

	NCWorks Commission
	NCWorks Commission Policy Statement Number:
	Date: February 10, 2021
	Subject: DRAFT Local Workforce Board Sanctions and Appeal Policy
	From: <div style="text-align: center;"> <hr style="width: 20%; margin: 0 auto;"/> <p>Tom Rabon Chair, NCWorks Commission</p> </div>

Purpose: To establish and implement the State Workforce Innovation and Opportunity Act (WIOA) sanctions policy and appeal processes for all subrecipients of federal grant awards and state grants, where applicable, as mandated by the US Department of Labor (USDOL).

References:

- WIOA Pub. L. No. 113-128, §§ 3(9), 107, 116, 181, 183–184, 186, 188
- 2 CFR §§ 200.208, 200.331, 200.332, 200.339, 200.340, 200.342, 200.501, 200.521
- 20 CFR Part 677; Part 683, Subpart F; 20 CFR §§ 679.350, 683.120, 683.140
- 29 CFR Part 38
- 34 CFR Part 361; Part 463
- Training and Employment Guidance Letters 2-12, 23-15, 11-19
- Policy Statement 20-2017 Change 1: Financial Management Policy for Workforce Innovation and Opportunity Act Title I, Policy Statement 11-2020: Defining WIOA Performance, and Policy Statement 07-2018: WIOA Nondiscrimination/EO Standards and Complaint Procedures

Background: The goals of the Workforce Innovation and Opportunity Act (WIOA) include increasing access to employment; improving the quality of efforts to provide workers with necessary skills and credentials; promoting improvement in the structure of and delivery of services; increasing the employment, retention, and earnings of participants; and addressing the skill needs of employers. In an effort to meet these goals, the Governor, or his/her designated agency, is responsible for overseeing the NCWorks System to ensure that all subrecipients of federal grant awards and state grants, are satisfactorily meeting the needs of workers, job seekers, and employers.

The USDOL, as the federal oversight agency for WIOA and the national workforce system ensures that the requirements of WIOA are met and has the authority to impose sanctions on states for failure to perform and operate in compliance with the programs.

The NCWorks Commission and NC Department of Commerce, Division of Workforce Solutions (DWS) have the responsibility of ensuring accountability of subrecipients; ensuring and/or improving performance in achieving outcomes; ensuring compliance with applicable federal and state laws, regulations, policies, guidance, and terms and conditions of applicable awards, and contracts, ensuring adequate returns on our workforce investments; and supporting the NCWorks Commission and DWS in achieving their goals.

Useful Terms

Chief Local Elected Official (CLEO) – As defined by WIOA § 3(9), a chief elected official is the chief elected executive officer of a unit of general local government in a local workforce development board, and in the case in which a local workforce development board includes more than one unit of local government, the individuals designated under the agreement described in WIOA § 107(c)(1)(B).

Remedial Action – Any action required to rectify a situation created by a sanctionable act is a remedial action.

Signatory Official – An individual authorized to enter into and sign legally binding agreements on behalf of the Local WDB.

Standards of Administration – Standards of administration are models accepted as correct by custom, consent, or authority for the management or performance of the executive duties of government, institution, or business.

State – The State includes the Governor, the NCWorks Commission, and the Division of Workforce Solutions.

Subrecipient – As defined in Uniform Guidance at 2 CFR § 200.330, a subrecipient may receive funds concurrently as a subrecipient and a contractor. Whether a subrecipient is the recipient of a subaward or a procurement contract is determined on a case-by-case basis. A subrecipient is a non-federal entity which:

- Determines who is eligible to receive what federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision making;

- Is responsible for adherence to applicable federal program requirements specified in the federal award; and/or
- In accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Local Workforce Development Boards and state grantees are subrecipients. For more information regarding the differences between a subrecipient and a contractor, see the definition of contractor in Uniform Guidance at 2 CFR § 200.330.

Action: It is the State’s expectation that all subrecipients will meet the established federal and state standards of performance and operations developed in accordance with federal, state, and local laws, regulations, policies, and guidance. If subrecipients do not meet these standards, it is the State’s responsibility to act in a timely manner and initiate the steps to address the sanctionable act.

Following the terms of this policy, the State may impose conditions, remedial actions, and/or penalties to remedy a sanctionable act if the State determines that a sanctionable act has occurred. For sanctions related to violations of nondiscrimination and equal opportunity provisions of WIOA, see Workforce Policy. Workforce Innovation (WIOA) Nondiscrimination/Equal Opportunity Standards and Complaint Procedure, which can be found at <https://www.nccommerce.com/jobs-training/workforce-professionals-tools-resources/workforce-policies>.

Sanction Determination Process

Step 1: Informal Resolution

The Governor’s designated agency for WIOA Title I services and other related services, DWS, will provide assistance to subrecipients to resolve issues informally before violations arise to the level of this formal sanctions policy. Informal resolution is a joint undertaking by DWS and the subrecipient to resolve any potential sanctionable acts without resorting to formal sanctions. Informal resolution efforts include:

- Technical assistance
- Additional oversight
- Desktop monitoring
- Mitigating efforts implemented by the subrecipient

In addition, local areas are monitored annually by DWS for compliance with federal, state, and local laws, regulations, policies, and guidance. Based on

annual monitoring reports or other operational documents noting noncompliance, local areas are able to develop a Corrective Action Plan (CAP) to respond to and address any issues discovered. Continued failure to address issues may result in the execution of the sanction determination process described in this policy. However, by developing a CAP and abiding by the terms of this action plan, local areas may respond and resolve issues before they rise to the level of the sanction determination process.

The sanction determination process described below is triggered only after all informal resolution efforts have failed.

Step 2: Notice of Sanctionable Act

If informal resolution fails to resolve the issue(s), DWS will issue a written notice identifying any sanctionable act(s). The written notice will include requirements for a CAP, the specific sanction(s) to be imposed, and a timeline of implementation. The notice will be sent by registered mail to the subrecipient, if a state grantee, and to the signatory official, the Chief Local Elected Official (CLEO), the Local Workforce Development Board (WDB) Chairperson, and the Local Workforce Development Board (WDB) Director.

If deemed necessary or prudent, sanctions may be imposed at any time ~~and~~ with prompt notice and the opportunity for a subsequent appeal within 30 days after such termination and suspension for, but not limited to incidents of fraud, malfeasance, misapplication of funds, potential or suspected criminal activity, violation of policy directives, or other serious violations.

Step 3: Subrecipient Response

The subrecipient must respond to the identified requirements in the letter, and must create a CAP, within the required timeframe established by DWS executive leadership. In the written response, the subrecipient may note justifications for the violation(s), mitigating efforts already made by the subrecipient to lessen any effects of the violation(s), and other information, as appropriate.

Subrecipients may request technical assistance activities related to sanctions. Technical assistance is vital in addressing performance, compliance, and continuous quality improvement. DWS will evaluate and respond to the request for technical assistance. Technical assistance may include development of a CAP, development of a local/regional plan, or other actions designed to improve performance or compliance. (TEGL 11-19).

If the subrecipient resolves the sanctionable act, then DWS will proceed to Step 5 and send a Notice of Resolution of Sanctionable Act.

Step 4: Notice of Sanction

Upon determining that the subrecipient has not corrected the sanctionable act, DWS will issue a written Notice of Sanction by registered mail, to the subrecipient, the signatory official, the CLEO, WDB Director, and the WDB Chairperson. The Notice of Sanction must include the following information in accordance with 2 CFR § 200.208:

- Nature of the sanction
- Reason the sanction is being imposed
- Nature of the remedial action(s) and/or condition(s) needed to remove the sanction, if applicable
- Time allowed for completing the remedial action(s) or meeting the condition(s), if applicable
- Method for appealing the sanction imposed.

Sanctions will be imposed based on the following criteria:

- Totality of the circumstances surrounding the sanctionable act(s):
 - Nature of the sanctionable act(s)
 - Severity of the sanctionable act(s)
 - Frequency of the sanctionable act(s)
 - Cause of the sanctionable act(s) (e.g., neglect, intent)
 - History of the subrecipient regarding its ability to administer a program (e.g., occurrences of sanctionable acts, resolution of sanctions and sanctionable acts, efforts to prevent the occurrence of the sanctionable acts, and oversight results); and other criteria not listed that may be deemed appropriate (e.g., justification for subrecipient's failure to provide necessary information or take required action, or demonstrations of willingness by the subrecipient to cooperate in the sanction process).

Failure to comply with the terms of the Notice of Sanction may result in additional sanctions. If a subrecipient chooses to appeal a Notice of Sanction, the subrecipient may do so according to the appeals procedure described in the Appeals section below.

Step 5: Notice of Resolution of Sanctionable Act

Upon completion of the terms of the Notice of Sanction, DWS will issue a Notice of Resolution of Sanctionable Act to the subrecipient and to the signatory official, the CLEO, the WDB Chairperson, and the WDB Director.

Sanctionable Acts

Examples of situations which may require the State to take immediate action include, but are not limited to, the following:

Fiscal Violations

- Repeated failure to submit timely and accurate monthly financial reports in Workforce Information System Enterprise (WISE), DWS's web-based financial system.
- Non-compliance with State, Federal, administrative, procurement, or 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 § 184(c)(2)-(3)).
- Incidents of fraud of a non-criminal nature*, malfeasance, misapplication of funds, or other serious violations (e.g., as defined in TEGL 2-12).
- Failure to submit audits as required by the Uniform Guidance (2 CFR § 200.501).
- Failure to implement proper budgetary controls to ensure actual expenditures are within the allocated budget, in accordance with the DWS Operational Guidance.
- 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 WIOA (20 CFR § 683.300).
- Failure to ensure actual expenditures are within the allocated budget, or actual expenditures exceeding the allocated budget.

***Note:** Information and complaints involving criminal fraud, waste, abuse, or other criminal activity must be reported immediately through USDOL's Incident Reporting System to USDOL's Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Ave. NW, Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the USDOL Employment and Training Administration. The Hotline number is 1-800-347-3756. The website is <http://www.oig.dol.gov/contact.htm>.

Performance Violations

- Failure to record timely and accurate federal and state required data for performance measures or data validation requirements.
- Failure to meet one or more negotiated/adjusted levels of local performance indicators for three consecutive program years or, actions that meet the definitions for “Failure to Meet Adjusted Levels of Performance” as noted in 20 CFR § 677.190 (d), 34 CFR §361.190 (d), and § 463.190 (d),

General

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- Failure to comply with any NCWorks Commission Policy Statements or DWS Operational Guidance.
- Willful disregard of, or gross negligence in fulfilling, the requirements of the following:
 - Title I and Title III of the Workforce Innovation and Opportunity Act
 - Other federal laws, regulations, policies, and guidance
 - State laws, regulations, NCWorks Commission Policy, DWS Operational Guidance, including all current and subsequent state policies
 - Written directives from the Assistant Secretary for Workforce Solutions or DWS Legal Counsel as designated by the Governor
 - Terms and conditions of applicable grant fund awards, and service provider contracts
 - Timely submittals of grant reports and other required data submissions to DWS.
- Hindering or impeding an investigation by law enforcement officials of alleged criminal conduct.

Sanctions

Unless deemed necessary or prudent, sanctions will not be imposed unless informal resolution efforts fail to resolve sanctionable acts. The following examples of sanctions may be imposed by the DWS Assistant Secretary for Workforce Solutions if informal resolution efforts fail and/or may overlap with actions described in a grant agreement.

- Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance (2 CFR § 200.339)
- Withhold drawdowns and requests for payment, suspension, and termination of funds (2 CFR § 200.339)
- Suspend or Terminate Intergovernmental Agreement, Memorandum of Understanding (MOU), or any other agreement between the subrecipient and the State (WIOA § 184(b); 2 CFR § 200.339, 200.340)
- Recapture and reallocate funds (20 CFR § 683.140)
- Reimbursement of funds rather than advanced payments (2 CFR § 200.208(b)(1))
- Ineligibility for discretionary funds (20 CFR § 683.120)
- Ineligibility to receive a voluntary reallocation from another local area (20 CFR § 683.140)
- Submission of additional or more detailed financial or performance reports (2 CFR § 200.208(b)(3))
- Reports on activities and progress until performance is satisfactory, by the WDB's executive director, other administrative officer, or the subrecipient (in person and/or in writing) (2 CFR § 200.208(b))
- Virtual or On-site visits to provide technical assistance to the WDB, the LWDB's contractor, or the subrecipient (2 CFR § 200.332(d)-(e), 200.521(a))
- Reorganization plan (WIOA § 107(c), (2)(C), 20 CFR § 677.220)
 - Appointment and certification of a new WDB, consistent with the criteria established under 20 CFR § 679.350
 - Prohibition of the use of eligible providers that have been identified as achieving substandard levels of performance
 - Other significant actions, as appropriate
- Recommend the initiation of suspension or debarment proceedings (2 CFR § 200.338(d))
- Any and all other legally available remedies (2 CFR § 200.339(f))

The sanctions listed above supplement, but 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, contracts, etc. This policy does not relieve the responsibilities of grantees under a DWS Grants Administration Agreement. **Actions described in a DWS Grants Administration Agreement may be imposed without entering the Sanction Determination Process** described above (e.g., disallowed costs or withholding drawdowns may be imposed until the grantee becomes compliant with the terms of the grant).

Appeals

A subrecipient that receives a written Notice of Sanction may file the appeal with DWS. The following actions may be appealed by the Chief Local Elected Official of a Local Workforce Development Board:

- Notice of Sanction
- Annual WIOA Title I Financial Allocations
- Actions involving disbursement of funds to subrecipients

Appeals regarding sanctions to subrecipients must be submitted in writing to Assistant Secretary for Workforce Solutions by the designated Chief Local Elected Official for the Local Workforce Development Board. All appeals will be reviewed by DWS and submitted to the NCWorks Commission Executive Committee for a final decision. A determination establishing a sanction shall be deemed final unless a subrecipient submits a written appeal to the NC Division of Workforce Solutions within 30 calendar days of the issuance of the Notice of Sanction. If the 30th day falls on a weekend or holiday, the deadline will be extended to the next business day. Appeals must be submitted by registered mail, clearly identified as “Dated Material,” and addressed to:

NC Division of Workforce Solutions
Attn: Assistant Secretary for Workforce Solutions
4316 Mail Service Center
Raleigh NC 27699-4316

Appeal letters must include the following elements:

- Description of the Sanction imposed;
- Appeal rebuttal;
- Rationale as to why the imposed Sanction(s) are not justifiable;
- Relief requested;
- References to WIOA regulations or State Policy associated with the Notice of Sanction; and
- Any alternatives to the Notice of Sanction that the Local WDB is willing to accept.

The following procedures will apply:

- The Chairperson of the NCWorks Commission will designate three members of the Executive Committee or an Ad Hoc Committee of at least three NCWorks Commission members to review the written appeal and any supplemental written information provided in the appeal.

- The NCWorks Commission will issue a final written decision within 90 days of the receipt of the appeal. If there is delay, the NCWorks Commission will notify all parties in writing of the revised deadline, prior to the initial 90-day deadline.

This Policy shall not prohibit a subrecipient from pursuing a remedy if such action is authorized under federal, state, or local law.

Additional appeals procedures apply to certain types of sanctions:

A local area that has been found in substantial violation of WIOA and has received notification that either all or part of the local plan will be revoked or that a reorganization will occur may appeal such sanctions to the Secretary of Labor, USDOL under 20 CFR §683.650. The appeal must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization. All appeals must be submitted in writing by the designated CLEO for the WDB. A copy of the appeal must be simultaneously provided to DWS, Attn: Assistant Secretary for Workforce Solutions and the Governor. The sanctions do not become effective until the time for appeal has expired or USDOL has issued a decision. USDOL will notify the Governor and the appellant in writing of the Secretary's decision within 45 days after receipt of the appeal.

A local area that has failed to meet one or more negotiated/adjusted levels of local performance indicators for three consecutive program years and has received the Governor's notice of intent to impose a reorganization plan may appeal to the Governor to rescind or revise such plan no later than 30 days after receiving written notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal. The local area may appeal the final decision of the Governor to USDOL under 20 CFR § 677.225 no later than 30 days after receiving the Governor's final decision. Any appeal of the Governor's final decision must be appealed jointly by the WDB and the CLEO. USDOL will make its final decision within 30 days after receipt of the appeal. The decision by the Governor on the appeal becomes effective at the time it is issued and remains effective unless USDOL rescinds or revises the reorganization plan.

Effective Date: Immediately

Expiration: Indefinite

Contact: Division of Workforce Solutions Director Policy, Planning, and Accountability