

## STANDARDS FOR OVERSIGHT AND INSTRUCTION FOR SUBSTATE MONITORING

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### GENERAL INSTRUCTIONS

The attached Directive is being issued in draft to give the Workforce Development Community the opportunity to review and comment prior to final issuance.

Submit any comments by email or mail no later than **March 21, 2020**.

All comments received within the comment period will be considered before issuing the final Directive. Commenters will not be responded to individually. Rather, a summary of comments will be released with the final Directive.

Comments received after the specified due date will not be considered.

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**Email**            Scott.Osborne@edd.ca.gov  
Include "Draft Directive Comments" in the email subject line.

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If you have any questions, contact Scott Osborne at 1-916-654-6577.

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## STANDARDS FOR OVERSIGHT AND INSTRUCTION FOR SUBSTATE MONITORING

### EXECUTIVE SUMMARY

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This policy provides the guidance and establishes the procedures regarding general standards for the Local Workforce Development Area (Local Area) oversight responsibilities regarding the *Workforce Innovation and Opportunity Act* (WIOA) and provides instructions for the development of substate monitoring plans to implement those standards. This policy applies to all Local Workforce Development Boards (Local Board), and is effective on date of issuance.

This policy contains some state-imposed requirements. All state-imposed requirements are indicated by ***bold, italic*** type.

This policy supersedes Workforce Investment Act Directive *Standards for Oversight and Instructions for Substate Monitoring* (WIAD00-7), dated April 10, 2001. Retain this Directive until further notice.

### REFERENCES

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- WIOA (Public Law 113-128) Sections 107, 108, 121, 129, and 184.
  - Title 2, *Code of Federal Regulations* (CFR) Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)
  - Title 2 CFR Part 2900: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Department of Labor [DOL] Exceptions)
  - Title 20 CFR Sections 679.430, 683.200, 683.400, 683.410, and 683.430
  - Department of General Services (DGS) [State Contracting Manual](#) (January 2018)
  - Workforce Services Directive (WSD) 17-08, Subject: *Procurement of Equipment and Related Services* (March 14, 2018)
  - WSD17-05, *Oversight and Monitoring of Nondiscrimination and EO Procedures* (August 29, 2017)
  - WSD17-01, *Nondiscrimination and Equal Opportunity (EO) Procedures* (August 1, 2017)

*The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.*

## BACKGROUND

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The WIOA Section 107(d)(8) requires that the Local Board, in partnership with the local Chief Elected Official (CEO), must conduct oversight of the WIOA programs and the America's Job Center of California<sup>SM</sup> (AJCC) system in the Local Area to ensure the appropriate use and management of funds for workforce development activities and to maximize the performance outcomes.

The WIOA Sections 184(a)(2)(A) and 184(a)(3)(A) require that each state and Local Area (including the local CEO) and provider receiving funds under Title I must comply with the applicable uniform cost principles as well as the uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as published in the Office of Management and Budget's Uniform Guidance.

Title 20 CFR Section 683.200 provides the general fiscal and administrative rules applicable to the use of WIOA Title I funds. Entities receiving WIOA Title I funds must follow the uniform administrative cost requirements contained in the Uniform Guidance at Title 2 CFR part 200, including any exceptions identified by DOL (including agencies and organizational units) in the DOL Exceptions at Title 2 CFR part 2900, as applicable to their type of organization. Title 20 CFR Section 683.200 further identifies applicable cost principles at subpart E and appendices III through IX at Uniform Guidance Title 2 CFR part 200 regarding allowable costs.

Title 20 CFR Section 683.400 requires that subrecipients must continuously monitor grant-supported activities in accordance with the uniform administrative requirements at Title 2 CFR part 200 (Uniform Guidance). Title 20 CFR 683.410(a) requires that each subrecipient must conduct regular oversight and monitoring of its WIOA activities and those of its subrecipients and contractors. The purpose of this requirement is to ensure that expenditures meet the cost category and cost limitation requirements of WIOA and the regulations, that there is compliance with other provisions of WIOA and the regulations, assure compliance with the Uniform Guidance at Title 2 CFR part 200 and other applicable laws and regulations, and to provide technical assistance as needed.

Uniform Guidance Section 200.501(g) requires subrecipients to ensure that the procurement, receipt, and payment for goods and services received complies with federal and state laws, regulations, and subrecipient polices, and the provisions of contractors' contracts and agreements. The Employment Development Department (EDD) Directive [WSD17-08 \(PDF\)](#), *Procurement of Equipment and Related Services*, provides combined federal and state guidance regarding the procurement of goods and services. The EDD Directive [WSD17-01 \(PDF\)](#), *Nondiscrimination and Equal Opportunity Procedures*, provides guidance regarding nondiscrimination and equal opportunity in contracts, job training plans, and policies and procedures. Title 20 CFR Section 683.410(6) states that the Governor may issue additional requirements and instructions to subrecipients regarding monitoring activities.

## POLICY AND PROCEDURES

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### Definitions

America's Job Center of California<sup>SM</sup> (AJCC) – The common identifier used within California for One-Stop centers, the One-Stop system, and access points to WIOA affiliated programs and services.

Area of Concern or Observation – If an effectiveness indicator is not met and the reviewer believes that it may possibly result in a finding at some later point if not addressed, an area of concern or observation is identified. Areas of concern or observation are not specific compliance violations, but may have negatively impacted the program or could lead to a finding in the future. Traditionally, no corrective action is specified or required for an area of concern or observation but may instead include suggestions for improvement.

Cognizant Agency (for indirect costs) – The federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed in accordance with the Uniform Guidance on behalf of all federal agencies. (Uniform Guidance Section 200.19)

Contract – A legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward. (Uniform Guidance Section 200.22)

Contract Management – The contract manager is the authorized representative responsible for administering a contract and monitoring the contractor's performance. The contract manager serves as a liaison with the contractor and may perform administrative tasks ranging from the request of contract services through the performance and final payment for completed services. (DGS State Contracting Manual Section 9.04)

Contractor – An entity that receives a contract as defined in Uniform Guidance Section 200.22. (Uniform Guidance Section 200.23)

Corrective Action Plan (CAP) – A list of specific steps that subrecipients must take within a stated period of time in order to achieve compliance.

Finding – A violation of a specific compliance requirement contained in laws, regulations, federal or state policies, Uniform Guidance, DOL Exceptions, grant terms and conditions, Employment and Training Administration (ETA) policy guidance, including Training and Employment Guidance Letters (TEGL), and/or the grant agreements that requires specific corrective action. Findings are also known as, but not limited to, non-compliance issues, questioned costs, and/or disallowed costs.

Monitoring – The monitoring review is an oversight activity that may lead to opportunities for technical assistance and/or corrective action. For ETA’s purpose, a monitoring review is a process used to measure progress, identify areas of compliance, offer opportunities for technical assistance to help resolve non-compliance issues, and ensure that federal funds are used responsibly.

Non-Federal Entity – Non-federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. (Uniform Guidance Section 200.69)

In the DOL, non-federal entity means a state, local government, Indian tribe, institution of higher education, for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a federal award as a recipient or subrecipient. (Uniform Guidance Section 2900.2)

Oversight – Performed by subrecipients in various ways such as on-site monitoring, risk assessment, desk reviews, and analysis of performance and financial reports.

Recipient – A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients. (Uniform Guidance Section 200.86)

Segregation of Duties – No one person has sole control over the lifespan of a transaction. All organizations should separate functional responsibilities to ensure that mistakes, intentional or unintentional, cannot be made without being discovered by another person.

Subaward – An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (Uniform Guidance Section 200.92)

Subrecipient – A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. (Uniform Guidance Section 200.93)

Vendor – The term “vendor” has been replaced with the term “contractor” as defined at Uniform Guidance Section 200.23, in which, a contractor is an entity that receives a contract as defined in Uniform Guidance Section 200.22.

## **Subrecipient and Contractor Determinations**

A non-federal entity may concurrently receive federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section. (Uniform Guidance Section 200.330)

- a) Subrecipient characteristics that support the classification of the non-federal entity as a subrecipient include when the non-federal entity meets the following criteria:
  1. Determines who is eligible to receive what federal assistance.
  2. Performance is measured by whether objectives of federal program are met.
  3. Has responsibility for programmatic decision making.
  4. Responsible for adhering to applicable federal program requirements.
  5. Uses federal funds to carry out a program for a public purpose.
  6. Funded by a subaward.
  
- b) Contractor characteristics include the following:
  1. Provides the goods and services within normal business operations.
  2. Provides similar goods or services to many different purchasers.
  3. Provides goods or services that are supplementary to the operation of the federal program.
  4. Not subject to compliance requirements of the federal program.
  5. Provides goods and services for the grant recipient's own use, creating a procurement relationship.
  6. Funded by a procurement contract.

For additional information on subrecipient and contractor determinations, see *Subrecipient and Contractor Distinctions* ([WSD18-06 \[PDF\]](#)).

## **Standards for Local Board Oversight**

The Local Board, in partnership with the CEO, must oversee activities funded under WIOA Title I, conducted under the local plan established pursuant to WIOA Section 108. In addition, the Local Board, in partnership with the CEO, must oversee activities of the AJCCs system established pursuant to WIOA Sections 121 and 184. The monitoring and oversight must be consistent with the requirements stated in WIOA and relevant federal and state regulations, and state directives/policies (*see Background*). The Local Board and the CEO must determine whether oversight will be conducted independently, jointly, or delegated to an appropriate entity. The oversight and monitoring must include the following:

1. ***On-site fiscal and programmatic monitoring of all subrecipients must occur annually and at least once each program year.***
2. ***Where WIOA administrative entities are parties to contracts that service multiple Local Area jurisdictions, the affected areas must coordinate and jointly establish procedures for monitoring multiple Local Area contracts.***
3. ***Maintain a complete monitoring log of all monitored entities (the log must contain the date review was conducted, type of review, period reviewed, monitor, date of draft and/or final report, findings, corrective action, location of working papers, and dates and number of attempts to subrecipient for not responding to draft and/or final report).***
4. The assurance that the procurement, receipt, and payment for goods and services received complies with federal and state laws, regulations, and subrecipient policies, and the provisions of contractors' contracts and agreements. (Uniform Guidance Section 200.501[g])

### **Instructions for Developing Substate Oversight and Monitoring Plans**

The Local Board, in partnership with the local CEO, must develop plans and procedures for the oversight and monitoring of subrecipients and the AJCC system in accordance with policies developed by the Local Board which are based on the Governor's standards for Local Board oversight. The development of monitoring plans may be delegated to the WIOA administrative entity by the local agreement.

In addition to incorporating the Local Board's policies, the substate oversight and monitoring plan must do the following:

1. Identify procedures for annual on-site fiscal and programmatic monitoring of all subrecipients and the AJCC system. (WIOA Section 107[d][8]). Procedures should include but are not limited to the following:
  - a. ***Identify procedures to require subrecipients, on a periodic basis, to provide documentation to support claim reimbursements prior to payment. Periodic basis must be identified within the procedures.***
  - b. ***Identify procedures to require expanded sample testing during monitoring reviews for high-risk areas (e.g., participants' data/files, procurement, expenditures, etc.) and when exceptions are identified.***
  - c. ***Identify procedures on when to disallow costs due to non-compliance.***
  - d. ***Identify procedures to conduct announced and unannounced visits of subrecipients to observe service delivery, interview staff, and review source documents for program and fiscal data.***
2. ***Identify procedures for oversight including risk assessment, desk reviews, and analysis of performance and financial reports, review of contractors and all training providers utilized.***

3. Require the on-site review of each subrecipient and the AJCC system is both fiscal and programmatic, consistent with the requirements stated in Title 20 CFR 683.410(a). ***If the subrecipient's fiscal office and/or records are separately located at an inaccessible site (i.e. out-of-state or not within a reasonable commute outside of the Local Area), the WIOA administrative entity must require that copies of fiscal records of a sufficient nature and sample size are sent to the subrecipient's local office or directly to the WIOA administrative entity for review upon request.***
4. ***Require that monitoring of subrecipients and AJCCs follow a standardized review methodology that will result in written reports which record findings, disallowed costs (if applicable), any needed corrective actions, and due dates for the accomplishment of corrective actions.***
5. Require systematic follow-up to ensure that necessary corrective action has been taken. (WIOA Section 184 [a][5][A]) ***Require subrecipients with noted deficiencies on monitoring reviews to submit supporting documents until the deficiencies are corrected and not repeated. Submit to the Local Board and/or CEO for approval, the proper and adequate documentation that demonstrates that the findings have been corrected and not repeated by their subrecipient. Ensure subrecipient and AJCC system follow-ups provide specific and timely corrective actions.***
6. Firewalls must conform to Title 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interests. If an AJCC wishes to also serve as the Adult and Dislocated Worker Career Services Provider they must have appropriate firewalls in place between the staff providing services, the staff responsible for oversight of services, and the Local Board.
7. ***Single audit reports do not take the place of an oversight or monitoring review for any subrecipient, AJCC, contractor, and/or training provider.***
8. Conduct oversight and monitoring of all local youth workforce development activities (***including youth providers***). If a Local Board does not establish a Youth Standing Committee, the Local Board is still responsible for conducting the oversight of youth activities under WIOA Section 129(c). (WIOA Section 107[d][8])
9. ***Identify procedures to periodically examine California's Eligible Training Provider List (ETPL) utilized by the subrecipient on participants' data and validate the data by conducting participant interviews, conducting third-party verification (timesheets, paystubs, personnel-related documents, new hire reports, etc.) to determine whether participants received WIOA services as claimed by the subrecipient. The periodic basis must be identified within the procedures.***
10. Describe procedures to ensure that the procurement, receipt, and payment for goods and services received complies with federal and state laws, regulations, and subrecipient polices, and the provisions of contractors' contracts and agreements.



(Uniform Guidance Section 200.501[g]) While contractors are not subject to the scope of the monitoring requirements for subrecipients, Local Areas are responsible for ensuring compliance regarding contractor transactions. The procurement of goods and services from contractors must comply with federal and state requirements in the EDD Directive WSD17-08.

11. Require that a system is in place to ensure that Local Areas and its subrecipients comply with the requirements in the EDD Directive WSD17-05.
12. Require that all financial records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the financial reports and other documentation pertaining to monitoring and other oversight activities must be made available for review by federal and state officials. (Uniform Guidance Section 200.333)
13. Local Areas must keep copies of their compliance monitoring efforts and reports on file. The Local Area's compliance monitoring reports should be used as an assessment reference when developing CAPs, and for scheduled onsite monitoring reviews that may be required by authorized federal and state reviewers.

## ACTION

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Establish or revise local oversight and monitoring plans, policies, and procedures in accordance with the requirements of this directive. Bring this directive to the attention of all appropriate staff.

## INQUIRIES

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If you have any questions, contact your [Regional Advisor](#) at 1-916-654-7799.

/s/ JAIME L. GUTIERREZ, Chief  
Central Office Workforce Services Division