

## **Workforce Services Policy – Sanctions for Failure to Meet Federal and State Standards**

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### **Executive Summary**

#### **1. What is the general purpose of this policy?**

The purpose of this policy is to inform Local Workforce Development Boards (LWDBs), and other subrecipients (e.g. LWDA's, Third Party Contractors, etc.) utilizing WIOA Title I funds or other Workforce Services pass through funds, about the potential remedies and sanctions that the State Workforce Development Board (SWDB) will impose on Local Workforce Development Areas (LWDAs) and LWDBs failing to meet the Federal and State fiscal standards and performance measures.

#### **2. What are the notable guidelines conveyed within this policy?**

- Defining the four (4) categories of sanctions
- Specific sanctions for each category
- Corrective Action notices
- Appeal rights

#### **3. Have there been any changes since the last policy? If so, describe the modification(s).**

No.

#### **4. What must the Local Workforce Development Board do to meet the requirements of this policy?**

Local Boards and subrecipients must adhere to federal and state standards. If a local board is sanctioned, they must ensure the implement corrective action to meet the federal and/or state standards they failed to meet.

#### **5. How does this policy affect the workforce system?**

This policy defines the actions that can be taken if a local board or subrecipient fails to meet federal and/or state standards.



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**Workforce Services Policy - Sanctions for Failure to Meet Federal and State Standards**

**Effective Date:** August 27, 2021

**Expiration:** Automatic Annual Renewal

**Purpose:**

The purpose of this policy is to inform Local Workforce Development Boards (LWDBs), and other subrecipients (e.g. LWDA's, Third Party Contractors, etc.) utilizing WIOA Title I funds or other Workforce Services pass through funds, about the potential remedies and sanctions that the State Workforce Development Board (SWDB) will impose on Local Workforce Development Areas (LWDAs) and LWDBs failing to meet the Federal and State fiscal standards and performance measures.

**Scope:**

Office of the Governor, Tennessee Department of Labor and Workforce Development (TDLWD); Division of Workforce Services (WFS); Tennessee Department of Economic and Community Development (ECD); Tennessee Department of Education (TNED); Tennessee Department of Human Services (DHS); State Workforce Development Board (SWDB); **Title I** – Adult, Dislocated Worker, and Youth Programs, **Title II** – Adult Education and Family Literacy Act Program(AE); **Title III** – Wagner-Peyser Act Program (WP); **Title IV** – Vocational Rehabilitation Program (VR); Regional Planning Council (RPC); Local Workforce Development Boards (LWDB); Local Workforce Development Areas (LWDA); American Job Center (AJC); One-Stop Operator (Operator); Workforce System Sub-Recipients (Sub-Recipients); Workforce System Partners (Partners).

**Background:**

The State Workforce Development Board (SWDB) shall have a zero-tolerance approach to addressing observed deficiencies by a subrecipient to meet the regulatory compliance standards for financial and program management. The effect of subrecipient noncompliance places the State at risk for loss in credibility/confidence of data used to support management decisions, increased risk for compliance findings, and potential for a reduction/recapture of funding at the State level.

In an effort to reduce such deficiencies, and to increase program integrity at the local level, any subrecipient not meeting the regulatory standards shall be subject to the specific conditions or

remedies and sanctions set forth in this policy. A non-exhaustive listing of examples of such standards include:

- *Uniform Administrative Requirements,*
- *Cost Principles, and Audit Requirements for Federal Awards, WIOA law,*
- *One-Stop Comprehensive Financial Management Technical Assistance Guide,*
- *Grantee Contract Terms and Conditions*
- *TN WIOA 17-1 Allowable and Unallowable Costs,*
- *TN WIOA 17-11 Minimum Participant Cost Rate,*
- *TN-WIOA 18-3 One Stop Certification,*
- *2 CFR Part 200, Appendix XI Compliance Supplement*
- *And all other applicable policy and guidance.*

**Methodology for Remedies of Non-Compliance:**

The severity of an infraction (Category 1, 2, 3, or 4) is determined by the level of risk associated with observed deficiencies relative to the *2 CFR Part 200, Appendix XI Compliance Supplement*. The state will maintain an internal tracker by local area detailing the status of compliance with requirements outlined in State policies and/or guidance.

The risk categories will be assigned as follows: Category 1 (Low); Category 2 (Moderate); Category 3 (High). Not satisfying Category 1 leads to a Category 2 and so forth through Category 4.

The following are examples of Category 1, 2, 3, and 4 infractions:

- **Category 1 (Low Risk)**
  - Untimely/Inaccurate reporting (i.e. monthly status reports, complaint logs, etc.)
- **Category 2 (Moderate Risk)**
  - Infractions leading to potential disallowed costs (i.e. eligibility issues, inaccurate cost classification, etc.)
- **Category 3 (High Risk)**
  - Inadequate use or non-utilization of State systems per contract agreements
  - Improper use of funds leading to waste, fraud, or abuse
- **Category 4**
  - Recurrent activity leading to lack of sustained program and/or fiscal integrity
  - Intentional acts that result in improper use of funds leading to waste, fraud, or abuse

*Note: This is not an exhaustive list the SWDB reserves the right to levy heavier penalties on more egregious offenses.*

## **I. Specific Conditions:**

The TDLWD, as the Federal awarding pass through agency, may impose additional specific award conditions as needed, especially in instances of noncompliance with Federal and State regulations. <sup>1</sup>

### **A. Category 1 Infractions will result in the following:**

1. Requiring the non-Federal entity to obtain technical or management assistance. This may be required through several means such as:
  - Webinars and Conference Calls
  - Required attendance at central office training
  - On-Site group technical assistance visits and or fiscal reviews
2. Requiring additional project monitoring.

### **B. Category 2 Infractions will result in the following:**

1. Requiring additional, more detailed financial reports.
  - This may include providing invoices and additional support documentation/justification for expenditures detailed in the drawdowns.
  - This is in addition to the desktop monitoring that has begun. Depending upon the nature of the noncompliance, a greater sample may be pulled for all programs.
2. Establishing additional prior approvals. This may be achieved through various means, including but not limited to:
  - Requiring LWDB approval on a variety of actions as determined necessary by TDLWD
  - Written approval and acknowledgment from the CLEO and LWDB Chair
  - Other related personnel as needed
3. Placing the Subrecipient on Reimbursement Status:
  - a.) This Corrective action will be used provided that the subrecipient is receiving limited advance payments
  - b.) For those areas that are already on reimbursements, one or more of the following specific conditions will apply:
    - i. Subrecipients will be required to submit additional, more detailed financial reports
    - ii. Subrecipients may be required to provide invoices and additional support documentations/justification for expenditures detailed in the drawdowns.

Once in place, specific conditions shall remain in effect until either expiration of the time period set forth in the probationary status (where applicable), or until the specific conditions have been met and evidence of acceptable performance has been demonstrated, as determined by TDLWD<sup>2</sup>.

Once specific conditions have been removed from the subrecipient, the TDLWD reserves the right to monitor the sub-recipient as necessary.

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<sup>1</sup> 2 CFR 200.207

<sup>2</sup> 20 CFR 677.220

## **II. Remedies and Sanctions:**

If the severity of the subrecipient noncompliance cannot be remedied by imposing specific conditions, as determined by TDLWD and/or the SWDB, then the following remedies and sanctions shall apply<sup>3</sup>.

Subject to the notification and approval of the SWDB the TDLWD, as Federal awarding pass through agency, may impose remedies and sanctions when noncompliance cannot be remedied by imposing additional conditions<sup>4</sup>. The following is a non-exhaustive listing of potential actions that will be taken against a noncompliant subrecipient where additional conditions have failed:

### **A. Category 3 Infractions will result in the following Sanctions:**

1. Recommend the LWDB reassess LWDB staff and their capacity to serve to ensure the LWDB functions are being carried out effectively and efficiently.
2. Additional on-site visits, including a full fiscal review of WIOA-related expenditures
3. Deny additional funding requests
4. Wholly or partly suspend or terminate the Federal award.
5. Temporarily withhold reimbursements
6. Disallow (that is, 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.
7. Reduce Infrastructure funding allotment

### **B. Category 4 Remedies:**

Failure to address Category 1 through 3 Infractions will result in the following:

1. Initiate suspension or debarment proceedings<sup>5</sup> (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
2. Decertification of the LWDB<sup>6</sup>
3. Any and all other legally available remedies

Any action taken by SWDB against a subrecipient is not intended in any way to cause adverse effects to the delivery of services in the respective LWDB.

## **III. Provision of Notice of Corrective Action:**

The subrecipient and all related parties shall be notified of the specific conditions or remedies and sanctions through a formal notice issued by the TDLWD. This notice shall contain the following:

- A.** The reason why the additional requirements/sanctions are being imposed;
- B.** The nature of the additional requirements/sanctions;
- C.** The nature of the action needed to remove the additional requirement, if applicable;
- D.** The time allowed for completing the actions if applicable, and;
- E.** The method for requesting reconsideration of the additional requirements/sanctions imposed.

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<sup>3</sup> 2 CFR 200.338

<sup>4</sup> 2 CFR 200.338

<sup>5</sup> 2 CFR 180

<sup>6</sup> WIOA Section 107(c)(3)

#### **IV. Process for Appealing Decisions to Impose Remedies and Sanctions:**

An area seeking to appeal the decision made regarding Remedies and Sanctions may file the appeal to the Tennessee Department of Labor and Workforce Development (specifically the Workforce Services Division).

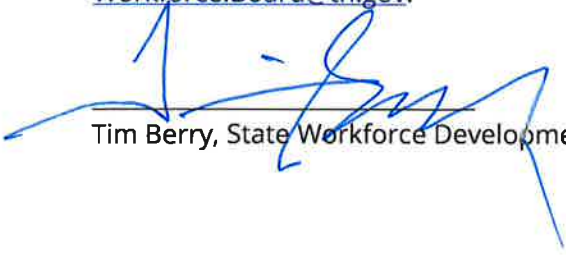
- A.** An appeal must be in writing and filed with the Tennessee Department of Labor and Workforce Development within thirty (30) calendar days after notification of the receipt of the imposed remedies and sanctions notice. The appeal is to be submitted to the Commissioner of the Tennessee Department of Labor and Workforce Development
- B.** The appeal must contain a specific statement of the grounds upon which the appeal is sought. Accompanying the appeal must be a list of the remedies and sanctions that have been imposed on the Local Workforce Development Area and/or subrecipient and justification as to why the remedies and sanction(s) imposed were not justifiable.
- C.** The Appeal will be filed to The State Board within (14) business days of being received by the Commissioner of the TDLWD.
- D.** The State Board or specially convened executive committee meeting will have a maximum of sixty (60) calendar days to review the appeal and make a recommendation to the Governor. The review will take into account the information in the appeal filed to the Tennessee Department of Labor and Workforce Development and any supplemental information provided in the appeal to determine if the criteria set forth in this policy have been met.
- E.** The final decision rests with the Governor.
- F.** If a LWDB chooses to appeal the Governor's decision a detailed statement of the grounds on which the appeal is sought plus a copy of the Governor's decision must be sent to the Secretary via certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: Assistant Secretary for Employment Training (ASET). A copy of the appeal must be simultaneously provided to the ETA Regional Administrator and Governor.
- G.** The Secretary will notify the Governor and the appellant in writing of the Secretary's decision within forty-five (45) days after receipt of the appeal. In making this determination, the Secretary may consider any comments submitted by the Governor in response to the appeals

#### **References:**

**2 CFR 200.207, 2 CFR 200.338, 20 CFR 677.220, 2 CFR 180, WIOA Section 107(c)(3) and all applicable State and Federal Regulations and Policies**

**Contact:**

For any questions related to this policy, please contact the Program Integrity Unit at [Workforce.Board@tn.gov](mailto:Workforce.Board@tn.gov).



Tim Berry, State Workforce Development Board Chair