



Montana Department of LABOR & INDUSTRY

1
2 Division: Workforce Services Division
3 Category: WIOA
4 Effective Date: TBD
5 Last Revised: N/A
6 Policy No.:

7 Monitoring, Audits, Performance and 8 Sanctions Policy

9 **Background:** Monitoring and evaluation is an integral part of the monitoring responsibilities required by
10 law. Monitoring and evaluation identify areas of strength and weakness in program operation with the intent of
11 improving program performance. Monitoring is essential to ensure compliance with appropriate laws,
12 regulations, plans, provider agreements, policies and procedures. Monitoring provides the opportunity to
13 strengthen or improve programs and systems to promote continuous improvement. The Programs Monitoring
14 Unit may conduct supplemental monitoring reviews of providers to determine the extent to which the provider is
15 assisting in the development and operation of the One Stop System. The Programs Monitoring Unit may
16 recommend that a service provider take a course of corrective action for any deficiencies found in the
17 provider's operations that relate to the One Stop System. Additional onsite reviews may be conducted to
18 investigate allegations of mismanagement or to clarify unusual findings. An additional review may or may not
19 result in corrective action. Additional reviews could lead to the implementation of an investigation or known or
20 suspected incidents of fraud, program abuse, or criminal conduct.

21 **Scope:** This policy applies to all service providers operating WIOA programs, WIOA program managers, WIOA
22 fiscal officers and the WIOA monitors. This policy is effective (*insert date upon SWIB approval*).

23 Policy:

24 Monitoring Definitions:

- 25 • **Commendation:** Given when the monitor finds consistently good practices the provider is doing.
- 26 • **Compliance Findings:** When the monitor finds a practice that is in violation of law, rule, or policy. Any
27 time documentation is missing for enrollment, eligibility, MIS standards, etc. this would be a compliance
28 finding. Deficiencies regarding overall program and/or case management policy would be a compliance
29 finding. The Compliance Finding would be immediately followed by Action Required. The Compliance
30 Finding will reference the law, regulation, or policy that is not being followed.
- 31 • **Area of Concern:** When the monitor finds a practice that might lead to non-compliance of law, rule, or
32 policy. This would be used for a questionable practice but does not meet the threshold of compliance
33 finding. The monitor will suggest technical assistance or opportunity for improvement. Depending on the
34 severity of the deficiency, the provider may or may not respond to these on the report. The Area of
35 Concern will be followed by a Recommendation.

- 1 • **Questioned Cost:** Used when monitors find unallowable purchases and/or incorrect or missing
2 documentation for activities, services or payments made with program dollars. The payment is
3 questioned until the provider has a chance to respond and resolve the discrepancy.
- 4 • **Disallowed Cost:** Used when the provider cannot provide the documentation to support a questioned
5 cost that is a clear violation of policy, rule or law. The provider has the responsibility to reimburse the
6 program with non-federal funds. Providers can collect repayment from the client, if applicable, but it is
7 at their discretion and the responsibility lies with the provider to repay the cost within the
8 report/response deadline.

9 Monitoring Process:

- 10 • The Programs Monitoring Unit conducts program, data and fiscal monitoring and evaluation of service
11 providers. Monitoring will be conducted to review previous program year(s) since the last monitoring.
- 12 • Monitoring and/or limited scope reviews may consist of interviews with appropriate staff and reviews of
13 policies, procedures, accounting reports, source documents, and other records as considered necessary
14 pertaining to any or all of the WIOA Title I activities including:
 - 15 ○ Fiscal,
 - 16 ○ Adult,
 - 17 ○ Youth,
 - 18 ○ Dislocated Worker,
 - 19 ○ National Dislocated Worker Grant (NDWG),
 - 20 ○ Management Information System (MIS),
 - 21 ○ Eligible Training Provider List (ETPL),
 - 22 ○ The One Stop System including One Stop Operators, Centers and Service Providers, and
 - 23 ○ Equal Opportunity (EO).
- 24 • Members or representatives of entities such as One Stop Operators, State Workforce Innovation Board
25 (SWIB), or U.S. Department of Labor (USDOL) may accompany onsite monitors.
- 26 • Regular monitoring of WIOA activities and providers of basic individualized career services is conducted
27 to ensure compliance with WIOA requirements including:
 - 28 ○ Compliance with the uniform administrative requirements described in WIOA Title I Section 181
29 and USDOL uniform administrative requirements in 2 CFR 200, including the appropriate
30 administrative requirements and applicable cost principles at WIOA Reg. Subpart B for all
31 entities receiving WIOA Title IB funds;
 - 32 ○ Compliance with applicable state laws and regulations;
 - 33 ○ Determining that expenditures have been made against the cost categories and within the cost
34 limitations specified in the Act and Regulation;
 - 35 ○ Compliance with the nondiscrimination, disability and equal opportunity requirements of WIOA
36 section 188 and 29 CFR part 38;
 - 37 ○ Compliance with data collection and reporting system policies and procedures; and
 - 38 ○ Determining whether or not there is compliance with other provisions of the Act and the WIOA
39 regulations and other applicable laws and regulations.
- 40 • If, as a result of financial and compliance audits or otherwise, the Programs Monitoring Unit has
41 determined that noncompliance with the uniform administrative requirements found at 2 CFR 200, 29
42 CFR part 95 or part 97, as appropriate, the requirements referred to in WIOA Sections 181 and 184, 29
43 CFR Part 37, or any other substantial violation of WIOA Title I, the Department of Labor and Industry,
44 Workforce Services Division will require corrective action to secure prompt compliance.
- 45 • If, as a result of financial and compliance audits or otherwise, the Programs Monitoring Unit has
46 determined a violation of specific provisions of WIOA Title I, and compliance with corrective action has
47 not been taken, the SWIB and/or Department of Labor and Industry, Workforce Services Division may:
 - 48 ○ Coordinate technical assistance as necessary and appropriate;
 - 49 ○ Prohibit the use of eligible providers;
 - 50 ○ Select an alternative entity to provide services; or

- 1 o Terminate contract with service provider.

2 Evaluation:

- 3 • Evaluation is the measurement of the effectiveness of programs in meeting objectives, program goals
4 and performance standards. Evaluations are intended to promote, establish, implement, and utilize
5 methods for continuously improving workforce activities in order to achieve maximum performance and
6 outcomes from the statewide workforce system.

7 Service Provider Performance:

- 8 • Federal performance measures are applied to the state and service providers providers; each must
9 strive to individually meet these Federal performance measures. Service providers are given goals at
10 the beginning of each program year and must meet these goals or be subject to sactions.

11 Performance Calculations:

- 12 • Acceptable performance for each measure is calculated based on negotiated factors.

13 Program Sanctions:

- 14 • The Programs Monitoring Unit will evaluate service provider’s performance as per individual
15 agreements. The evaluation of performance will be provided to the Program Manager. The Program
16 Manager will provide assistance to the service provider based on planned versus actual expenditures of
17 funds and fulfillment of the terms and provision and scope of services. The process will include monthly
18 program and fiscal desk review; regular communication with operators and providers; attendance at
19 training and technical assistance sessions; monthly status reports; and agreement modifications and
20 monitoring.
- 21 • Service providers found deficient in any of the areas will submit a corrective action plan to the Programs
22 Monitoring Unit. Program Managers will provide appropriate technical assistance.
- 23 • Should a service provider fail to fulfill the corrective action, and the program managers have exhausted
24 the viability of technical assistance as a remedy to correct the problem, the Programs Monitoring Unit
25 will forward the information to the appropriate committee of the SWIB.
- 26 • Sanctions may result in recommending de-obligation of funds and/or that the service provider become
27 ineligible for any future funding consideration.
- 28 • In cases of claims of known or suspected incidents of fraud, malfeasance, misfeasance, nonfeasance,
29 misapplication of funds, gross mismanagement, or other criminal activities in federally funded
30 programs, the Department of Labor and Industry, Workforce Services Division will report all known
31 information on the Federal Incident Report. In addition, the Department of Labor and Industry,
32 Workforce Services Division may initiate a special investigation or audit of the incident. The special
33 investigation or audit may include, but is not limited to additional onsite monitoring and/or a financial
34 audit conducted by a third party auditing firm. For the purpose of this section the following definitions
35 apply:
 - 36 o Fraud, Misfeasance, Nonfeasance or Malfeasance Fraud: Misfeasance, nonfeasance or
37 malfeasance should be considered broadly as any alleged deliberate action that is in violation of
38 federal statutes and regulations. This category includes, but is not limited to, indications of
39 bribery, forgery, extortion, embezzlement, theft of client checks, kickbacks from clients,
40 intentional payment to a contractor or service provider without the expectation of receiving
41 services, payment to ghost enrollees, misuse of appropriated funds, and misrepresenting
42 information in official reports.
 - 43 o Misapplication of funds is considered as use of funds, assets, or property not authorized or
44 provided for under WIOA regulations, grants, agreements or contracts. This category includes,
45 but is not limited to, nepotism, political patronage, use of clients for political activities, ineligible
46 clients, conflict of interest, failure to report income from federal funds, violation of
47 agreement/contracts/grant procedures, and the use of federal funds for other than specified
48 purposes.

- 1 ○ Gross mismanagement is considered as actions or situations arising out of management
- 2 ineptitude or oversight, leading to major violations of WIOA processes, regulation, or
- 3 agreement/contract/grant provisions which could severely hamper the accomplishment of
- 4 program goals. These include situations that lead to waste of government resources and could
- 5 jeopardize future support for a particular project. This category includes, but is not limited to,
- 6 non-auditable records, unsupported costs, highly inaccurate fiscal or program reports, payroll
- 7 discrepancies, payroll deductions not paid to the Internal Revenue Service, and the lack of good
- 8 internal control procedures.
- 9 ○ Employee/client misconduct is considered as actions occurring during or outside work hours
- 10 that reflect negatively on USDOL, the State of Montana, or the WIOA program. Misconduct may
- 11 include, but is not limited to, conflict of interest involving outside employment, business, and
- 12 professional activities, the receipt or giving of gifts, fees, entertainment and favors, misuse of
- 13 Federal property, misuse of official information and such other activities as might adversely
- 14 affect the confidence of the public, as well as serious violations of Federal and State laws.
- 15 ● All program activities may be suspended during the time that a special investigation or audit is being
- 16 conducted. Following completion of the special investigation or audit, action taken may include, but is
- 17 not limited to:
- 18 ○ Reinstatement;
- 19 ○ For audits, resolution as outlined below;
- 20 ○ Reduction or de-obligation of all or part of the funds awarded to a service provider or operator;
- 21 ○ Termination of all or part of the operator or provider agreement with possible repayment of
- 22 funds; and
- 23 ○ Civil or criminal prosecution, if warranted.

24 Debt Collection:

- 25 ● Due to monitoring or audit findings resulting in a repayment...Debts receivable must be paid within 30
- 26 days of establishment of the debt. Repayment of debts established will be in the form of a cash
- 27 payment unless negotiation between the SWIB Administrative Entity and the debtor produce some other
- 28 method. Cash from a non-federal source is the required method of repayment where there is misuse of
- 29 funds due to willful disregard of requirements of the Act, gross negligence, or failure to observe
- 30 accepted standards of administration. Settlement of debts on a non-cash basis will be by exception.
- 31 ● If an established debt is not paid within 30 days of the final determination or if established installment
- 32 payments are more than 30 days late, a letter will be sent from the SWIB Administrative Entity stating
- 33 that payment is due immediately. At 45 days, another letter will be sent stating the account will be sent
- 34 to the Attorney General's Office if not paid within 15 days. At 60 days, the account is turned over to the
- 35 Attorney General and the SWIB will consider whether to continue to do business with the debtor.

36 Methods of Repayment of Debt:

- 37 ● **Lump Sum:** payment in full may be made by certified check, money order, cashier's check, or bank
- 38 draft.
- 39 ● **Installment Payments:** cash installment repayment agreements are usually short-term duration, from
- 40 three to twelve months, and are limited to 36 months by the Federal Claims Collection Standards.
- 41 Duration is negotiated based on the size of the debt and the debtor entity's ability to pay.
- 42 ● **Adjustment in Payments:** when cash repayment in lump sum or in installments is impossible, an
- 43 agreement may be entered into with the debtor whereby the contract is reduced by the amount of the
- 44 debt repayment while the program is maintained at an undiminished cost level through nonfederal
- 45 contributions.
- 46 ● **Withholding:** this repayment method will involve withholding amounts owed the debtor for past services
- 47 or for other considerations already provided in satisfaction of the debt owed.
- 48 ● **Offset:** this method involves reducing the contract up to the amount of the debt. The SWIB
- 49 Administrative Entity may use this option with the approval of the U.S. Secretary of Labor.

- 1 • Non-Cash methods must be negotiated with the SWIB Administrative Entity prior to being considered as
 2 a method for debt recovery.
 3 ○ **Stand-in Costs:** this method is not actually a debt repayment, but is a way of “erasing” the debt.
 4 The debtor must identify allowable non-federal costs associated with the contract but not
 5 charged to the contract, and substitute those costs for the disallowed costs, thus erasing the
 6 debt. These expenditures must have been reported to the SWIB Administrative Entity with the
 7 quarterly financial status report or closeout package for the year the costs were incurred in
 8 order to be considered for disallowed costs incurred during that same time period. This method
 9 would require negotiation and agreement with the debtor that such costs are subject to audit.
 10 Documentation that will establish a clear audit trail must be maintained when such agreements
 11 are made.
 12 ○ **Service in Lieu of Cash**

Option 1	This method involves a repayment agreement with the debtor whereby additional services above those originally agreed to with the recipient, paid through nonfederal funds, are received in lieu of cash. When it becomes clear that a debtor cannot repay through any other repayment method, an agreement of this nature may be negotiated. This method requires a written agreement signed by both parties with conditions regarding the type of funds to be used, documentation subjected to audit, and a description of the services rendered.	<ul style="list-style-type: none"> - this is the current language. - this provision has never been utilized. - this is not an option that is required that we offer
Option 2		<ul style="list-style-type: none"> - no longer offer this as an option of repayment. - what is an example of a service that we would be able to accept as repayment? - with the lack of funds on our own behalf is it prudent to continue to offer this as a debt repayment option?
Staff Recommendation	Option 2 - The WIOA Committee has selected Option 2	

13 **References:**

- 14 • [2 CFR 200 Uniform Administrative Requirements](#)
 15 • [WIOA Section 181 Requirements and Restrictions](#)
 16 • [29 CFR 37 Nondiscrimination and Equal Opportunity](#)
 17 • [WIOA Section 188 Nondiscrimination](#)