

Workforce Arizona Council
Substantial Violation, Sanctions, Decertification and Reorganization Policy

POLICY NAME: Substantial Violation, Sanctions, Decertification and Reorganization Policy

POLICY NUMBER: 13

EFFECTIVE DATE: September 7, 2023

ISSUING AGENCY: Workforce Arizona Council

SCOPE: Workforce Arizona Council (Council), Arizona Department of Economic Security (DES) Staff, Local Workforce Development Boards (LWDBs).

REFERENCES: Workforce Innovation and Opportunity Act (WIOA) of 2014 (P.L. 113-128), 2 CFR part 200, 20 CFR 677.220, 20 CFR 677.225, 20 CFR 679.230, 20 CFR 679.240, 20 CFR part 683, 20 CFR 683.410 and 683.650. Title 6, Chapter 11 of the Arizona Administrative Code, Workforce Arizona Council Local Governance Policy.

OBJECTIVE: This policy provides definitions and examples of substantial violations under Title I of the Workforce Innovation and Opportunity Act and the actions and process which may be taken by the Workforce Arizona Council and/or the Department of Economic Security (DES) to address substantial violations by Local Workforce Development Boards (LWDBs), local subrecipients, fiscal agents, or contractors of a LWDB or local subrecipient/fiscal agent.

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I. Informal Resolution

- A. Prior to issuing a formal notice of substantial violation, the Workforce Arizona Council and/or the Department of Economic Security (DES) may work with the LWDB, the Chief Elected Official (CEO, hereinafter referred to as the local subrecipient) and/or fiscal agent (designated by the CEO), or contractor of the LWDB or local subrecipient and/or fiscal agent to resolve issues informally using one or more actions for informal resolution. Examples of such informal resolutions efforts includes:
1. Training and technical assistance from the Workforce Arizona Council (the Council) and/or the Department of Economic Security (DES) for the LWDB, local grant subrecipient/fiscal agent, or contractor of the LWDB or local grant subrecipient/fiscal agent to resolve the violation.
 2. In matters regarding disallowed expenditures, agreement by the local grant subrecipient/fiscal to repay those expenditures found to be disallowed.
 3. Additional oversight by the Council, DES, or the LWDB, local grant subrecipient, and/or fiscal agent to resolve the issue.
 4. Other mitigation efforts agreed upon between the Council, DES and the LWDB, local grant subrecipient and/or fiscal agent.

II. Definition of Substantial Violation

- A. A determination of a substantial violation occurs after a sanctionable act. A sanctionable act is a violation of federal, state, and local laws, regulations, contract provisions, grant agreements, or policies by a LWDB, local subrecipient and/or fiscal agent, or a contractor of the LWDB or local subrecipient and/or fiscal agent as determined by the United States Department of Labor (DOL) or any other federal agency on behalf of DOL, or from the Governor, the Council, DES, or any state agency on behalf of the Governor. This policy applies only to LWDBs, local subrecipient and/or fiscal agents or their contractors under Title I of WIOA. Such failures may occur during or after the program, grant, fiscal, contract, or calendar year. Routine findings identified and requiring action as a result of the regular monitoring process are not considered to be substantial violations. To the extent allowable, the Council will not proceed to make a determination of a substantial violation until the routine monitoring process has been exhausted. The following are examples of sanctionable acts which may lead to a determination of a substantial violation by DOL, the Governor, the Council, and/or DES:

1. Failure of the LWDB to meet agreed upon adjusted levels of performance for two consecutive program years, using a consistent definition for performance failure applied to states by DOL:
 - a) If any single individual indicator score falls below 50 percent;
 - b) If any overall local Title I program score falls below 90% for that single core program; and
 - c) In any overall local Title I indicator score falls below 90% for that single measure.
 - d) For these three calculations, the results will not be rounded.
 - e) Failure by the LWDB to submit a local plan or local plan modification as required by the Council.
 - f) Failure by the local subrecipient and/or grant recipient to comply with the Uniform Administrative Guidance, found at 2 CFR part 200.
 - g) Failure of the LWDB to carry out functions required in Section 107(d) of WIOA.
 - h) Failure by the LWDB, local subrecipient and/or fiscal agent, or contractor of the LWDB or local subrecipient and/or fiscal agent, to address findings of noncompliance of applicable federal, state, or local laws, or contractor of the LWDB or local subrecipient and/or fiscal agent to resolve monitoring findings identified by DOL, the Council and/or DES.
 - i) Incidents of fraud, misfeasance, nonfeasance, malfeasance, misapplication of funds, or other similar violations.

III. Required Corrective Action

- A. The Workforce Arizona Council will require prompt corrective action, as determined by the Council to be taken for any determination of a substantial violation to ensure the LWDB, local grant subrecipient, local fiscal agent, and contractor are in compliance with Title I of WIOA, Uniform Administrative Guidance, or state, and/or local laws, regulations, and policies.
- B. DES as the State Grant Recipient may also require corrective action prior to Council approval.

C. Notice of Corrective Action

1. Upon a determination of a substantial violation, the Council will issue a formal notice of required corrective action to the Chief Elected Official (CEO) of the Local Workforce Development Area (LWDA) with a copy to the Chair of the LWDB, the LWDB Executive Director, and DES.
2. The notice of corrective action will include the following:
 - a) Substantial Violation - The specific provision(s) of Title I of WIOA, Uniform Administrative Guidance, or federal, state, and/or local laws, regulations, and policies that the LWDB, local subrecipient and/or fiscal agent, and/or a contractor of the LWDB or local subrecipient and/or fiscal agent, determined to be out of compliance.
 - b) Required Corrective Action - The specific corrective action requested, timeline for completing the corrective action, and timeframe for submission of corrective action plan, taking under advisement schedules for both LWDBs and CEOs if formal action from either is required.
 - c) Possible Sanctions for Noncompliance - A statement that failure to come into compliance may result in the imposition of sanctions.

D. Appeal of Notice of Corrective Action

1. Any party who has received a notice of corrective action may submit an appeal to the Council for a hearing within ten (10) business days of the date of the notice of corrective action.
2. The Workforce Arizona Council Executive Committee must make a decision within 60 business days of the date of the filing of the appeal of the notice of the corrective action.
3. No action will be taken regarding the imposition of sanctions while the appeal is pending.
4. During the time of the appeal, the Council and DES may continue to work with the LWDB, subrecipient, fiscal agent and/or contractor of the LWDB, grant recipient or fiscal agent to resolve the issues identified in the notice of corrective action.

E. Compliance with Corrective Action

1. The process leading to a sanction will stop if a party complies with all required actions within the time frames specified in the corrective action plan.
2. The Council will provide written notification to the Chief Elected Official (CEO) of the Local Workforce Development Area (LWDA) with a copy to the Chair of the LWDB, LWDB Executive Director, and DES indicating resolution of the findings that were the subject of the corrective action plan.

F. Non-Compliance with Corrective Action

1. The Council will provide written notification to the Chief Elected Official (CEO) of the LWDA, with a copy to the Chair of the LWDB, the LWDB Executive Director, and DES if there is a failure to comply with the requirements of the corrective action plan.
2. The Council may recommend the Governor impose a sanction as listed in Section IV.
3. If there is partial compliance, the Council may recommend extending the time frame for completing the corrective action plan as an alternative to recommending the imposition of sanctions.

IV. Sanctions Imposed

- A. The following non-exhaustive examples may be imposed, 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 and contracts:
 1. Requiring repayment of disallowed costs.
 2. Withholding requests for reimbursements to DES for any and all WIOA Title I funds requested.
 3. Terminating the Intergovernmental Agreement between DES and the local grant subrecipient or fiscal agent.
 4. Recapturing and reallocating WIOA Title I funds.
 5. Determining the LWDB or local grant subrecipient or fiscal agent is not eligible for discretionary funds or receipt of a voluntary reallocation.

6. Requiring submission of additional or more detailed financial or performance reports.
 7. Providing targeted technical assistance through virtual and/or on-site visits to the LWDB, and/or the subrecipient/fiscal agent, and/or the contractor of the LWDB or the subrecipient/fiscal agent.
 8. Requiring participation in technical and quality assurance activities.
 9. Revoking approval of all or part of the local plan impacted.
 10. Imposing a reorganization plan, which may include:
 - a) Decertifying the LWDB;
 - b) Prohibiting the use of eligible providers;
 - c) Selecting an alternative entity to administer the program in the LWDA. The alternative entity may be any entity who demonstrates capability of complying with federal and state laws, regulations, policies and guidance.
 - d) Designation of a new fiscal agent.
 11. Recommending the initiation of suspension or debarment proceedings.
 12. Imposing other remedies that may be legally available.
- B. The Council may recommend sanctions based on the following criteria as determined by the Council given the totality of circumstances surrounding the substantial violation and sanctionable act(s):
1. Severity, nature, duration, and extent;
 2. Previous occurrences of substantial violations and sanctionable acts;
 3. Efforts by the LWDB and/or subrecipient/fiscal agent, and/or contractor of the LWDB and or subrecipient/fiscal agent to prevent the occurrence of the sanctionable act, including efforts to:
 - a) Obtain technical assistance, training, or other assistance from the Council and/or DES;

- b) Resolve monitoring findings; and
- c) Prevent potential substantial violations and sanctionable acts.

V. Sanction Process

- A. The Governor determines the sanction(s) after recommendation from the Council in consultation with DES. The Council may also recommend imposition of a sanction based on all council policies.
- B. The Council will issue a notice of the sanction to the CEO of the LWDA with a copy to the LWDB Chair, LWDB Executive Director, and DES. The notice will include:
 - 1. The substantial violation which prompted the sanction process.
 - 2. Any requirements for corrective action imposed by the Council (including any efforts by the Council to informally resolve the finding) and details of how the LWDB and/or local grant subrecipient/fiscal agent failed to comply with the corrective action plan.
 - 3. The specific sanction or sanctions imposed.
 - 4. The process to appeal the imposition of the sanction.

VI. Appeals

- A. Appeal to the Governor
 - 1. Any LWDB and CEO subject to a reorganization plan due to failure to meet local performance accountability measures may appeal to the Governor to rescind or revise the reorganization plan no later than 30 business days after receiving such notice.
 - 2. Appeals to the Governor must be submitted to the following address:
 - a) 1700 Washington St. Phoenix, Arizona 85007
 - b) The appeal may also be sent via email to engage@az.gov.
 - c) A copy must also be submitted to the Chair of the Workforce Arizona Council at the following address:

(1) Office of Economic Opportunity
100 North 7th Ave. Suite 400
Phoenix, AZ 85007

3. The Governor must make a final decision within 30 business days after receipt of the appeal.

B. Appeal to the Secretary of Labor

1. The LWDB and CEO may appeal the decision of the Governor to the Secretary of the U.S. Dept. of Labor.
2. The LWDB and CEO must jointly submit the appeal to the Secretary.
3. Appeals must be submitted to the Secretary by certified mail, return receipt requested, and addressed as follows:
 - a) Secretary, U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210
ATTN: ASET
4. A copy of the appeal must be simultaneously provided to the Governor, the Chair of the Workforce Arizona Council, and the Director of the Department of Economic Security.
5. The sanction becomes effective at the time the Governor issues a decision and remains effective unless the Secretary rescinds or revises the reorganization plan.

C. Appeal of Sanction to Revoke all or part of Local Plan or Impose Reorganization Plan

1. If the LWDA has been found to be in substantial violation of Title I and has received notice from the Council, on behalf of the Governor, that either all or part of the local plan will be revoked or that a reorganization will occur, the LWDB, local subrecipient/fiscal agent, and/or a contractor of the LWDB or subrecipient or fiscal agent may appeal the imposition of a sanction to the Secretary of the U.S. Department of Labor.
2. The appeal must be filed no later than 30 business days after receipt of written notification of the intent to impose the sanction.
3. Appeals must be submitted to the Secretary by certified mail, return

receipt requested, and addressed as follows:

- a) Secretary, U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210
ATTN: ASET
 - b) A copy of the appeal must be simultaneously provided to the Governor, the Chair of the Workforce Arizona Council, and the Director of the Department of Economic Security.
4. The Secretary will issue a decision within 45 business days after receipt of the appeal and notify the State and the appellant in writing of the decision.
 5. Effective Date of Sanction:
 - a) If there is no appeal, the sanction will be imposed 30 business days after receipt of written notification of intent to impose the sanction.
 - b) If the Secretary confirms the decision to impose the sanction, the sanction will be imposed on the date of the decision by the Secretary.

D. Appeal of Other Sanctions

1. If the LWDBs, and/or subrecipients/fiscal agents, and/or contractors of subrecipients/fiscal agents are subject to a sanction which is not a revocation of the all part of the local plan or a reorganization, the LWDBs, and/or subrecipients/fiscal agents, and/or contractors of subrecipients/fiscal agents may submit an appeal to the Council.

VII. Continuity of Services After Decertification

- A. After imposition of the sanction to decertify the LWDB, the Council in partnership with DES may terminate the Intergovernmental Agreement with the subrecipient or fiscal agent if actions by the subrecipient/fiscal agent resulted in the substantial violation determination which led to the sanction.
- B. If DES terminates the Intergovernmental Agreement with the subrecipient or fiscal agent, the following may occur to ensure continuity of services in the impacted area:
 1. DES may require the CEO to designate a new fiscal agent; or

2. DES may serve as the fiscal agent until a new grant recipient or fiscal agent is designated.
3. DES, in consultation with the Council, will appoint an entity to act as the LWDB for the impacted geographic area until a new LWDB is formed by the CEO and certified by the Governor.

VIII. Reorganization and Redesignation

A. Reorganization Options

1. If the imposed sanction is decertification of the LWDB, the Governor must certify a new LWDB.
2. The Council, in consultation with DES, will make reorganization recommendations to the Governor, which may include one of the following scenarios:
 - a) The geographic area of the LWDA will remain as is, but require the CEO(s) to appoint a new LWDB;
 - b) Create multiple LWDAs of one or more units of general government from the area that is the subject of decertification;
 - c) Reconfiguring the LWDA by merging the general units of local government into other LWDAs, creating one or more new LWDAs.

B. Redesignation Requirements

1. The process for redesignation of any LWDA requires consultation with the following stakeholders:
 - a) The Workforce Arizona Council;
 - b) The CEO(s) in the impacted geographic area(s); and
 - c) Representatives from LWDB(s) in the impacted geographic area(s).
2. There must be an opportunity for public comment by all stakeholders, which include representatives from the following:
 - a) The CEO(s) in the impacted geographic area(s);

- b) LWDB(s) in the impacted geographic area(s);
 - c) Institutions of higher education;
 - d) Labor organizations;
 - e) Other primary stakeholders; and
 - f) The general public.
3. A new LWDA must request in writing, to the Governor, designation as a LWDA, pursuant to the Workforce Arizona Council Local Governance Policy, which includes the signatures of CEOs from the petitioning counties.
 4. The Council, in consultation with DES, will recommend redesignation of LWDAs, which includes at a minimum, consideration of the following:
 - a) Consistency with local labor market areas;
 - b) Common economic development areas; and
 - c) The availability of Federal and non-Federal resources, including appropriate training institutions, to administer activities under Title I, subtitle B of WIOA.

C. Requirements for Newly Designated Local Workforce Development Areas

1. Upon notice of designation by the Governor, the CEO(s) are required to establish the following agreements in accordance with Workforce Arizona Council Local Governance Policy:
 - a) A CEO consortium agreement if there are multiple units of government.
 - b) Bylaws for the new LWDB.
2. Upon appointment of the new LWDB, the following is required by the CEO(s) and the LWDB:
 - a) Develop and execute a Shared Governance Agreement, in accordance with Workforce Arizona Council Local Governance Policy; and
 - b) Development of a Local Workforce Plan.

- c) The Governor, after consultation with the Council and DES, must certify the new LWDB, in accordance with the Workforce Arizona Council Local Governance Policy.

CONTACT ENTITY: Inquiries regarding this policy must be directed to the Workforce Arizona Council staff at Workforce.Council@oeo.az.gov.