



COMMONWEALTH OF VIRGINIA
VIRGINIA COMMUNITY COLLEGE SYSTEM

WORKFORCE INNOVATION AND OPPORTUNITY ACT

VIRGINIA WORKFORCE LETTER (VWL) No. 20-01, Change 1

TO: Local Workforce Development Boards

FROM: Randall Stamper *Randall Stamper*
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SUBJECT: **Sanctions and Appeals Process**

EFFECTIVE DATE: July 1, 2022

PURPOSE:

To provide guidance to local workforce development areas regarding sanctions for subrecipients of federal grant awards.

REFERENCES:

Workforce Innovation and Opportunity Act of 2014, Final Rule Subpart F- 20 CFR §683.650
Workforce Innovation and Opportunity Act of 2014, Final Rule Subpart G-20 CFR §683.700-683.750
Workforce Innovation and Opportunity Act of 2014, Final Rule 20 §677 et al.
29 CFR Part 97.40, Monitoring and Reporting Program Performance
Uniform Administrative Requirements. Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200 (Subpart E))
Training and Employment Guidance Letter (TEGL) 11-19 Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs
Training and Employment Guidance Letter (TEGL) 02-12 Employment and Training Administration (ETA) Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct

REVISION HISTORY:

This guidance replaces VWL 20-01: Sanctions and Appeals dated July 8, 2020. Updates that adjusted levels of performance will be used for applying sanctions, not negotiated levels of performance.

DEFINITIONS:

Sanction - a penalty imposed by the WIOA Title I Administrator on a Local Workforce Development Board due to failure to report, failure to meet adjusted performance levels, non-compliance with corrective action plans, or non-compliance with state and federal law or regulations.

WIOA Title I Administrator - The Virginia Community College Systems Office

Subrecipient - a non-federal entity that receives a sub-award 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 a federal awarding agency.

Disallowed Costs - are charges to a federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable terms and conditions of the federal award.

BACKGROUND:

The purpose of the sanctions process is to ensure accountability of subrecipients (i.e., local boards, contracted providers, intermediaries, etc.) in meeting the needs of the local workforce development system; ensure and/or improve performance in achieving outcome measures; ensure compliance with applicable federal and state laws, regulations, policies, guidance, and terms and conditions of applicable awards, contracts, etc.; and support the Commonwealth in achieving its goals. To accomplish these responsibilities, as well as to satisfy its oversight role, the WIOA Title I Administrator may impose corrective actions or penalties to remedy or to mitigate the risk for noncompliance or nonperformance.

GUIDANCE:

The guidance is to address failure to comply with state and federal regulations that govern the operational, administrative, and financial aspects of the local workforce development system service delivery under Workforce Innovation and Opportunity Act WIOA Title I.

The WIOA Title I Administrator may impose, in non-sequential order, the following sanctions on a grant subrecipient:

- Intent to Sanction
- Level-One Sanctions
- Level-Two Sanctions
- Level-Three Sanctions

Applicable Resolutions

The WIOA Title I Administrator may impose sanctions with resolutions on a subrecipient for failure to comply with applicable federal, state, or local laws and regulations, policies, or terms and conditions of applicable awards and contracts, etc. Remedial actions and/or penalties will be applied in accordance with applicable laws, regulations, policies, directives, award/contract provisions, etc., and may include, but are not limited to:

- i. Mandatory participation in training and technical assistance.
- ii. Determination of costs as disallowed: The WIOA Title I Administrator may make a determination that costs charged to an award are unallowable.

- iii. Repayment: The WIOA Title I Administrator may require the repayment of disallowed costs of any federal fund amounts found to have been expended in violation of applicable statutes, regulations, policies, or terms and conditions of applicable awards, contracts, etc. (e.g., WIOA Section 184 (c)(4)); Repayment of disallowed costs must be made from sources other than federal funds.
- iv. Reduction of funds: The WIOA Title I Administrator may reduce or de-obligate all or part of the funds awarded.
- v. Reallocation of funds: The WIOA Title I Administrator may reallocate all or part of the funds awarded as a result of noncompliance regarding obligation or expenditure requirements.
- vi. Withholding, suspension and termination of funds: The WIOA Title I Administrator may immediately terminate or suspend funds, in whole or in part, when necessary to ensure the proper operation of the program and ensure the integrity of funds.
- vii. Reorganization plan: The WIOA Title I Administrator, in consultation with the Governor's Office, may require a reorganization plan. Such a plan may include:
 - a. Decertification or restructuring of the local board;
 - b. Appointment and certification of a new local board;
 - c. Prohibition on the use of certain providers;
 - d. Designation of a new fiscal agent;
 - e. Selection of an alternate entity to administer the program for the local workforce area involved; and
 - f. Other organizational changes as the WIOA Title I Administrator deemed necessary to ensure compliance.

Note: the WIOA Title I Administrator may offset certain amounts to which the local workforce area is, or may be, entitled to under WIOA, unless it is determined that the local workforce area should be held liable pursuant to TEGL No. 2-12 (i.e., willful disregard of the requirements of WIOA Title I; gross negligence; failure to observe accepted standards of administration; a pattern of mis-expenditures as described in WIOA section 184 (c)(2) and (3); or incidents of fraud, malfeasance, misapplication of funds or other serious violations.)

Sanctions

The resolutions outlined above will be applied as prescribed below. An intent to sanction notice will be provided to the LWDB Executive Directors, LWDB Chair, and the Grant Recipient.

A. Intent to Sanction

The WIOA Title I Administrator may issue an Intent to Sanction to set forth:

- a. A resolution plan;
- b. A specific timeline for the implementation of the resolution plan; and
- c. Sanctions to be applied if failure to carry out and complete the resolution plan.

B. Sanctions

i. Notice :

The notice shall be sent to the local area by electronic transmission from the WIOA Title I Administrator and will include the following information:

- a. The sanctionable act(s) upon which the sanctions are based;

- b. The sanction level in which the grant subrecipient is placed and the conditions under which the sanction may be removed;
- c. The penalty and effective date penalty;
- d. The resolution action required, including the timeline for completing the corrective action; and
- e. The technical assistance contacts from the WIOA Title I Administrator or other entity to assist in completing the corrective action.

- ii. Status
 - There are three (3) sanction status levels that may be assigned by the WIOA Title I Administrator to a subrecipient depending upon the nature and severity of the sanctionable act(s), mitigating circumstances surrounding the sanctionable act(s), or other relevant factors. Sanction status levels may change as deemed to be appropriate by the WIOA Title I Administrator.

1. Level-One Sanction

The WIOA Title I Administrator may impose a level-one sanction on a grant subrecipient for any or all of the following sanctionable acts that may occur during the grant's performance period:

- i. Failure to submit timely and accurate required reporting and documentation;
- ii. Failure to submit required annual audits;
- iii. Breach of administrative requirements as provided in the Uniform Guidance; and
- iv. Breach of service contract requirements.

Level One Sanctions may include the following resolution actions:

- i. Mandatory participation in technical assistance and quality assurance activities;
- ii. The WIOA Title I Administrator may require the local board to establish policies and procedures to ensure compliance with reporting and documentation requirements.

2. Level-Two Sanction

The WIOA Title I Administrator may impose a level-two sanction on a grant subrecipient for any or all of the following sanctionable acts that may occur during the performance period:

- i. Failure to sufficiently resolve or implement remedial action in a level-one sanction within the time period determined by the WIOA Title I Administrator;
- ii. Failure to implement corrective actions to resolve findings identified during monitoring, investigative, or program reviews, including failure to comply with a technical assistance plan as directed by the WIOA Title I Administrator;
- iii. Failure to meet adjusted levels of programmatic or fiscal performance for the same performance measure under WIOA Title I formula funds for two consecutive years, or for the performance period established under other grants issued under WIOA
- iv. Failure to resolve all independent audit findings or questioned costs within required time frames.

Level Two Sanctions may include the following actions:

- i. On-site visits by WIOA Title I Administrator staff to oversee and assist with daily operations of a LWDB and/or grant subrecipient;
- ii. Designation as a high-risk board or grant subrecipient requiring additional monitoring visits
- iii. Second-year nonperformance: Formal monthly performance reviews and may include local board organizational change, and/or other remedial actions as deemed appropriate.
- iv. Ineligibility for additional discretionary or other funds, including incentive awards;
- v. Determination of costs as disallowed: The WIOA Title I Administrator may make a determination that costs charged to an award are unallowable.
- vi. Repayment: The WIOA Title I Administrator may require the repayment of disallowed costs of any federal fund amounts found to have been expended in violation of applicable statutes, regulations, policies, or terms and conditions of applicable awards, contracts, etc. (e.g., WIOA Section 184 (c)(4));
- vii. Reduction of funds: The WIOA Title I Administrator may reduce or de-obligate all or part of funds awarded.
- viii. Reallocation of funds: The WIOA Title I Administrator may reallocate all or part of funds awarded as a result of noncompliance regarding obligation or expenditure requirements.
- ix. Withholding, suspension, and termination of funds: The WIOA Title I Administrator may immediately terminate or suspend funds, in whole or in part, when necessary to ensure the proper operation of the program and ensure the integrity of funds.

3. Level-Three Sanction

The WIOA Title I Administrator may impose a level-three sanction on a grant subrecipient for the following sanctionable acts that may occur during the performance period:

- i. Failure to sufficiently resolve or implement remedial action in a level-two sanction within the time period determined by the WIOA Title I Administrator;
- ii. A pattern of mis-expenditure;
- iii. Incidents of fraud, malfeasance, misapplication of funds or other serious violations as defined TEGL 2-12;
- iv. Failure to meet adjusted levels of programmatic or fiscal performance for the same performance measure under WIOA Title I formula funds for three consecutive years, or for the performance period established under other grants issued under WIOA Committing three or more sanctionable acts within three consecutive program years.

Level Three Sanctions may include the following actions:

- i. WIOA Title I Administrator may appoint a steward to provide oversight and management toward corrective action resolution;
- ii. Require approval by the WIOA Title I Administrator of specified grant subrecipient actions (i.e., prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval by the WIOA Title I Administrator)
- iii. Contract and/or grant award cancellation or termination; and
- iv. The WIOA Title I Administrator will review the identified performance deficiencies and make a recommendation to the Governor to impose a reorganization plan for the local area; and a restructuring of the LWDB, including decertification of the current local LWDB and the appointment and certification of a new LWDB; and/or the prohibition of the use of eligible training providers and one-stop system partners that have been identified as achieving/contributing to poor levels of performance. The WIOA Title I Administrator will also

issue a notice of intent to revoke approval of all or part of the affected LWDA WIOA Plan, requiring, at a minimum, modification of the LWDA's WIOA plan, and may make additional recommendations to the Governor that include one or more of the following actions:

- a. Seeking an alternate entity to administer the program for the local workforce area involved;
- b. Local workforce development area re-designation;
- c. Other such changes or penalties as the WIOA Title I Administrator or Governor deems necessary to ensure performance.
- d. The amount of monetary sanctions imposed for nonperformance will not exceed five percent (5%) of the combined WIOA formula funds for a particular program year. Such sanctions imposed (i.e., reduction of funds by the percent assessed) will apply to the subsequent year's funding allocation.

Appeals Process

Local areas may appeal the application of sanctions Level Two or Level Three to the WIOA Title I Administrator. No person shall participate on behalf of WIOA Title I Administrator in any case in which he or she is an interested party.

A determination establishing a sanction shall be deemed final unless a written appeal is filed within thirty (30) calendar days after the date of issuance. Appeals may be sent electronically to wioa@vccs.edu or mailed via certified mail to Assistant Vice Chancellor of Grants and Federal Workforce Programs, 300 Arboretum Place, Suite 200, Richmond, VA 23236

The appeal must indicate:

- a. The purpose for the request (i.e., list each sanctionable action being appealed)
- b. Information supporting the grounds upon which the appeal is sought.
- c. Any vital factors to support the grounds for appeal

Investigation/Hearing

The WIOA Title I Administrator shall engage an independent arbitrator to conduct the appeals process. The WIOA Title I Administrator will:

1. Review the appeal within twenty (10) business days of the receipt of the request for appeal;
2. Notify the complainant, and other concerned parties (CEOs, grant subrecipient, etc.) by certified mail, return receipt requested, within twenty (20) business days after receiving the notice of appeal. The notification shall include the following information:
 - i. The date, time, and place of an independent appeals arbitrator meeting to review the matter. A telephonic option will be provided for the complainant if they wish to call in for the meeting.
 - ii. The name, address, and contact information of the arbitrator
 - iii. Inform local areas of the opportunity to make recommendations to the Chancellor of the VCCS as to the adjudication of the appeal.

3. The independent arbitrator's final written decision will be issued to the complainant and other related parties by certified mail, return receipt requested, within sixty (60) calendar days of receipt of the appeal. The written decision will include the following information:
 - i. A summary of the original matter that is being appealed;
 - ii. A summary of the basis for the appeal;
 - iii. A statement of the facts as determined by the independent appeal arbitrator; and
 - iv. Notice that appellant has the right to appeal the decision, within 60 calendar days of the receipt of the decision, to the Secretary of Labor.
4. If a decision on the appeal has not been reached within sixty (60) calendar days, the appellant and other related parties may appeal to the Secretary of Labor pursuant to WIOA sec. 184(b).

Sanctions imposed by the state and appealed to the Secretary shall not become effective until the time for the appeal has expired or the Secretary has issued a decision.

Appeals to the Secretary must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, D.C. 20210, Attention ASET. A copy of the appeal must be simultaneously provided to the VCCS.

The Secretary will notify the WIOA Title I Administrator and the appellant in writing of the Secretary's decision within forty-five (45) calendar days after the receipt of the appeal. In making this decision, the Secretary may consider any comments submitted by the Governor in response to the appeals (WIOA Sec.136(h)(2)(A)(B), (WIOA Final Rules and Regulations - 20 CFR § 667.650(e)).

INQUIRIES:

Inquiries regarding this VWL may be directed to the WIOA Title I Administrator:

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