
Substantial Violations and Applicable Sanctions

General Instructions

The attached Directive is being issued in draft to give the Workforce Development Community the opportunity to review and comment prior to final issuance.

Submit any comments by email no later than November 8, 2024.

All comments received within the comment period will be considered before issuing the final Directive. Commenters will not be responded to individually. Rather, a summary of comments will be released with the final Directive.

Comments received after the specified due date will not be considered.

Email

WIOAPolicy@edd.ca.gov

Include “Draft Directive Comments” in the email subject line.

If you have any questions, contact the Workforce Services Branch (WSB) Policy Unit at WIOAPolicy@edd.ca.gov.

Substantial Violations and Applicable Sanctions

Executive Summary

This policy provides guidance and establishes the procedures regarding issues of noncompliance that lead up to a substantial violation and the subsequent sanctions that can be imposed when subrecipients do not take prompt actions to resolve these instances of noncompliance. This policy applies to all subrecipients of *Workforce Innovation and Opportunity Act* (WIOA) Title I-B funding.

This policy contains no state-imposed requirements.

This Directive remains active until further notice.

References

-
- WIOA (Public Law 113-128) Sections 106, 107, 116, 128, and 184
 - Title 2 *Code of Federal Regulations* (CFR) Part 200: *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) Sections 200.208, 200.328-200.331, 200.338, 200.339 (a)-(f), 200.340-200.341, 200.405, and 200.519
 - Title 20 CFR WIOA Joint Final Rule, Sections 683.120, 683.140, 683.220(a)(4), 683.300, 683.400-683.440, 683.620-683.650, and 683.700-683.750
 - Title 20 CFR WIOA Joint Final Rule, Sections 677.190(d)677.195, 677.210, and 677.225
 - Title 34 CFR Sections 361.190(d), and 463.190(d)
 - Training and Employment Guidance Letter (TEGL) 23-15 *The Process for Making High Risk Determinations after Award and the Associated Risk Mitigation Procedures* (May 16, 2016)
 - TEGL 02-12 *Employment and Training Administration (ETA) Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct* (July 12, 2012)
 - [Workforce Services Directive](#) WSD23-04, *WIOA 15 Percent Governor's Discretionary Funds*
 - WSD22-15, *WIOA Data Validation Source Documentation* (June 27, 2023)
 - WSD22-07, *Debt Collection* (November 14, 2022)
 - WSD22-06, *Audit Resolution* (November 14, 2022)
 - WSD22-04, *WIOA Data Validation* (September 1, 2022)
 - WSD22-02, *Standards for Oversight and Instruction for Substate Monitoring* (July 27, 2022)

- WSD20-10, *CalJOBS Participant Reporting* (April 8, 2021)
- WSD20-03, *Audit Requirements* (October 13, 2020)
- WSD20-02, *Calculating Local Area Performance and Nonperformance* (September 18, 2020)
- WSD19-05, *Monthly and Quarterly Financial Reporting Requirements* (December 4, 2019)
- WSD18-05, *WIOA Grievance and Complaint Resolution Procedures* (September 4, 2018)
- WSD16-03, *Unilateral De-Obligation* (July 20, 2016)

Background

WIOA section 184(b) requires each state to establish a policy of corrective action when a determination of a substantial violation of WIOA Title I-B is identified. These requirements include ensuring that the policy outlines what sanctions can be imposed when subrecipients have substantial violations and do not take prompt actions to correct these instances of noncompliance. As the state administrative entity for WIOA Title I programs, the Employment Development Department (EDD) is responsible for the oversight and monitoring of California's subrecipients of WIOA Title I-B funds to ensure accountability with the proper use of funds.

Policy and Procedures

Definitions

For purposes of this directive, the following definitions apply:

Finding – A written 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.

Sanctionable Act – A violation of federal, state and local laws, regulations, contract provisions, grant agreements, or policies, as determined by the state or Department of Labor (DOL). These violation primarily involve an occurrence of noncompliance. Such failures may occur during or after the program, grant, fiscal, contract, or calendar year.

Sanction – A penalty imposed for noncompliance with remedial action, or noncompliance with applicable state and federal laws or regulations.

Subrecipient – A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program. A subrecipient may also be a recipient of other federal awards directly from the federal awarding agency.

Monitoring and Oversight

Monitoring and oversight activities ensure that subrecipients of WIOA Title I-B funds operate programs efficiently and provide services effectively in compliance with all applicable state and federal laws or regulations, including state and local policies.

The state conducts monitoring on an annual basis as required by WIOA Section 184(a)(4). The state also conducts ongoing oversight and may investigate any instances as necessary to determine compliance with all applicable laws, regulations, Uniform Guidance, subgrant agreements and state and local policies. Regular and ongoing oversight is conducted by state representative(s) engaged in oversight activities.

The state is also responsible for determining compliance findings and providing a notice of corrective actions and impending sanctions in writing. In these instances, subrecipients will be notified by their state representative(s) with oversight responsibilities.

Subrecipients that receive WIOA Title I-B funds and are found to be noncompliant with any applicable state and federal laws or regulations are required to take timely corrective action and may be subject to sanctions from the state.

The EDD's Compliance Review Office (CRO) is responsible for the resolution of monitoring findings and notice of impending sanctions related to monitoring findings. Compliance Monitoring may be performed onsite or may be in the form of a desk review.

Sanctionable Acts

The following is a non-exhaustive list of sanctionable acts that may lead to sanctions. The possible sanctions that can be imposed will vary depending on the frequency, nature, and severity of the sanctionable act(s):

- Repeated failure to submit timely and accurate monthly or quarterly financial reports.
- Non-compliance with state, federal, administrative, procurement, or sub-grant agreement terms or provisions.
- Failure to retain required financial records.
- Failure to observe accepted standards of administration resulting in a disallowed expenditure, or a pattern of impermissible expenditures (e.g., as described in WIOA Section 184[c][2]-[3]).
- Failure to submit audits as required by 2 CFR Section 200.501.
- Failure to implement proper budgetary controls to ensure actual expenditures are within the allocated budget.
- Failure to report expenditures, matching funds, and program income, including any profits earned on the accrual basis of accounting and cumulative by fiscal year of appropriation as required by 20 CFR Section 683.300.

- Failure to ensure actual expenditures are within the allocated budget, or actual expenditures exceeding the allocated budget.
- Failure to submit a timely closeout report by the due date, which is either 60 days after the grant term end-date or 60 days after the subrecipient has spent their funding, whichever comes first.
- Failure to maintain supporting documentation for expenditures.
- Failure to substantiate expenditures through data reporting and maintain supporting documentation.
- Failure to provide financial records or substantiation of expenditures to EDD upon request for regular and ongoing fiscal oversight or monitoring activities:
 - Note – Information and complaints involving criminal fraud, waste, abuse, or other criminal activity must be reported immediately through the DOL’s Incident Reporting System to DOL’s [Office of Inspector General](#). For additional information regarding mandatory Incident Reporting, refer to [WSD20-12](#).
- Failure to comply with any EDD Policy Directives, Information Notices, or other EDD operational guidance.
- Willful disregard of, or gross negligence, in fulfilling the requirements of the following:
 - WIOA Title I-B.
 - TEGs and other federal laws, regulations, policies, and guidance.
 - State laws, regulations, which includes all current and subsequent state policies.
 - Terms and conditions of applicable grant fund awards, sub-grant agreements, and service provider contracts.
 - Timely and accurate submittals of required narrative reports or data submissions to the EDD.
 - Hindering or impeding an investigation by law enforcement officials of alleged criminal conduct.
 - Failure to cooperate with monitoring and/or oversight activities including providing documentation as required by the SFP or sub-grant agreement or as requested by the EDD.
 - Failure to conduct a risk assessment and/or compliance monitoring and oversight of subrecipients.
 - Failure to resolve compliance findings within the timeframe established by the state.

Substantial Violation

A determination of a substantial violation occurs after a sanctionable act. Prompt corrective action is required when the state determines that a substantial violation of WIOA Title I-B or its regulations has occurred. The following are examples of sanctionable acts that may lead to a determination of a substantial violation by the DOL, the Governor, or the state:

- Failure by a Local Workforce Development Board (Local Board) to submit a Local Plan or Local Plan modification as required by the California Workforce Development Board (CWDB) on behalf of the Governor.
- Failure of a Local Board to carry out functions required in Section 107(d) of WIOA.
- Failure by a Local Area or subrecipient of WIOA funds to comply with the Uniform Guidance found at 2 CFR part 200.
- Failure by a subrecipient of WIOA Title I-B funds to address findings of noncompliance with applicable state and federal laws or regulations.
- Consistent failure by a subrecipient of WIOA Title I-B funds to report timely and accurate participant or activity data to substantiate expenditures.
- Incidents of fraud, misfeasance, nonfeasance, malfeasance, misapplication of funds, gross mismanagement, gross negligence, lack of sustained fiscal integrity or other similar violations.

If corrective action is not taken to remedy a substantial violation of WIOA Title I-B, then the Governor shall:

- Issue a notice of intent to revoke approval of all or part of the Local Plan affected.
- Impose a reorganization plan, which may include the following:
 - Decertifying the Local Board involved.
 - Prohibiting the use of eligible training providers.
 - Selecting an alternate entity to administer the program for the Local Area involved.
 - Merging the Local Area into one or more other Local Areas.
 - Making such other changes as the Governor or the Secretary determines to be necessary to secure compliance.

(WIOA Section 184[b][1])

Sanctions

The following is a non-exhaustive list of sanctions that the state may impose if a subrecipient commits a sanctionable act. The sanctions will vary on the type, severity, and frequency of the sanctionable act. However, it should be noted that the sanctions listed below do not supplant applicable civil and criminal actions under other pertinent federal, state, or local laws, regulations, policies, or terms and conditions of applicable awards and contracts:

- Require repayment of disallowed costs.
- Withholding drawdowns (cash hold) and requests for payment, suspension, and termination of funds for thirty days.
- Withholding drawdowns (cash hold) and requests for payment, suspension, and termination of funds until corrective action has been taken and the issue has been resolved.

- Making any other changes determined to be necessary to ensure compliance:
 - Note – In the event of disallowed costs, the subrecipient will be required to repay the amount of disallowed costs with non-federal funds. For Debt Collection, refer to [WSD22-07](#).
 - For WIOA Governor’s Discretionary funds allotted to the state under WIOA sections 128(b) and 133(b), refer to [WSD16-03](#).
- Revocation of the Local Plan until conditions, violations, or deficiencies have been corrected (for example, Local Areas without approved Local Plans are prohibited from receiving any WIOA Funds).
- Imposing a Reorganization Plan, which may include decertifying the Local Board.
- Prohibiting the use of specific providers.
- Selecting an alternative entity to administer the program for the Local Area involved.
- Merging the Local Area into another Local Area.
- Making any other changes determined to be necessary to ensure compliance with WIOA Provisions.
- Declaring the ineligibility for discretionary funds (20 CFR Section 683.120).
- Ineligibility to receive a voluntary reallocation from another Local Area (20 CFR Section 683.140).
- Suspend or Terminate the Intergovernmental Agreement, Memorandum of Understanding, or any other agreement between the subrecipient and the state (WIOA Section 184(b); 2 CFR Sections 200.339 – 200.340).
- Exclusion from future discretionary funding opportunities.
- Full or partial de-obligation of existing discretionary grants.

The state may choose to impose other sanctions it deems appropriate.

NOTE: For performance related sanctions, please refer to [WSD20-02](#).

Sanctions Process

The state’s sanctions process consists of the following steps:

1. Intent to Sanction

The steps leading to the issuance of an Intent to Sanction are as follows:

- Determine whether a sanctionable act has occurred and if a sanction should be pursued.
- Determine the remedial action(s) required and/or the penalty to be assessed.
- Issue a written Intent to Sanction to the entity regarding any identified sanctionable act(s) and potential sanction to be imposed. The entity will be provided 30 calendar days to correct the identified sanctionable act. The written

Intent to Sanction may not be appealed and will include the following information:

- The finding(s) for which the identified sanctionable act was applied.
- The potential sanction and/or penalty to be imposed.
- The timeline for completing the remedial action.

For entities that choose to address findings after receipt of an Intent to Sanction, the determination will remain in place until the state is satisfied that the findings have been sufficiently addressed per the negotiated corrective actions. Furthermore, entities may request a one-time extension of the deadline if a good-faith effort to resolve the sanction(s) has been made and additional time is needed to fully remedy the identified sanctionable act(s). The state may grant the request, and if granted, the length of the extension will be based on the reasonableness of the request, not to exceed 5 working days.

Finally, if the identified sanctionable act is resolved within the designated timeframe or if the required corrective action is accepted, no further action will be taken, and a final sanction determination will not be issued.

2. Final Sanction Determination

Entities who do not correct the identified sanctionable act(s) within the established timeframe set in the written Intent to Sanction will result in the state issuing a final sanction determination. The state will issue a written final notice to the entity regarding the identified sanctionable act(s) and sanction to be imposed. Such notice will be sent within a reasonable time to provide an opportunity to appeal the sanction. In most instances, the notice will be provided thirty (30) calendar days in advance of the effective date of the sanction.

3. Resolving or Closing Sanctions

The state will issue a written notice to entities documenting the resolution and closing of the remedial actions and/or penalties. Such notices will include the sanction resolution date (i.e., the official date a specific sanction is determined to be resolved and closed).

Appeals Process

State-imposed sanctions may be appealed to the U.S. Secretary of Labor. Appeals must be sent to the Secretary by certified mail with return receipt requested no later than 30 calendar days after the date the sanctions were imposed.

Appeals must be sent to the DOL Secretary at the following address:

U. S. Department of Labor
Attention: ASET (Assistant Secretary Employment & Training Administration)
200 Constitution Avenue NW
Washington, DC 20210

A copy of the appeal must be simultaneously provided to the Governor and the EDD Director or the CWDB Executive Director depending on who leveled the sanction.

The DOL Secretary will review and issue final decisions on appeals no later than 45 days after receipt of appeals.

If the DOL Secretary rejects the appeal, the sanction will be imposed. If the Secretary upholds the appeal, the state will withdraw the sanction and take no further action.

Action

Bring this Directive to the attention of all appropriate staff.

Inquiries

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

/s/ JAVIER ROMERO, Deputy Director
Workforce Services Branch

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