

## STANDARDS FOR OVERSIGHT AND INSTRUCTION FOR SUBSTATE MONITORING

### EXECUTIVE SUMMARY

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This policy provides the guidance and establishes the procedures regarding general standards for the Local Workforce Development Area (Local Area) monitoring responsibilities regarding the *Workforce Innovation and Opportunity Act* (WIOA) and provides instructions for the development of substate monitoring plans to implement those standards. This policy applies to all Local Workforce Development Boards (Local Board), and is effective on the date of issuance.

This policy contains some state-imposed requirements. All state-imposed requirements are indicated by ***bold, italic*** type.

This Directive finalizes Workforce Services Draft Directive *Standards for Oversight and Instructions for Substate Monitoring* (WSDD-210), issued for comment on February 20, 2020. The Workforce Development Community submitted 14 comments during the draft comment period. A summary of comments, including all changes, is provided as Attachment 1.

This policy supersedes Workforce Services Directive *Standards for Oversight and Instructions for Substate Monitoring* (WIAD00-7), dated April 10, 2001. Retain this directive until further notice.

### REFERENCES

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- WIOA (Public Law 113-128) Sections 107, 108, 129, and 184.
  - Title 2, *Code of Federal Regulations* (CFR) Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)
  - Title 2 CFR Part 2900: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Department of Labor [DOL] Exceptions)
  - Title 20 CFR Sections 679.430, 683.200, 683.400, 683.410, and 683.430
  - Department of General Services (DGS) [State Contracting Manual](#) (January 2018)

*The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.*

- [Workforce Services Directive](#) (WSD) 21-03, *Eligible Training Provider List (ETPL) Policy and Procedures* (November 10, 2021)
- WSD18-16, *Guidance on Regional Awards* (June 21, 2019)
- WSD17-08, *Procurement of Equipment and Related Services* (March 14, 2018)
- WSD17-05, *Oversight and Monitoring of Nondiscrimination and EO Procedures* (August 29, 2017)
- WSD17-01, *Nondiscrimination and Equal Opportunity (EO) Procedures* (August 1, 2017)
- Workforce Services Information Notice 20-27, *CA ETPL Subsequent Eligibility Review 2020* (November 20, 2020)

## BACKGROUND

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The WIOA Section 107(d)(8) requires the Local Board, in partnership with the local Chief Elected Official (CEO), must conduct oversight of the WIOA programs and the America's Job Center of California<sup>SM</sup> (AJCC) system in the Local Area to ensure the appropriate use and management of funds for workplace development activities and to maximize the performance outcomes.

The WIOA Sections 184(a)(2)(A) and 184(a)(3)(A) require that each state and Local Area (including the local CEO) and provider receiving funds under Title I must comply with the applicable uniform cost principles and administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as published in the Office of Management and Budget's Uniform Guidance.

Title 20 CFR Section 683.200 provides the general fiscal and administrative rules applicable to the use of WIOA Title I funds. Entities receiving WIOA Title I funds must follow the uniform administrative cost requirements contained in the Uniform Guidance at Title 2 CFR part 200, including any DOL Exceptions (including agencies and organizational units) at Title 2 CFR part 2900, as applicable to their type of organization. Title 20 CFR Section 683.200 further identifies applicable cost principles at subpart E and appendices III through IX at Uniform Guidance Title 2 CFR part 200 regarding allowable costs.

Title 20 CFR Section 683.400 requires that subrecipients must continuously monitor grant-supported activities in accordance with the uniform administrative requirements at Title 2 CFR part 200 (Uniform Guidance). Title 20 CFR 683.410(a) requires that each recipient and subrecipient must conduct regular oversight and monitoring of its WIOA activities and those of its subrecipients and contractors. The purpose of this requirement is to ensure that expenditures are charged to the appropriate cost category and are within the cost limitation requirements of WIOA and the regulations, Uniform Guidance, and other applicable laws and regulations.

Uniform Guidance Section 200.501(g) requires subrecipients to ensure that the procurement, receipt, and payment for goods and services received comply with federal and state laws, regulations, and subrecipient policies, and the provisions of contractors' contracts and agreements. The [WSD17-08, Procurement of Equipment and Related Services](#), provides guidance regarding the procurement of goods and services. The [WSD17-01, Nondiscrimination and Equal Opportunity Procedures](#), provides guidance regarding nondiscrimination and equal opportunity in contracts, job training plans, and policies and procedures. Title 20 CFR Section 683.410(6) states that the Governor may issue additional requirements and instructions to subrecipients regarding monitoring activities.

## POLICY AND PROCEDURES

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### Definitions

*America's Job Center of California<sup>SM</sup> (AJCC)* – The common identifier used within California for One-Stop centers, the One-Stop system, and access points to WIOA affiliated programs and services.

*Area of Concern or Observation* – If an effectiveness indicator is not met and the reviewer believes that it may possibly result in a finding at some later point if not addressed, an area of concern or observation is identified. Areas of concern or observation are not specific compliance violations, but may negatively impact the program or could lead to a finding in the future. A corrective action may not be specified or required for an area of concern or observation, but may include suggestions for improvement.

*Contract* – A legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward. (Uniform Guidance Section 200.22)

*Contract Manager* – The contract manager is the authorized representative responsible for administering a contract and monitoring the contractor's performance. The contract manager serves as a liaison with the contractor and may perform administrative tasks ranging from the request of contract services through the performance and final payment for completed services. (DGS State Contracting Manual Section 9.04)

*Contractor* – An entity that receives a contract as defined in Uniform Guidance Section 200.22. (Uniform Guidance Section 200.23)

*Corrective Action Plan (CAP)* – A list of specific steps that subrecipients must take within a stated period of time in order to achieve compliance.

*Finding* – A violation of a specific compliance requirement contained in laws, regulations, federal or state policies, Uniform Guidance, DOL Exceptions, grant terms and conditions, Employment and Training Administration (ETA) policy guidance, including Training and Employment Guidance Letters (TEGL), and/or the grant agreements that requires specific corrective action. Findings are also known as, but not limited to, non-compliance issues, questioned costs, and/or disallowed costs.

*Monitoring* – The monitoring review is an oversight activity that may lead to opportunities for technical assistance and/or corrective action. For ETA’s purpose, a monitoring review is a process used to measure progress, identify areas of compliance, offer opportunities for technical assistance to help resolve non-compliance issues, and ensure that federal funds are used responsibly.

*Non-Federal Entity* – A state, local government, Indian tribe, institution of higher education, for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a federal award as a recipient or subrecipient. (Uniform Guidance DOL Exceptions Section 2900.2)

*Oversight* – Performed by subrecipients in various ways such as on-site monitoring, risk assessment, desk reviews, and analysis of performance and financial reports.

*Recipient* – A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients. (Uniform Guidance Section 200.86)

***Regional Fiscal Agent – a non-federal entity designated by the State of California to carry out a federal award as a subrecipient. The Regional Fiscal Agent allocates funds to partner Local Boards and other organizations within a Regional Planning Unit.***

*Regional Planning Unit* – Regions of the state determined by the Governor, with input from local CEOs and Local Boards, which represent the regional labor market and are responsible for developing and implementing Regional Plans.

*Segregation of Duties* – No one person should have sole control over the lifespan of a transaction. All organizations should separate functional responsibilities to ensure that mistakes, intentional or unintentional, cannot be made without being discovered by another person.

*Subaward* – An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include

payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (Uniform Guidance Section 200.92)

*Subrecipient* – A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. (Uniform Guidance Section 200.93)

*Vendor* – The term “vendor” has been replaced with the term “contractor” as defined at Uniform Guidance Section 200.23, in which, a contractor is an entity that receives a contract as defined in Uniform Guidance Section 200.22.

*WIOA Administrative Entity* – a unit of local government, corporation, or agency designated by a Chief Elected Official (CEO) to oversee and administer WIOA programs and activities in the Local Area. (20 CFR 678.400)

### **Subrecipient and Contractor Determinations**

A non-federal entity may concurrently receive federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section. (Uniform Guidance Section 200.330)

- a. Subrecipient characteristics that support the classification of the non-federal entity as a subrecipient include when the non-federal entity meets the following criteria:
  1. Determines who is eligible to receive what federal assistance.
  2. Performance is measured by whether objectives of federal program are met.
  3. Has responsibility for programmatic decision making.
  4. Responsible for adhering to applicable federal program requirements.
  5. Uses federal funds to carry out a program for a public purpose.
  6. Funded by a subaward.
  
- b. Contractor characteristics include the following:
  1. Provides the goods and services within normal business operations.
  2. Provides similar goods or services to many different purchasers.
  3. Provides goods or services that are supplementary to the operation of the federal program.

4. Not subject to compliance requirements of the federal program.
5. Provides goods and services for the grant recipient's own use, creating a procurement relationship.
6. Funded by a procurement contract.

For additional information on subrecipient and contractor determinations, see *Subrecipient and Contractor Distinctions* ([WSD18-06](#)).

### **Standards for Local Board Oversight**

The Local Board, in partnership with the CEO, must oversee activities funded under WIOA Title I conducted under the local plan established pursuant to WIOA Section 108. The monitoring and oversight must be consistent with the requirements stated in WIOA, relevant federal and state regulations, and state directives/policies (*see Background*). The Local Board and the CEO must determine whether monitoring will be conducted independently, jointly, or delegated to an appropriate entity. The monitoring must include the following:

1. On-site fiscal and programmatic monitoring of all subrecipients must occur annually and at least once each program year, unless an alternative approach is documented and justified according to uniform guidance. Title 2 CFR 200.332 (b) directs pass-through entities to evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for the purpose of determining the appropriate subrecipient monitoring, which may include consideration of such factors as the following:
  - a. The subrecipient's prior experience.
  - b. The results of previous audit findings.
  - c. Whether the subrecipient has new personnel or new or substantially changed systems.
  - d. The extent and results of Federal awarding agency monitoring.

The evaluation of each subrecipient's risk of noncompliance should be fully documented and readily available upon request.

2. Where WIOA administrative entities are parties to agreements that service multiple Local Area jurisdictions, the affected areas must coordinate and jointly establish procedures for monitoring multiple Local Area subrecipients.
3. In instances where Regional Planning Units receive regional awards and one Local Board is the Regional Fiscal Agent and in a subgrant with the EDD, that Regional Fiscal Agent must monitor their subrecipients.
4. Maintain a complete monitoring log of all monitored entities (the log must contain the date review was conducted, type of review, period reviewed, monitor, date of draft

and/or final report, findings, corrective action, location of working papers, and dates and number of attempts to contact subrecipient for not responding to draft and/or final report).

5. The assurance that the procurement, receipt, and payment for goods and services received complies with federal and state laws, regulations, and subrecipient policies, and the provisions of contractors' contracts and agreements. (Uniform Guidance Section 200.501[g])

### **Instructions for Developing Substate Oversight and Monitoring Plans**

The Local Board, in partnership with the local CEO, must develop plans and procedures for the oversight and monitoring of subrecipients and the AJCC system in accordance with policies developed by the Local Board which are based on the Governor's standards for Local Board oversight. The development of monitoring plans may be delegated to the WIOA administrative entity by the local agreement.

In addition to incorporating the Local Board's policies, the substate oversight and monitoring plan must do the following:

1. Identify procedures for annual on-site fiscal and programmatic monitoring of all subrecipients. (WIOA Section 107[d][8]). Procedures should include but are not limited to the following:
  - a. ***Identify procedures to require subrecipients, on a periodic basis, to provide documentation to support claim reimbursements prior to payment. Periodic basis must be identified within the procedures.***
  - b. ***Identify procedures to require expanded sample testing during monitoring reviews for high-risk areas (e.g., participants' data/files, procurement, expenditures, etc.) and when exceptions are identified.***
  - c. ***Identify procedures on when to disallow costs due to non-compliance.***
  - d. ***Identify procedures to conduct announced and unannounced visits of subrecipients to observe service delivery, interview staff, and review source documents for program and fiscal data.***
2. ***Identify procedures for oversight including risk assessment, desk reviews, and analysis of performance and financial reports, review of contractors and all training providers utilized.***
3. Require that the on-site review of each subrecipient is both fiscal and programmatic, consistent with the requirements stated in Title 20 CFR 683.410(a). ***If the subrecipient's fiscal office and/or records are separately located at an inaccessible site (i.e., not within a reasonable commute outside of the Local Area), the WIOA administrative entity must require that copies of fiscal records of a sufficient nature and sample size are sent to the subrecipient's local office or directly to the WIOA administrative entity***

***for review upon request. When mailing or emailing documentation, the subrecipient must take reasonable measures to safeguard protected personally identifiable information (PII) and other information that is deemed sensitive or confidential according to applicable privacy laws and obligations of confidentiality. (2 CFR Section 200.303[e], TEGL 39–11)***

4. ***Require that monitoring of subrecipients follow a standardized review methodology that will result in written reports which record findings and areas of concerns or observations, disallowed costs (if applicable), any needed corrective actions, and due dates for the accomplishment of corrective actions.***
5. Require systematic follow-up to ensure that necessary corrective action has been taken. (WIOA Section 184 [a][5][A]). ***Require subrecipients to submit specific and timely documentation of progress until deficiencies are corrected and not repeated. Submit to the Local Board and/or CEO for approval, the documentation that demonstrates that the findings have been corrected and not repeated by their subrecipient.***
6. Implement firewalls that conform to Title 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interests. If an organization performs more than one of the following functions, local fiscal agent, Local Board staff, one-stop operator or direct provider of services, there must be appropriate firewalls in place describing how the organization will carry out the responsibilities while demonstrating compliance with WIOA and corresponding regulations.
7. ***Ensure single audit reports do not take the place of an oversight or monitoring review for any subrecipient, AJCC, contractor, and/or training provider.***
8. Conduct oversight and monitoring of all local youth workforce development activities (***including youth providers***). If a Local Board does not establish a Youth Standing Committee, the Local Board is still responsible for conducting the oversight of youth activities under WIOA Section 129(c). (WIOA Section 107[d][8])
9. ***Identify procedures to periodically examine training providers utilized by the subrecipient to determine whether participants received WIOA services as claimed by the subrecipient (e.g., validating participant data, conducting participant interviews, conducting third-party verification, etc.). The periodic basis must be identified within the procedures. Any training providers found to not be providing sufficient training shall be reported to the ETPL administrator.***
10. Describe procedures to ensure that the procurement, receipt, and payment for goods and services received complies with federal and state laws, regulations, and subrecipient policies, and the provisions of contractors' contracts and agreements



(Uniform Guidance Section 200.501[g]). While contractors are not subject to the same monitoring requirements as subrecipients, Local Areas are responsible for ensuring compliance regarding contractor transactions. The procurement of goods and services from contractors must comply with federal and state requirements in WSD17-08, *Procurement of Equipment and Related Services*.

11. Require that a system is in place to ensure that a Local Area and its subrecipients comply with the requirements in WSD17-05, *Oversight and Monitoring of Nondiscrimination and EO Procedures*.
12. Require that all financial records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the financial reports and other documentation pertaining to monitoring and other oversight activities must be made available for review by federal and state officials. (Uniform Guidance Section 200.333)
13. Ensure Local Areas keep copies of their compliance monitoring efforts and reports on file. The Local Area's compliance monitoring reports should be used as an assessment reference when developing CAPs and for scheduled onsite monitoring reviews that may be required by authorized federal and state reviewers.

## ACTION

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Establish or revise local oversight and monitoring plans, policies, and procedures in accordance with the requirements of this directive.

Bring this directive to the attention of all appropriate staff.

## INQUIRIES

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If you have any questions, contact your assigned [Regional Advisor](#).

/s/ JAVIER ROMERO, Deputy Director  
Workforce Services Branch

Attachment:

[Summary of Comments \(DOCX\)](#)