Monitoring Instrument

   If the LWIA/Subgrantee opts not to use the state developed monitoring instrument, established policy shall include procedures for the development of objective monitoring instruments for use in on-site reviews to ensure that pertinent data can be collected and analyzed for all program activities including but not limited to:

   -- administrative

   -- fiscal

   -- programmatic

   -- general compliance

5. Documentation of Findings

   The policy shall describe procedures in place to ensure that all findings resulting from a monitoring review shall be documented in writing and shall include a description of the specific violation of Federal or State laws, policies, regula-tions, and/or contractual provisions.

6. Working Paper File

   The policy shall describe the procedures implemented to maintain a working paper file for each on-site review. The working paper file shall, in an organized manner, contain documentation of tests performed and all findings in the report and other documentation as deemed appropriate to substantiate that monitoring has occurred. Organization of the file can be by systems reviewed or actual testwork performed or any other method deemed appropriate by the LWIA/SSG. The working paper file shall include certification of the individual performing the testwork and evidence of supervisory review of the working papers.

7. Monitoring Report

   The policy shall describe procedures in place to ensure that following the on-site review, a written report shall be prepared when there are findings and when there are no findings. This report shall be completed within two weeks of the review. At a minimum, the following elements shall be included in the written report:

   -- A face page to be signed by all monitors who participated in the review and the signature of supervisory level staff or the executive director;

   -- The dates of the review and areas covered during the review.

   -- A sequential listing of findings and recommendations, if applicable. Where findings are noted, each finding shall consist of an objective narrative description of a violation of Federal or State laws, policies, regulations, and/or contractual provisions; and

-- Each finding is to be followed by a recommendation which sets forth the most appropriate action to correct the deficiency or violation noted in the finding.

8. Corrective Action

The policy shall include procedures to ensure that each report of findings and recommendations shall be forwarded to the subgrantee with a transmittal letter. The transmittal letter shall require a written response from the subgrantee, by a specified due date as deemed appropriate within 45 days from the date of the report to identify the specific corrective action measures implemented or planned by the subgrantee for each finding and recommendation.

9. Acceptance/Non-acceptance of Corrective Action

The policy shall describe the procedures that will be used to determine the acceptance or non.acceptance of the corrective action plan submitted by the subgrantee. Notification of the determination shall be in written form and forwarded to the subrecipient within 30 working days of receipt of the proposed corrective action plan.

10. Follow-up Monitoring and Verification of Corrective Action

The policy shall include procedures to ensure the need for a follow-up monitoring visit will be determined by the nature of the monitoring finding and the subgrantee's response to the finding. When a follow-up visit is appropriate, the review shall be designed to determine if the corrective action measures taken were adequate to resolve the noted deficiencies.

11. Unannounced Visits

The policy shall describe the procedures for conducting unannounced visits to subgrantees when:

-- There is reason to believe such visits are necessary, and

-- On a randomly selected sample basis.

12. Permanent Monitoring Files

The policy shall include procedures establishing and maintaining the permanent and official monitoring files. A separate file shall be maintained for each on-site visit. At a minimum, the files shall contain the following records:

-- Letter announcing monitoring visit, when appropriate. NOTE: In some instances it may be more practical to use telephone contact to schedule the monitoring visit with a letter to follow.

-- Completed desk review instrument;

-- Signed monitoring report;

-- Completed monitoring instrument(s);

-- Letter transmitting report to subgrantee, and if applicable, requesting a corrective action response from the sub-grantee;

-- Response(s) from subgrantee, when appropriate;

-- Letter(s) to subgrantee accepting/rejecting corrective action; and

-- Working paper file to include actual testwork performed and documentation to support findings.

ETD recommends that the LWIA develop an official monitoring file checklist to help ensure the maintenance of appropriate contents in the permanent monitoring file.

III. DESK MONITORING

The ETD recognizes that there may be times when the LWIA/SSG enters into an OJT contract or ITA agreement with a subgrantee where only a small number of participants (5 or less) are employed or enrolled in a training class. In such instances, it may not be practical or cost effective to conduct an on-site monitoring visit. Therefore, the ETD will allow for the limited use of desk monitoring (not to be confused with a desk review) of those contracts and training pro.grams only. The subgrantee must meet all of the following criteria:

A. ITA training providers or OJT contracts with five or less participants;

B. The total cost for the contract or total cost of training is no more than $ 25,000; and

C. Adequate documentation is obtained and maintained in permanent monitoring files to document:

-- Eligibility;

-- Time and/or Attendance;

-- Progress reports -to ensure student has not dropped out of school;

-- Completion of Training/Credit hours earned/passed;

-- License or certificate;

-- Participant medical and accident insurance;

-- Placement and wage information, where applicable;

-- Financial records -invoices for payments, amount of pell grant funds where applicable. Perform a cursory review and substantive tests such as re-perform calculations on all invoices or a significant sample. Look for completeness and accuracy of information, proper authorization and supporting documentation.

D. There are no known problems with the subgrantee's operations that would warrant an on-site visit; and

E. The LWIA/SSG has determined and documented the determination that desk monitoring is the most practical means of monitoring the subgrantee.

Any LWIA/SSG desiring to conduct desk monitoring in lieu of on-site monitoring, shall include language in its monitoring policy to cover the above requirements.

In all cases, desk monitoring is to be the exception and not the rule.

IV. FORMAT

All monitoring policies shall adhere to the outline provided in Sections II through V of this policy.

V. EFFECTIVE DATE

This policy shall be effective August 1, 2001.

Policy Number 12. Recapture and Reallocation Policy.

I. SCOPE AND PURPOSE

This policy sets forth the criteria and rules for the application of the Workforce Investment Act and its regulations regarding the recapture and reallocation of funds allocated to the local areas.

This policy is established to ensure that local areas properly report annual expenditures and obligations. It also al-lows for the proper distribution of excess unspent and/or unobligated funds. This policy applies to the following two separate types of recapture and reallocation:

-- Unexpended Funds -Funds not expended by the local area in the first two-year period of availability;

-- Excess Unobligated Funds -Funds in excess of 20 percent of that year's allocation that are not expended or obligated on June 30 of the year for which the allocation was made;

-- Voluntary Deobligation -Funds that a local area does not anticipate a use for during the period of availability; and

-- State-level Reallotment or Recapture -Either reallotment or recapture based on procedures applied by the Department of Labor.

II. REQUIREMENTS

A. Unexpended Funds

1. Citations

a. WIA Section 189(g)(2) --"...Funds received by local areas from States under this title during a program year may be expended during that program year and the succeeding program year. No amount of the funds described in this paragraph shall be deobligated on account of a rate of expenditure that is consistent with a State plan, an operating plan de-scribed in section 151, or a plan, grant agreement, contract, application, or other agreement described in subtitle D, as appropriate."

b. 20 CFR 652 et al. § 667.107(b) -"Grant funds expended by local areas.

(1) Funds allocated by a State to a local area under WIA sections 128(b) and 133(b), for any program year are available for expenditure only during that pro-gram year and the succeeding program year.

(2) Funds which are not expended by a local area in the two-year period described in paragraph (b)(1) of this section, must be returned to the State. Funds so returned are available for expenditure by State and

local recipients and subrecipients only during the third program year of availability. These funds may:

(i) Be used for Statewide projects, or

(ii) Be distributed to other local areas which had fully expended which had fully expended their allocation of funds for the same program year within the two-year period."

2. Recapture Procedures

a. Notice of Fund Availability -The notice of fund availability that provides spending authority to the local areas shall reflect the two-year period of availability.

b. Reporting -The closeout package and final reporting worksheet for the two year period shall be due 45 days following the two-year period.

c. Recapture -Funds, including reallocated funds, not reported as expended in the closeout packages will be recaptured by the Employment Training Division.

3. Use of Recaptured Funds

The Employment Training Division shall issue plan for the use of the recaptured funds no later than June 30 of the second year of the two-year period.

B. Excess Unobligated Funds

1. Citations

a. Workforce Investment Act

i. Youth -Section 128 (c) "Reallocation Among Local Areas. --

(1) In general.--The Governor may, in accordance with this subsection, reallocate to eligible local areas within the State amounts that are allocated under paragraph (2)(A) or (3) of subsection (b) for youth activities and that are available for reallocation.

(2) Amount.--The amount available for reallocation for a program year is equal to the amount by which the unobligated balance of the local area allocation under paragraph (2)(A) or (3) of subsection (b) for such activities, at the end of the program year prior to the program year for which the determination under this paragraph is made exceeds 20 percent of such allocation for the prior program year.

(3) Reallocation.--In making reallocations to eligible local areas of amounts available pursuant to paragraph (2) for a program year,

the Governor shall allocate to each eligible local area within the State an amount based on the relative amount allocated to such local area under subsection (b)(3) for such activities for the prior program year, as compared to the total amount allocated to all eligible local areas in the State under subsection (b)(3) for such activities for such prior program year. For purposes of this paragraph, local areas that received allocations under subsection (b)(2)(A) for the prior program year shall be treated as if the local areas received allocations under subsection (b)(3) for such year. (4) Eligibility.--For purposes of this subsection, an eligible local area means a local area that has obligated at least 80 percent of the local area allocation under paragraph (2)(A) or (3) of subsection (b) for such activities, for the program year prior to the program year for which the determination under paragraph (2) is made."

ii. Adult/Dislocated Worker -Section 133 (c) "Reallocation Among Local Areas.--

(1) In general.-.The Governor may, in accordance with this subsection, reallocate to eligible local areas within the State amounts that are allocated under paragraph (2)(A) or (3) of subsection (b) for adult employment and training activities and that are available for reallocation.

(2) Amount.--The amount available for reallocation for a program year is equal to the amount by which the unobligated balance of the local area allocation under paragraph (2)(A) or (3) of subsection (b) for such activities, at the end of the program year prior to the program year for which the determination under this paragraph is made exceeds 20 percent of such allocation for the prior program year.

(3) Reallocation.--In making reallocations to eligible local areas of amounts available pursuant to paragraph (2) for a program year, the Governor shall allocate to each eligible local area within the State an amount based on the relative amount allocated to such local area under subsection (b)(3) for such activities for the prior program year, as compared to the total amount allocated to all eligible local areas in the State under subsection (b)(3) for such activities for such prior program year. For purposes of this paragraph, local areas that received allocations under subsection (b)(2)(A) for the prior program year shall be treated as if the local areas received allocations under subsection (b)(3) for such year.

(4) Eligibility.--For purposes of this subsection, an eligible local area means a local area that has obligated at least 80 percent of the local area allocation under paragraph (2)(A) or (3) of subsection (b) for such activities, for the program year prior to the program year for which the determination under paragraph (2) is made.

b. 20 CFR 652 et al.

i. Reallocation -§ 667.160 “What reallocation procedures must the Governors use?

(a) The Governor may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of sections 128(c) and 133(c) of the Act. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year’s unobligated balance of allocated funds exceeds 20 percent of that year’s allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. This amount, if any, must be separately determined for each funding stream.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year’s allocation, less any amount reserved (up to 10 per-cent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area’s eligibility to receive a reallocation must be separately determined for each funding stream.”

ii. Obligation § 660.300 -”Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipients during the same or a future period.”

3. Recapture Procedures

a. Reporting --Each local area must submit an obligation report at the each program year; for Youth, March 31, and for Adult and Dislocated Workers, June 30. The report shall be submitted in writing ten working days following the end of the program year. A copy of the WIA Obligation Reporting Worksheet is attached.

b. Recapture --Funds not reported as expended or obligated in excess of 20 percent of the grant allocation, not including any funds received as a result of a voluntary deobligation and reallocation, will be recaptured by the Employment Training Division. The ETD shall issue revised Notices of Fund Availability to reflect the recapture of funds.

c. Exception --A local area that wishes to carry over funds in excess of the 20 percent may request a waiver to this policy from the Employment Training Division. The waiver request must be submitted in writing a minimum of 45 days prior to the end of the applicable program year. The written request must justify the need for the waiver and describe the reason for low expenditure and the plan for the use of funds. This justification may include such information as enrollment trends that reasonably indicate increasing expenditure and a need for the funds.

Waiver approval will be considered on a case-by-case basis. The Employment Training Division will formally approve or deny all requested no later than the end of the program year. In the event that no local area qualifies to receive reallocated funds, local areas may be allowed to carry over such amounts as available.

3. Reallocation of Funds

a. Eligibility

i. To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 per-cent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

ii. To be eligible to receive reallocated funds, a local area must maintain auditable records, with the most recent financial audit completed without significant issues; have complied with the administrative cost limitations during all prior years under the WIA; and have no major uncorrected monitoring findings for compliance or financial issues.

b. Procedures

Funds will be reallocated to the eligible local areas according to the original allocation process using the same data. The Employment Training Division will issue revised Notices of Fund Availability to reflect the deobligation and real-location of funds.

C. Voluntary Deobligation

1. Request

A local area may voluntarily deobligate funds from any funding source during the first two quarters of the applicable program year. The request must be made in writing and must document the concurrence of the local chief elected officials and the local board and for youth funds, the youth council.

2. Eligibility

a. To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 per-cent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation will be separately determined for each funding stream.

b. To be eligible to receive reallocated funds, a local area must maintain auditable records, with the most recent financial audit completed without significant issues; have complied with the administrative cost limitations during all prior years under the WIA; and have no major uncorrected monitoring findings for compliance or financial issues.

3. Procedures

Funds will be reallocated to the eligible local areas according to the original allocation process using the same data. The Employment Training Division will issue revised Notices of Fund Availability to reflect the voluntary deobligation and reallocation of funds.

D. State-level Reallotment or Recapture

1. Citation -§ 667.150 What reallotment procedures does the Secretary use?

(a) The first reallotment of funds among States will occur during PY 2001 based on obligations in PY 2000.

(b) The Secretary determines, during the first quarter of the program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under WIA sections 127 and 132 for programs serving youth, adults, and dislocated workers for the prior year, as separately determined for each of the three funding streams. Unobligated balances are determined based on allotments adjusted for any allowable transfer between the adult and dislocated worker funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under WIA sections 127 and 132 for programs serving youth, adults, or dislocated workers, less any amount reserved (up to 5 percent at the State level and up to 10 percent at the local level) for the costs of administration. This amount, if any, is separately determined for each funding stream.

(c) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of WIA sections 127(c) and 132(c), respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year's allotment, less any amount reserved for the costs of administration of youth, adult, or dislocated

worker funds. A State's eligibility to receive a reallotment is separately determined for each funding stream.

(d) The term "obligation" is defined at 20 CFR 660.300. For purposes of this section, the Secretary will also treat as State obligations: (1) Amounts allocated by the State, under WIA sections 128(b) and 133(b), to the single State local area if the State has been designated as a single local area under WIA section 116(b) or to a balance of State local area administered by a unit of the State government, and (2) Inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities.

2. Procedures

a. If the State of Mississippi is subject to the recapture of funds by the Department of Labor due to under-obligation, the Employment Training will reduce all local areas and state funds proportionately based on the extent to which each areas and the State contributed to the under-obligation

b. The Employment Training Division will issue revised Notices of Fund Availability to reflect the reduction and deobligation of funds.

III. EFFECTIVE DATE

This policy shall be effective immediately.

ATTACHMENT

WIA OBLIGATION REPORTING WORKSHEET AND INSTRUCTIONS

INSTRUCTIONS FOR OBLIGATIONS REPORTING WORKSHEET

INTRODUCTION

The Obligations Reporting Workaheet provides procedures for reporting all obligations for WIA activities by year (separate worksheet for each program year). Obligations are defined as follows:

20 CFR 652 et al. § 660.300-What definitions apply to the regulations for workforce investment systems under Ti-tle I of WIA? Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or a future period.

PREPARATION OF THE FORM

The instructions for completing the WIA Obligations Reporting Worksheet are set forth below. Attached is a blank form with reference instruction numbers.

REFERENCE EXPLANATION

1. Name and address of the fiscal agent.
2. Name of the Local Workforce Investment Area.
3. First year of allocation.
4. Name of entity responsible for providing goods or services.
5. Beginning and ending dates for providing goods or services.
6. Type of obligation such as contract, purchase order or single time provision of services or goods.
7. Enter dollar amount of obligation for each funding stream.
8. Add each obligation under each funding stream to calculate total by funding stream.
9. Total amount of expenditures (calculate most recent expenditures on an accrual basis of accounting in accordance with Generally Accepted Accounting Principles) by funding stream.
10. Total amount of grant for the allocation year by funding stream.
11. Reference numbers 8 plus 9 minus 10 will equal Total Unobligated by Funding Stream.
12. Signature of the person who signed as the fiscal agent on the “Plan Approval Certification” of the Local Plan. In case of signatory designation, an authorization letter is required.
13. Date of signing by authorized official.
14. Name of staff who actually prepared the report.

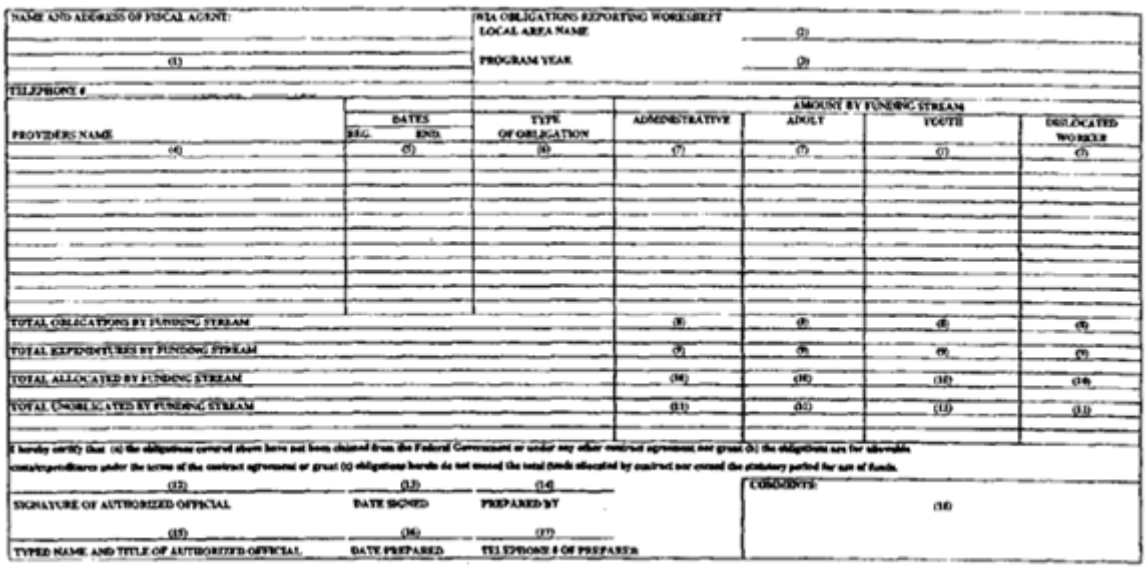
15. Type name and title of the authorized official.
16. Date of preparation.
17. Preparer's telephone number.
18. Comments that will be helpful in understanding or interpreting data.

DOCUMENTATION

The original of each new or revised WIA Obligations Reporting Worksheet should be mailed to:

Mississippi Development Authority
Employment Training Division
Post Office Box 24568
Jackson, Mississippi 39225-4568
Attention: Barbara Lowe

The Obligations Reporting Worksheet is due by the 10th working day of each month.



NAME AND ADDRESS OF FISCAL AGENT:

(1)

TELEPHONE #

WIA OBLIGATIONS REPORTING WORKSHEET

LOCAL AREA NAME (2)

PROGRAM YEAR (3)

PROVIDERS NAME (4)	DATES BEG. (5)	DATES END. (5)	TYPE OF OBLIGATION (6)	AMOUNT BY FUNDING STREAM ADMINISTRATIVE (7)	ADULT (7)	YOUTH (7)	DISLOCATED WORKER (7)
TOTAL OBLIGATIONS BY FUNDING STREAM				(8)	(8)	(8)	(8)
TOTAL EXPENDITURES BY FUNDING STREAM				(9)	(9)	(9)	(9)
TOTAL ALLOCATED BY FUNDING STREAM				(10)	(10)	(10)	(10)
TOTAL UNOBLIGATED BY FUNDING STREAM				(11)	(11)	(11)	(11)

I hereby certify that: (a) the obligations covered above have not been claimed from the Federal Government or under any other contract agreement nor grant (b) the obligations are for allowable costs/expenditures under the terms of the contract agreement or grant (c) obligatory funds do not exceed the total funds allocated by contract nor exceed the statutory period for use of funds.

(12)

SIGNATURE OF AUTHORIZED OFFICIAL

(13)

DATE SIGNED

(14)

PREPARED BY

(15)

TYPED NAME AND TITLE OF AUTHORIZED OFFICIAL

(16)

DATE PREPARED

(17)

TELEPHONE # OF PREPARER

COMMENTS

(18)

Policy Number 13. Governor's WINnovation Grant Policy.

I. PURPOSE

The purpose of the Governor's WINnovation Grants is to assist Mississippi's local workforce investment areas build a responsive, efficient, flexible and focused system of one-stop WIN Job Centers and programs for youth. WINnovation Grants may be used for the following activities:

-- Developing and implementing a plan for a model WIN Job Center and enhancing services at existing job centers -Model/Enhanced WIN Job Centers

-- Developing and implementing innovative programs for youth -Innovative Youth Programs

-- Developing and implementing a plan to ensure access to computers for all WIN Job Center customers -Technology Access

-- Developing and implementing program and projects to meet the training needs of area employers and ensuring a self-sufficient wage and promotional opportunities for workers .Business Retention/Services

-- Developing and implementing a plan to ensure the full participation of partners in the WIN Job Center system -Partnerships

-- Developing and implementing a comprehensive customer assessment system -Customer Assessment

WINnovation Grants of approximately $ 1 million will be available each local area during Program Years 2001 and 2002.

The Employment Training Division (ETD) of the Mississippi Development Authority (MDA) will be available to provide technical assistance and support when possible. The outcomes of the WINnovation initiative will be collected evaluated and disseminated by the ETD.

II. FUNDING

Funding will be provided through increases in existing funding or a special WINnovation source via supplements to the standard Notice of Available Funds (NFA). To access these funds, the local area must submit a WINnovation plan completed according to the instructions that follow in Section III.

The total approved amount may not be provided in a single NFA. Funds may be provided incrementally as deter-mined by the Employment Training Division to ensure the timely obligation and expenditure of funds. Funds provided under the WINnovation Grant plan are subject to recapture based on low expenditures or failure to meet the goals of the project.

III. LOCAL WINNOVATION PLAN

The plan describing the local activities funded by the WINnovation Grant shall be submitted to the Employment Training Division using the a prescribed format and as part of the local plan required by Section 118 of the WIA. If the local area is proposing more than one project, a separate plan should be completed for each project. Each WINnovation plan should be limited to no more than six (6) lettersize pages, including the grant approval page and the budget plan.

The WINnovation plan should be consistent with the current local plan completed and approved according to Section 118 of the Workforce Investment Act. Substantial changes in the plan or the budget plan should be reflected in a modification to the plan. Such modification shall be limited to one per quarter. They should be completed and submitted in accordance with State Policy Number 8. The revised Local Area Five-Year Plan format is attached to this policy.

A. LOCAL AREA AND PROJECT CONTACT PERSON

Provide the name and telephone number for the primary contact for the planned WINnovation activity.

B. PROJECT IDENTIFICATION

1. Model WIN Job Center(s)

2. Innovative Youth Program(s)

3. Technology Access

4. Business Retention

5. Partnerships

6. Customer Assessment

C. AREA of SERVICE:

If the project is planned for a specific area or site within the local area, describe the process and rationale used for the selection of the sub-area.

D. TARGET GROUP

If the project is planned to serve specific groups of job seekers, employers or youth within the local area, describe the process and rationale used to identify the need and benefit.

E. NARRATIVE DESCRIPTION of PROGRAM

Provide brief description of the project. The description should address the following:

1. Assessment of need;

2. Program goals;

3. Program design;

4. Program outcomes;

5. Program benefits; and

6. Economic benefits.

F. IMPLEMENTATION SCHEDULE

Provide a schedule for planning and implementing all major activities. At a minimum, the schedule must give a start and end date and a brief description of the major activities to be accomplished for the following activities:

1. Board review and approval,

2. Planning,

3. Procurement,

4. Project review and monitoring,

5. Fund utilization, and

6. Project completion.

G. BUDGET PLAN

The local area must submit a complete budget plan according to the attached prescribed format.

WINnovation Grant expenditures will not be reported separately. However, to ensure the timely expenditure of funds, the Employment Training Division requires that the local area submit separate monthly requests for cash. The WINnovation Grant requests must include a corresponding itemized list of expenditures. The ETD reserves the right to question and disallow WINnovation Grant expenditures based on the information provided in the approved plan and budget.

H. ASSURANCES

1. The local chief elected official(s), the local workforce investment board, counties with fiscal authority, and the fiscal agent(s) will comply with all WINnovation Grant reporting requirements implemented by the Mississippi Development Authority, Employment Training Division.

2. The local chief elected official(s), the local workforce investment board, counties with fiscal authority, and the fiscal agent(s) will submit written quarterly reports to describe the implementation steps taken, accomplishments, obstacles encountered, steps taken to overcome obstacles, plan of action for the next quarter and request to modify plan.

I. APPROVAL

The WINnovation Plan shall be submitted and approved as a part of a modification to the local plan prescribed by the WIA at Section 118.

IV. EFFECTIVE DATE

This policy shall be effective immediately.

Policy Number 14. Processing Cash Requests and Reporting Worksheets.

I. SCOPE AND PURPOSE

This policy provides guidance for the completion, submission, and processing of cash requests and reporting work-sheets submitted to the Employment Training Division (ETD) of the Mississippi Development Authority (MDA) for expenditure of funds for costs associated with Workforce Investment Act (WIA) funding.

To promote uniformity and consistency in completion of forms and timely submissions of documents to the state office, ETD has developed this policy. Local Workforce Investment Areas (LWIAs) and subgrantees are encouraged to follow the guidance of this policy in order to prevent delays in processing requests for cash and to ensure accurate re-porting and recording of fund expenditures.

II. REQUIREMENTS

A. State Responsibilities

1. When possible, ETD staff shall process cash requests and reporting worksheets and forward the documents to the MDA Accounting office no later than two working days after receipt of the documents. Extreme circumstances may warrant additional time to process the documents.

   In the event of questions, errors, or discrepancies regarding submitted document(s), ETD shall contact the designated financial officer of the appropriate local area to discuss the issue. If a resolution can be reached by phone, ETD will make the necessary changes to the document, noting the date of the conversation, the name of the local area or sub-grantee representative authorizing the change, and the initials of the ETD staff making the correction. Any additional documentation regarding the change (i.e. facsimiles, notes, etc.) shall be attached to the ETD copy of the document.

2. ETD shall maintain copies of all cash requests and reporting worksheets submitted by the local areas and sub-grantees. ETD will maintain two grant files for each local area and subgrantee: a permanent in-house copy for original signed copies of grants, modifications, etc. as well as copies of all cash requests, worksheets, and correspondence; and a working copy, containing copies of all materials in the permanent in-house file. The working copy may be removed from the ETD office for monitoring visits, meetings with local areas and subgrantees, etc.

B. Local Area Responsibilities

1. Cash Requests

   The Request for Cash form is used by local areas using the current needs or the fixed-unit price method of payment. See Attachment A for example.

The Request for Cash form may be submitted twice each month, with a two-week in-house (or 10 working days) turnaround time for the drawdown of funds from the time the request is initiated until funds are credited to the local area's account. Supplemental requests may be submitted as the need arises. Note: The two-week period does not allow for holidays, weekends, or computer downtime. Local areas are encouraged to allow sufficient time for the processing of requests in order to receive their funds when needed.

The form should be completed as follows:

a. Name, address, and telephone number of fiscal agent.

b. Request number.

c. Date of cash need.

d. Current Cash on Hand-the amount of federal cash on hand at the time of the request. This amount may be positive to reflect actual cash balance or negative to request reimbursement for funds already spent. Note: Funds should be drawn for immediate cash needs only. Local areas are discouraged from holding unobligated funds in their accounts for longer than three days. Should circumstances dictate that excess cash be drawn down beyond obligated expenditures, the local area may attach written justification to the cash request. In the event that a local area submits a request while having cash on hand in excess of $ 5000.00, ETD may either ask for written justification or ask that the local area re-duce the amount of the new request.

e. Available Funds (Column B) -the total amount available, by funding source, from the "Notice of Fund Availability" (NFA) authority. Transfers of funds between Adult and Dislocated Worker funding sources, once approved by the Governor, should be reduced from the original source and added to the receiving source.

f. Cash Requested to Date (Column C) -the prior cumulative WIA cash applied for by funding source to date at the time of the payment request.

g. This Request (Column D) -the amount of money asked for on this request. This figure shall represent expected disbursements plus or minus any transfers or adjustments between funding sources.

h. Funds Remaining (Column E) -equals Column B minus Column C and Column D.

i. Total-equals the sum of all boxes in Column D.

j. Signature of Authorized Official-the person who signed as the fiscal agent on the "Plan Approval Certification" of the Local Plan-and date signed. In case of signatory designation, an authorization letter is required.

k. Typed name and title of the authorized official, date of preparation, and the preparer's name and telephone number.

l. The original signed request should be mailed to: Mississippi Development Authority Employment Training Division Post Office Box 24568 Jackson, Mississippi 39225-4568

m. The envelope should be clearly marked "Request for Cash".

2. Reporting Worksheets

The Reporting Worksheet is a concise report of accruals and actual disbursements for the report month plus cumulative expenditures to date for the grant period. See Attachment B for example.

If the local area uses the fixed-unit/performance based payment method, the worksheet shows the amounts earned based on the negotiated payment schedule. A printed worksheet form showing each activity listed on the Budget Summary will be mailed to the local area. By the tenth working day of each month, local areas must submit the worksheet to ETD showing the expenditures through the end of the previous month, which is the reporting month. The form should be completed as follows:

a. Fiscal agent name and address.

b. Program year, period ending (month/day/year) and alternate signature.

c. Available funds (Column B) -the total amount available, by funding source, from the "Notice of Fund Availability" (NFA) authority.

(i) The total amount from the "New Level" column of the latest NFA should be shown in the "Federal Funds Allocated" box. The figure shown in this box should not be adjusted by the following transfers. Note that a "Federal Funds Allocated" box has been added to the Youth section to show the total funds from the NFA prior to the disbursement among the In-School and Out-of School fields.

(ii) Transfers of funds between Adult and Dislocated Worker funding sources should be noted in the "Fed. Funds Transferred (To) From" box as a debit or credit amount. This Transfer amount should be shown each month thereafter.

(iii) Transfers of funds from the Adult, Youth, or Dislocated Worker funding streams to Administration should be shown as a negative figure (debit) in the "Total Amount of ___ Funds to Admin" box, and should continue to be shown each month thereafter.

d. Prior cumulative cost reported to date (Column C) -the prior cumulative WIA expenditures as of the ending period of the last reporting worksheet submitted to ETD.

e. Current period cost (Column D) -the costs accumulated during the reporting period.

f. Cumulative cost reported to date (Column E) -equals Column C plus Column D.

g. Unliquidated obligations (Column F) -funds remaining; equals Column B minus Column E.

h. Signature of Authorized Official and date signed.

i. MDA Review line for initials of the ETD staff member processing the worksheet and the date processed.

j. Worksheets should be sent to MDA-Employment Training Division at the aforementioned address.

k. The envelope should be clearly marked “Reporting Worksheet(s)”.

C. Subgrantee Responsibilities

1. Cash Requests

The Request for Cash form is used by subgrantees using the current needs or the fixed-unit price method of payment. See Attachment C for example.

The Request for Cash form may be submitted twice each month, with a two-week in-house (or 10 working days) turnaround time for the drawdown of funds from the time the request is initiated until funds are credited to the subgrantee’s account. Supplemental requests may be submitted as the need arises. Note: The two-week period does not allow for holidays, weekends, or computer downtime. Subgrantees are encouraged to allow sufficient time for the processing of requests in order to receive their funds when needed.

The form should be completed as follows:

a. Name, address, and telephone number of grant recipient (# 1 on form).

b. Current Cash on Hand-the amount of federal cash on hand at the time of the request (# 2). This amount may be positive to reflect actual cash balance or negative to request reimbursement for funds already spent. Note: Funds should be drawn for immediate cash needs only. Subgrantees are discouraged from holding unobligated funds in their accounts for longer than three days. Should circumstances dictate that excess cash be drawn down beyond obligated expenditures, the subgrantee may attach written justification to the cash request. In the event that a subgrantee submits a request while having cash on hand in excess of $ 5000.00, ETD may either ask for written justification or ask that the subgrantee reduce the amount of the new request.

c. Special mailing/deposit information (# 3).

d. Cumulative Cost reported (# 4).

e. Grant Number and Contract Number (# 5).

f. Request Number (# 6).

g. Date Cash Needed (# 7).

h. Total Contract Award (# 8).

i. Cash Requested to Date-the prior cumulative WIA cash applied for to date at the time of the payment request (# 9A).

j. This Request -the amount of money asked for on this request (# 9B).

k. Total (A and B) -total amount of funds requested to date.

l. Contract Award Balance-(8) minus the sum of (9A) and (9B) (# 10).

m. Signature of Authorized Official-the person who signed as the primary signatory official of the grant recipient-and date signed (# 11). In case of alternate signatory designation, an authorization letter is required.

n. Typed name and title of the authorized official, date of preparation, and the preparer's name and telephone number (# 12).

o. The original signed request should be mailed to: Mississippi Development Authority Employment Training Division Post Office Box 24568 Jackson, Mississippi 39225-4568

p. The envelope should be clearly marked "Request for Cash".

2. Reporting Worksheets

The Reporting Worksheet is a concise report of accruals and actual disbursements for the report month plus cumulative expenditures to date for the subgrant period. See Attachment D for example.

If the subgrantee uses the fixed-unit/performance based payment method, the worksheet shows the amounts earned based on the negotiated payment schedule. A printed worksheet form showing each activity listed on the Budget Summary will be mailed to the subgrantee. By the tenth day of each month, the subgrantee must submit the worksheet to ETD showing the expenditures through the end of the previous month, which is the reporting month. The form should be completed as follows:

a. Subgrant recipient name and address.

b. Grant Number.

c. Contract Number.

d. Effective Dates.

e. Cost Category and description from budget.

f. Amount Budgeted-the total amount available.

g. Prior cumulative cost reported to date-the prior cumulative WIA expenditures as of the ending period of the last reporting worksheet submitted to ETD.

h. Current period cost-the costs accumulated during the reporting period.

i. Cumulative cost reported to date-equals G plus H.

j. Grand Total Activity.

k. Grand Total Reported.

l. Signature of Authorized Official and date signed.

m. MDA Review line for initials of the ETD staff member processing the worksheet and the date processed.

n. Worksheets should be sent to MDA-Employment Training Division at the aforementioned address.

o. The envelope should be clearly marked “Reporting Worksheet(s)”.

III. EFFECTIVE DATE

This policy shall be effective immediately.

ATTACHMENT A.

CASH REQUEST FORM-LOCAL AREAS

LOCAL AREA'S REQUEST FOR CASH INSTRUCTION

(01) Name and Address:

Enter the name and address of the Grant reciplent.

(02) Request #:

Enter the request number in numerical sequence, i.e. the first request will be # 1....the tenth will be # 10.

(03) Date of Cash Need:

(04) Current Cash on Hand:

This is the federal cash on hand at the time of the payment request. This amount may be positive to reflect the actual cash balance or negative to request reimbursement for funds already spent. Note: Funds should be drawn for immediate cash needs only.

(05) Available Funds (Column B):

This is the total funds available by funding source from the "Notice of Fund Availability" (NFA) authority. Transfer of funds between Adult and Dislocated Worker, once approved by the Governor, should be reduced from the original funding source dollars and increased in the receiving funding source.

(06) Cash Requested to Date (Column C):

This is the prior cumulative WIA cash requested by funding source at the time of the payment request.

(07) This Request (Column D):

This is the amount of money requested on this request. It should represent expected disbursements plus or minus any transfers or adjustments needed between funding sources.

(08) Funds Remaining (Column E):

This column is the available funds remaining after this request. (Column B minus Column C and Column D)

(09) Signature of Authorized Official:

This is the signature of the person who signed as the fiscal agent on the "Plan Approval Certification" of the Local Plan. In case of signatory designation, an authorization letter is required.

(10) Type the name and title of the authorized official, date of signature and preparation and the preparer's name and telephone number.

(11) The original signed request should be mailed to Mississippi Department of Economic and Community Development, P. O. Box 24568, Jackson, Mississippi 39225

LOCAL AREA'S WIA REQUEST FOR CASH
PROGRAM YEAR____
LOCAL AREA #_____

NAME AND ADDRESS:	REQUEST #	DATE OF CASH NEED	CURRENT CASH ON HAND
(a)	(b)	(c)	(d)
TELEPHONE	FOR DECD USE ONLY: VENDOR #:_____ FUNDS AVAILABLE:_____ PERIOD AND AMT. OF LAST COST:_____ LAST REQ. #:_____ APPROVAL:		

(A)	(B)	(C)	(D)	(E)
FUNDING STREAM	AVAILABLE FUNDS	CASH REQUESTED TO DATE	THIS REQUEST	FUNDS REMAINING (COLUMN B-C-D)
ADMINISTRATION	(e)	(f)	(g)	(h)
ADULT				0.00
YOUTH				0.00
DISLOCATED WORKERS				
INCENTIVE				0.00
		TOTAL FOR PY	(i) 0.00	

I HEREBY CERTIFY THAT (a) The services covered by this request have not been received from the Federal Government or expended for such services under any other contract agreement or grant; (b) the amount(s) requested will be expended for allowable cost/expenditures under the terms of the contract agreement or grant; (c) amounts requested herein do not exceed the total funds obligated by contract; and (d) funds are requested for only immediate disbursement needs.

(j)	(j)	(k)
Signature of Authorized Official	Date Signed	Prepared By
(j)	(j)	(k)
Typed Name and Title of Authorized Official	Date Prepared	Telephone # of Preparer

ATTACHMENT B.

REPORTING WORKSHEET-LOCAL AREAS

LOCAL AREA #	LOCAL AREA'S WIA MONTHLY REPORTING WORKSHEET PROGRAM YEAR XXXX FOR THE PERIOD ENDING (insert date)
name and address (a)	Alternate Signature: (b)

A	B	C	D	E	F
FUNDING STREAM	AVAILABLE FUNDS	PRIOR CUM. COST REPORTED TO DATE 00/00/00	CURRENT PERIOD COST	CUMULATIVE COST REPORTED TO DATE	UNLIQUIDATED OBLIGATIONS B MINUS E
ADMINISTRATION:					
F01 10% MAX.-FEDERAL ADMIN	(c)	(d)	(e)	(f)	(g)
PROGRAM INCOME					
ADULTS					
FEDERAL FUNDS ALLOCATED					
FED. FUNDS TRANSFERRED (TO) FROM					
F02 TOTAL ADULTS AVAILABLE					
PROGRAM INCOME					
YOUTH					
F04 IN-SCHOOL					
Summer Youth					
Other Youth					
TOTAL IN_SCHOOL					
F05 30% MIN.-OUT OF SCHOOL					
Summer Youth					
Other Youth					
TOTAL OUT OF SCHOOL					
TOTAL YOUTH AVAILABLE					
PROGRAM INCOME					
DISLOCATED WORKERS					
FEDERAL FUNDS ALLOCATED					
FED. FUNDS TRANSFERRED (TO) FROM					
F06 TOTAL DISLOCATED WORKERS AVAILABLE					
PROGRAM INCOME					

THE SIGNING OF THIS DOCUMENT CERTIFIES THAT REPORTED COST IS CALCULATED ON AN ACCRUAL BASIS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. FINAL AUDIT OF PROJECT(S) WILL INCLUDE VERIFICATION OF ABOVE CLAIMED COST FROM THE LOCAL AREA'S SOURCE RECORDS.

(h) SIGNATURE OF AUTHORIZED OFFICIAL _____ DATE _____ (i) WDA REVIEW _____

(a)
Local Workforce Investment Area
Your County Board of Supervisors
Honorable Elected Official
Local Workforce Investment Area
Post Office Box 000
Your Town, Mississippi 39000
Telephone #: 601-228-0662

(b) LOCAL AREA'S WIA MONTHLY REPORTING WORKSHEET
PROGRAM YEAR 2003
FOR THE PERIOD ENDING OCTOBER 31, 2003

ALTERNATE SIGNATORY _____

	(c) B	(d) C	(e) D	(f) E	(g) F
FUNDING STREAM	AVAILABLE FUNDS	PRIOR CUM. COST REPORTED TO DATE 9/30/02	CURRENT PERIOD COST	CUMULATIVE COST REPORTED TO DATE	UNLIQUIDATED OBLIGATIONS (B-E)
ADMINISTRATION:					
F01 10% MAX.-FEDERAL ADMIN					
PROGRAM INCOME					
ADULTS					
FEDERAL FUNDS ALLOCATED	(i)				
FED. FUNDS TRANSFERRED TO/FROM DW	(ii)				
SUBTOTAL					
TOTAL AMOUNT OF ADULT FUNDS TO ADMIN	(a)				
F02 TOTAL ADULTS AVAILABLE					
PROGRAM INCOME					
YOUTH					
FEDERAL FUNDS ALLOCATED	(i)				
TOTAL AMOUNT OF YOUTH FUNDS TO ADMIN	(iii)				
SUBTOTAL					
F04 IN-SCHOOL Summer Youth					
IN-SCHOOL Other Youth					
TOTAL IN-SCHOOL					
F05 OUT OF SCHOOL Summer Youth					
OUT OF SCHOOL Other Youth					
TOTAL OUT-OF-SCHOOL -30% MIN.					
TOTAL YOUTH AVAILABLE					
PROGRAM INCOME	0.00	0.00	0.00	0.00	

DISLOCATED WORKERS					
FEDERAL FUNDS ALLOCATED	(f)				
FED. FUNDS TRANSFERRED TO/FROM ADULT	(g)				
SUBTOTAL					
TOTAL AMOUNT OF DW FUNDS TO ADMIN	(#)				
NON-WINNOVATION DISLOCATED WORKERS					
WINNOVATION DISLOCATED WORKERS					
TOTAL DISLOCATED WORKERS AVAILABLE					
PROGRAM INCOME					
WINNOVATION					
ADMINISTRATION					
PLANNING					
IMPLEMENTATION					
OVERSIGHT/EVALUATION					
TOTAL WINNOVATION AVAILABLE *					
PROGRAM INCOME					
RAPID RESPONSE					
PROGRAM INCOME					
GRAND TOTAL BY COLUMN					

ACCRUED VS. CASH COST REPORT SUMMARY

FUNDING STREAM	OUTLAYS TO	ACCRUED COSTS	DATE	(should equal
ADMINISTRATION				0.00
ADULT				0.00
YOUTH				0.00
DISLOCATED WORKER				0.00
WINNOVATION				0.00
RAPID RESPONSE				0.00
TOTAL BY COLUMN	0.00	0.00		0.00

THE SIGNER OF THIS DOCUMENT CERTIFIES THAT REPORTED COST IS CALCULATED ON AN ACCRUAL BASIS WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. FINAL AUDIT OF PROJECT(S) WILL INCLUDE VERIFICATION OF ABOVE CLAIMED COST FROM THE LOCAL AREA'S SOURCE RECORDS.

(h) _____ SIGNATURE OF AUTHORIZED OFFICIAL

_____ DATE

(i) _____ MDA REVIEW

*NOTE: Expenditures for Dislocated Worker WINnovation, Dislocated Worker Administration, and WINnovation must be reported on separate itemized lists. These lists must accompany this worksheet.

ATTACHMENT C.

CASH REQUEST FORM-SUBGRANTEES

MISSISSIPPI DEVELOPMENT AUTHORITY

REQUEST FOR CASH

(1) Contractor's Name / Address (a)	(3) Special Mailing/Deposit Info (c)	(5) Grant Number (e)	Contract Number (e)
		(6) Request Number (f)	(7) Date Cash Needed (g)
(2) Current Cash Balance (b)	(4) Cumulative Cost Reported (d)		

(8) Total Contract Award (h)

(9) Less Cash Requested to Date

(A) Received/In-Transit (i)

(B) "This Request" (j)

Total (A & B) (k)

(10) Contract Award Balance (l)

"I HEREBY CERTIFY THAT (a) The services covered by this request have not been received from the Federal Government or expended for such services under any other contract agreement or grant; (b) the amount(s) requested will be expended for allowable cost / expenditures under the terms of the contract agreement or grant; (c) amounts requested herein do not exceed the total funds obligated by contract; and (d) funds are requested for only immediate disbursement needs.

(m) (11) Signature of Authorized Official		(m) Date Signed	(n) Prepared By	(12)
(n) (12) Typed Name and Title of Authorized Official			(n) Date Prepared	(12)

MDA Approval _____ Date _____

ATTACHMENT D.

REPORTING WORKSHEET-SUBGRANTEES

Mississippi Development Authority
Reporting Worksheet
Period Ending: _____

Division: Employment Training		(a)	
(b) Grant Number:			
(c) Contract Number:			
(d) Effective Dates:			

	(f) Amount Budgeted	(g) Prior Cum Thru / /	(h) Period Cost	(i) Cumulative Cost to Date
(e)				
(e)	$ (f)	$ (g)	$ (h)	$ (i)
Federal	$	$	$	$
State	$	$	$	$
Program Income	$	$	$	$
Match	$	$	$	$
Total (Same as cat.)	$	$	$	$
	$	$	$	$
Federal	$	$	$	$
State	$	$	$	$
Program Income	$	$	$	$
Match	$	$	$	$
Total (Same as cat.)	$	$	$	$
(j) Grand Total Activity	$ (j)	$ (j)	$ (j)	$ (j)
(k) Grand Total Report	$ (k)	$ (k)	$ (k)	$ (k)

THE SIGNER OF THIS DOCUMENT CERTIFIES THAT REPORTED COST IS CALCULATED ON AN ACCRUAL BASIS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. FINAL AUDIT OF THIS PROJECT WILL INCLUDE VERIFICATION OF ABOVE CLAIMED COST FROM PROJECT DIRECTOR'S SOURCE RECORDS.

(l)	(l)	(m)
SIGNATURE OF AUTHORIZED OFFICIAL	DATE	MDA REVIEW

Policy Number 15. WIA Performance Measures and Goals.

I. SCOPE AND PURPOSE

This policy sets forth State's interpretation and requirements for performance measures as prescribed by Section 136(c)(1) and 20 CFR 666.300 and 666.310. The US Department of Labor negotiates these measures with each state, and the state, in turn negotiates with each local Workforce Investment Area. The state is authorized to adjust these measures with each local area, and to require additional measures.

The purpose of this policy is to empower the local Workforce Boards to maintain and/or increase activities with occupational skills training, on-the-job training (OJT) and customized training, and to serve groups such as TANF recipients who will need longer-term investment to succeed in the job market. Further, this policy will reflect the strong emphasis of the U.S. Department of Labor on increasing expenditures, enrollments, and exits. Nothing in this policy ne-gates the responsibility of each local area to track and accurately report information on all performance measures and the participant characteristics data.

Each local area may set local performance measures for its providers. Locally prescribed measures may be set higher than measures set by the state.

If these modifications result in a loss of federal funds, the cost will be absorbed at the state level from the state's portion of WIA funds. This policy shall be in effect from July 1, 2003 through June 30, 2005 or until revised or re-placed.

II. REQUIREMENTS

WIA Requirements -Section 136(c)

Local Performance Measures.--(1) In general.--For each local area in a State, the local performance measures shall consist of-.

(A) (i) the core indicators of performance described in subsection (b)(2)(A), and the customer satisfaction indicator of performance described in subsection (b)(2)(B), for activities described in such subsections, other than statewide workforce investment activities; and

(ii) additional indicators of performance (if any) identified by the State under subsection (b)(2)(C) for activities de-scribed in such subsection, other than statewide workforce investment activities; and

(B) a local level of performance for each indicator described in subparagraph (A).

A. Core Indicators

The State, in an effort to maximize local choice and assure the greatest flexibility, has elected to negotiate local performance measures as illustrated in the following table.

1. Indicators and Measures

Performance Indicator	Negotiated Measures			
	PY 2003		PY 2004	
	[redacted]	Local	[redacted]	Local
ADULT				
Entered Employment Rate[i]	[redacted]	0.00%	[redacted]	0.00%
Employment Retention Rate[i]	[redacted]	0.00%	[redacted]	0.00%
6 Month Average Earnings Change[ii]	[redacted]	$ 0	[redacted]	$ 0
Employment/ Credential Rate	[redacted]	58.00%	[redacted]	58.30%
DISLOCATED WORKERS				
Entered Employment Rate[iii]	[redacted]	0.00%	[redacted]	0.00%
Employment Retention Rate[i]	[redacted]	0.00%	[redacted]	0.00%
Earnings Replacement[iii]	[redacted]	0.00%	[redacted]	0.00%
Employment/ Credential Rate	[redacted]	60.00%	[redacted]	60.31%
OLDER YOUTH				
Entered Employment Rate[iv]	[redacted]	0.00%	[redacted]	0.00%
Employment Retention Rate[i]	[redacted]	0.00%	[redacted]	0.00%
6 Month Average Earnings Change[iv]	[redacted]	$ 0	[redacted]	$ 0
Employment/ Credential Rate	[redacted]	38.90%	[redacted]	39.10%
YOUNGER YOUTH				
Goal Attainment	[redacted]	72.00%	[redacted]	72.37%
Diploma or Equivalent Rate[v]	[redacted]	0.00%	[redacted]	0.00%
Retention Rate[i]	[redacted]	0.00%	[redacted]	0.00%
CUSTOMER SATISFACTION				
Participants	[redacted]	71.00%	[redacted]	71.30%
Employers	[redacted]	69.00%	[redacted]	69.30%

<i> Rationale --Local Flexibility

<ii> Rationale --Maximize OJT and Customized Training

<iii> Rationale --Increase Services to Dislocated Workers

<iv> Rationale --Increase Services to Older Youth

<v> Rationale --Keep Younger Youth in School

2. Failure to Meet Standards

In accordance to 20 CFR 666.240(d), only performance that is less than 80 percent of the negotiated levels will be deemed to be failure to achieve negotiated levels of performance.

3. Negotiation

All of the standards described above are negotiable, except for Customer Satisfaction. To negotiate, a local area must submit a written request to the state. The request must explain the rationale for the needed request and must include quantifiable data to support the request.

4. Incentives

Any area that fails to meet the Customer Satisfaction performance levels will receive no incentive funds. This is the same rule that the U.S. Department of Labor applies to the states.

a. Incentive Awards to the State

If the state is awarded incentive funds, 100 percent of those funds will be awarded proportionately to those areas that meet the standards on all measures as described above.

b. State Set-aside Funds

For Program Year 2003 performance, the state shall set aside a minimum of $ 120,000 for incentives for exceeding the core performance standards. These funds shall be divided equally among the areas that exceed all of the standards prescribed above.

5. Sanctions

If a local area fails to meet the levels of performance agreed for the core indicators of performance or customer satisfaction indicators for a program for two consecutive program years, the Governor must take corrective actions. The corrective actions may include the development of a reorganization plan under which the Governor:

a. Requires the appointment and certification of a new Local Board;

b. Prohibits the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or

c. Requires other appropriate measures designed to improve the performance of the local area.

Also, if a local area fails to meet each standard for any year, they will not participate in the receipt of any incentive funds and will not be eligible to receive additional grants.

6. Technical Assistance

The state will provide technical assistance to each local area on a regular basis. If an area fails to meet a standard for the year, the area must develop a corrective action and technical assistance plan. The plan must be approved by the state. The state will monitor the implementation of the plan.

B. State Indicators

In an effort to focus Mississippi's performance on expenditures, enrollments, and increased service activity, ETD is modifying the performance standards for the local areas. If this modification results in a reduction in federal funds, the state will absorb the entire reduction.

Mississippi needs to increase customized training and On-The-Job-Training. Mississippi needs to address those who face multiple barriers to employment. The State and local areas cannot let the performance standards inhibit pro-gram opportunities. Therefore, the following performance indicators and standards will be in effect from July 1, 2003 through June 30, 2005. Local measures and actual performance will be based on data included in the annual report.

1. Indicators and Measures

2. Failure to Meet Standards

   Any performance that is less than 100 percent of the negotiated levels will be deemed to be failure to achieve negotiated levels of performance.

3. Negotiation

   The standards described above are negotiable. To negotiate, a local area must submit a written request to the state. The request must explain the rationale for the needed request and must include quantifiable data to support the request.

4. Incentives

   Following Program Year 2003, the state will set aside a minimum of $ 100,000 to provide incentive awards. These funds will be divided equally among the local areas that meet or exceed all three standards two years consecutively.

5. Sanctions

   Display Table If a local area fails to meet the negotiated levels of performance for a program for two consecutive program years, the Governor may take corrective actions. The corrective actions may include the development of a reorganization plan under which the Governor:

   a. Requires the appointment and certification of a new Local Board;

   b. Prohibits the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or

   c. Requires other appropriate measures designed to improve the performance of Also, if a local area fails to meet each standard for any year, they will not participate in the receipt of any incentive funds and will not be eligible to receive additional grants.

6. Technical Assistance

The state will provide technical assistance to each local area on a regular basis. If an area fails to meet a standard for the year, the areas must develop a corrective action and technical assistance plan. The plan must be approved by the state. The state will monitor the implementation of the plan.

III. EFFECTIVE DATE

This policy shall be effective immediately. It shall remain in effect until modified or replaced by the Employment Training Division.

Policy Number 16. Dislocated Worker Registration.

I. SCOPE AND PURPOSE

This policy provides guidance for eligibility determination and the registration of dislocated workers. The intent is to substantially increase the accessibility of dislocated workers services funded by Title I of the Workforce Investment Act (WIA). Each local workforce investment area (LWIA) shall develop and adopt a policy for eligibility determination and registration of dislocated workers. The LWIA should take all appropriate steps to ensure that front-line WIN Job Center staff have and understand the local definitions, policies and procedures related to the identification and registration of dislocated workers.

II. REQUIREMENTS

A. Statutory and Regulatory Citations

WIA Section 134 describes services to adults and dislocated workers. WIA Section 101(9) (10)(15)(38) and (47), defines the terms “dislocated worker,” “displaced homemaker,” “family,” “rapid response” and “unemployed.” 20 CFR 663 establishes the framework for services to adults and dislocated workers. 20 CFR 665.300 to 340 describes rapid response activities. 20 CFR 600.300 defines the term “register” and “self-certification.” 20 CFR 663.115(b) allows the state and local boards to establish policies and procedures to use in determining a dislocated worker’s eligibility.

All federal, state and local policymaking is to be guided by key principles, the first of which is “streamlining ser-vices” to increase accessibility for individuals and businesses. (20 CFR 652, of the WIA Final Rules, Part I.A., “WIA Principles”).

B. Dislocated Worker Eligibility Requirements

There are four types of eligible dislocated workers, with key WIA eligibility requirements set out below:

1. General Dislocated Workers --A “general dislocated worker” is an individual who:

   a. Has been terminated or laid off, or has received a notice of termination or layoff, from employment;

   -and .

   b. Is currently eligible for unemployment compensation (UC) or has in the past exhausted unemployment compensation;

      -or .

      Has been employed long enough to demonstrate workforce attachment, but is ineligible for unemployment compensation due to low earnings or work for an uncovered employer;

-and .

c. Is unlikely to return to their previous industry or occupation.

2. Rapid Response Dislocated Worker --A “rapid response dislocated worker” is an individual who:

   a. Has been terminated or laid off or has received a notice of termination or layoff; -and .

      The termination or layoff is a result of a permanent closure or substantial layoff at a plant, facility or enterprise; -or .

   b. Is employed at a facility at which the employer has made general announcement of closure within 180 days;

      -or .

   c. Is employed at a facility at which the employer has made a general announcement of closure within 180 days; but there is either no known date or the date will occur after 180 days. In this instance only rapid and core services may be provided.

3. Self-Employed Dislocated Workers

   A self --employed dislocated worker (including but not limited to farmers, ranchers and fishermen) must be:

   a. Unemployed; -and .

   b. The unemployment must be due to general economic condition in the community or due to a natural disaster.

4. Displaced Homemaker

   A “displaced homemaker” is an individual who:

   a. Has been providing unpaid services to family members in the home; -and .

   b. Has been dependent upon another family member’s income; -and .

   c. Is no longer supported by that family member’s income; -and .

   d. Is unemployed or underemployed; -and .

   e. Is experiencing difficulty in either obtaining employment or upgrading to better paying employment.

C. Dislocated Worker Eligibility Definitions

The local policy shall establish the specific rules and requirements related to the following definitions.

1. General Dislocated Worker (GDW)

A key eligibility requirement is either current UC eligibility or past exhaustion of UC, or past workforce attachment of sufficient duration with an uncovered employer. The length of workforce attachment with an uncovered employer is a state and local call. For purposes of satisfying this element for uncovered GDWs, continuous employment with an uncovered employer of 13 weeks or more is presumed adequate. (Local Workforce Investment Area) may choose or individual circumstances. If the applicant has been working in uncovered employment for longer than 13 weeks, the eligibility determination would still have to deal with the other two eligibility requirements for a general dislocated worker --termination or layoff and "unlikely to return."

2. Rapid Response Dislocated Worker (RRDW)

A key eligibility requirement is past or prospective termination or layoff due to a permanent closure or substantial closure. For eligibility purposes "permanent" means that the plant, facility or enterprise is not expected to reopen for at least two years. A "substantial layoff" means ten (10) or more persons laid off within a six-month span from the same plant, facility or enterprise. If a county has an unemployment rate over 7 percent for an unemployment rate, which has increased by two or more percentage points within the last two years, the threshold for a substantial layoff is reduced to five (5) individuals. Layoffs must be expected to last six months or more. Again, the LWIA may choose to expand upon these definitions to fit community circumstances on a reasonable, case-by-case basis. An example could be a labor mar-ket with an 8.5 percent unemployment rate including several counties, one of which has a 7.8 percent unemployment rate. The lower threshold for a substantial layoff could be extended to all counties in the labor market through LWIA policy making.

Note that RRDWs need not be "unlikely to return" and do not need to be UC eligible. The past or prospective layoff or closure event alone triggers eligibility for affected individuals. Eligibility is not lost through subsequent reemployment. LWIAs are encouraged to recruit RRDWs who have become reemployed, but who need assistance to achieve their previous earnings levels.

3. Self --Employed Dislocated Workers (SEDW)

"Unemployment due to general economic conditions" is established if the business closed or was sold due to a downturn in profitability, and the county's unemployment rate is either over 7 percent or has increased by two or more percentage points in the last two years. Again, the LWIA may choose to expand upon this presumption due to community or individual circumstances.

4. Displaced Homemaker (DH)

   20 CFR 663.120 discusses DH eligibility and registration, concluding that past dependence upon public assistance does not meet the second of the five eligibility requirements, which is past dependence upon a family member's income. Public assistance receipt, past, present or future does not disqualify a DH applicant if, in addition to public assistance, that individual was dependent upon a family member's earned income.

   LWIAs are encouraged to adopt eligibility policies and procedures stressing self-certification based upon personal interviews to establish DH eligibility. Note that the WIA 101(15) definition of a "family" is narrow and includes (a) husband, wife and dependent children, (b) a parent or guardian and dependent children, and (c) a husband and wife alone. Families must be related by blood, marriage or decree of court and must live in a single residence. Past dependence upon a boyfriend or girlfriend's income, or an aunt or uncle's income will not meet DH requirements. Past dependence on a dislocated worker's income, assuming the DW was or is in the DH applicant's family, would meet the requirements for this element.

   LWIAs are encouraged to actively recruit DHs, from the families of DW participants, as a part of rapid response and from the broader community. It may be necessary to hire or move DH coordinators whose sole job is to recruit and serve DH effectively.

D. The Dislocated Worker Registration Process

Registration is the process of collecting information to establish eligibility. It can be done in a variety of ways including:

1. A personal interview with the applicant;

2. Accessing electronic data to visually verify eligibility; or

3. Collecting or viewing applicant paperwork. All three eligibility information-collecting methods are permissible either alone or in combination. At a minimum, dislocated worker eligibility shall be established using self-certification, a signed attestation by the applicant that this eligibility information is true and accurate.

E. Local Policy Required

Each LWIA shall adopt a written policy describing how dislocated worker registration should occur, including which eligibility requirements may be determined using self-certification, which may be determined using electronic data, and which may be determined by collecting or viewing applicant paperwork. The local policy shall encourage streamlined services over paperwork collection and copying.

F. Examples

The LWIA may use any of the following examples to determine one or more eligibility elements. These examples are intended to be illustrative rather than inclusive:

1. Unemployment Compensation (UC) Receipt

An applicant who is receiving UC will have an electronic record of receipt, accessible by the Mississippi Employment Security Commission (MESC). Viewing this data onscreen may verify:

(a) Termination or layoff status,

(b) UC eligibility or exhaustion, and

(c) Unlikely to return to their industry or occupation due to four or more consecutive weeks of UC receipt. UC receipt requires that an individual be available for and seeking work unsuccessfully during a given week.

Viewing electronic UC data could verify each and every element for a general dislocated worker. All other application information, with the sole exception of selective service registration, which could also be verified electronically, would be self-certified.

2. Closure Announcement

A copy of the announcement or a news report of the closure announcement would be kept in the file. All other "rapid response dislocated worker" application information would be self-certified.

3. Old Termination Date

If the date of dislocation is prior to the oldest date upon which UC information is electronically available to local MESC staff, and if the dislocation event is credible, the termination event and UC exhaustion may be self-certified. Note that mere past receipt of UC absent exhaustion and also absent current UC eligibility is inadequate to establish eligibility. The second "general dislocated worker" eligibility element requires either current UC eligibility or past UC exhaustion.

If the old termination date was due to a substantial layoff or permanent closure, "unlikely to return" need not be established since this is not a required element for a "rapid response dislocated worker." If the old termination date was unrelated to a substantial layoff or permanent closure, "unlikely to return" must be determined.

4. Unlikely to Return to the Previous Industry or Occupation

This is an eligibility element only for "general dislocated workers." It could be determined by a) continuous UC receipt, (b) labor market information (LMI), (c) four weeks of unsuccessful job search, (d) a lack of openings or job announcements in the WIN Job Center as determined by staff, (e) applicant barriers such as a

disability, lack of personal transportation or lack of child care preventing return to the industry or occupation, (f) an assessed skill deficit preventing reemployment, or (g) a significant disparity in pre-dislocation wages ($ 1.00/hr or more, for example) and the wages currently available in the industry or occupation. WIN Job Center staff through a brief, initial assessment may determine any or all of these items.

5. Self-Employed or Displaced Homemaker

Self-certification may be based upon a personal applicant interview corroborated by brief file notes. All file information should be reasonably consistent with the eligibility determination, or paper or electronic verification should be sought.

6. Social Security Number & Identification

Social Security cards and numbers and personal identification, including driver's licenses, should not be copied and may or may not be visually verified. Social Security registration is not an eligibility requirement for WIA participation.

7. Selective Service

Selective service status would be electronically verified.

G. Concurrent Enrollment

Many adults and some youth participants are also dislocated workers. LWIAs are encouraged to review current adult and youth caseloads, and, if dislocated worker eligibility is established, to concurrently enroll the individual in the dislocated worker program. Costs for serving that individual may be charged to the dislocated worker program; to the extent they are allowable, as of the effective date of concurrent enrollment. The concurrently enrolled participant will count towards the performance goals of both programs in which they are concurrently enrolled.

H. Monitoring Audit and Cost Disallowance

Compliance with the LWIA policy on dislocated worker registration shall be the standard for monitoring, audit and cost disallowance findings and determinations. The mere fact of participant ineligibility shall not establish a questioned or disallowed cost. If a significant number of ineligibles are discovered, the LWIA registration policy may be revisited and a greater level of electronic and paper verification should be sought in the future.

I. Adult and Youth Programs

The identical principles set out in this policy apply to the WIA Title I adult and youth programs. LWIAs are encouraged, but not required, to adopt similar registration policies for adults and youth, considering the differing eligibility requirement for these programs.

III. EFFECTIVE DATE

This policy shall be effective immediately.

Policy Number 17. WIA Supportive Services and Payments for Adults and Dislocated Workers.

I. SCOPE AND PURPOSE

The purpose of this policy is to provide guidance concerning allowable supportive services and payments to Work-force Investment Act (WIA) participants. Section 134(e)(2)(3) of the WIA allows funds allocated to a local board to be used for the provision of supportive services to out of school youth, adults and dislocated workers. Further, the Work-force Investment Act recognizes the need to assist participants in obtaining services and training and retaining employment. Therefore, WIA funds should be used to provide needed supportive services to participants when the needed assistance is not available through non-WIA sources. This policy provides guidance for the provision of supportive ser-vices and payments to adults and dislocated workers only.

II. REQUIREMENTS

A. Supportive Services

Each Local Board, in consultation with the one-stop partners and other community service providers, is required to develop supportive services policies and procedures addressing coordination with other entities to ensure non-duplication of resources and services, as well as any limits on the amount and duration of such services.

According to Section 134(d)(2)(H), information about the availability of supportive services in the local area, as well as referral to such services, is one of the core services that must be available to adults and dislocated workers through the WIA one-stop delivery system.

1. Definition

The term “supportive services” means services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under this title, consistent with the provisions of Title I of the WIA.

The Regulations strongly encourage local boards to establish linkages with programs such as child support, EITC, Food Stamps, Medicaid, and the Children’s Health Insurance Program.

2. Determination of Supportive Services Needs

At WIA registration and/or at regular intervals thereafter, job center staff should review each participant’s needs to determine if supportive services are needed. The first option should always be to refer a participant to other agencies or programs providing the needed services through non-WIA sources. The local policy shall describe the assessment standards for determining need.

3. Authorized Supportive Services

The local policy shall describe all WIA-funded supportive services available in the area. These services may include:

a. Financial Assistance: Payments to assist with normal living expenses to ensure the completion of training. This assistance should be based on a formula or system prescribed by the local area.

b. Transportation Assistance: Payments to assist with transportation based on a formula or system prescribed by the local area.

c. Child Care: Payments to assist with childcare shall be made based on a formula or system prescribed by the local area.

d. Dependent Care: Payments to assist with dependent care, other than children, based on a formula or system pre-scribed by the local area.

e. Housing: Payments to assist housing based on a formula or system prescribed by the local area.

f. Post Placement Supportive Services: Post placement services are intended to ensure that the participant succeeds in the labor market. No participant shall receive cash financial assistance post placement. Supportive service needs may be met through direct payment to vendors or by providing vouchers, gas cards, bus tickets, or other non-cash assistance.

g. Emergency Assistance: Emergency assistance placement services are intended to ensure that the participant succeeds in training and/or the labor market. Emergency assistance may be provided during WIA participation or post placement. Such assistance might include, but not be limited to: payment of car insurance premium, utilities, car repairs, and clothing assistance. Emergency assistance should be based on a system prescribed by the local area.

h. Needs-Related Payments: Needs-related payments to adults and dislocated workers, respectively, who are unemployed and do not qualify for (or have ceased to qualify for) unemployment compensation for the purpose of enabling such individuals to participate in programs of training services. Payments should be based on a formula or system pre-scribed by the local area.

The level of a needs-related payment made to a dislocated worker under this paragraph shall not exceed the greater of:

(1) the applicable level of unemployment compensation; or

(2) if such worker did not qualify for unemployment compensation, an amount equal to the poverty line, for an equivalent period, which amount shall be adjusted to reflect changes in total family income.

(3) Additional Eligibility Requirements: In addition to the requirements contained in WIA Section 134(e)(3)(A), a dislocated worker who has ceased to qualify for unemployment compensation may be eligible to receive needs-related payments under this paragraph only if such worker was enrolled in the training services:

(a) by the end by the end of the thirteenth (13th) week after the most recent layoff that resulted in a determination of the worker's eligibility for employment and training activities for dislocated workers under this subtitle; or

(b) if later, by the end by the end of the eighth (8th) week after the worker is informed that a short-term layoff will exceed six (6) months.

4. Eligibility for Supportive Services

The local policy shall describe the requirements for eligibility.

a. According to Section 134(e)(2) of the WIA, funds allocated to a local area for adults and dislocated workers may be used to provide supportive services to participants:

(1) who are participating in programs with activities authorized in any of paragraph (2), (3), or (4) of subsection 134(d), Required Local Employment and Training Activities --Core, Intensive and Training Services,

(2) who are unable to obtain such supportive services through other programs providing such services, and

(3) who would be unable to participate in WIA Title I activities without the provision of such services. [WIA Section 101(46)].

b. Needs-Related Payments

(1) ADULTS must:

(a) be unemployed;

(b) not qualify for or cease qualifying for, unemployment compensation; and

(c) be enrolled in a program of training services under Section 134(d)(4) of the WIA.

(2) DISLOCATED WORKERS must:

(a) be unemployed, and;

(i) have ceased to qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA-TAA; and

(ii) be enrolled in a program of training services under Section 134(d)(4) of the WIA by the end of the thirteenth (13th) week after the most recent layoff that resulted in a determination of the worker's eligibility for employment and training activities for dislocated workers under this subtitle; or if later, by the end of the eighth (8th) week after the worker is informed that a short-term layoff will exceed six (6) months; or

(b) be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA-TAA.

(3) Special Circumstances

According to 20 CFR 663.830, payments may be provided to a participant who is waiting to start training classes if the participant has been accepted in a training program that will begin within thirty (30) calendar days. In accordance with this section, local areas are hereby authorized to extend the 30-day period for participants in the above mentioned circumstance, or in other appropriate circumstances as defined by the local areas. Payments should be made in accordance with the standard procedures.

NOTE: Dislocated workers enrolled in approved training who are unemployed but who receive payments as a member of a reserve component of the U. S. Armed Services, or as a member of the Mississippi National Guard, for periods of duty of 72 consecutive hours or less, shall be considered unemployed for purposes of qualifying for Needs Related Payments.

5. Levels of Payments

a. Supportive Services

The local board must establish the level of payments for supportive services other than needs-related payments. Minimum and maximum levels must be described in the local supportive services and/or payments policy.

b. Needs-Related Payments

(1) Adults

The local board must establish the level of needs-related payments for adults. Minimum and maximum levels must be described in the local supportive services and/or payments policy.

(2) Dislocated Workers

According to Section 134(e)(3)(c) of the WIA and 20 CFR 663.840, needs-related payments must not exceed the following level:

(a) For participants eligible for unemployment compensation as a result of the qualifying dislocation, the payment may not exceed the applicable weekly level of unemployment compensation benefit; or

(b) For participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level must be adjusted to reflect the changes in total family income as determined by the policy established by the local board.

6. Documentation

The local policy shall require sufficient documentation to support the provision of supportive services from all sources. The policy shall describe the minimum documentation required to support the provision of services.

B. Internships and Work Experience

1. Definition

According to 20 CFR 663.200, internships and work experience may be provided, based on an assessment or individual employment plan. Work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private-for-profit sector, the non-profit sector or the public sector.

If an unpaid work experience creates an employer/ employee relationship, federal wage standards may apply. This relationship is determined under the Fair Labor Standards Act.

Note: Internships and work experience are intensive services, not training.

2. Determination of Need

At WIA registration and/or at regular intervals thereafter, job center staff should review each participant's needs to determine if work experience is needed. The local policy shall describe the assessment standards for determining need for internship or work experience.

3. Eligibility

The local policy shall describe the requirements to eligibility for internships and/or work experience.

4. Payments

The local policy shall:

a. specify standards, for paid and unpaid internships and/or work experience;

b. set the minimum and maximum levels for payments to participants for internship and/or work experience; and

c. describe process and standards for selecting internship/work experience workplaces.

5. Documentation

The local policy shall require sufficient documentation to support the decision to provide internship and/or work experience. The policy shall specify the minimum documentation required to support the need for and provision of internship or work experience.

C. Examples

An example of an adequate local policy for supportive services and payments for adults and dislocated workers is attached. The example should be used as a guide in developing and/or enhancing local the local policy.

D. Administrative Requirements

1. General

Section 181(a)(1)(A) of the WIA requires that individuals in on-the-job training and individuals employed in activities under WIA title I shall be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills, and such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in Section 6(a)(1) of the fair Labor Standards Act or the applicable State or local minimum wage law.

2. Treatment of Allowances, Earning and Payments

Allowances, earnings and payments to individuals participating in programs under this title shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need other that as provided under the Social Security Act. [WIA 181(a)(2)]

3. Limitation

No funds provided under the WIA title I shall be used to pay wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system. [WIA 181(b)(1)]

III. EFFECTIVE DATE

This policy is effective immediately. It will remain in effect until rescinded or replaced.

IV. APPROVAL

James R. Lott

Director, Employment Training Division

ATTACHMENT: EXAMPLE POLICY

EXAMPLE

LOCAL WORKFORCE INVESTMENT AREA SUPPORTIVE SERVICES AND PAYMENTS TO ADULT AND DISLOCATED WORKER PARTICIPANTS POLICY

WORKFORCE INVESTMENT ACT OF 1998

I. SCOPE AND PURPOSE

The following policy has been developed in accordance with the requirements established in the Workforce In-vestment Act (WIA) of 1998 sections 101 (46) and 134(e)(2) and (3) and section 134 (d)(3)(C) and sections 663.200, 663.800 and 664.440 of the Federal Register issued on August 11, 2000. This policy governs the Local Workforce In-vestment Area (LWIA) supportive services and payments to eligible WIA participants.

This policy sets forth requirements for allowable supportive services and payments to WIA participants in the LWIA. These services are made available to enhance the participation and retention of individuals enrolled in a LWIA program, and to enable eligible individuals to participate in WIA programs who could not otherwise participate. This policy sets forth guidelines for all payments to WIA participants, including requirements for: supportive services, relocation assistance, compliance with applicable labor laws, workers' compensation coverage or medical and accident insurance where there is no state workers' compensation coverage, working conditions which are not detrimental to the participant's health and safety, and child labor laws.

II. REQUIREMENTS FOR SUPPORTIVE SERVICES

A. General Provisions: WIA Supportive Services: Supportive services for youth, adults and dislocated workers are defined at WIA sections 101(46) and 134(e)(2) and (3). For adults and dislocated workers, supportive services include services such as cash assistance, transportation, child care, after school care, dependent care, housing, and needs-related payments that are necessary to enable an individual to participate in activities authorized under WIA title I.

The Local Workforce Investment Board (LWIB), in consultation with its One-Stop partners and other community service providers, has developed this policy on supportive services that ensures resource and service are coordinated in the local area. The policy addresses procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as

well as referral to such activities, is one of the core services that must be available to adults and dislocated workers through the One-Stop delivery system. (WIA sec. 134(d)(2)(H).)

Supportive services may be provided in-kind, by arrangement with another human service agency, or with WIA funds when necessary to enable an individual eligible under a WIA-assisted program, but who cannot afford to pay for such services, to participate in such WIA-assisted program.

1. Limitations: In accordance with WIA section Sec. 663.810, the Local Workforce Investment Board has established limits on the provision of supportive services, including a maximum amount of funding and maximum length of time for supportive services to be available to participants. The maximum funding to any one eligible WIA participant is $ 2500.00 and the maximum length of time to receive supportive services is six (6) months. For Post-Placement ser-vices, the maximum funding to any one eligible WIA participant is $ 2000.00 and the maximum length of time to receive supportive services is 12 months. The One-Stop operator may grant exceptions to the limits established under this policy on a case-by-case basis and after coordination with the LWIA fiscal agent.

2. Allowable Supportive Services: The following is a list, but not an all inclusive list, of supportive services which may be provided to participants using WIA funds: Transportation; Child care, After school care, and dependent care; Meals; Temporary shelter; Supplies such as work boots, uniforms; Other reasonable and necessary expenses required for participation in the WIA program.

3. Eligibility: To be eligible for supportive services, a participant must be eligible for WIA assisted services, as determined by WIA federal regulations, and unable to participate in WIA without supportive service assistance.

    (a) WIA funded supportive services may only be provided to individuals who are:

        (1) Participating in WIA core, intensive or training services; and

        (2) Unable to obtain supportive services through other programs providing such services. (WIA sec. 134(e)(2)(A) and (B).

    (b) WIA funded supportive services may only be provided when they are necessary to enable individuals to participate in title I activities. (WIA sec. 101(46).)

    (c) For post-placement services, WIA funded supportive services may only be provided to individuals who:

        (1) Participated in WIA core, intensive or training services; and

        (2) Unable to obtain supportive services through other programs providing such services. (WIA sec. 134(e)(2)(A) and (B). and

        (3) Unable to remain in the job without such assistance.

4. Basis of Provision of Services

   a. The individual determination of supportive services needs shall be based on the results of the objective assessment and documented in the participant's case file. During the initial assisted core counseling session, participants should be asked to describe any limitations or disabilities that they may have. These limitations or disabilities are to be documented in the file. A need may be determined at this time or at a later time by the participant's case manager and/or counselor, or when the participant is offered a job or enters training an a determination of need is identified in order for the participant to continue. A job or training activity may require certain items, such as tools, work boots, drug screens, uniforms, etc. which an economically disadvantaged individual cannot afford and may be funded through WIA supportive services.

   b. A participant's status as economically disadvantaged is documented on the enrollment form, and the need for the service is documented in the case file. The determination of a need must be documented in the participant's file.

   c. Based upon the objective assessment and counseling sessions, counselors may determine that a need exists. The counselor matches that need with a supportive service necessary to meet that need.

5. Delivery: Upon the decision to fund a supportive service through WIA funds, the item or service will be purchased at cost directly by LWIA for the service provider, or the LWIA fiscal agent will reimburse the participant for the cost of the item or service. The payment will be accounted for and documented in accordance with the existing cash disbursement system established by the LWIA fiscal agent.

6. Non-WIA Supportive Services: During the assessment and counseling session, the case manager or counselor may discover that a participant is in need of a particular service which requires coordination with another governmental or not-for-profit agency. At this time, the participant is referred to an agency representative within the one-stop system who can meet these needs. Participants in need of housing are referred to their respective Regional Housing Authorities servicing their jurisdiction. Also, services such as Financial Assistance (TANF), Food Stamps, and Medicaid are made known and available to needy participants, as appropriate. Additionally, participants are referred to other local agencies on an as needed basis.

   In completing the objective assessment and developing the case file for participants, the One-stop case manager and/or youth service provider will ensure, to the extent practicable, that available Federal, State, and local resources are coordinated sufficiently to meet the costs of services, so that the participant can afford to successfully complete the agreed-upon program. Those participants enrolling in classroom training at an institution of higher learning (which are eligible to receive Pell assistance) shall apply for a Pell grant.

B. Allowable Supportive Services.

1. Cash Assistance

a. Eligibility The LWIB has determined that to be successful in WIA-supported training, individuals require cash assistance to meet daily personal and familial needs. Therefore, supportive services cash assistance payments may be made available to eligible participants who are enrolled in WIA approved training with WIA funds title I.

WIA participants participating in classroom training are eligible for supportive services cash assistance. The term "participating in a classroom training or education program" means that the participant's application for training has been approved and the training institution has furnished written notice that the participant has been accepted in the approved training program beginning within 30 calendar days. A participant must be enrolled and scheduled to attend a training provided by an eligible training provider, not including on-the-job training. Participants who are concurrently enrolled in a WIA supported project may receive supportive services cash assistance from only one of source. An eligible individuals receiving supportive services cash assistance, that may not receive needs related payments. The reverse is also true.

b. Fixed Reimbursement

(1) The LWIA's rationale for setting fixed levels of benefits for supportive services cash assistance is as follows. Eligible individuals participating in classroom training may incur incidental expenses such as transportation, meals, and clothing in order to participate in the WIA program. In order to assist the participants with these costs/expenses, it has been determined that a supportive services cash assistance payment is usually necessary to participate in the program of training. Depending on the availability of funds, it has been determined that a range from a minimum of $ 1.00 per hour and a maximum level of $ 5.00 per hour for each documented hour in classroom training may be available.

The current hourly payment is $ 2.00 per documented hour. The LWIA fiscal agent shall approve any deviation or change from the $ 2.00 per hour. Notification will be provided to appropriate parties. A maximum level of $ 2.00 per hour for each hour of classroom training for youth involved in summer youth employment opportunities has also been set. The effective date and amount of the pay rate or supportive services will be documented and maintained separately through grant and payroll records with the fiscal agent. Payments will be made for a maximum of 40 hours per week.

(2) Supportive services cash assistance payments will not be made for time in which the participant. Training payments will not be paid for periods of time such as illness, holidays or other events in which no training occurs.

Time and attendance will be documented by participant's classroom training supervisor or instructor on worksheets provided by the GCWIA. Both the participant and supervisor will sign the worksheets.

(3) Delivery

Payments are mailed to the participant's documented place of residence. All canceled checks and associated sup-porting documentation are filed and retained to document payments to participants.

2. Child Care

Adult and dislocated worker participants with children are eligible for child care and after school care assistance. Participants must show proof that other sources have been applied for and denied before receiving WIA assistance. To qualify for child care and after school care assistance, a participant must be enrolled and attending a classroom training project provided by an approved service provider, other than On-the-Job Training, for a minimum of three hours per scheduled day and have dependents under age six for child care and 6 through 10 years of age for after school care. Child care and after school care assistance payments will be made by the LWIA fiscal agent. The following payment scale will be utilized:

Display Table

The effective date and amount of the pay rate or child care and after school care supportive services will be documented and maintained separately through grant and payroll records at the local area fiscal agent's office.

Only participants who are economically disadvantaged and who are determined to be a single parent, single head of household, or whose spouse is employed at the time of enrollment will be eligible to receive child care or after school care payments. Participants receiving TANF childcare assistance must continue such assistance in lieu of WIA child-care. Additionally, childcare payments will be reduced proportionately for absences from training activities.

3. Dependent Care (other than children): Payments to assist with dependent care, other than children, shall be made based upon the following schedule:

Display Table

4. Transportation Assistance: Payments to assist with transportation shall be limited to $ 35.00 per week.

C. Post-Placement Supportive Services

Post-placement services are intended to ensure that the participant succeeds in the labor market. No participant shall receive cash financial assistance post-placement. Supportive service needs may be met through direct payment to vendors or by providing vouchers, gas cards, bus tickets, or other non-cash assistance.

The following post-placement supportive services shall be available to WIA participants:

1. Limited Transportation Assistance: All participants who have perfect attendance during a workweek shall be offered up to $ 25.00 in transportation assistance. These payments shall be available for the first six weeks after the participant gains employment. This assistance includes, but is not limited to:

   a. Arranging to purchase gas for the vehicle used to travel to and from work;

   b. Help with servicing the vehicle used to travel to and from work;

   c. Assistance towards vehicle payment;

   d. Assistance toward vehicle insurance or driver's license fees;

   e. A bus pass or voucher; or

   f. A voucher for cab fare.

   The need for all post-placement supportive services shall be based upon an individual's need for the payment.

2. Limited Emergency Assistance: During the first three months post-placement, participants who face an employment related emergency shall be eligible for up to $ 100.00 in emergency assistance. Emergency assistance may include, but is not limited to: assistance with rent; the purchase of necessary work tools; the purchase of work clothes; and costs for medical emergencies such as illness or injury, which would prevent or hinder work performance. The need for, and amount of emergency assistance, will be determined by WIN Job Center staff on a participant by participant basis and will be documented in case notes. Factors to consider include whether or not the participant has received a pay-check, the severity of need and the ability of the participant to address the emergency.

D. Needs-Related Payments

Needs-related payments provide financial assistance to adult and dislocated worker participants for the purpose of enabling individuals to participate in training and are one of the supportive services authorized by WIA section 134(e)(3).

1. Allowable Payments

   Needs-related payments will be allowed solely for eligible adult and dislocated workers participants to engage in training services (exclusive of On-the-Job Training). A participant must be enrolled and scheduled to attend a classroom training project provided by an approved service provider, other than On-the-Job Training, for a minimum of three hours per scheduled day. These payments will be fully coordinated with the unemployment compensation benefit pro.gram and other WIA funding sources. Eligible youth concurrently enrolled in an adult program are eligible for needs-related payments or supportive services cash assistance, but not both concurrently.

2. Eligibility

a. Adults must:

(1) Be unemployed,

(2) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(3) Be enrolled in a program of training services under WIA section 134(d)(4).

b. To receive needs related payments, a dislocated worker must:

(1) Be unemployed, and:

(a) Have ceased to qualify for unemployment compensation or trade readjustment allowance under TAA or NAFTA-TAA; and

(b) Be enrolled in a program of training services under WIA section 134(d)(4) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed six months; or

(2) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA or NAFTA-TAA.

c. For needs-related payments, the term "enrolled in a training or education program" means that the participant's application for training has been approved and the training institution has furnished written notice that the participant has been accepted in the approved training program beginning within 30 calendar days. An eligible participant who does not qualify for unemployment compensation must be participating in a training or education program.

d. In completing the objective assessment and developing the case file for dislocated worker participants, the LWIA one-stop operator or service provider will ensure, to the extent practicable, that available Federal, State, and local re-sources are coordinated sufficiently to meet the training and education-related costs of services, so that a participant can afford to successfully complete the agreed-upon program. Those title I adult and dislocated worker participants enrolling in classroom training at an institution of higher learning (which are eligible to receive Pell assistance) must apply for a Pell grant.

e. An individual is not eligible for needs-related payments under the following circumstances:

(1) An individual employed more than 20 hours per week or enrolled in or receiving on-the-job training, or out-of-area job search under WIA, or

(2) An individual who receives trade readjustment allowance, on-the-job training, out-of-area job search allowances, or relocation allowances under the Trade Act. For those participants receiving NAFTA-TAA who are eligible for income support, needs-related payments equal to their weekly unemployment insurance claim amount will be provided if funding is available. If funding is not available, the file will be documented accordingly.

3. Basis of Payment

a. Eligible participants in training services will receive needs-related payments at a maximum of $ 50 per week or $ 10 per day; or the local area may elect to pay such benefits at the rate of $ 2.50 per hour for each hour that the participant is in training, with an additional $ .50 per hour paid for each dependent.

b. For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) For participants who were eligible for unemployment compensation as a result of the qualifying dislocation, the payment may not exceed the applicable weekly level of the unemployment compensation benefit; or

(2) For participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level must be adjusted to reflect changes in total family income as determined by the LWIB. (WIA sec. 134(e)(3)(C).)

c. A request for payment form, which includes documentation of time and attendance, will be submitted by the participant's to LWIA's fiscal agent on a weekly basis. The information on the form will be authenticated by a representative of the training facility, i.e., the participant's instructor or supervisor. The weekly requests for payments will be mailed to the WIA Payment Unit for processing and payment. Payments will not be made for holidays, sick days, doctor's or dentist's appointments, etc. Determining if the participant participated in training is part of the authentication process that the training facility performs by authenticating and signing the payment form. Based upon the hours of attendance as documented on the certified request for payment, the payment amount is calculated and a check is prepared.

4. Delivery

Needs-related payments are mailed to participants at their documented place of residence on a weekly or a bi-weekly basis.

5. Documentation

(a) Eligibility is documented in the participant's individual participant folder. If a determination is made that a participant is eligible for needs-related payments, an Allowance Entitlement and Notice of Participation form will be completed for the participant.

(b) As described in the eligibility section above, a participant's eligibility for title I and for needs-related payments depend upon the status of the participant's unemployment compensation claim. Therefore, this status will be supported by the information maintained in the Mississippi Employment Service Commission's unemployment insurance data-base. The participant's file will indicate if the participant is receiving needs related payments and supporting documentation will be maintained in the individual participant folder. Checks are mailed to participants at their documented place of residence as indicated on the WIA intake form.

D. Relocation / Interview Assistance

1. Maximum Amount Allowable for Relocation Assistance

Relocation assistance up to a maximum amount of $ 1,700 may be provided to an eligible adult or dislocated worker to move within the state or contiguous United States to accept employment. The reimbursement shall not exceed 90% of the actual, allowable, documented cost of the move or the maximum of $ 1,700:

a. For a commercial carrier, no more than 90% of the allowable costs, with the maximum reimbursement being $ 1,700, for moving household goods and personal effects of the eligible participant and family;

b. For a commercial trailer, no more than 90% of the allowable costs, with the maximum reimbursement being $ 1,700, to include private vehicle mileage reimbursement at the state rate and the trailer rental fee for each day required to complete the move;

c. For a rental truck, no more than 90% of the allowable costs, with the maximum reimbursement being $ 1,700, to include the rental fee for each day required to complete the move and the necessary fuel purchased by the eligible participant; and

d. For a commercial carrier's charges for moving a house trailer or mobile home, no more than 90% of the allow-able costs, with the maximum reimbursement being $ 1,700, to include the commercial carrier's charges for moving the house trailer or mobile home; the charges for unblocking and reblocking; any fees for ferries, bridges, roads, tunnels, taxes, permits to transport through a jurisdiction, and retention of necessary flagmen; and the cost of insuring the

house trailer or mobile home for its actual value or $ 10,000 -whichever is less -against loss or damage in transit. (For an eligible participant to receive assistance to move a house trailer or mobile home, it must be the participant's residence in the current area and will be the participant's residence in the new area.)

2. Maximum Amount Allowable for Interview Assistance

Interview assistance up to a maximum amount of $ 500 may be provided per eligible participant to travel to job interviews, testing sites, physical examinations, or other locations required as part of the application or interviewing process. The travel may be within the state or contiguous United States. The reimbursement shall not exceed 90% of the actual, allowable, documented costs for meals, lodging, and mileage reimbursement or the maximum reimbursement of $ 500.

3. Criteria for Receiving Relocation / Interview Assistance

To qualify to receive relocation / interview assistance, an individual must meet the following criteria that must be documented and maintained on file by the one-stop operator:

a. The participant must meet the WIA title I eligibility criteria and be enrolled in title I intensive services. These qualifications should be documented on the WIA Intake form.

b. The eligible participant must meet the following criteria:

(1) The individual cannot obtain suitable employment within his commuting area, generally defined as a 50-mile radius of the individual's permanent place of residence. Documentation to substantiate this criterion shall include a signed, dated statement from the Mississippi Employment Security Commission verifying the employment conditions supporting the relocation decision.

(2) The individual has secured suitable, long-duration employment or has obtained a bona fide offer in the relocation area. Documentation to substantiate this criterion shall include a signed, dated statement from the one-stop staff documenting contact with the new employer.

(3) The individual shall not use WIA funds to supplant relocation or interview assistance available from other sources.

(4) For an individual to be eligible for relocation assistance, the distance between the individual's current residence and proposed, new residence must exceed 50 miles.

(5) For an individual to be eligible for interview assistance, the distance between the individual's residence at the site of the interview, test, or examination exceeds 50 miles. Documentation to substantiate the participant's attending the interview, test, or examination shall be developed and maintained by the one-stop operator.

4. Estimates of Costs for Moving Household Goods

The eligible participant may move household goods by any of the methods listed in this policy. In all cases, written estimates must be obtained from two bona fide moving companies, carriers, or services, as applicable. If the lower estimate is not selected, the one-stop operator case manager/counselor must document justification for the selection.

Two examples of situations justifying the selection of a bidder other than the low bidder are:

a. The low bidder cannot carry out the move within acceptable time frames.

b. The low bidder will not accept payment on a reimbursement basis, and the participant does not have the funds to pay for the move.

5. Basis of Payment

A request for payment form, which includes documentation of all cost, including receipts where appropriate for re-imbursement, will be submitted by the one-stop operator's case manager/counselor to LWIA's fiscal agent.

6. Delivery

Relocation payments are mailed to participants at their documented place of residence for reimbursement of costs or directly to the moving service provider based on a valid invoice.

E. Documentation Requirements Sufficient documentation shall be maintained to support the provision of supportive services from all sources. At a minimum, the participant files shall include the following types of documentation: --Staff notes determining individual need for all supportive services; and --Staff notes showing why non-WIA resources are unable or insufficient to meet the participant's need; and --A log tracking disbursement of all non-cash supportive services; and --Payment records for all cash financial assistance supportive services.

III. REQUIREMENTS FOR PAYMENTS

A. Training Payments

1. Wages

a. Allowable Payments

(1) Wages shall be paid when the participant is in an employee-employer relationship as defined by the Internal Revenue Service.

(2) Work Experience wages for adults, dislocated workers and youth will not be less than the minimum wage as stipulated by the Department of Labor wage and hour laws.

b. Eligibility

Wage payments are allowable and will be paid to participants involved in limited internships and work experience. Wages will also be paid to work experience youth under the summer employment opportunities element. WIA participants whom a limited internship or work experience has been objectively determined and documented in the participant's file to be the appropriate method of training are eligible for wage payments.

c. Standards

(1) Wages paid will be at the minimum wage or the same rate as a similarly situated employee or trainee, but in no event less than the higher of the minimum wage prescribed under the Fair Labor Standards Act of 1938, as amended, or applicable State or local minimum wage laws.

(2) The LWIA is responsible for meeting applicable Internal Revenue Service (IRS) requirements. When not authorized specifically in the service provider's contract, wages will be disbursed through the Local Area's Human Re-source Department who ensures that IRS regulations are met by consulting with outside certified public accountants and reviewing authoritative literature published by the IRS.

d. Basis of Payment

(1) Wages will not be paid for time in which the participant did not participate with good cause. Good cause is de-fined as attendance in the applicable activity plus any specific criteria as established by the applicable supervisor based upon accepted policies and procedures that are applied to all WIA and non-WIA participants. Also, wages will not be paid for periods of time such as illness, holidays or other events in which no training occurs.

Time and attendance will be documented by the participant's supervisor on worksheets provided by the LWIA. The worksheets will be signed by both the participant and supervisor.

(2) Designated supervisors will submit time and attendance worksheets to LWIA. Worksheets are submitted every two weeks, and wage payments will be calculated based upon the worksheets submitted.

e. Documentation

(1) Time and attendance is documented on worksheets provided by LWIA.

(2) The check is mailed to the participant's documented place of residence. All canceled checks are filed and retained to document payments.

B. Worker's Compensation

Checks for the appropriate amounts are mailed to participants at their documented place of residence.

1. Work-Related Activities

Where a participant is not covered under a State's workers' compensation law, the participant shall be provided with adequate on-site medical and accident insurance for work-related activities. In order to ensure that these requirements are met, all OJT and work-related contracts contain a clause requiring that the contractor carry all necessary insurance coverage.

2. Training Activities

All participants participating in training activities will be covered by insurance to protect them from potential injuries. The applicable service provider or the LWIA will pay this when the provider does not carry the appropriate insurance.

C. Occupational Safety and Health

1. Participants engaged in activities not covered under the Occupational Safety and Health Act of 1970, as amended, shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions that are unsanitary, hazardous, or dangerous to the participant's health and safety.

2. In order to ensure that these requirements are met, all OJT and work-related contracts contain a clause requiring that the contractor meet the requirements of the Occupational Safety and Health Act of 1970, as amended.

D. Wage and Hour Labor Laws

In the development and conduct of programs funded under WIA, the LWIA shall ensure that participants are not assigned to work for employers that do not comply with applicable labor laws, including wage and hour. In order to ensure compliance applicable LWIA policies and contracts contain language regarding wage and hour labor laws.

Policy Number 18. WIA Supportive Services and Payments for In-School and Out-of-School Youth.

I. SCOPE AND PURPOSE

The Workforce Investment Act (WIA) states that youth programs must provide supportive services. The purpose of this policy is to provide guidance concerning allowable supportive services and payments to younger youth and older youth, in school and out of school, participating in WIA activities.

The Workforce Investment Act recognizes the need to assist participants in obtaining services and training and retaining employment. Therefore, WIA funds should be used to provide needed supportive services to participants when the needed assistance is not available through non-WIA sources.

II. REQUIREMENTS

A. Supportive Services

Each Local Board, in consultation with the one-stop partners and other community service providers, is required to develop supportive services policies and procedures addressing coordination with other entities to ensure non-duplication of resources and services, as well as any limits on the amount and duration of such services.

The Workforce Investment Act (WIA) Section 129(c)(2)(G) identifies supportive services as one of the ten required elements for WIA-funded youth programs. WIA Section 134(e)(2)(3) allows funds allocated to a local board to be used for the provision of supportive services to out-of.school youth, adults and dislocated workers. WIA Section 101(46) defines supportive services.

1. Definition

20 CFR Part 664.440 elaborates on the definition of supportive services as it applies to youth. The term “supportive services” means services such as linkages to community services, transportation, child care, dependent care, housing, referrals to medical services, and assistance with uniforms or other appropriate work attire and work related tools, including such items as eye glasses and protective eye gear. For older youth, supportive services may also include needs-related payments to enable individuals to participate in training.

The Regulations strongly encourage local boards to establish linkages with programs such as child support, EITC, Food Stamps, Medicaid, and the Children’s Health Insurance Program.

2. Determination of Supportive Services Needs

   a. Younger youth-A determination of the supportive services needs of each WIA-eligible youth participant shall be made based on information in the Individual Service Strategy. If the participant is determined to be in need of supportive services, he or she will be referred to other publicly funded human service agencies for the appropriate services needed.

   b. Older youth-At WIA registration and/or at regular intervals thereafter, WIN Job Center staff should review each participant's needs to determine if supportive services are necessary. The first option should always be to refer a participant to other agencies or programs providing the needed services through non-WIA sources. The local policy shall de-scribe the assessment standards for determining need.

3. Authorized Supportive Services

   The local policy shall describe all WIA-supported supportive services available in the area. WIA funded supportive services may include:

   a. Transportation Assistance: Payments to assist with transportation based on a formula or system prescribed by the local area.

   b. Child Care: Payments to assist with childcare shall be made based on a formula or system prescribed by the local area.

   c. Dependent Care: Payments to assist with dependent care, other than children, based on a formula or system pre-scribed by the local area.

   d. Housing: Payments to assist housing based on a formula or system prescribed by the local area.

   e. Referrals to Medical Services: Payments to assist with medical expenses based on a formula or system prescribed by the local area.

   f. Assistance with Uniforms or Other Appropriate Work Attire and Work-Related Tools: Payments to assist with uniforms/other work attire and work-related tools, including such items as eye glasses and protective eye gear, based on a formula or system described by the local area.

   g. Post Placement Supportive Services (Older Youth only): Post placement services are intended to ensure that the participant succeeds in the labor market. No participant shall receive cash financial assistance post placement. Supportive service needs may be met through direct payment to vendors or by providing vouchers, gas cards, bus tickets, or other non-cash assistance.

   h. Needs-Related Payments (Older Youth only): Needs-related payments to individuals who are unemployed and do not qualify for (or have ceased to qualify for) unemployment compensation for the purpose of enabling such individuals to participate in programs of training services. Payments should be based on a formula or system prescribed by the local area.

4. Eligibility for Supportive Services

The local policy shall describe the requirements for eligibility.

a. Younger Youth: Given the income, educational, and employment barriers necessary for a youth to participate in WIA services, it is presumed that all youth eligible for participation shall require support to remain in and benefit from the services provided and to prepare them for further education or employment.

b. Older Youth:

(1) According to WIA Section 134(e)(2), funds allocated to a local area for adults may be used to provide supportive services to older youth:

(a) Who are participating in programs with activities authorized in any of paragraph (2), (3), or (4) of subsection 134(d), Required Local Employment and Training Activities --Core, Intensive and Training Services,

(b) Who are unable to obtain such supportive services through other programs providing such services, and

(c) Who would be unable to participate in WIA Title I activities without the provision of such services. [WIA Section 101(46)]

(2) Needs-Related Payments-Older youth must:

(a) Be unemployed;

(b) Not qualify for or cease qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under Section 134(d)(4) of the WIA.

(3) Special Circumstances-Older youth:

According to 20 CFR 663.830, payments may be provided if the participant has been accepted in a training program that will begin within 30 calendar days.

5. Levels of Payments

a. Supportive Services

The local board must establish the level of payments for supportive services other than needs-related payments. Minimum and maximum levels must be described in the local supportive services and/or payments policy.

b. Needs-Related Payments (Older Youth only)

The local board must establish the level of needs-related payments for older youth. Minimum and maximum levels must be described in the local supportive services and/or payments policy.

6. Documentation

The local policy shall require sufficient documentation to support the provision of supportive services from all sources. The policy shall describe the minimum documentation required to support the provision of services.

B. Internships and Work Experience

1. Definition

a. Younger Youth: 20 CFR 664.460 and 664.470 cover work experience for youth. The same general guidelines for adults and dislocated workers apply for the youth programs. 20 CFR 664.460(c) provides details on how the work experience should be designed for youth.

b. Older Youth: According to 20 CFR 663.200, internships and work experience may be provided, based on an assessment or individual employment plan. Work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private-for-profit sector, the non-profit sector or the public sector.

If an unpaid work experience creates an employer/ employee relationship, federal wage standards may apply. This relationship is determined under the Fair Labor Standards Act.

Note: Internships and work experience are intensive services, not training.

2. Determination of Need

At WIA registration and/or at regular intervals thereafter, job center staff should review each participant's needs to determine if work experience is needed. The local policy shall describe the assessment standards for determining need for internship or work experience.

3. Eligibility

The local policy shall describe the requirements to eligibility for internships and/or work experience.

4. Payments The local policy shall:

a. specify standards, for paid and unpaid internships and/or work experience;

b. set the minimum and maximum levels for payments to participants for internship and/or work experience; and

c. describe process and standards for selecting internship/work experience workplaces.

5. Documentation

The local policy shall require sufficient documentation to support the decision to provide internship and/or work experience. The policy shall specify the minimum documentation required to support the need for and provision of internship or work experience.

6. Examples

An example of an adequate local policy for supportive services and payments for adults and dislocated workers is attached. The example should be used as a guide in developing and/or enhancing local the local policy.

7. Administrative Requirements

a. General

Section 181(a)(1)(A) of the WIA requires that individuals in on-the-job training and individuals employed in activities under WIA title I shall be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills, and such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in Section 6(a)(1) of the fair Labor Standards Act or the applicable State or local minimum wage law.

b. Treatment of Allowances, Earning and Payments Allowances, earnings and payments to individuals participating in programs under this title shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need other that as provided under the Social Security Act. [WIA 181(a)(2)]

a. Limitation

No funds provided under the WIA title I shall be used to pay wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system. [WIA 181(b)(1)]

III. EFFECTIVE DATE

This policy is effective immediately. It will remain in effect until rescinded or replaced.

ATTACHMENT

EXAMPLE POLICY-SUPPORTIVE SERVICES FOR YOUTH

ACQUISITION AND DISBURSEMENT LOG FOR NON-CASH SUPPORTIVE SERVICES-.OUT-OF-SCHOOL YOUTH

Subgrantee _____ Program Year _____

Display Table

Policy Number 19. WIA Eligibility Determination Policy.

I. SCOPE AND PURPOSE

Section 663.110 and Section 664.200 of the Workforce Investment Act (WIA) regulations outline the eligibility criteria for adults, dislocated workers and youth. The purpose of this policy is to provide guidance to the local workforce areas for use in developing and using a local eligibility policies and/or procedures. Each local workforce investment area shall have appropriate procedures to ensure that only eligible individuals are served in programs funded under Title IB of the WIA.

II. REQUIREMENTS

Each local policy shall address youth, adult and dislocated worker eligibility issues. The policies and related procedures should allow staff discretion for determining participant eligibility.

The following provisions of the WIA shall apply when determining an individual's eligibility to participate in Title IB programs funded by the Workforce Investment Act

A. All individuals receiving any WIA Title IB funded services beyond self-service and informational services, must meet the provisions of Section 189(h) of the WIA regarding the enforcement of compliance with the Military Selective Service Act; and the provisions of Section 188 of the WIA, regarding the availability of Title IB services to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

B. All individuals receiving services beyond self-service and informational services funded by the WIA Title IB adult funding stream under Section 133(b)(2)(A) of the WIA must be 18 years of age or older and meet the priority for service determinations established by the local workforce investment board (LWIB) in accordance with Section 134(d)(4)(E) of the WIA for the local workforce area in which the individual is applying for services.

C. All individuals receiving services beyond self-service and informational services funded by the WIA Title IB dislocated worker funding stream under Section 133(b)(2)(B) of the WIA must be 18 years of age or older and meet the definition of dislocated worker in accordance with Section 101(9) and State Policy Number 16.

D. Individuals receiving services funded by the WIA Title IB youth funding stream under Section 128(b)(2)(A) must be at least 14 years of age and not more than 21 years of age at the time of registration for services and meet the definition of eligible youth in Section 101(13). The term "eligible youth" means an individual who:

   1. is not less than age 14 and not more than age 21;

   2. is a low-income individual; and

3. is an individual who is one or more of the following:

    a. Deficient in basic literacy skills

    b. A school dropout.

    c. Homeless, a runaway, or a foster child.

    d. Pregnant or a parent.

    e. An offender.

    f. An individual who requires additional assistance to complete an educational program, or to secure and hold employment.

E. Not more than 5% of the eligible youth who do not meet the minimum income criteria established in Section 101(25) of the Act may receive youth funded services if they meet the criteria established in WIA Section 129(c)(5) of the Act.

1. The minimum income criteria established in Section 101(25) of the Act apply to an individual who:

    a. Receives, or is a member of a family that receives, cash payments under a Federal, State, or local income-based public assistance program;

    b. Received an income, or is a member of a family that received a total family income, for the 6.month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, payments described in subparagraph (A), and old-age and survivors insurance benefits received under section 202 of the Social Security Act (42 U.S.C. 402)) that, in relation to family size, does not exceed the higher of-.

        (1) the poverty line, for an equivalent period; or

        (2) 70 percent of the lower living standard income level, for an equivalent period;

    c. Is a member of a household that receives (or has been determined within the 6-month period prior to application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

    d. Qualifies as a homeless individual, as defined in subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302);

    e. Is a foster child on behalf of whom State or local government payments are made; or

f. In cases permitted by regulations promulgated by the Secretary of Labor, is an individual with a disability whose own income meets the requirements of a program described in subparagraph (A) or of subparagraph (B), but who is a member of a family whose income does not meet such requirements.

2. Individuals who do not meet the minimum income criteria in subsection 1 shall be within one or more of the following categories:

a. Individuals who are school dropouts.

b. Individuals who are basic skills deficient.

c. Individuals with educational attainment that is one or more grade levels below the grade level appropriate to the age of the individuals.

d. Individuals who are pregnant or parenting.

e. Individuals with disabilities, including learning disabilities.

f. Individuals who are homeless or runaway youth.

g. Individuals who are offenders.

h. Other eligible youth who face serious barriers to employment as identified by the local board.

E. Participants receiving services in projects funded by statewide activity funds in accordance with Sections 129(b) and 134(a) of the WIA must meet the following eligibility criteria:

1. Projects serving adults age 18 and over shall be subject to the eligibility provisions established for the project.

2. Projects serving dislocated workers shall be subject to the eligibility provisions established in Section C above.

3. Projects serving youth ages 14 to 21 at the time of service entry shall be subject to the provisions of Section D above.

4. Projects serving displaced homemakers may include individuals who are receiving public assistance and are within 2 years of exhausting lifetime eligibility under Part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) in accordance with Section 134((a)(3)(A)(vi)(I) of the WIA.

G. The following additional definitions from WIA section 101 apply to eligibility determinations for WIA Title IB Youth Programs:

1. FAMILY- The term "family" means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

a. A husband, wife, and dependent children.

b. A parent or guardian and dependent children.

c. A husband and wife.

2. OFFENDER- The term "offender" means any adult or juvenile-.

a. who is or has been subject to any stage of the criminal justice process, for whom services under this Act may be beneficial; or

b. who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

3. OUT-OF-SCHOOL YOUTH- The term "out-of-school youth" means-.

a. an eligible youth who is a school dropout; or

b. an eligible youth who has received a secondary school diploma or its equivalent but is basic skills deficient, un-employed, or underemployed.

5. SCHOOL DROPOUT -- The term "school dropout" means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

6. (e) UNEMPLOYED INDIVIDUAL- the term 'unemployed individual' means an individual who is without a job and who wants and is available for work. The determination of whether an individual is without a job shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

H. Each local workforce investment area shall have appropriate procedures to ensure that only eligible individuals are served in programs funded under Title IB of the WIA. The State will issue a policy to specify acceptable eligibility documentation and verification methods. However, the local area may adopt eligibility documentation procedures requiring a higher level of verification than self-certification.

III. EFFECTIVE DATE

This policy shall be effective immediately. It shall remain in effect until modified or replaced by the Employment Training Division.

Policy Number 20. Eligibility Documentation Policy.

I. SCOPE AND PURPOSE

The purpose of this policy is to provide guidance to the local workforce investment areas for the development of local policies and procedures regarding eligibility documentation and participant record keeping.

II. REQUIREMENTS

A. Definitions

Documentation means to maintain on file physical evidence that is obtained during the verification process. Such evidence would be copies of documents, completed telephone/ document inspection forms and signed applicant statements.

Eligibility Determination means the entire process used to obtain information about an applicant's eligibility status at the time of application and to identify and evaluate those element(s) that are necessary for the participant's eligibility for WIA programs.

Review means checking the file for internal consistency, completeness, reasonableness and proper mathematical calculations.

Self-certification means an individual's signed attestation that the information he/she submits to demonstrate eligibility for a program under Title I of WIA is true and accurate (20 CFR 660.300).

Verification means to confirm eligibility requirements through examination of official documents, e.g., birth certificates, public assistance records, or speaking with official representatives of cognizant agencies.

B. Local Policy/Procedure Requirements

Each local workforce investment area (LWIA) shall have appropriate procedures to assure that only eligible individuals are served in programs funded under the WIA. The WIA does not specifically address documentation of eligibility factors. At 20 CFR 660.300 the regulation define self-certification as specified above. To assist local areas, the State is adopting this documentation policy that includes the WIA definition of self-certification.

The LWIA procedures shall include provisions to:

1. Ensure utilization of an applicant statement of eligibility form as documentation of the eligibility factors applicable to the applicant. The applicant statement of eligibility form should contain wording requesting the applicant to certify that the information provided is true and accurate and wording that states the penalties for misrepresenting information, such as termination or repayment of funds. An example of this wording is, "I, , certify the information on this form is true and accurate and I understand that the above information, if misrepresented, or

incomplete may be grounds for immediate termination of services and penalties as specified by law." The applicant statement of eligibility information may be contained within the general application for services or may be a separate form. In either case, all eligibility factors relevant to the program of services being applied for must be on the application or eligibility form and signed and dated by the applicant.

2. Ensure that a minor's parent or legal guardian certifies eligibility information, including barriers not verified by outside sources. Minors cannot self-certify their eligibility information. Minors who are legally emancipated may self-certify their eligibility information if there is documentation of the emancipation. If eligibility for homeless or runaway youth cannot be certified through a parent or legal guardian, then the LWIA should attempt to document eligibility through agencies that the youth may be involved with.

3. Ensure that all applications and separate applicant eligibility statement forms are signed and dated by the intake person, the applicant, and a parent or legal guardian for a minor.

4. Ensure that applicants are registered into the applicable program within a reasonable time period after the date of application for services. Thus, ensuring that the information in the application is still applicable at the time of registration. The State suggests that no more than a maximum of 45 days pass between the date of application and the date of registration. If registration occurs after the 45-day period, the application should be reviewed to determine if it should be to be updated.

5. Ensure that all applications and/or applicant statements are reviewed to determine:

   a. The application is complete;

   b. The original eligibility determination was correct; and

   c. The information on the eligibility documents is internally consistent, and reasonable.

   If the information provided is not internally consistent or is not reasonable taking into account all of the information provided by the applicant, the LWIA should take immediate action to document any questionable items. This response may be completed through contact with partner agencies or public agencies from which the applicant is currently receiving services or through requesting hard documentation from the applicant.

6. Ensure that there is a system for immediate termination of any registrant found to be ineligible and a system to recover funds from the ineligible individual, if the LWIA determines it appropriate.

C. The LWIA may adopt documentation verification procedures more stringent than self-certification, especially when delegating eligibility determination to another entity. For example, the LWIA may require applicants to produce documents to verify factors such as age, citizenship or legally able to work in the United States, Selective Service status,

etc. If the LWIA requires documentation of eligibility factors, this requirement may be applied equally to all applicants, on a sample basis, or on an individual basis. If applied on an individual basis, the LWIA should be sure that this does not appear to discriminate against any particular group of applicants.

D. All eligibility forms or documents must be maintained in the registrant's file and be available for review by State or Federal review.

E. If an applicant has been determined ineligible by another public agency that has the same or similar eligibility requirements, the LWIA should verify the reason for the ineligible determination and take appropriate steps to ensure that the applicable eligibility items for the applicant are verified and documented adequately before registration is completed.

F. The LWIA should ensure that youth applicants certify the all appropriate barriers.

1. According to Section 101(13) of the WIA, barriers for eligible youth are:

a. Deficient in basic literacy skills

b. School dropout

c. Homeless, a runaway or a foster child

d. Pregnant or a parent

e. An offender

f. An individual who requires additional assistance to complete an educational program, or to secure and hold employment.

2. The barriers for youth who do not meet the minimum income criteria to be considered eligible youth and will be served through the 5% exception in the youth program (Section 129(c)(5) of the WIA) are:

a. School dropout

b. Basic skills deficient

c. Individuals with an educational attainment that is one or more grade levels below the grade level appropriate to the age of the individuals.

d. Pregnant or parenting

e. Individuals with disabilities, including learning disabilities

f. Homeless or runaway

g. Offenders

h. Other eligible youth who face serious barriers to employment as identified by the local board.

G. The LWIA should develop documentation requirements appropriate for the item to be verified. Items such as school dropout, basic skills deficient, learning disabilities, and homeless or runaway should to be verified in a manner other than self-certification. Verification of these items and any other items that need outside verification should be documented in each applicant file.

H. An example of sufficiently developed local eligibility documentation procedures is attached.

II. EFFECTIVE DATE

This policy shall be effective immediately. It shall remain in effect until modified or replaced by the Employment Training Division.

ATTACHMENT

EXAMPLE PROCEDURES

EXAMPLE

ELIGIBILITY DOCUMENTATION POLICY/PROCEDURES

WORKFORCE INVESTMENT ACT

I. INTRODUCTION

Section 663.110 and Section 664.200 of the WIA regulations outline the eligibility criteria for adults, dislocated workers and youth.

II. SPECIFICATIONS

Staff responsible for determining and documenting participant eligibility should exercise reasonable and professional judgment. If staff has reason to believe a participant is misrepresenting an eligibility item, additional information and documentation should be requested, copied and maintained in the participant file.

A. Determining and Documenting Eligibility

Adults
In making the initial determination of eligibility for adults, staff shall maintain on file, a description of the documentation used to verify the following eligibility items:

1. Registrant's Name;

2. Social Security Number;

3. Citizenship; and

4. Selective Service Status (where applicable).

The WIA Intake Form shall be maintained in the participant file to document an eligibility determination. The WIA Intake Form should be completed using the instructions in the Forms Manual. The signature of the participant on the WIA Intake Form will attest to the truth and accuracy of the information included on the WIA Intake Form. In addition, self-attestation shall be allowed for documentation of family income, family size and employment status as described in Section C of this policy "Self-Certification." No additional documentation or applicant information should be copied or placed in the file unless staff determines there is a need. The need for core, intensive, and/or training services, and supportive services can be documented on either the Employment Development Plan or in the staff case notes.

Youth
In making the initial determination of eligibility for youth, staff shall maintain on file, a copy of the WIA Youth Eligibility Verification Form (attached) and a copy of the WIA Intake Form. The WIA Youth Eligibility Verification Form should be completed according to the instructions prescribed on the form. The WIA Intake Form should be completed using the instructions for the WIA Intake Form. The signature of the participant (and/or parent or guardian when participant is under 18 years of age), on the WIA Youth Eligibility Verification Form and the WIA Intake Form will attest to the truth and accuracy of the information included on the forms. In addition, self-attestation shall be allowed for documentation of family income, family size and employment status as described in Section C of this policy "Self-Certification." No additional documentation or applicant information should be copied or placed in the file unless staff determines there is a need. The provision of services can be documented on the Individual Service Strategy or in staff case notes.

NOTE: For youth participants, staff shall refer to the Youth Eligibility Definitions and Policy for documentation requirements of "barriers."

B. Absence of Documentation

When an eligible item cannot be verified because the participant lacks documentation, (i.e., the applicant does not have photo identification, a birth certificate or a selective service registration document, etc.), the staff must provide the needed assistance to the participant to obtain the documentation. No participant should be denied services for lack of eligibility documentation without an attempt by staff to help secure the needed documentation.

C. Self-Certification

Self-Certification is defined in the WIA regulations as the process by which an individual's signed attestation that the information he/she submits to demonstrate eligibility for a program under Title I of WIA is true and accurate. The LWIA will accept the attestation of individuals as documentation of income, family size and employment status for the purposes of determining and certifying eligibility for WIA activities. The following table indicates, by applicant group, the eligibility criteria for which self-attestation will be accepted.

Display Table

In addition to self-certification of income and employment status, the participant may attest to the following items:

1. Need for services

2. Dislocation

3. Unlikely to return to prior occupation

4. Displaced homemakers

D. Ineligible Participants Participants determined to be ineligible, should be exited immediately upon discovery of the ineligibility. Corrective actions should be implemented to correct conditions that result in erroneous determinations.

E. Fraud

Participants determined to be ineligible due to fraud or purposeful misrepresentation should be exited immediately, an incident report should be filed, and repayment requested from the participant for all costs incurred as a result of in-eligibility.

III. REQUIREMENTS (DOCUMENTATION)

The following documentation shall be maintained in the participant file:

1. WIA Intake Form; and

2. WIA Youth Eligibility Verification Form (attached) when applicable; and

3. Other documentation staff deemed necessary to support an eligibility item; and

4. Documentation specified for "barriers" in the Youth Eligibility Definitions and Policy; and

5. Description of the documentation used for adult eligibility items listed in Section II.A.1-4 of this policy; and

6. Employment Development Plan or Individual Service Strategy; or

7. Staff case notes.

IV. EFFECTIVE DATE

This policy is effective July 1, 2001

Policy Number 21. Property Management Policy.

I. PURPOSE AND SCOPE

To provide property management requirements for each grantee/subgrantee for all federal programs administered by Employment Training Division under the Workforce Investment Act (WIA).

A. All fiscal policies and guidance letters published for WIA are governed as appropriate under:

WIA Regulations at 20 CFR 652, et al

29 CFR Parts 95 and 97 48

CFR Part 31

OMB Circulars:

A-21 Cost Principles for Educational Institutions

A-87 Cost Principles for State and Local Governments

A-122 Cost Principles for Non-Profit Organizations

A-102 Administrative Requirements for State and Local Governments

A-110 Administrative Requirements for Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

Generally Accepted Accounting Principles (GAPP)

Mississippi State Government Policies and Procedures

Mississippi Development Authority/Employment Training Division Policies and Procedures.

B. All property purchased with WIA Title I-B grant funds and JTPA grant funds shall be maintained and managed in accordance with the federal regulations at 29 CFR Part 97.31 and 97.32 and 97.33, or at 29 CFR 95.30 through 37, whichever is applicable. Additionally, where applicable, the provisions of 29 CFR Part 667.200 shall apply.

II. REQUIREMENTS

Property is defined at both 29 CFR 97.3 and 95.2 as tangible, nonexpendable personal property having useful life of more than one year and an acquisition cost of $ 5000 or more per unit, including all costs related to the property's final intended use.

A. Acquisition of Nonexpendable Personal Property

Nonexpendable personal property, acquired either through purchase or lease-purchased, with a unit purchase price of $ 5000 or more shall require prior approval from Employment Training Division. Standards used in determining whether to grant approval include the necessity of such purchases to achieve program goals and the planned expenditure for such purposes as compared to other available prices.

B. Inventory Control

Employment Training Division shall be responsible for inventory units of nonexpendable personal property with an acquisition cost of $ 5000. Grantees/subgrantees shall provide inventory information to the division on the "Employment Training Division Personal Property Inventory Control Form" (Attachment A) within 30 days of the acquisition of the property. Records shall be maintained in accordance with the federal regulations at 29 CFR Part 97.31 and 97.32 and 97.33, or at CFR 95.30-37, whichever is applicable. Additionally, where applicable, the provisions of 20 CFR Part 667.200 (c) shall apply.

C. Physical Inventory

The acquiring grantee/subgrantee must meet the following minimum management standards:

1. Property records must be maintained that include the following data on each piece of property: description; serial number; purchases date and cost; percentage of Federal participation in the cost; location, use and condition of the property; and, any ultimate disposition data including date of disposal and sale price. (See Attachment B)

2. A control system must be developed to ensure adequate safeguards to prevent any loss (Including acts of nature such as floods, and earthquakes), damage, or theft of the property. Any loss, damage or theft shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee/subgrantee shall promptly notify the Federal-awarding agency. (See Attachment C)

3. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee/subgrantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

4. An adequate maintenance procedure must be developed to keep the property in good condition.

5. If property is sold, proper sales procedures must be established to provide competition to the extent practicable and result in the highest possible return.

D. Lost, Damaged, or Stolen Property

When loss, theft, or damage to grant property occurs, a "Report of Lost, Stolen, of Damaged Property" (Attachment C) shall be forwarded by the grantee/subgrantee to the Employment Training Division Property Manager within 10 days to the discovery of loss. In the case of stolen property, a police report must accompany the report to Employment Training Division, or a fire department report in the case of fire damaged property.

E. Disposition of Nonexpendable Personal Property

1. The Employment Training Division Property Manager should be contacted for disposition instructions for disposition of property having an acquisition cost of $ 5000 or more when the WIA grantee/subgrantee, relationship ends or the property is no longer needed. This notification shall be given via the "Report of Excess/ Unserviceable Nonexpendable Personal Property" (Attachment D). In no event should property having an acquisition cost of $ 5000 or more be transferred from control of the grantee/subgrantee without written approval from Employment Training Division.

2. Property shall be used by the grantee/subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the property may be used in other activities currently or previously supported by a federal agency.

3. The grantee/subgrantee shall also make property available for use on other project or programs currently or previously supported by the federal government, providing such use will not interfere with the work on the projects or pro-grams for which it was originally acquired. First preference for use of the property shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

4. Nonexpendable personal property with an acquisition cost of less than $ 5000 will be disposed of at the discretion of the grantee/subgrantee. Disposition options include:

   a. Transfer of property to other federal grant grantee/subgrantees

   b. Sale of the property (net proceeds to be returned to the program as program income)

   c. Donation of property to public schools or community-based organizations

   d. "Junking" of property which is obsolete, unusable, or in a state of disrepair

III. DEFINITIONS:

A. Expendable personal property: means all tangible personal property other than nonexpendable personal property.

B. Fair market value means:

1. For currently used vehicles, the "low" Kelly Blue Book price, adjusted for vehicle condition;

2. For older vehicles, a quote from a dealer with the name of the dealership and price quoted submitted in writing;

3. For heavy equipment, the Green Book price or an oral dealership quote which will then be submitted in writing;

4. For real property, a written appraisal by a licensed appraiser;

5. For all other property, oral quotations by dealers which will then be submitted in writing.

C. Nonexpendable personal property is tangible personal property having a useful life of one or more years and an acquisition cost of $ 5000(State requirement) or more. The Local Workforce Investment Area may use its own definition provided that such definition includes all tangible nonexpendable personal property covered by the above definition.

D. Personal property is property of any kind except real property. It may be tangible having physical existence, or intangible, having no physical existence. Tangible property may be expendable or nonexpendable. For the purpose of this policy, a unit of property is defined as a single piece of property, except in the case where more than one piece of property is needed to make an entire system functional such as a computer or telephone system. For example, when purchasing a computer, the monitor, keyboard, printer, and hard drive are all to be considered as a component of the total system, with the total system defined as a unit of property. Likewise with a telephone system, the switchboard along with all phones required to make up the system shall be considered the unit of property. After initial acquisition of such a system, any component part upon replacement shall be considered as a single unit of property for the type of transaction.

E. Real Property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

IV. EFECTIVE DATE:

Immediately

ATTACHMENT A

NONEXPENDABLE/ PERSONAL PROPERTY INVENTORY CONTROL

STATE OF MISSISSIPPI
WORKFORCE INVESTMENT ACT
TRANSFER DOCUMENT

PRE-TRANSFER INVENTORY NUMBER _____ *ASSIGNED BY TRANSFERRING PARTY*
TRANSFER INVENTORY NUMBER _____ *ASSIGNED BY ETD*

TRANSFERRED
This is to certify that I have transferred the following property and will not be held responsible for the accountability of same.

Name: _____
Location: _____
Date: _____
Signature: _____

RECEIVED
I acknowledge receipt of items listed below and fully understand my responsibility as to proper use and protection of materials listed.

Name: _____
Location: _____
Date: _____
Signature: _____

Description	Serial Number	Tag Number	Cost of Property	Purchase Date	Title Holder	% Of Federal Funds	Specific Location of Property	Use & Condition of Property	Disposition

SIGNATURE OF PROPERTY OFFICER_____ DATE:_____

ATTACHMENT B

COMPREHENSIVE PROPERTY INVENTORY

Attachment A

STATE OF MISSISSIPPI
WORKFORCE INVESTMENT ACT
WIA NONEXPENDABLE/PERSONAL PROPERTY INVENTORY CONTROL FORM

Grantee/Subgrantee Name:	Date:
Brief Description of Property:	
Location of Property:	
Serial Number:	Date of Purchase:
Purchase Price:	Condition: ( ) New ( ) Used
Vendor Name & Address:	
Signature of Grantee/Subgrantee Property Officer	Date:

FOR EMPLOYMENT TRAINING DIVISION USE ONLY		
Tag #	EMPLOYMENT TRAINING DIVISION approval letter on file? ( ) Yes ( ) No ( ) N/A	Date of Letter:
On-site verification date:	Property Mgr's. Name:	Initials:
Comments:		

EMPLOYMENT TRAINING DIVISION GRANT ADMINISTRATION OFFICE
Date received by EMPLOYMENT TRAINING DIVISION
Signature of EMPLOYMENT TRAINING DIVISION Property Officer:
Comments:

ATTACHMENT C

REPORT OF LOST, STOLEN, OR DAMAGED NONEXPENDABLE PERSONAL PROPERTY

Attachment B

STATE OF MISSISSIPPI
WORKFORCE INVESTMENT ACT
COMPREHENSIVE PROPERTY INVENTORY

Grantee/Subgrantee_____ Date: _____ Date of Last Physical Inventory: _____

A complete property listing of all items with a **value of $5,000.00 or more and a useful life of one year or longer** must be maintained. The list must include all items purchased with funds from programs administered by the Employment Training Division.

Description	Serial Number	Tag Number	Cost of Property	Purchase Date	Title Holder	% Of Federal Funds	Specific Location of Property	Use & Condition of Property	Disposition

1. I certify that the above property inventory list contains all property having a value of $5000.00 or more where DOL reserves the right to take title. This list includes property purchased under the Job Training Partnership Act and Workforce Investment Act.

_____ _____ _____
Authorized Signature Typed Name and Title Date

2. I certify that no property having a value of $5000.00 or more was purchased with federal funds. Therefore, we (grantee/subgrantee) have no further obligation to DOL. This list includes items purchased under the Job Training Partnership Act and Workforce Investment Act.

_____ _____ _____
Authorized Signature Typed Name and Title Date

ATTACHMENT D

REPORT OF EXCESS/UNSERVICEABLE NONEXPENDABLE PERSONAL PROPERTY

Attachment C

STATE OF MISSISSIPPI
WORKFORCE INVESTMENT ACT
Report of Lost, Stolen, or Damaged Nonexpendable Personal Property

Grantee/Subgrantee Name					
Location of property at time of loss:					
Description of Property from Employment Training Division WIA Inventory Listing	Employment Training Division Tag #	Serial #	Acquisition Date	Acquisition Cost	Condition of Equipment

DETAILS OF INCIDENT
Type of Incident: ( ) Theft ( ) Fire ( ) Accident ( ) Other (indicate)
Explain the circumstances associated with the loss, indicating date, time, and person's name discovering the loss: (attach additional pages if needed)
Was the property loss covered by insurance? ( ) Yes ( ) No (If yes, indicate insurance carrier, policy number, and intent to replace)
If the loss was uninsured, how will the loss be financially repaid?
Signature of Grantee/Subgrantee Property Officer: Date:

Attach Police, FBI, or Fire Dept. Report

EMPLOYMENT TRAINING DIVISION USE ONLY: PROPERTY MANAGER COMMENTS

Attachment D

STATE OF MISSISSIPPI
WORKFORCE INVESTMENT ACT
REPORT OF EXCESS/UNSERVICEABLE NONEXPENDABLE PERSONAL PROPERTY

Grantee/Subgrantee Name:

Location of property:

Description of Property from Employment Training Division WIA Inventory Listing	Employment Training Division Tag #	Serial #	Acquisition Date	Acquisition Cost	Condition of Equipment

Signature of Grantee/Subgrantee Property Officer: Date:

EMPLOYMENT TRAINING DIVISION USE ONLY: OPERATION SUPERVISOR'S RECOMMENDATION FOR DISPOSITION

Supervisor's Signature: Date:

Policy Number 22. Requirements for WIA Financial Reporting.

I. SCOPE AND PURPOSE

This policy sets forth the standards for Workforce Investment Act (WIA) financial reporting. This policy shall ap-ply to all subrecipients, i.e. local workforce investment areas (LWIAs), and contractors receiving WIA funds. Each local workforce investment area is encouraged to adopt a similar policy to address specific local policies, procedures and needs. Such policy should be shared with contractors.

II. REQUIREMENTS

A. Regulatory Requirements

The WIA regulations at 20 CFR 667.300 provide the following requirements to the states.

"What are the reporting requirements for Workforce Investment Act programs?

(a) General. All States and other direct grant recipients must report financial, participant, and performance data in accordance with instructions issued by DOL. Required reports must be submitted no more frequently than quarterly within a time period specified in the reporting instructions.

(b) Subrecipient reporting.

(1) A State or other direct grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients. However, the recipient is required to meet the reporting requirements imposed by DOL.

(2) If a State intends to impose different reporting requirements, it must describe those reporting requirements in its State WIA plan.

(c) Financial reports.

(1) Each grant recipient must submit financial reports.

(2) Reports must include any income or profits earned, including such income or profits earned by subrecipients, and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. (WIA sec. 185(f)(2))

(3) Reported expenditures and program income, including any profits earned, must be on the accrual basis of ac-counting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must

develop accrual information through an analysis of the documentation on hand.

(d) Due date. Financial reports and participant data reports are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

(e) Annual performance progress report. An annual performance progress report for each of the three programs under title I, subpart B is required by WIA section 136(d).

(1) A State failing to submit any of these annual performance progress reports within 45 days of the due date may have its grant (for that program or all title I, subpart B programs) for the succeeding year reduced by as much as five percent, as provided by WIA section 136(g)(1)(B).

(2) States submitting annual performance progress reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions may be treated as failing to submit annual reports, and be subject to sanction. Sanctions related to State performance or failure to submit these reports timely cannot result in a total grant reduction of more than five percent. Any sanction would be in addition to having to repay the amount of any incentive funds granted based on the invalid report.

Training and Employment Guidance Letter Number 16-99, Change 1 issued November 6, 2002 defines accrued expenditures for the purpose of the State's required financial reports as "the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, plus: net increase or decrease in the amounts owed by the state grant recipient for goods and other property received; for services performed by employees, contractors, subgrantees, and other payees, and other amounts becoming owed for which no current services or performance is required, such as, annuities, insurance claims, and other benefit payments."

B. Definitions

1. Accrual Accounting -- Transactions are counted when they happen regardless of when the money is actually received or paid. All reported WIA expenditures and program income, including any profits earned, must be on the accrual basis of accounting and cumulative by program year funding allocation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual information through an analysis of the documentation on hand.

2. Accrued expenses/expenditures -- A debt that has been incurred or has accumulated over a period of time and must be paid but has not yet been paid. The

charges incurred during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) Services performed by employees, contractors, subrecipients, and other payees; and, (c) Other amounts becoming owed under programs for which no current services or performance is required.

Example: A local fiscal agent contracts with an entity to provide individual training accounts (ITAs) for WIA customer. Each contractor must institute an accrual based accounting system to manage the program and report accrued expenditures according to the requirements of the WIA and its regulations as follows:

1) When an ITA is written, the contractor notes the standard cost of the course as an obligation.

2) When the contractor confirms that the customer has reported to training, the contractor enters the standard costs of the training as an accrued cost. These costs are reported to the fiscal agent as an accrued expenditure. The fiscal agent may require the contractor to separate and identify costs as actual cash outlays and accruals.)

(Note: The local areas must define standard costs for training. Allowable definitions of standard costs of training may include but are not limited to either of the following:

-- The total amount required for the individual to complete the training program if no incremental payment policy or refund policy applies; or

-- The total amount required for the individuals to participate in the training during that program year. Additional costs to be made for training in the next program year(s) should be reported as an obligation; or

-- The incremental amount necessary to reach a required payment threshold. The incremental accrual must be man-aged and recorded at the appropriate time. Example: A six-month training program costs a total of $ 2,400. The applicable refund policy that allows for the following:

Display Table

(According to this procedure, accruals would be recorded on the 1st, 21st, 61st, and 81st day of training.)

3) The contractor shall maintain up-to-date records of obligations, accruals, cash expenditures, and available funds.

3. Cash Accounting -- Income is counted when cash (or a check) is actually received and expenses are counted when actually paid. Subrecipients and contractors may not use cash accounting systems to report WIA expenditures.

4. Contract -- A procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

5. Contractor -- An organization or person who provides a service or services to a subrecipient on a contractual ba-sis, and for said service(s) receives financial compensation from the subrecipient as part of that contract. For the purpose of WIA in Mississippi, contractors are any person or group that enters into a contract to receive WIA funds for providing services to the State, a local workforce area and/or applicable fiscal agent, or another WIA contractor.

6. Expenditures or Outlays -- Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

7. Program Year Allocation -- The initial year in which the funds were allocated to the local area or the program year or grant identifier noted in the contract.

8. Recipient -- An organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. For the purpose of WIA in Mississippi, the recipient is the Mississippi Development Authority.

9. Subrecipient -- The legal entity to which a subaward is made and which is accountable to the recipient for the use of funds provided. For the purpose of WIA in Mississippi, subrecipients are the local workforce areas grant recipients and/or applicable fiscal agents.

C. Local Area Reporting Procedures Requirements Each subrecipient shall have written financial reporting procedures and processes in place to ensure the timely and adequate reporting of both internal and external (contractor's) expenditures.

1. Definitions - Such procedures shall clearly define and describe:

   a. What is to be considered accrued expenses and when and how such expenses should be reported; and

   b. What is to be considered the standard cost of training or other such activity.

2. Documentation - Such procedures and processes may require the submission of documentation to illustrate cash and accrued expenditures. A sample expenditure documentation form is attached. The local area may use this form or may develop its own form for this purpose.

3. Monitoring -- The subrecipient should have procedures to monitor contractors to ensure the use of accrual basis accounting.

4. Sanctions -- The subrecipient may impose sanction on contractors that do not uniformly use accrual basis ac-counting procedures. Such sanction may include but not be limited to deobligation or reduction in available funds or contract termination.

D. State Reporting Procedures Requirements

Local areas shall submit periodic and annual financial reports in a manner and in such a time as prescribed by ETD.

III. EFFECTIVE DATE

This policy shall be effective immediately.

ATTACHMENT

SAMPLE EXPENDITURE DOCUMENTATION FORM

EXPENDITURE DOCUMENTATION SUMMARY

Contractor Name:

Contractor Address:

Contract Number:

WIA Funding Source: WIA Adult PY2002

For the Period Ending:

Display Table

Policy Number 23. Local Area Transition Provisions for the Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004.

I. SCOPE AND PURPOSE

The Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004 requires changes in the existing Workforce Investment Act system. In order to provide for the orderly transition from six to four local work-force investment areas for provision of Workforce Investment Act activities, the following procedures apply to the local workforce areas and to their subcontractors. Additional guidance on transition matters may be provided in administrative instructions or on a case-by-case basis. The provisions in this document are operational until the transition is complete. The transition period will end on September 30, 2004 unless otherwise stated. The intent of the transition period is to complete, to the extent possible, activity begun on or before June 30, 2004 under current policies and regulations and to ensure that all requirements mandated by the WIA are completed.

II. STATE ACTIONS

The State will take the following action:

A. Appoint a State Workforce Investment Board;

B. Issue applicable closeout and transition provisions;

C. Develop standards for transition agreement between applicable WIA Local Workforce Investment Areas (LWIA);

D. Provide technical assistance to local areas during negotiation of transition agreements and closeout packages.

E. Certify Local Workforce Investment Boards;

F. Review and revise current policies, practices, procedures, and delivery systems to ensure that they conform to the requirements of the WIA;

G. Ensure that local boards submit transition plans to describe necessary transition and/or closeout activities;

H. Develop and submit a revised WIA State Plan;

I. Issue instructions necessary to implement Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004 activities; and

J. Deobligate and obligate carryover funds from the Gulf Coast Area to Southeast Area and the Hinds County Area to the Southwest Area.

III. TRANSITION AND IMPLEMENTATION.

A. Review

The State shall conduct a comprehensive review of the current policies, procedures, and delivery systems relating to programs authorized under the Workforce Investment Act for the purpose of ensuring effective integration with the Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004. Such a review shall include consideration of cost limitations, procurement, performance review and other relevant matters.

B. Transition Plans

Affected local areas, Hinds County/Southcentral Mississippi Works and Gulf Coast/Twin Districts, will jointly develop and implement transition plans. At a minimum, each plan will address:

1. Planned program closeout and startup time schedule;

2. Procedures for the orderly transition of program participants, including the exchange of participant files and MIS data;

3. Estimated staffing needs for closeout activities;

4. Procedures to identify preliminary transfer of unspent/unobligated available funds;

5. Procedures for subcontractor closeout;

6. Procedures for the inventory and disposition of equipment and property;

7. Procedures to ensure adequate records retention;

8. Arrangements to pay for audits;

9. Procedures for handling complaints and grievances after June 30, 2004;

10. Procedures for handling initial and interim local board, Elected Official Board and Workforce Investment Board, activities prior to full implementation;

11. Budget(s) for completing closeout activities; and

12. Primary closeout and/or transition contact person(s) from each organization.

C. Participants

1. Participants currently enrolled in WIA activities in the Gulf Coast and Hinds County Workforce Areas will be transferred into the applicable receiving area. The receiving area may request adjustment to performance measures to accommodate the acquired participants.

2. The Gulf Coast and Hinds County Workforce Areas must have procedures in place to stop enrollments in a timely and fiscally efficient manner.

3. The Gulf Coast and Hinds County Workforce Areas must have procedures in place for the orderly transfer of participant files.

D. Cost Limitations

In determining compliance with the WIA cost limitations for the Gulf Coast and Hinds County Workforce Areas, the State will determine cost limitation compliance at closeout.

F. Grievances, Investigations, and Hearings

Grievances, investigations, and hearings occurring on or after the completion of transition activities will be governed by the procedures of the receiving area.

G. Information Sharing

Other transition issues may be provided in a series of transition guidance issuances. Such issuances will be sequentially numbered and shall be maintained in a separate file. All questions related to procedures, policies or the Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004 should be submitted to the Employment Training Division in writing (letter or email). Any questions received on a specific subject will be responded to in writing. The Employment Training Division Plans to provide information and answers to interested parties via the www.mississippi.org website administrative page.

H. Instructions for Closeout and Transition

Specific instruction for closeout and transition of the Workforce Investment activities as a result of the Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004 are attached.

IV. IMPLEMENTATION

A. The Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004 shall be fully implemented by December 31, 2004.

B. The Gulf Coast and Hinds County Local Workforce Areas shall cease providing services to WIA participants no later than June 30, 2004.

C. The grant recipients for the Gulf Coast and Hinds County Local Workforce Areas shall complete fiscal closeouts and applicable transfer of property and files by September 30, 2004.

V. EFFECTIVE DATE

This policy is effective immediately upon signature.

Policy Number 24. Incentive Grants for Community/Junior Colleges.

I. SCOPE AND PURPOSE

The Mississippi Comprehensive Workforce Training and Education Act of 2004, Section 4(3)(g), authorizes one-time incentive grants through Local Workforce Investment Boards to Mississippi Community/Junior Colleges using Workforce Investment Act (WIA) funds. The purpose of this policy is to establish terms and conditions for these incentive grants.

A one-stop operator is defined as:

A. A part of a consortium of partner entities that may manage the center's facility, may market center services to businesses and job seekers, may seek out and manage center resources and may provide one or more core and intensive services. A one-stop consortium may allocate operator responsibilities among the consortium partners as they see fit.

Or

B. A single entity competitively procured by the Local Workforce Investment Board to run a full- service or specialty center.

To fulfill the requirements of the Mississippi Comprehensive Workforce Training and Education Act of 2004, Section 4(3)(g), allowable activities as determined by the local board that may include:

-- Coordination costs and costs associated with WIN Job Center operation;

-- Delivery of one or more job seeker core services within a WIN Job Center;

-- Delivery of one or more intensive services to eligible, enrolled WIA adults and dislocated workers;

-- Development and delivery of specialized, high business demand training to eligible, enrolled WIA adults and dislocated workers;

-- Operation of a WIN Job Center offering advanced skills or technology training or otherwise offering a customized package of services to an occupational sector; and/or

-- Other innovative, demand-driven, WIA allowable activities will be considered on a case-by.case basis.

To implement this policy, local areas may submit the locally approved grant application or may provide planning grants to the community/junior colleges to research one-stop operator options and determine the most suitable application.

II. INCENTIVE GRANT REQUIREMENTS

A. Available Funds

1. Each of the four Mississippi Local Workforce Investment Areas (LWIAs) may request a Community/Junior College Incentive Grant (CIG) of up to $ 200,000, including planning grants, for each Community/Junior College who is either:

   a. Part of a consortium that operates one or more WIN Job Centers and whose College district is wholly or partially within the LWIA's boundaries, or

   b. The competitively procured operator of the WIN Job Center.

2. All CIG funds received by the four LWIAs shall be subgranted to appropriate Community/Junior Colleges.

3. No College may receive more than $ 200,000 even if its district is in more than one LWIA.

4. In the case of a split district, one LWIA may request the full $ 200,000 or two or more LWIAs may request a lesser amount, so long as the $ 200,000 per college limit is not exceeded.

5. The local area may use local funds or the Employment Training Division may authorize the LWIAs to use part of the available incentive to provide planning grants to assist Colleges in developing a plan and the systems necessary to become an operator. Requests to the ETD for funds must address or comply with the following.

   a. LWIAs should request funding for the planning grants from the Employment Training Division no later than October 1, 2004. The requests should identify the Community/Junior College to receive the planning grant and the amount to be provided.

   b. Planning grants may be for up to $ 25,000 per community college.

   c. Planning grant requests must address split districts.

   d. Planning grants may be for up to a three-month duration.

   e. Planning grants activities should begin no later than November 1, 2004.

6. Special Circumstances

   These funds are available for local areas that may already have a Community/ Junior College serving as a one-stop operator under the following conditions:

   a. These funds are not used to duplicate or supplant existing activities;

   b. The local board determines or approves the additional or new activities; and

c. The local area submits a grant application according to the procedures outlined below.

The State encourages the local area to use these funds to provide additional direct participant services such as class-room training and on-the-job training.

B. Grant Application

Each LWIA shall submit a written request for the one-time incentive as follows:

1. Shall be submitted to:

Mississippi Development Authority

Employment Training Division

Attn: Wanda Land

Post Office Box 24568

Jackson, Mississippi 39225-4568

2. May be received immediately.

3. Must be received by the Employment Training Division by January 15, 2005;

4. Must be reviewed and approved by the applicable College and the Local Workforce Investment Board (LWIB) prior to submission;

5. Must be for allowable adult and dislocated worker costs and activities pursuant to the Workforce Investment Act of 1998 (WIA);

6. Must specify if the College is a member of the consortium or is a competitively procured operator;

7. Must describe the activities and services to be provided;

8. Must include a budget plan to include but not be limited to the following:

a. Administration Costs:

(1) Staff

(2) Other (Specify)

b. Program Costs:

(1) Staff

(2) Training

(3) Support Services

(4) Other (Specify)

9. Must comply with CIG instructions issued by the Mississippi Development Authority (MDA). Separate applications should be submitted by a LWIA for each College; and

10. For split Community/Junior College Districts, must address the status of service in counties included in another area or other areas.

C. Allowable Grant Activities

All CIG activities must be permitted by WIA and by United States Department of Labor and State of Mississippi rules, regulations, plans, policies and procedures. Allowable CIG activities include, but are not limited to, any or all of the following items:

1. Coordination costs and costs associated with WIN Job Center operation

a. The center operator must be approved by the LWIB in accordance with WIA and local procedures.

b. The operator may be a single competitively procured entity or a non-competitively designated consortium. (To date, LWIA's have chosen to designate consortia that include Community/Junior Colleges.)

c. The operator may manage the center's facility, may market center services to businesses and job seekers, may seek out and manage center resources and may provide one or more core and intensive services.

d. A description of operator tasks to be performed by the College must accompany the CIG application.

2. Delivery of one or more job seeker core services within a WIN Job Center

a. Core services are listed in 20 CFR 662.240(b) of the WIA regulations (Attachment 1 to this policy)

b. Core services that may be of particular interest to Colleges include initial assessment, providing information and counseling on training and educational opportunities and helping customers to access financial aid.

c. A description of core services to be performed by the College must accompany the CIG application.

3. Delivery of one or more intensive services to eligible, enrolled WIA adults and dislocated workers

a. Intensive services are listed in WIA Section 134(d) (3) (Attachment 2 to this policy).

b. Intensive services that may be of particular interest include comprehensive and specialized assessments, counseling and career planning and short-term prevocational services or “soft skills.”

c. A description of intensive services to be performed by the College must accompany the CIG application.

4. Development and delivery of specialized, high business demand training to eligible, enrolled WIA adults and dislocated workers.

a. Training is listed in WIA Section 134(d) (4) (Attachment 3 to this policy).

b. Training of particular interest includes workplace literacy, vocational English as a second language, job readiness training, open entry/open exit training in advanced technology or high skill areas, customized training and entrepreneurial training.

c. Training may either be delivered by including an existing course offering on the Mississippi Eligible Training Provider List, charging costs based upon the going catalogue tuition rate as eligible students sign up for courses, or by developing one or more group sized courses in a high demand area, charging actual, allowable costs for course creation and delivery.

d. A description of specialized training to be delivered by the College must accompany the CIG application.

5. Operation of a WIN Job Center offering advanced skills or technology training or otherwise offering a customized package of services to an occupational sector

a. Examples include a health careers center, an automotive careers center, a small business development center, a customer service careers center, and other high employer demand occupations.

b. The CIG application may only seek center costs to the extent center customers become enrolled in the WIA adult or dislocated worker programs.

c. The LWIB must certify the center as a comprehensive or specialty site.

d. Certification may be contingent upon receipt of CIG funding and successful subsequent start.up.

e. A description of the WIN Job Center that the College will operate must accompany the CIG grant application.

6. Other innovative, demand-driven, WIA allowable activities will be considered on a case-by.case basis.

D. Allowable Grant Costs

All CIG costs must be allowable WIA adult or dislocated worker costs as determined by applicable Federal cost circulars, by Federal, State and local rules, policies and procedures, and by the terms of the CIG grant and subgrant agreements. OMB Circular A-21 applies specifically to colleges. Any disallowed CIG costs must be repaid from non-Federal fund sources.

CIG costs must be reasonably priced relative to market rates and must be properly allocated to the extent line items benefit other Federal, State or local programs or initiatives. For example, if a given specialized training program has an enrollment of 40 trainees, 30 of whom are enrolled WIA adults or dislocated workers, a maximum of 75% of the training program's allowable costs may be billed to the CIG grant.

A detailed budget listing all proposed CIG costs must accompany the application.

III. EFFECTIVE DATE

This policy is effective 30 days after filing with the Secretary of State and signature.

ATTACHMENT 1

WIA CORE SERVICES

There are two levels of core services, unassisted and assisted, available through the WIN Job Centers to eligible individuals who are adults or dislocated workers.

UNASSISTED CORE SERVICES

The following core services are general and are services provided without significant assistance from WIN Job Center Staff. If core services are provided as stand-alone services, the individual may not be registered in the WIA participant tracking system. Unassisted Core Services include the following:

-- Outreach, intake (which may include worker profiling), orientation to the services available through the One-Stop system;

-- Initial assessment of skill levels, aptitudes, abilities, and supportive services needs;

-- Job search and placement assistance, either individually or in groups through the Job Information Service (JIS), the Professional Placement Network (PPN), computerized file search, and, where appropriate, career counseling;

-- Provision of local, state and national employment statistics information, including:

* Accurate information relating to local, regional and national labor market areas such as job vacancy listings in such labor market areas,

* Information on the job skills necessary to obtain the jobs, and

* Information relating to local occupations in demand and the earnings and skill requirements for such occupations;

-- Provision of performance information and program cost information on eligible providers of training services;

-- Provision of information regarding how the local area is performing on the local performance measures and any additional performance information with respect to the WIN Job Center delivery system in the local area;

-- Provision of accurate information relating to the availability of supportive services, including child care and transportation, available in the local area and referral to such services as needed;

-- Provision of information regarding filing claims for unemployment compensation;

-- Assistance in establishing eligibility in programs of financial aid assistance for non-WIA training and education;

-- Resource room usage, Internet browsing, Internet accounts; and

-- Other Services as determined by the local workforce investment area.

ASSISTED CORE SERVICES

An assisted core service is individualized help that goes beyond general information or self-service. These customers should be entered into the WIA participant tracking system. Assisted Core Services include but are not limited to the following:

-- Individual job development;

-- Job clubs;

-- Screened/assisted referrals (testing and background checks done before referral or when operating as the employer's agent in order to fill job orders);

-- Follow-up services, including counseling regarding the workplace, for participants in WIA activities who are placed in unsubsidized employment for not less than 12 months after the first day of employment as appropriate; and -- Adult and dislocated worker eligibility determination under WIA prior to referral to intensive services.

ATTACHMENT 2

WIA INTENSIVE SERVICES

Adults and dislocated workers who are unemployed or underemployed and who have not obtained employment through core services may be referred to intensive services for additional placement services. When intensive services are received, a participant is considered registered in WIA and will be followed-up for performance measurement purposes. Intensive Services include but are not limited to the following:

-- Comprehensive, specialized objective assessment of the skill levels and service needs of adults and dislocated workers which may include:

  * Diagnostic testing and use of other assessment tools, and

  * In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

-- Development of an individual employment plan;

-- Group counseling;

-- Individual counseling and career planning;

-- Case management;

-- Short-term prevocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for unsubsidized employment or training; and

-- Stand-alone adult education and literacy training.

ATTACHMENT 3

WIA TRAINING SERVICES

Adults and dislocated workers who do not obtain employment following intensive services may be referred to training in order for these individuals to secure employment. The training must be directly linked to occupations in demand in the area or another area if the individual is willing to relocate. Training Services include but are not limited to the following:

-- Occupational skills training, including training for nontraditional employment,

-- On-the-job training,

-- Programs that combine workplace training with related instruction, which may include cooperative education pro-grams,

-- Training programs operated by the private sector,

-- Skill upgrading and retraining,

-- Entrepreneurial training,

-- Job readiness training,

-- Adult education and literacy activities provided in combination with training described above, and

-- Customized training conducted with the commitment of an employer or group of employers to employ an individual upon successful completion of the training.

Policy Number 25. High Growth/High Demand Training Policy.

I. SCOPE AND PURPOSE.

At Section 134(d)(4)(G)(ii)(II) the Workforce Investment Act (WIA) allows local boards to contract for group-sized training classes when there is "an insufficient number of eligible providers" on the statewide eligible training provider list to meet demand. Mississippi is a predominantly rural state that is experiencing rapid economic and workforce changes. It is essential that local workforce areas use this option to increase the supply of training in high growth/high demand areas. The presumptive high demand/high growth occupations shall be the most up-to-date Fastest Growing, Most Openings, and Largest Employment lists of overall occupations included for Mississippi by the Department of Labor at the America's CAREERInfoNet website at:

http://www.acinet.org/acinet/statel.asp?soccode=&from=&Level=&keyword=&stfips=28&x=32&y =4.

The local area may refine these lists to reflect only occupations requiring post-secondary training or an associate's degree as appropriate. Other occupations may be targeted as indicated by local labor market information or other reli-able sources. The short-term goal is to significantly increase the number of Mississippians trained using WIA resources.

Local workforce areas are encouraged to work with local public Community/Junior Colleges immediately to create and contract for group-sized training in at least three areas identified by the local board as high growth/high demand occupations.

II. REQUIREMENTS.

A. Identifying Local High Growth/High Demand Training Opportunities

Local areas should meet with local college, business and economic development representatives as soon as possible to identify, at a minimum, three occupational areas in high demand or with high growth potential for which demand is expected to exceed the projected supply of trainees. Group-sized training should be created as quickly as possible to bridge the gap.

B. Training Format High growth/high demand training should, to the extent possible, be open entry/open exit, offer full-time and part-time trainee options, connect to other courses and programs, offer credentials and certificates tied to employer expectations and offer internships and other work based learning options. Training should be prominently featured in the WIN Job Centers and marketed aggressively.

The intent of this policy is to meet immediate or forecasted training needs in the local area. It is not its intent to establish or maintain training programs indefinitely. Local areas should consider and address sustainability issues during the planning process.

C. Training Costs

Allowable training creation and delivery costs may be paid by local WIA allocations, by Community/Junior College Incentive Grants (CIGs) Policy - Number 24 or by other sources. If local funds are inadequate, additional funding may be requested from the Mississippi Development Authority (MDA). Requests will be dealt with on a case-by-case basis as funding allows. Requests to MDA should include but not be limited to:

1. A description of the proposed training to include the occupations trained for and the unique or flexible features to be included;

2. Documentation of the high demand or the high growth potential for the occupation;

3. The projected length of the training and number of cycles the class will be operated;

4. The approximate total budget to operate the class, local contributions and sources, and amount requested from the State; and

5. Documentation of approval of the request by the local workforce investment board.

D. Procurement

Local workforce areas should pursue contracts with local public Community/Junior Colleges to create group-sized training in high growth and high demand occupations as soon as possible. Therefore, these contracts may be procured through the sole-source method based on the public community/junior colleges' specific qualifications for performing training that make them superior over others so that no substitute will suffice. This sole-source approval does not relieve the local areas of the obligation to ensure that costs are reasonable, necessary and allowable.

E. Accountability

Local areas will be measured quarterly and annually on the number of participants who enter and complete all types of training, including on-the-job training (OJT) and other types of training listed in § 134(b)(4)(D) of the WIA. Each local workforce area is expected to significantly increase the number of individuals trained annually. Program Year 2003, July 1, 2003 through June 30, 2004 is the baseline against which progress will be measured.

The creation of high growth/high demand options is important to the State's economy and to meeting the State and the Department of Labor's goals for increasing training services. At least one new group sized high growth/high demand training option should be operational and ready to accept trainees by February 1, 2005. At least two additional high growth/high demand options should be operational by April 1, 2005. Quarterly performance reports submitted by the local areas should describe the progress made toward meeting this goal. Technical assistance may be provided during the coming year focusing upon expanding the supply and usage of WIA funded training.

SECTION III. EFFECTIVE DATE.

This policy is effective immediately.

Policy Number 26. On-the-Job Training and Customized Training Policy.

I. SCOPE AND PURPOSE.

The purpose of this policy is to provide the Local Workforce Investment Boards (LWIBs) guidance and procedures to facilitate the development of On-the-Job-Training (OJT), Customized Training (CT), and other employer-based training or wage subsidized activities for Adults and Dislocated Workers. References:

-- Workforce Investment Act (WIA) of 1998 (Pub.L.105-220), particularly sections 101(8) and 101(31)

-- Federal Register 20 CFR Part 652 et al, Workforce Investment Act Final Rules, particularly sections 663.700 through 663.730

-- Mississippi State Policy Number 10, Revision 1, Waivers and Work-flex, which allows increased OJT and CT flexibility

II. REQUIREMENTS.

Each Local Workforce Investment Area is required to develop OJT and CT policies and procedures that address meeting the needs of employers and workers and promote development of a skilled workforce. From time to time, the Mississippi Department of Employment Security (MDES) or the local areas may request and be granted waivers applicable to OJT and CT. Those waivers may override this policy.

A. Definitions

1. On-the-Job Training (OJT) is defined in WIA sect. 101(31). It is employment with a public, private, or nonprofit employer that:

   a. Includes a good faith expectation of continued employment of an individual upon successful completion of the training;

   b. Provides knowledge and skills essential to the full and adequate performance of the job;

   c. Provides reimbursement to the employer for up to 50% of the participant wage amount, which is deemed to be compensation for training, additional supervision and lower productivity related to the training; and

   d. Is limited in duration, as appropriate to the occupation for which the participant is being trained, taking into ac-count the training content, the participant's prior work experience, and the participant's service strategy.

2. Customized Training (CT) is provided by an employer or an employer selected vendor and meets the following criteria:

a. Is occupational or industry-specific training designed to meet the special requirements of an employer or a group of employers;

b. Includes a commitment by the employer to employ or to continue to employ an individual upon successful completion of the training;

c. Requires that the employer pay for not less than 50% of the cost of training; and

d. Relates to the introduction of new technologies, production procedures or service procedures; provides additional skills required to upgrade to new jobs; or provides other training based on a case-by-case assessment of need, given local policies regarding priority of services.

B. Eligible Participants

A good candidate for OJT or CT is an eligible WIA participant who is appropriate for long-term employment in a particular industry or occupation, but does not have all of the skills or the experience to qualify for, retain employment in, or advance in the field. Participants placed in an OJT or customized training position should also be appropriate for long-term employment with the particular company providing the placement.

Approval of an eligible participant for subsidized OJT or CT is contingent upon unemployment or underemployment as defined by the Local Workforce Investment Board.

C. Appropriate Employers

Employers must be willing to work closely with program staff and notify them if issues or problems occur. Employers need to have some flexibility in working with participants who have issues that may be barriers to employment (transportation, childcare, personal adjustment problems, etc.) The service provider will help address these issues throughout the OJT period and, in some cases, into long term employment.

OJT and CT funds cannot be used to encourage or induce the relocation of an employer that results in the loss of employment of any existing employee in the United States. Further, if a relocating employer expands its operations, a LWIB cannot approve an OJT or CT request from the employer for the first 120 days of operation after relocation, if the relocation has resulted in loss of employment for an existing employee at the original United States location.

D. Pre-Award Review

The pre-award review must include knowledge of:

1. Names under which the establishment does business;

2. The name, title, and address of the company official authorized to sign the OJT contract;

3. Whether WIA assistance is sought in connection with past or impending job losses at other facilities;

4. Whether wage payments can be easily verified; and

5. Workers' compensation or equivalent coverage permitted by Mississippi law.

E. Subsidy Limits

Subsidy for an OJT or CT position is limited to 50 percent of total wages paid during the training period (OJT only) or 50 percent of the training costs paid by the employer (CT). Please refer to Mississippi State Policy Number 10, Revision 1, Waivers and Work-flex, which allows changes to the subsidy percentage in certain circumstances and for a set time frame.

Payments to employers are considered compensation for the extra cost associated with developing and implementing training and for initially reduced productivity of participants. The actual time spent by the supervisor on training need not be documented. The training content need not be different than that offered to other, unsubsidized employees. The OJT reimbursement request need not include a calendar, hours worked, or differentiation between regular, over-time, holiday, or sick pay.

F. Period of Reimbursement The period of reimbursement must be limited to the period of time required for a participant to become proficient in the occupation for which training is being provided. In determining the appropriate length of an OJT or customized training position, local areas should consider:

-- The skill requirements of the occupation,

-- The skill level of the participant,

-- The participant's prior work experience, and

-- Barriers shown in the participant's Individual Employment Plan.

Local areas may choose to set specific time limits for the duration of OJT and CT. An OJT or CT position may be extended as deemed reasonable.

G. Workers' Compensation

The employer is required to cover all approved OJT and CT participants with workers' compensation insurance or an equivalent.

H. Employer Pattern of Failure

Requests from an employer who has exhibited a pattern of failing to provide OJT or CT participants with continued long-term employment should not be approved until corrective action has occurred. The local area should adopt a policy or procedure defining "failure" and the process to be followed when a failure situation occurs.

I. Contracts

OJT and CT contracts should, at a minimum:

1. Identify the occupation, skills and competencies to be learned;

2. Specify the length of training time provided;

3. Define what constitutes successful completion of training;

4. Identify the percentage rate used for reimbursement to the employers;

5. Identify the employer's cost for training (CT only); and

6. Contain or reference required assurances.

J. Evaluation of Employer and Trainee Progress Local areas or service providers should evaluate approved OJT and CT contracts regularly. Evaluation requires a meeting with the employer and the trainee(s) to review work performance and/or training progress. In addition, the OJT/CT evaluator should review payroll records (OJT only) and CT cost documentation.

K. Method of Reimbursement

Local areas should have in place reimbursement procedures for OJT and CT contracts and should provide that in-formation to employers.

SECTION III. EFFECTIVE DATE.

This policy is effective immediately. It will remain in effect until rescinded or replaced.

Policy Number 27. Relocation Assistance for Hurricane Katrina -WIA National Emergency Grant Policy.

I. SCOPE AND PURPOSE

20 CFR 663.220 of the Workforce Investment Act (WIA) allows funds allocated to a local area to be used for the provision of intensive services to adults and dislocated workers. Further, the Workforce Investment Act recognizes the need to assist participants in obtaining services and training and retaining employment. Consequently, WIA funds may be used to provide needed intensive services to participants when the needed assistance is not available through non-WIA sources.

As a result of Hurricane Katrina which struck the Mississippi Gulf Coast on August 29, 2005, many of the State's citizens were displaced to other states and other regions in Mississippi. The Mississippi Department of Employment Security is working with Manpower Inc. and others to develop and implement a "Coming Home Portfolio." The portfolio provides resources to assist displaced individuals in coming home to Mississippi to be employed or to receive training necessary for employment or reemployment. One service recognized as essential to the success of the coming home process is relocation assistance. The purpose of this policy is to set forth the criteria for providing relocation assistance and to describe the reimbursement system and methodology. Relocation assistance will be provided to cover travel expenses including mileage and per diem (meals and accommodations).

II. REQUIREMENTS

A. Eligibility

WIA National Emergency Grant funded relocation assistance shall be available to participants who:

1. Were displaced by Hurricane Katrina, at a distance of more than 150 miles from the place of residence held on August 28, 2005; and

2. Are enrolled in the WIA program.

B. Determination of Relocation Assistance Needs and Requirements

Need for relocation assistance to assist individuals to return home and support their participation in NEG activities will be determined as follows:

1. Pre-Determination

Individuals who have been displaced as a result of Hurricane Katrina and who find their way to a WIA support One-Stop or a Manpower office will be provided information in the "Coming Home Portfolio" concerning the availability of relocation assistance to return to Mississippi or their home county prior to Hurricane Katrina. A Relocation Plan (see Attachment A) will be developed by

One-Stop or Manpower staff. The following information should encourage affected individuals to ensure the following prior to relocating:

a. Relocation was not available from other sources, and

b. Adequate affordable housing is available and/or secured, and

c. There is a valid job offer, or

d. There is training available in a demand occupation in which the individual can succeed.

One-Stop or Manpower staff will provide a completed Relocation Plan for the individual desiring to return to the Mississippi Gulf Coast to the appropriate WIN Job Center or a Reintegration Counselor Coordinator. Reimbursement will be made after the individual has returned to Mississippi and is enrolled in the WIA NEG program.

2. Post Relocation Determination

Individuals who have been displaced as a result of Hurricane Katrina and who return to the state or their pre-Katrina residence and find their way to a WIN Job Center within 30 days of returning may apply, and may be eligible to receive reimbursement for relocation expenses. See eligibility requirements below.

At WIA registration and at regular intervals thereafter, Manpower Inc. or WIN Job Center staff shall review the participant's needs to determine if additional supportive services are necessary.

The first option shall always be to refer the participant to other agencies or programs providing the needed services through non-WIA sources, such as FEMA or Red Cross.

C. Methodology Relocation assistance shall be limited to the following: A relocation allowance may be granted to a dislocated worker who was displaced by Hurricane Katrina, more than 150 miles from the place of residence held on August 28, 2005.

1. Requirements:

(a) Request for relocation assistance must be made at the local One-Stop/WIN Job Center or a Manpower Center. (See Attachment B)

(b) The individual must be enrolled in the WIA NEG program.

(c) A relocation allowance shall not be granted to more than one member of a family with respect to the same location.

(d) A determination must be made by the local One-Stop/WIN Job Center or Manpower Center that the individual is returning due to a bona fide job, job offer or approved training.

(e) Relocation must be completed within 10 days from receiving notice that allowances for relocation is approved.

2. Relocation Reimbursements:

(a) Request for reimbursement of travel expenses, including mileage and per diem (meals and accommodations), must be made within ten (10) days of arriving at the approved point of destination.

(b) The participant must certify that he/she relocated as a result of Hurricane Katrina. (See Attachment C)

(c) A debit card will be used for reimbursement payment in the following amounts based on distance traveled:

Display Table

III. EFFECTIVE DATE

This policy is effective April 1, 2006. It will remain in effect throughout the life of the Hurricane Katrina National Emergency Grant or until rescinded or replaced.

Attachment A

WORKING YOUR WAY BACK HOME

ACTION PLAN FOR HURRICANE KATRINA EVACUEE

(NAME)_____

The items checked below indicate the service options you have selected and that you are eligible to receive through the _____WIN Job Center upon your return to Mississippi for training and/or reemployment.

- ☐ Job placement assistance. What type of work are you interested in?
  _____.
- ☐ An Individual Training Account in the amount of _____ for training as a (an) _____. You have selected as your training provider _____. If you successfully complete the training, WIN Job Center staff will assist you with resume preparation and a job search to locate employment in your area or throughout Mississippi.
- ☐ Training in one of the State's high-growth, in-demand occupations via placement into a registered apprenticeship program. You have selected as your training provider _____.
- ☐ On-the Job Training (OJT) after placement into permanent employment with _____.
- ☐ Relocation expenses in the amount of _____. This payment will assist with expenses associated with travel, including meals, lodging, and mileage costs. The amount for which you qualify was determined using the following scale, based upon the distance you relocated from Mississippi:

Distance Traveled	Amount Allowed
151-200 miles	$100.00
201-400 miles	$200.00
401-600 miles	$400.00
601-800 miles	$500.00
801 miles or more	$700.00

You will be reimbursed for the above amount in the form of a debit card upon your return to Mississippi.

- ☐ Payments to assist with the costs associated with overcoming the challenges of participating in training and returning to work as a result of the devastation of the hurricane. NOTE: These payments will not necessarily provide enough money to meet all your needs, but will provide income support beyond what would otherwise be available through other sources, such as Unemployment Insurance (UI) compensation, Federal Emergency Management Agency (FEMA), Red Cross, etc. Payments will be based on your individual needs while in training programs and upon your return to work.

  Amount of payment(s) approved (if known): _____

Page 1 of 2

During consultation with the Hurricane Katrina evacuee, identify their additional needs in the areas listed below by checking the appropriate box. Enter the amount they indicate is needed and provide a brief explanation for each:

☐ $_____ per week for transportation costs:

_____
_____
_____
_____

☐ $_____ per week for child care assistance:

_____
_____
_____
_____

☐ $_____ for the following work related tools and equipment necessary for you to obtain and retain employment:

_____
_____
_____
_____

☐ $_____ reimbursement for testing/certification/registration fees for a Mississippi State Board exam or license to be able to work in the State in a specific occupation or industry as described below:

_____
_____
_____
_____

☐ $_____ per week for housing allowance:

_____
_____
_____
_____

☐ $_____ for other needs as specified below:

_____
_____
_____
_____

(Original to file. Fax/e-mail to WIN Job Center contact when evacuee/applicant reports to destination.)

Attachment B

WORKING YOUR WAY BACK HOME
RELOCATION ASSISTANCE REQUEST

Name:	Last	First	Middle Initial
Social Security Number:			
Contact Information:	Phone:		Name, if not same as applicant
Relocation Information			
Current Location:		New Location:	
Applicant's Signature: I certify that I do not have the following Relocation Assistance Options:			
Relocation Assistance Options:	FEMA Assistance: Yes_____ No _____ Red Cross Assistance: Yes _____ No _____ Other (Specify Family, Public Agency, etc): _____ WIA NEG: Yes _____ No_____		
Estimated Miles To New Location:			
Mode of Transportation:	Personal Vehicle	Public Carrier (Specify: Bus, Train, Air, Other)	
Reason for Relocation			
Job Offer:		Enter Training:	
Type of Job:		Type of Training:	
Name of Business:		Training Provider:	
Street Address:		Street Address:	
City State/Zip Code:		City State/Zip Code:	
Start Date:		Start Date:	
Contact for Verification:	Name:	Name:	
	Phone Number:	Phone Number:	
Verification of Housing (Check which one applies)			
FEMA Trailer	Public Housing	Personal Home	Other (Specify)
Date Housing Available:			

One-Stop/WIN Job Center Referral Contact:

Name: _____ Phone Number:_____

(Original copy to file. Copy to evacuee/applicant)

Attachment C

WORKING YOUR WAY BACK HOME
APPLICANT RELOCATION ALLOWANCE CERTIFICATION

Name:	Last Name	First Name	Middle
Social Security Number			

Address on August 28, 2005:	Address to which Relocated:

Documentation of residence for both addresses must be attached.

Relocation Dates

	Location	Date
Departed:		
Arrived:		

Applicant Certification: This is to certify that I resided at the above-referenced address in an area affected by Hurricane Katrina, lost my residence and had to relocate until housing was available at the address provided above. This certifies that as a result of these circumstances, I required the assistance described above upon my return to Mississippi for training and/or reemployment. I further certify that I am the only member of my household to receive reimbursement.

Name:	
Signature:	
Date:	
Current Address:	
Phone Number:	

WIN JOB CENTER CERTIFICATION

Total Distance Traveled: _____
Total Amount of Reimbursement Allowed: $_____

Employer/Training:

Authorized By:	
Signature:	
Date:	

Policy Number 28. Supportive Services Policy for National Emergency Grant Participants.

I. INTRODUCTION

Section 134(e)(2) of the Workforce Investment Act and the Hurricane Katrina National Emergency Grant (NEG) allow funds to be used for the provision of supportive services. Further,

the Workforce Investment Act recognizes the need to assist participants in obtaining services and training and retaining employment. Consequently, NEG funds may be used to provide needed supportive services to NEG eligible participants when the needed assistance is not available through non-NEG sources. Supportive services include assistance with transportation, child or dependent care, housing, and other necessities required for participation in NEG services and employment retention.

II. SPECIFICATIONS REQUIREMENTS

A. Determination of Supportive Services Needs

In section 101(46), WIA identifies supportive services as services "...that are necessary to enable an individual to participate in activities authorized under this title." At WIA registration and at regular intervals thereafter, WIN Job Center or other appropriate staff shall review the participant's needs to determine whether supportive services are necessary. The first option shall always be to refer the participant to other agencies or programs providing the needed services through non-WIA sources.

B. Eligibility for Supportive Services

NEG funded supportive services shall be available to participants while enrolled and on a limited basis as a follow-up service for up to one year after exit.

C. Supportive Services

NEG funded supportive services shall be limited to the following:

1. Fees: Test fees or costs related to licensure and/or certification resulting from completion of an approved training program.

2. Cash Financial Assistance Supportive Service Payments: Hurricane Katrina National Emergency Grant participants who are in school-based training and not receiving a wage may receive a cash financial assistance supportive service payment equivalent to $ 2.00 per hour for each hour of documented actual participation. Such assistance is deemed necessary to assist with incidental costs of attending the skills training such as housing or food. Participants shall not receive payments for any hours in which they do not actually participate.

3. Training Transportation Assistance: Hurricane Katrina NEG participants enrolled in the training may receive pre-paid gas cards based on the following schedule:

   Display Table

   Transportation assistance for the purpose of attending approved training will not exceed a maximum of 26 (twenty-six) weeks of training.

   Employment Transportation Assistance: NEG participants may receive pre-paid gas cards for the purpose of commuting to and from work to retain employment based on the transportation schedule described above.

   NEG participants may also participate in commuter transportation programs for the purpose of travel to and from work to retain employment. Van pool operators will be reimbursed based on its established monthly rate not to exceed $ 100 per week per participant.

   Transportation assistance for the purpose of commuting to and from work will not exceed a maximum of 26 (twenty-six) weeks.

4. Child Care Expenses: Hurricane Katrina NEG participants who need assistance with child care expenses in order to participate an NEG program may receive a weekly NEG child care voucher or payment as follows:

   Display Table

   Child Care assistance for the purpose of attending approved training will not exceed a maximum of 26 (twenty-six) weeks of training.

5. Clothing, Equipment, and Supplies: Hurricane Katrina NEG participants who require specific work-related clothing, equipment, tools, supplies or other necessary items in order to accept a valid job offer or to establish legitimate self-employment may be provided with the required items or reimbursed for the cost of such items up to a maximum of $ 1,000.

   A valid job offer is defined as a legitimate offer of employment verifiable through verbal or written communication with the prospective employer. Contact with the employer verifying the offer of employment shall be documented in the participant's file. Legitimate self-employment is defined as the establishment of a legitimate and legal business by an individual. Proof shall be provided by the participant that he/she intends to operate a legitimate and legal business, evidenced by a federal tax identification number or other verification of the establishment of the business. Individuals are required to successfully complete Entrepreneurial Skills Training. A certificate or other proof of completion of the training shall be documented in the participant's file.

6. Supportive Services are not an entitlement. Prior to the provision of any Supportive Services, justification of need must be documented and included in the participant file. All Supportive Services will be fully coordinated with services available from non-NEG sources. Provision of Supportive Services is contingent upon availability of

NEG funds and may be based on "most-in- need" criteria. The menu of Supportive Services may be limited based on availability of funds.

III. DOCUMENTATION REQUIREMENTS

Documentation shall be maintained in individual participant files to support the provision of supportive services. All other reasonably available sources must be exhausted prior to any expenditure of NEG funds. At a minimum, participant files shall include the following types of documentation:

-- Staff notes determining individual need for all supportive services; and

-- Staff notes showing why non-WIA resources are unable or insufficient to meet the participant's need; and

-- A log tracking disbursement of all non-cash supportive services; and -- Records for all cash financial assistance supportive services payments.

IV. EFFECTIVE DATE

This policy is effective April 1, 2006.

Policy Number 29. State Needs Related Payments for National Emergency Grant Participants.

I. SCOPE AND PURPOSE

Section 134(e)(3) of the Workforce Investment Act allow funds to be used for the provision of needs-related payments. The State has established a needs-related payment (NRP) policy for Hurricane Katrina National Emergency Grant (NEG) funds. These needs-related payments may be administered by the Mississippi Department of Employment Security (MDES) the appropriate local workforce investment area or by a contractor selected by MDES for that purpose. The purpose of needs-related payments is to provide support to allow eligible individuals to participate in and successfully complete core, intensive and training services that lead to permanent employment.

II. REQUIREMENTS

Needs-related payments may be provided to those unemployed participants who (1) are not employed in temporary recovery jobs; or (2) are not eligible for or have exhausted Disaster Unemployment Assistance (DUA)/ Unemployment Insurance, for purposes of enabling such eligible individuals to participate in core, intensive, and training services activities without regard to whether the applicable local workforce investment board provides NRPs to participants in its formula or NEG funded programs.

A. Eligibility

The Flexibility for Displaced Workers Act (P.L. 109-72) provides additional flexibility for grantees to provide victims of Hurricane Katrina NRPs (income support) while enrolled in core and/or intensive services, as well as in training. Participants who are receiving income under a NEG project (e.g. work experience, on-the-job training, general public sector employment, part-time unsubsidized employment) are not eligible for NRPs.

To be eligible, an individual must be eligible for and enrolled in NEG core, intensive, or approved training services. NEG eligibility is as follows:

1. An individual temporarily or permanently laid off as a consequence of Hurricane Katrina, or

2. A dislocated worker as defined by the Workforce Investment Act section 101(9) and the WIA State Policy Number 16, Dislocation Worker Registration, or

3. A long-term unemployed individual as defined by the applicable local workforce investment area (e.g. unemployed for 15 of the last 26 weeks), or

4. Any individuals who were affected by Hurricane Katrina, including those who have relocated due to the effects of Hurricane Katrina, and who were unemployed at the time on August 29, 2005, or

5. Any individuals who were affected by Hurricane Katrina, including those who have relocated due to the effects of Hurricane Katrina, and who are without employment history.

   Also, in order to receive NEG needs-related payments, participants must also meet the following requirements:

6. Participant must be unemployed, and

7. Need Related Payments (NRP) must be for the purpose of enabling the participant to participate in program or training services, and

8. Participant must not be eligible for, or have exhausted UI or DUA benefits, and

9. Participant is enrolled in or has been accepted in an approved training program that will begin within 30 calendar days. The state may authorize local areas to extend the 30-day period to address extraordinary circumstances, or

10. Participant is enrolled in and actively participating in structured core and/or structured intensive services.

Definitions:

-- "Approved Training" means training from a provider that meets one of the following criteria:

-- Training included on the State's Eligible Training Provider List,

-- Training funded by the Hurricane Katrina National Emergency Grant, -- Training funded by either of the State's H-1B Grants:

* High Growth, or

* Pathways to Construction, or

-- Training at a recognized public or proprietary school being paid for by the individuals or from other resources.

-- "Full-time" means enrollment in approved training in which the individual is required to participate more than 20 hours per week.

-- "Structured core" or "structured intensive services" means participation in activities outlined in a written plan that includes regular contact with WIN Job Center staff or a Reintegration Counselor. Activities may include but are not limited to assessment, counseling, resume preparation, internships and other job search activities.

B. Benefits

NEG NRPs will not necessarily provide enough money to meet all needs of a dislocated worker enrolled in core, intensive or training services. NRPs will provide income support beyond what would otherwise be available through other sources [FEMA, Red Cross, etc.]. Needs related payments will cease upon completion of training or completion of structured core and structured intensive services activities. The level of income support will be determined by the following.

1. For dislocated workers who cease to qualify for UI compensation as a result of the qualifying layoff or Hurricane Katrina, the weekly NRP payment level may be lower than but cannot exceed the applicable weekly level of the UI compensation; or

2. For adults and dislocated workers who did not qualify for UI compensation as a result of the qualifying layoff or Hurricane Katrina, the weekly NRP payment level may be lower than but cannot exceed the poverty level for an equivalent period of time. The weekly payment level must be adjusted to reflect changes in total family income as determined by local board policies.

3. NRP Rate Calculation Needs related payments will be calculated according to the following table: 5 to 10 hours per week = $ 20.00 11 to 15 hours per week = $ 30.00 16 to 20 hours per week = $ 40.00 21 to 25 hours per week = $ 50.00 26 to 30 hours per week = $ 65.00 31 to 35 hours per week = $ 80.00 36 to 40 hours per week = $ 100.00

4. Maximum Benefit

   Needs related payments to an individual may not exceed $ 1,000 for participation in any activity or combination of activities.

C. Procedures

1. To be awarded a NRP, an eligible adult or dislocated worker must complete a WIA Hurricane Katrina NEG Support Eligibility Assessment Questionnaire and be determined eligible for NRPs by the case manager.

2. The eligible participant must be enrolled in approved full-time training or structured core and/or structured intensive services; and,

3. Following enrollment, the participant must be making satisfactory progress in an approved training program, structured core or structured intensive services. Progress will be documented using the NRP Progress Certification form to ensure that the individual is making satisfactory progress. Satisfactory certification may be a document signed by:

   a. The registrar or an equivalent person designated by an educational institution where the individual is attending training; or

b. The WIN Job Center Manager or equivalent staff designated by the provider where the individual is attending structured core and/or structured intensive services.

E. Waiver

NRPs provided with Hurricane Katrina NEG funds are done so as a result of the special provisions contained in the Flexibility for Dislocated Workers Act (P.L. 109-72) for those impacted by the 2005 Gulf Coast hurricanes (TEGL 16-03, Change 3; 20 CFR 671.170(b)(5).

III. EFFECTIVE DATE

This policy is effective April 1, 2006. It will remain in effect throughout the life of the Hurricane Katrina National Emergency Grant, as modifies or rescinded or replaced through a grant modification.

IV. APPROVAL

Wanda Land, Director, Office of Grant Management

Support Eligibility Assessment Questionnaire

Please note that a "no" answer to question 1 would disqualify you for needs-related payments (NRPs).

1. Are you unemployed or have you received notification of layoff?
   Yes No

Please note that a "yes" answer to questions 2 through 4 would disqualify you for needs-related payments (NRPs).

2. Do you qualify for Unemployment Insurance Compensation (UI) benefits?
   Yes No
3. Do you qualify for Disaster Unemployment Assistance (DUA)?
   Yes No
4. Do you quality for Trade Readjustment Allowances (TRA)??
   Yes No

Please note that a "no" answer to questions 4 and 5 would disqualify you for needs-related payments (NRPs).

5. Have you ceased to qualify for UI benefits?
   Yes No
6. Have you ceased to qualify for DUA benefits?
   Yes No
7. Have you ceased to qualify for Trade Readjustment Allowances?
   Yes No

Have you considered all "other resources" available that will help you successfully participate in your full-time training program? Examples of other resources include but are not limited to: Pell grants, severance pay, other family income (spouse's income).

8. Will "other resources" meet your need to support you while attending school full-time?
   Yes No
9. Do you need income support beyond your "other resources" available in order to participate in training?
   Yes No

NRPs are not intended to provide the entire amount of income support you may need to complete your training. If you are awarded NRPs, they will be based on this support analysis and the weekly level of NRP payments will be determined by the WIN Job Center. These payments are made to help you while making satisfactory progress in your efforts to acquire meaningful employment. NRPs are subject to your eligibility for the program and total funds available.

All answers and statements are true and complete to the best of my knowledge. I understand that untruthful or misleading answers are cause for rejection of my determination or fraud of mispayment, which may require my repayment of any NRPs provided.

Name: _____
(PRINT)

Signature: _____ *Date:* _____

WIN Job Center Certification By: _____
Date: _____

NRP Progress Certification
and
Request for Needs-Related Payments

Participant Name _____ Social Security Number _____

Street Address _____

City _____ State _____ Zip _____

Phone Number (Include Area Code) _____ Week Beginning _____

Needs-Related Payment Amount _____ Week Ending _____

Did you claim or intend to claim any type of employment insurance benefits for the week of participation in core, intensive, or training activities?	☐ Yes ☐ No	Weekly Claim Amount: $_____
Did you receive any payments for work or vacation for the week of participation in core, intensive or training activities?	☐ Yes ☐ No	Amount: $ Employer: _____
Did you maintain satisfactory progress in core, intensive, or training activities?	☐ Yes ☐ No	If no, explain:
How many hours did you participate in core, intensive or training activities?	☐ Core ☐ Intensive ☐ Training	_____ Hrs _____ Hrs _____ Hrs

Comments: _____

_____

_____

_____

Signature of Participant _____ Date _____

Signature of Win Job Center Staff/Instructor _____ Date _____

Policy Number 30. Records Retention and Public Access.

I. SCOPE AND PURPOSE.

Grantees, subrecipients and contractors funded under the Workforce Investment Act (WIA), whether in whole or in part, must abide by the Workforce Investment Act of 1998, the WIA regulations, all applicable Office of Management and Budget (OMB) circulars, state requirements in laws and rules, and state WIA policies.

This policy sets forth the criteria and rules for the application of the Workforce Investment Act and its regulations regarding the retention of records and public access as found in OMB Circular A-133 and the Mississippi State Code.

This policy is established to ensure that Local Workforce Investment Areas (LWIAs) and its contractors and contractors of the Mississippi Department of Employment Security (MDES) properly maintain and retain records of all fiscal and program activities funded under the Workforce Investment Act of 1998 (WIA). With some exceptions, such records shall be available to the public. This policy sets forth the minimum requirements and timeframes for records retention, and the extent to which such records may be made available to the public. Individual LWIAs, subrecipients or contractors may set stricter requirements than those included in this policy.

II. REQUIREMENTS.

A. Records Retention

Each Local Workforce Investment Board (LWIB) fiscal agent, and any subrecipient and contractor of WIA funds shall:

1. Retain all records pertinent to the grant, grant agreements, interagency agreements, contracts or any other award, including financial, statistical, property, applicant or registrant records, cost allocation plans, audit reports, and supporting documentation, for a period of at least three (3) years after submittal of the final expenditure report (closeout) for that funding period to the awarding agency.

2. Retain all records of non-expendable property for a period of at least three (3) years after final disposition of property.

3. Retain all records pertinent to employees, and applicants for employment for a period of not less than three (3) years from the close of the applicant program year.

4. Retain all records pertinent to participants for a period of not less than four (4) years from the close of the program year during which the participant exited. Example -- the record for a participant who exits in May of 2007 may be destroyed after June 30, 2011.

5. Retain records regarding complaints and actions taken on the complaints for a period of not less than three (3) years from the date of resolution of the complaint.

7. Have written guidelines in place for the disposal of confidential information after the files have been retained for a minimum of three (3) years.

8. Retain all records beyond the required three (3) years [or four (4) years for participants] if any litigation or audit is begun or a claim is instituted involving the grant or agreement covered by the records. The records shall be retained for an additional three (3) years after the litigation, audit, or claim has been resolved.

In the event of the termination of the relationship between the State and a LWIA fiscal agent or other WIA subrecipient/contractor, the fiscal agent or subrecipient/contractor will be responsible for the maintenance and retention of their own records as well as the records of any subrecipient unable to maintain and retain its own records. The State, however, will be responsible for the maintenance and retention of the records of any fiscal agent or subrecipient unable to maintain and retain its own records and/or those of its subrecipients.

Copies of records made by microfilming, photocopying, or similar methods may be substituted for the original records if they are preserved with integrity and are admissible as evidence.

All records retained beyond the mandatory retention period are subject to audit and/or review.

B. Limitation of Public Access to Records

Personal records of WIA registrants will be private and confidential, and will not be disclosed to the public. Personal information may be made available to Workforce Investment Network (WIN) in Mississippi partners or service providers on a selective basis consistent with the registrant's signed "Release of Information" form. In addition, this information may be made available to persons or entities having responsibilities under WIA, including representatives of:

1. The U.S. Department of Labor;

2. The Office of the Governor;

3. WIA Grant Recipients;

4. Local Area Subrecipients; and

5. Appropriate governmental authorities involved in the administration of WIA to the extent necessary for its proper administration

The conditions under which information may be released or withheld are shown below:

1. WIA registrants will have access to all information concerning themselves as individuals unless the records or information are exempted from disclosure.

2. The names of LWIA staff and subrecipient staff in positions funded by WIA, in part or in whole, will be a matter of public record. Other information pertaining to these recipient or subrecipient employees will be made available to the public in the same manner and to the same extent as such information is made available on staff in positions not funded by WIA.

3. Public agencies responsible for financial and/or program activities under WIA will have public records systems in accordance with Mississippi Code Chapter 61 relating to Public Access to Public Records. Nongovernmental agencies with such responsibilities will have public records systems which comply with the spirit and intent of Mississippi's Sunshine Law. State and local entities may establish additional guidelines related to what final, formal documentation will be shared. Exceptions to sharing data are listed at WIA Section 185 (A)(4), the Freedom Of Information Act & Privacy Act (applies only to records transferred to the Secretary of Labor), and Mississippi's Sunshine Law. A nominal fee may be charged to recover costs of processing information requests.

C. Procedures for Disposal of Records

Each LWIA fiscal agent, and any subrecipient or contractor of WIA funds shall have written procedures for the timely and prudent disposition of records, i.e. an inventory listing destroy dates and method of disposal such as shredding of files.

III. EFFECTIVE DATE.

This policy shall be effective immediately upon signature.

EXCEPTIONS TO SHARING DATA

A. FOIA -Applies only to records transferrred to the Secretary of Labor

B. MS Sunshine Law

C. §185 WIOA (A)(4)

STATUTORY AUTHORITY

STATUTORY AUTHORITY:
Miss. Code Ann. §7-1-355

EFFECTIVE DATE:
September 20, 2004

AMENDED:
April 23, 2005; January 5, 2006 Secretary of State Administrative Bulletin #12803 [Policies 6, 10, 26]; April 1, 2006 Secretary of State Document #13931 [Policy 29], #13932 [Policy 27], #13933 [Policy 28]; June 11, 2007 Secretary of State Document #14427 [Policy 30]; February 2014 [Renumbered from 38 000 009 to match state's numbering system.]
Annotations

NOTES
EDITOR'S NOTE:
Authority transferred to Department of Employment Security from Mississippi Development Authority by Miss. Code Ann. §7-1-355, effective July 1, 2005.

CODE OF MISSISSIPPI RULES