

ADMINISTRATIVE ENTITY STATE POLICY –

WIOAP # 03-21

Effective Date: June 8th 2022

TO: All WIOA Subrecipients

From: Danilo Cabrera, Bureau Chief *Danilo Cabrera*

Subject: **WIOA Corrective Action Policy**

A. Purpose:

To establish a policy and outline the process used by the Administrative Entity (AE), as directed by the Governor, to conduct effective Workforce Innovation and Opportunity Act (WIOA) program monitoring and provision of technical assistance to ensure program quality, fiscal integrity, and performance achievement, and to render accurate and comprehensive reports of such monitoring and technical assistance activities.

This issuance serves as a notification and applies to all local areas and Subrecipients (recipients of awards, grants, and service providers receiving WIOA Title 1-B funding). The AE ensures compliance with applicable federal and state laws, regulations, policies, guidance, and terms and conditions of applicable awards and agreements. To accomplish these responsibilities and satisfy its oversight role, the AE 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.

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 for performance failure or failure to report (section 116(f) of WIOA).

Subrecipients are 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. The goal of the Corrective Action Policy is to create a statewide policy that clearly outlines the process for determining when and how corrective action plans are applied. This corrective action policy covers all subrecipient agreements, including those serving participants with local WIOA program funds. 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 POLICY

Corrective action will be taken when a Subrecipient, including all WIOA Title I-B Adult, Dislocated Worker, and Youth service providers, fails to meet compliance or performance in any of the following areas:

<ul style="list-style-type: none"> Achieving performance measures or milestones as outlined in the statement or scope of work and/or fidelity to the program design in the subrecipient's proposal. 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 federal timelines. "Failure" to perform on any WIOA metric would be defined as any of the following: <ul style="list-style-type: none"> Failure to meet 50% of targets for any metric on a quarterly basis, or Failure to average 90% of targets for all measures across programs (i.e., Adult) on an annual basis, or
<ul style="list-style-type: none"> Significant monitoring findings and/or not working to address and/or close findings promptly, including but not limited to: <ul style="list-style-type: none"> Compliance with uniform cost principles described in Office of Management and Budget (OMB) circulars. Compliance with appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving funds. Compliance with WIOA and applicable federal, state, and local regulations. Appropriate procurement, receipt, and payment for goods and services from vendors to ensure compliance with federal, state, and local requirements. Fiscal integrity. Compliance with all Subrecipient agreement stipulations, including adherence to the state's WIOA Provisions and Assurances.
<ul style="list-style-type: none"> Underspending - Actual subagreement expenditures compared to planned budget/trend within a 20 percent difference, assessed on a quarterly basis. Ex. If a subrecipient's 1st quarter planned budget is 25 percent of their annual budget, but only expends 18 percent of their budget, they will be found not to have achieved this outcome.
<ul style="list-style-type: none"> Mismanagement of Subrecipient agreement, which impacts AE performance standards, expenditure rates, employer relations, and/or customer service.
<ul style="list-style-type: none"> Other violations of the legislative, regulatory, legal, and other Subrecipient agreement requirements,

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

C. 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 Subrecipient agreement 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 statement or scope of work. The AE will provide technical assistance as needed.

D. PERFORMANCE MEASURES

Refer to the current year's negotiated performance levels and/or individual Subrecipient agreement for the approved Program Performance Measures.

E. CORRECTIVE ACTION PROCESS

The following outlines the progressive manner in which AE staff and Subrecipients will address program performance, financial reporting, and monitoring deficiencies, and are in addition to any Subrecipient agreement or performance policy language contained within any individual agreement.

1. If a deficiency in a Subrecipient's agreement, compliance, or performance is identified, the AE will send a warning letter noting the area(s) of deficiency to the Subrecipient's Signatory or equivalent position with a copy to the AE's Program Manager. Some circumstances, such as when a Subrecipient's agreement language identifies specific performance triggers, may advance the process directly to a Corrective Action Plan, bypassing the warning letter process noted earlier.
2. The Subrecipient must provide a response to the AE within five (5) business days of the issuance of the warning letter, including the date the subrecipient plans to resolve the matter.
 - a. Upon receiving any response, the AE may request a follow-up meeting with the Subrecipient to discuss performance or other agreement compliance issues and any technical assistance that may be necessary to address the issue.
3. Ultimately, the Subrecipient's responsibility is to address and resolve performance and agreement compliance issues. However, 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. This may include technical assistance provided by the Grants Management team or other designated staff.
4. The AE will follow up with the Subrecipient to review the status of the deficiency to determine if the resolution will be achieved by the end of the period specified in the Subrecipient's response.
 - a. If the AE staff has verified the Subrecipient has carried out its plan to correct the underperformance to its agreement, AE staff will notify the Subrecipient that it is no longer on corrective action.
 - b. If the Subrecipient is still found to be deficient at this time, the AE will formally initiate the state's Corrective Action Plan process by sending a letter to the Subrecipient's Signatory (with a copy to the Administrator or equivalent position and AE Program Manager)**
5. The Subrecipient shall have five (5) business days from the date the corrective action letter is issued to submit a written Corrective Action Plan (see Attachment 1) to the AE. The plan must address how the deficiency(ies) will be corrected and must include the following:
 - a. The finding or concern,
 - b. Cause for the finding or concern,
 - c. An Action Plan to correct the deficiency, and
 - d. The target date of correction or dates of action steps towards completion.
 - e. Request for technical assistance from the AE, if needed.
6. The Subrecipient shall have no more than fifteen (15) business days from the date of the Corrective Action Plan's submission to correct a deficiency unless the AE and Subrecipient have previously agreed to an extension beyond this date. The Grants Management team shall oversee compliance with the Corrective Action Plan, conducting periodic follow-ups,

including requests for additional information to track the Plan's progress during the allotted timeframe.

a. **Upon resolution of the deficiency(ies), the AE will communicate the resolution and completion of the Correction Action Plan via written correspondence to the subrecipient's Signatory with a copy to the Administrator or equivalent position and AE Program Manager.**

7. If the deficiency(ies) is not satisfactorily rectified, the subrecipient shall be subject to one or more of the following actions:
 - a. The Corrective Action Plan may be continued for an additional time, depending upon the circumstances of the deficiency(ies) and the ability to resolve the issue(s) promptly, as determined by the AE;
 - b. Subrecipients with outstanding or unresolved Corrective Action Plans at the end of the Program Year may face one or more of the following sanctions:
 - The Subrecipient may not be considered for continued funding or an extension of their agreement from the Workforce Development Council or the AE;
 - The Subrecipient may be subject to a de-obligation of funds;
 - The Subrecipient may be considered ineligible for funding in future procurements, for a specified period, from the Workforce Development Council or the AE; and/or
 - The Subrecipient may be subject to termination of their agreement.
8. If it is determined that a de-obligation of funds or a termination of the agreement is warranted, this recommendation will be brought forward as an action item to the Workforce Development Council, as the local board, or the AE, determined upon the agreement authority. Written notification will be sent to the Subrecipient's Signatory, with copies to the Administrator (or equivalent position) and the AE's Program Manager, informing them of such action.

F. Appeals Process

Upon a Subrecipient being notified of the possibility of being sanctioned, (C7) the Subrecipient has the right to appeal the decision to the AE. The Subrecipient will have 30 calendars days from the date of the written notification of sanction to submit an appeal.

G. Definitions:

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

Targets will vary upon each subrecipient agreement. For Title I programs, these include the negotiated level of performance agreed upon for any of the five WIOA performance measures. This also includes enrollment and spending targets based on the subrecipient's Program Planning Summary submission.

- For all other non-participant servicing subrecipients, targets will be based on the deliverables specified in the agreement and Statement/Scope of Work.

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

H. 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”