

## ADMINISTRATIVE ENTITY STATE POLICY –

WIOAP # 02-21

**Effective Date:** October 1, 2021

TO: All WIOA Subrecipients

From: Danilo Cabrera, Program Operations Manager *Danilo Cabrera*

Subject: **WIOA Performance Corrective Action Policy**

### A. Purpose:

To establish procedures to assist the Administrative Entity (AE-Idaho Department of Labor) in conducting effective Workforce Innovation and Opportunity Act (WIOA) program monitoring, providing technical assistance to ensure program quality and fiscal integrity, performance achievement, and rendering accurate and comprehensive reports of monitoring activities.

The state Administrative Entity ensures compliance with applicable federal and state laws, regulations, policies, guidance, and terms and conditions of applicable awards and contracts. To accomplish these responsibilities and satisfy its oversight role, the Administrative Entity will impose penalties or conditions in the form of sanctions for any noncompliance issues, including non-performance, that have not been promptly resolved based on state-imposed corrective actions identified in monitoring or other oversight reports. This policy applies to all local areas, subrecipients, and service providers receiving WIOA Title 1-B funding.

### B. Background:

Section 116(b)(3)(A)(iv) of WIOA requires the state to negotiate performance targets for each WIOA metric at the local level. States may leverage sanctions on local grant recipients sanctioned for performance failure or for failure to report (section 116(f) of WIOA).

### CORRECTIVE ACTION

The subrecipient is expected to work closely with the AE to meet and exceed federal, state, and local performance measures to provide high-quality services and outcomes to our participants. This corrective action policy covers all contracted subrecipients serving participants with funds from the AE. This policy outlines the procedures for corrective action and details how AE staff and subrecipients will address program performance, financial reporting, and monitoring deficiencies.

Corrective action will be taken when a contracted subrecipient fails to meet compliance or performance in any of the following areas:

- Achieving performance measures or milestones as outlined in the scope of work and/or fidelity to the program design as outlined in the subrecipient's proposal  
As determined necessary by the Administrative Entity, the state performance sanctions policy mirrors the federal sanctions policy (TEGL 11-19) to the extent possible. However, because of the significance of a provider's impact on participants and state and local performance, implementation of state sanctions may occur sooner and not mirror the

<p>federal timelines. "Failure" to perform on any WIOA metric would be defined as any of the following:</p> <ul style="list-style-type: none"> <li>• Failure to meet 50% of targets for any metric, or</li> <li>• Failure to average 90% of targets for all measures across programs (i.e., Adult) (via regression modeling), or</li> <li>• Failure to average 90% of targets for all programs across a given measure (i.e., earnings)</li> </ul>
<ul style="list-style-type: none"> <li>• Significant monitoring findings and/or not working to address and/or close findings promptly, and includes, but is not limited to: <ul style="list-style-type: none"> <li>• Compliance with uniform cost principles described in Office of Management and Budget (OMB) circulars.</li> <li>• Compliance with appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving funds.</li> <li>• Compliance with WIOA and applicable federal, state, and local regulations.</li> <li>• Appropriate procurement, receipt, and payment for goods and services from vendors to ensure compliance with federal, state, and local requirements.</li> <li>• Fiscal integrity.</li> <li>• Compliance with all subgrant stipulations and assurances.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Underspending contract amount against planned budget/trend</li> </ul>
<ul style="list-style-type: none"> <li>• Mismanagement of contract which impacts AE performance standards, expenditure rates, employer relations, and/or customer service</li> </ul>
<ul style="list-style-type: none"> <li>• Other violations of the legislative, regulatory, legal, and other contractual requirements</li> </ul>

Please note that the above measures, and their respective performance standards, are subject to change based on federal, state, and local laws, policies, and the AE's and subrecipient's negotiated contract changes.

**A. PERFORMANCE MONITORING**

The AE will monitor the performance of the subrecipient throughout the program year using:

- 1) Data reporting from the program's system of record
- 2) Monitoring reports
- 3) Financial reports from the AE's finance team; and
- 4) Other program reporting requirements as specified in the contract and/or requested by the AE.

It is the responsibility of the subrecipient to ensure all staff involved in the service delivery and program management are appropriately trained to perform the tasks outlined in their scope of work. The AE will provide technical assistance as needed.

**B. PERFORMANCE MEASURES**

Refer to ***Subrecipient Contract - Attachment C*** for the approved Program Performance Measures.

**C. CORRECTIVE ACTION PROCESS**

The following outlines the progressive manner in which AE staff and subrecipients will address performance deficiencies.

1. If an area of deficiency in contract compliance or performance is identified, the AE will send a corrective action letter noting the area(s) of deficiency to the subrecipient's Executive Director

or equivalent position.

2. The subrecipient is required to provide a response to the AE within ten (10) business days of the issuance of the corrective action letter and complete the following:
  - a. Submit an **ATTACHMENT - CORRECTIVE ACTION PLAN** and provide progress updates on the plan, on frequency designated by the AE
  - b. Meet with the Program Manager to discuss corrective action and any necessary technical assistance, on frequency designated by the AE
3. It is the responsibility of the subrecipient to address and resolve performance and contract compliance issues. The AE will work with the subrecipient to provide identified technical assistance and/or capacity-building needs to ensure the delivery of high-quality services to participants.
4. Once a corrective action letter has been issued, the deficiency will be reviewed by the Program Manager, on a frequency selected by the AE, to determine if the issue has been resolved by the end of the period specified in the **ATTACHMENT - CORRECTIVE ACTION PLAN**.
5. When/if the AE staff has verified the corrective action plan has been carried out and the subrecipient has corrected the contract underperformance, AE staff will notify the subrecipient it is no longer on corrective action.
6. If the deficiency(ies) is not satisfactorily rectified, subrecipients shall be subject to one or more of the following actions:
  - a. The corrective action may be continued for an additional time depending upon the circumstances of the deficiency and ability to resolve the issue promptly, as determined by the AE; or
  - b. Subrecipients with outstanding or unresolved Corrective Action Plans may face one or more of the following consequences:
    - Subrecipient may not be considered for continued funding or an extension of their contract from the AE;
    - Subrecipient may be subject to a de-obligation of funds;
    - Subrecipient may be considered ineligible for funding in future procurements, for a specified period, from the AE; and/or
    - Subrecipient may be subject to a termination of the contract.
7. If it is determined that a de-obligation of funds or a termination of the contract is warranted, this recommendation will be brought forward as an action item to the local board (the state Workforce Development Council) and relevant committee(s). Written notification will be sent to the subrecipient's Signature Authority informing them of such action.

#### **D. Appeals Process**

Upon an area/subrecipient/provider being notified of the possibility of being sanctioned, local boards/WIOA service providers have the right to appeal the decision to the Administrative Entity. They must do this within 30 calendar days of intent to sanction for performance failure.

#### **E. Definitions:**

**Sanction** is a penalty imposed/assessed or a remedial action required for noncompliance with applicable federal, state, and local laws, regulations, contract provisions/grant agreements or conditions, or policies.

**Targets** are the negotiated level of performance agreed upon for any of the five metrics across the Title I programs

**Technical Assistance** is the efforts by the Administrative Entity to identify and correct causes of performance failure.

## F. References

- WIOA (Public Law 113-128)
- WIOA Section 116(g) – Performance Accountability
- WIOA Final Rule, 20 CFR 677.220 – Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
- WIOA Final Rule, 20 CFR 677.225 – Under what circumstances may local areas appeal a reorganization plan?
- Training and Employment Guidance Letter (TEGL) 11-19 – Negotiations and Sanctions Guidelines for the WIOA Core Programs
- 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)
- WIOA Final Rules
- Title 20 United States Code (U.S.C.) Section 1401: “Definitions”