

Sanctions – Initial Implementation of the Workforce Innovation and Opportunity Act (WIOA)

- I. **Purpose.** To establish and implement the Pennsylvania Department of Labor & Industry (Department) sanctions policy and processes for all subrecipients of federal grant awards, and state grants where applicable.

Note: While this policy’s focus is on the Department’s subrecipients and all pass-through entities, this limit in scope does not relieve the local workforce boards of their responsibilities regarding the procurement, administrative/management and oversight of their subrecipients.

- II. **Background.** The purpose of the sanctions process is to ensure accountability of subrecipients (i.e., partners, contracted providers, intermediaries) 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.; ensure adequate returns on Pennsylvania’s workforce investments; and support the commonwealth in achieving its goals. To accomplish these responsibilities, as well as to satisfy its oversight role, the Department may impose penalties or conditions to remedy or to mitigate the risk of a sanctionable act, if it determines that a “sanctionable act” has occurred, or if a subrecipient is determined to be “at-risk” or “high-risk” for noncompliance or nonperformance.

Note: See the attached appendices for references, definitions, and appeal process.

III. **Processes.**

- A. **Risk assessment process.** As applicable, the Department may evaluate a subrecipient’s risk of noncompliance and nonperformance during pre-award and post award. As a result of this evaluation, the Department may render a determination as to each subrecipient’s potential for such failures and assign a risk designation as appropriate. If a subrecipient is determined to be *high-risk*, the Department will notify the subrecipient, (and local board, if the local board is not the subrecipient), of any remedial action(s) required and/or conditions or penalties assessed. If a subrecipient is determined to be *at-risk*, the Department may notify the subrecipient of such risk-level status and any at-risk actions or factors identified, as such notification may increase the opportunity for the subrecipient to pursue risk-mitigation action. The Department will provide notification when the *risk* designation has been changed or resolved.

Oversight and risk assessment responsibilities are also required for subrecipients per *Workforce System Policy No. 07-2015 – Oversight*. Any deficiency (e.g., fraud, waste, abuse, disallowed costs, etc.) identified by a subrecipient must be reported to the Department no more than 30 calendar days from the date in which the violation was identified. Such reporting is required to ensure effective risk assessment and management. The Department will report to US Department of Labor (USDOL), any subrecipient placed into a *high-risk sanction status level*, or a *sanction status level*, as deemed appropriate. The Department will communicate with the subrecipient and/or local board and chief elected official(s) to resolve any errors and/or to correct other identified issues to the maximum extent possible and may terminate or

amend any risk assessment or sanction processes as deemed appropriate in accordance with applicable federal or state laws or regulations.

- B. Sanction process.** As applicable, the Department will render a determination as to whether or not a sanctionable act has occurred. If a sanctionable act has occurred and/or a sanction will be imposed, the Department will determine the *sanction status level* assignment; the remedial action(s) required and/or penalty assessed; and when such violation is resolved or action/penalty is completed.
- C. Sub-processes.** Processes incorporated into and pertaining to risk assessment and sanctions (e.g., notification, resolution, technical assistance, and appeal) are described herein.

IV. Determinations.

A. Risk determination. The Department may assess the subrecipient's risk of noncompliance and nonperformance during pre-award and post-award and render a determination as to a subrecipient's potential for such failures when warranted. If a subrecipient is determined to be *at-risk* or *high-risk*, the Department will follow the risk-assessment process described herein.

- Determination. The Department may render a determination regarding any risk designation. If a *high-risk* designation is assigned, or if any penalty, condition or remedial action will be imposed, the Department will provide written notice to the subrecipient with information regarding such determination.
- Notice. The Department will issue a written notice to the subrecipient upon any designation of *high risk* or regarding any penalty, condition or remedial actions that may be applied to mitigate the subrecipient's risk of noncompliance or nonperformance. Such notice will be sent as early as reasonably possible in order to provide opportunity for appeal the risk determination and/or other response to associated penalties, conditions or remedial actions. Notice applicable to local boards will be sent to the appropriate local board chairperson and chief elected official(s) and should include the following information:
 - The nature of the penalties, conditions or remedial actions associated with the risk designation;
 - The justification for the risk designation;
 - The actions needed to remediate or remove the penalties, conditions and/or the risk-status designation;
 - Timeline for completing any remedial actions or removing any conditions; and
 - Method for appealing the management decision (i.e., **Appendix C: Sanction Appeal Process**).

B. Sanction determination. If it has been determined that a sanctionable act has occurred, the Department will follow the sanction process described herein.

- Determination. The Department will render a determination regarding any sanctionable act(s). If a sanctionable act has occurred and/or if a sanction will be imposed, the Department will provide written notice to the subrecipient with information regarding such determination.
- Notice of intent. The Department will issue a written notice to the subrecipient (and local board chairperson as applicable) regarding any identified sanctionable act(s) and/or any sanction to be imposed. Such notice will be sent as early as reasonably possible in order to provide opportunity for appealing the sanction determination and/or sanction (i.e., in most instances notice will be provided thirty (30) calendar days in advance of the effective date of the sanction). However, in rare circumstances if deemed necessary or prudent, sanctions may be imposed at any time and without

prior notice. Notices of intent will be sent to the appropriate local board chairperson and chief elected official(s) or subrecipient, and should include the following information:

- Sanctionable act upon which the sanction was based;
- *Sanction status level* in which the subrecipient and/or local board is placed;
- Nature of the remedial action and/or penalty, and its effective date;
- Timeline for completing the remedial action and/or penalty; and
- Method for appealing the management decision (i.e., **Appendix C: Sanction Appeal Process**).

Note: The elements addressed within the notice of intent are subject to change as deemed appropriate by the Department (e.g., an instance wherein a subrecipient's appeal warrants an amendment to the timeline for completing remedial action).

V. Status. The Department may place a subrecipient into a risk designation status and/or a sanction status once a determination has been made regarding such risk and/or or violations. It is at the discretion of the Department to determine the appropriate *status level* for the applicable subrecipient.

A. Risk status. There are three (3) *risk status levels* that may be assigned by the Department to a subrecipient depending upon the identification of internal and external risks that may prevent the subrecipient from meeting compliance or performance requirements.

- Low-risk. A *low-risk status level* is assigned to a subrecipient whose assessment and results of oversight activities indicate minimum expectations for performance and compliance have been met, are being met, and/or are likely to be met.
- At-risk. An *at-risk status level* is assigned to a subrecipient who is determined to be likely to fail compliance and/or performance requirements. Such designation is based on the results of compliance and/or performance reviews, the presence of risk indicators (e.g., previous year failed performance, identified lack of internal controls, etc.), or other oversight assessment activities; and may be determined at various phases of the award lifecycle. Subrecipients designated as an *at-risk status level* may be notified of such determination and may have remedial actions and/or additional conditions imposed, as determined appropriate by the Department.
- High Risk. A *high risk status level* is assigned to a subrecipient who is determined to have recurrent deficiencies; a lack of effective governance and/or administrative provisions; and/or a recent pattern of poor outcomes (e.g., demonstration of a lack of fiscal integrity/stability; an inability to effectively implement or comply with requirements; inadequate management system; failure to adequately safeguard assets; or has experienced a change in any risk assessment category). Subrecipients designated as a *high-risk status level* will be notified of such determination, and are likely to have remedial actions and/or additional conditions or penalties imposed.

B. Sanction status. There are three (3) *sanction status levels* that may be assigned by the Department 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 Department.

- Level one. *Level one sanction status* is assigned for relatively less significant failure to perform or comply as required by the Department, and may result in the imposition of conditions, remedial actions and/or penalties. Examples of sanctionable acts associated with a *level one sanction status* include, but are not limited to:

- Failure to submit timely and accurate financial or performance reports;
 - Failure to take action, within established timeframe, to resolve findings as required;
 - Failure to sufficiently resolve audit findings or questioned costs within required time frames;
 - Failure to submit audits as required by Uniform Guidance and/or the provisions found in the Department’s Workforce System Policy No. 03-2015 attached financial management guide;
 - Breach of administrative, contract, or grant agreement provisions;
 - Failure to retain required service-delivery or financial records; and
 - Failure to meet one (1) local performance level in a single program year.
- Level two. *Level two sanction status* is assigned for significant failure to perform or comply as required and may result in the imposition of more significant conditions, remedial actions and/or penalties than those assessed to a subrecipient in *level one sanction status*. Examples of sanctionable acts associated with a *level two sanction status* include, but are not limited to:
 - Failure to observe accepted standards of administration (see **Appendix B: Definitions**);
 - Failure to sufficiently (as determined by the Department) resolve or implement remedial action on a level-one sanction within the time provided and detailed in the notice of intent; and
 - Failure to meet negotiated/adjusted levels of performance for the same performance measure for two (2) consecutive program years.
- Level three. *Level three sanction status* is assigned for extreme failure to perform or comply as required by the Department. A *level three sanction status* may result in the imposition of the most severe conditions, extensive remedial actions and/or penalties. Examples of sanctionable acts associated with a *level three sanction status* include, but are not limited to:
 - Gross negligence;
 - Willful disregard of the requirements of WIOA and other federal and state laws, regulations, policies, guidance, and/or terms and conditions of applicable awards, contracts, etc.;
 - A pattern of mis-expenditure (e.g., as described in WIOA Section 184(c)(2) and (3));
 - Incidents of fraud, malfeasance, misapplication of funds or other serious violations (e.g., as defined in US Department of Labor Training and Employment Guidance Letter No. 2-12);
 - Failure to meet negotiated/adjusted performance levels for the same performance measure for two (2) or more consecutive program years;
 - Failure to meet any negotiated/adjusted levels of performance for (3) consecutive program years;
 - Failure to sufficiently (as determined by the Department) resolve or implement remedial action while placed in a level two sanction within 180 calendar days of notice; and
 - Committing three (3) or more violations within three (3) consecutive program years.

VI. Conditions, Remedial Actions and Penalties. The conditions, actions and/or penalties provided herein regarding sanctionable acts and risk-mitigation supplement, but do not supplant, applicable civil and criminal actions under the pertinent federal, state or local laws, regulations, policies, or terms and conditions of applicable awards, contracts, etc.

A. Criteria. Conditions, remedial actions and/or penalties will be imposed based on the following criteria:

- Totality of the circumstances surrounding the risk status assignment and/or the sanctionable act(s):
 - Source, type, nature and frequency of finding;

- Severity, nature, duration, and extent of the sanctionable act(s) and/or risk;
- Experience of the Department, or another program entity, with the subrecipient regarding its ability to administer a program (e.g., occurrences of sanctionable acts, resolution of sanctions and sanctionable acts, efforts to prevent the occurrence of sanctionable acts, oversight results, and previous risk-status assignments); and
- Other criteria not listed that may be deemed appropriate by the Department (e.g., justification for subrecipient’s failure to provide necessary information or take required action; or demonstrations of willingness by the subrecipient to cooperate in the sanction process).

Note: Notwithstanding any lawful requirements, it is at the discretion of the Department to determine the appropriate condition, action and/or penalty.

B. Nonperformance. The Department may increase risk-status assignment and/or impose sanctions on a subrecipient for failure to achieve negotiated/adjusted levels of overall performance; or an individual indicator of performance; or any other statutory, program-specific, or state-initiated performance-related requirements (i.e., not limited to formula funds). Remedies regarding measures other than primary indicator performance levels will be assessed as deemed appropriate by the Department. Actions and penalties associated specifically with nonperformance for primary-indicator performance levels include, but are not limited to, the following:

- *First-year nonperformance.* If a subrecipient fails to meet the overall adjusted performance or one (1) or more individual adjusted performance levels in a single program year, the subrecipient must develop a “performance improvement plan” (PIP) within 45 calendar days of the final performance outcome. The Department may also require the local board to modify its local plan and/or take other action as deemed appropriate.
- *Second-year nonperformance.* In addition to a PIP, if a subrecipient fails to meet the overall adjusted levels of performance, or one (1) or more local negotiated/adjusted performance levels for the same performance measure(s) for a second consecutive program year, the Department will review the identified performance deficiencies and impose the appropriate action and/or penalty. Such action and/or penalty will include technical assistance, formal monthly performance reviews and may include local board organizational change, financial penalties, and/or other remedial actions as deemed appropriate.
- *Third-year nonperformance.* In addition to a PIP, if a subrecipient fails to meet the overall adjusted levels of performance, or one (1) or more local negotiated/adjusted performance levels for the same performance measure(s) for a third consecutive program year, the Department will review the performance deficiencies and make a recommendation to the governor to impose a reorganization plan for the local area; and/or a restructuring of the local board, including decertification of the current local board and the appointment and certification of a new local board; and/or the prohibition of the use of eligible providers and one-stop system partners that have been identified as achieving/contributing to poor levels of performance. The Department will also issue a notice of intent to revoke approval of all or part of the affected local plan, requiring at a minimum, modification of the local area’s local plan, and may make additional recommendations to the governor that include one (1) or more of the following actions:
 - Selecting an alternate entity to administer the program for the local workforce area involved;
 - Local workforce development area re-designation; and
 - Other such changes or penalties as the Department or governor deem necessary to ensure performance.

Note: 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.

- Local board performance improvement plan. The subrecipient/local board PIP is used to resolve performance issues when a subrecipient does not meet the levels of performance as negotiated with the Department. Each PIP must include at a minimum the following:
 - List of performance measure(s) for which the subrecipient/local board failed to achieve negotiated/adjusted level of performance for the indicators or measures applicable;
 - Detailed analysis and explanation/justification of failure to achieve the negotiated/adjusted level of performance for the indicators or measures applicable (to include addressing all identified deficiencies);
 - Description of the remedial actions to be taken and the timeline for such actions to address performance deficiencies;
 - Identification of the technical assistance needed to support successful performance, including the source and type of assistance; and
 - Local board monitoring plan of its subrecipients with timelines for evaluating effectiveness of corrective action plan.

Each PIP must be submitted within 45 calendar days of notification by the Department. Each PIP must be fully implemented and completed as directed by the Department, and may be modified by the Department in conjunction with the local board as deemed appropriate.

Note: The thresholds for determining whether a failure has occurred, as referenced in this section, are subject to change and beyond the scope of this policy and, as such, are not defined herein.

C. Noncompliance. The Department may increase risk-status assignment and/or impose sanctions on a subrecipient for failure to comply with federal, state or local laws, regulations, policies, or terms and conditions of applicable awards, 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:

- Determination of costs as disallowed. The Department may make a determination that costs charged to an award are unallowable.
- Reorganization plan. The Department may require a reorganization plan. Such a plan may include:
 - Decertification or restructuring of the local board;
 - Appointment and certification of a new local board;
 - Prohibition on the use of certain providers;
 - Designation of a new fiscal agent;
 - Selection of an alternate entity to administer the program for the local workforce area involved;
 - Redesignation of the local area; and
 - Other organizational changes the Department deems necessary to ensure compliance.
- Repayment. The Department may require the repayment of mis-expenditures:

- Repayment of any federal fund amounts found to have been expended in violation of applicable statute, regulations, policies, or terms and conditions of applicable awards, contracts, etc. (e.g., WIOA Section 184 (c)(4)); and
- Repayment of sources other than federal funds for unallowable expenditures where liability arises (e.g., as defined by USDOL Training and Employment Guidance Letter (TEGL) 2-12).

Note: The Department may offset certain amounts to which the local workforce area is, or may be, entitled 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.)

- Reduction of funds. The Department may reduce or de-obligate all or part of funds awarded.
- Reallocation of funds. The Department may reallocate all or part of funds awarded as a result of noncompliance regarding obligation or expenditure requirements (e.g., WIOA title I funds).
- Withholding, suspension and termination of funds. The Department 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.

D. Other conditions, remedial actions and penalties. In addition to the actions described above, the Department may impose one (1) or more of the following actions and/or penalties for each occurrence of a sanctionable act and/or at-risk or high-risk status.

- Mandatory participation in technical and quality assurance activities;
- Mandatory participation in training;
- Department-developed and subrecipient-implemented corrective action plan to address the weaknesses identified;
- Specific correction action plan timeline (i.e., implementation and completion deadline);
- Submission of additional or more detailed financial or performance reports;
- Appearances at Pennsylvania State Workforce Development Board meetings by the local board’s executive director, other administrative officer, or the subrecipient to report on activities and progress until performance is satisfactory;
- On-site visits by the Department or its designee to monitor and assist with daily operations of a local board, a local board’s contractor, or subrecipient;
- Department meetings with the local area’s chief elected officials, local board chairperson, local board members, local board executive director, and/or subrecipient;
- Department approval of specified actions (e.g., prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval of the Department);
- Contract cancellation or termination;
- Prohibiting the use of designated service providers, including workforce system operators;
- Issuing a notice that the subrecipient has been placed in a “no-draw” status;
- Delay, suspension or denial of contract payments;

- Require evidence of acceptable performance or compliance within a given time period prior to Departmental release of advanced payment;
- Require payment as reimbursement rather than advanced payments;
- Ineligibility for additional discretionary or other funds;
- Financial penalties;
- Designation as a high-risk local board, or subrecipient;
- Initiation of suspension or debarment proceedings; and
- Other actions deemed appropriate by the Department to assist the chief elected official(s), local board, or subrecipient in correcting deficiencies and ensure compliance.

VII. Technical Assistance. Technical assistance is vital in addressing performance, compliance and continuous quality improvement. Subject to the availability of funds and at the discretion of the Department, subrecipients may apply for funds to support technical assistance initiatives.

A. Limits. Applicable subrecipients may request from the Department funds to be used to support technical assistance activities related to sanctions. Upon such request, the Department will evaluate the request and determine the appropriate resources and activities to be used in the provision of such technical assistance.

State-funded technical assistance limits may be imposed (e.g., subrecipients may not receive more funding for technical assistance than it would have been eligible to receive for performance incentive awards for the program year; or such funds may not be applied toward administrative costs, staff salaries or benefits, out-of-state travel, meals or refreshments, or capital equipment purchases, including computers or other equipment).

B. Activities. Examples of technical assistance activities include, but are not limited to:

- Use of the Commonwealth Workforce Development System;
- Service delivery quality review;
- Analysis and recommendation for improving processes and methodology;
- Monitoring of services and providers;
- Linkages with business, workforce development partners, and other stakeholders;
- Staff development;
- Restructuring of staff;
- Case management;
- Performance management;
- Financial management;
- Program-specific audits or reviews; and
- Follow-up services.

Note: Notwithstanding any lawful requirements, it is at the discretion of the Department to determine the extent to which the Department will provide technical assistance.

VIII. Resolution.

A. Risk process resolution.

- If penalties or conditions were added or remedial actions were imposed, the Department will indicate such penalties, conditions, or actions, to the subrecipient as described in the determination process. The subrecipient must address each condition and action indicated, and submit supporting documentation in response to said condition or action as appropriate and/or instructed.
- Once the subrecipient submits a response to the penalties or additional conditions and/or completes the remedial actions imposed, the Department will review the response, documentation and remedial actions and make a determination.
- If the Department determines the subrecipient's response and/or action acceptable, the Department will remove the additional condition(s) that were adequately addressed and make any adjustments as deemed appropriate to the subrecipient's risk level.
- The Department will issue a written notice in a timely manner to the appropriate subrecipient regarding the removal of any penalties or conditions and/or termination of any required remedial actions imposed.
- If the Department determines that noncompliance or nonperformance cannot or has not been adequately addressed (i.e., continued failure to comply or performance) through penalties, additional conditions or remedial actions imposed, the Department may consider other conditions, actions and/or penalties as allowable or determined appropriate.

B. Sanctions process resolution.

- The Department will issue a written notice to the appropriate subrecipient regarding a resolution determination for a sanctionable act and/or sanction, and changes if any, to an applicable entity's *sanction status level* assignment.
- The Department will issue a *sanction resolution determination* to the subrecipient (and local board chair and chief elected official(s) as appropriate) indicating the conclusion of the remedial actions and/or penalties; and the removal or change in the *sanction status level* associated with the applicable sanction and entity.
- A notice of resolution will be sent to the subrecipient and/or appropriate local board's chairperson. Such notice will include the disposition of the sanction and the sanction resolution date (i.e., official date a specific sanction is determined to be concluded).

IX. **Appeal.** All management decisions issued by the Department may be appealed pursuant to the process provided in **Appendix C: Sanction Appeal Process.**

X. **Contact Entity.** Requests for technical assistance and/or inquiries regarding this guidance should be directed to the Pennsylvania Department of Labor & Industry, Director of the Bureau of Workforce Development Administration, 651 Boas Street, 12th Floor, Harrisburg, PA 17121. Requests may be submitted to the following resource account: RA-LI-BWDA-Policy@pa.gov

XI. **Rescissions.** This policy rescinds Workforce Investment Information Notice (WIIN) No. 1-11, *WIA Performance Incentive Award, Technical Assistance and Sanctions Policy*, July 15, 2011

XII. **Accessibility.** Workforce system directives are available on the PA Department of Labor & Industry website at <http://www.dli.pa.gov> for downloading.

XIII. Appendices.

- **Appendix A: References**
- **Appendix B: Definitions**
- **Appendix C: Sanction Appeal Process**

Appendix A: References

- Public Law (Pub. L.) 113-128, Workforce Innovation and Opportunity Act (WIOA)
- 20 Code of Federal Regulations (CFR) Parts 677 et al., WIOA Final Rules and Regulations
- 29 CFR Part 97, Monitoring and Reporting Program Performance
- 2 CFR Part 200 et al, and Part 2900, Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Training and Employment Guidance Letter (TEGL) No. 09-07, Revised Incentive and Sanction Policy for Workforce Investment Act Title IB Programs
- TEGL No. 2-12, Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct
- TEGL No. 17-05, 17-05 Change 1, and 17-05 Change 2, Common Measures Policy for the Employment and Training Administrations (ETA) Performance Accountability System and Related Performance Issues
- TEGL No. 30-14, Negotiating or Extending Performance Goals for the Workforce Investment Act (WIA) Title IB Programs and Wagner-Peyser Act Funded Activities for Program Year (PY) 2015
- TEGL No. 17-15, WIOA Adult, Dislocated Worker and Youth Activities Program Allotments for Program Year (PY) 2016; Final PY 2016 Allotments for the Wagner-Peyser Act Employment Service (ES) Program Allotments; and Workforce Information Grants to States Allotments for PY 2016
- TEGL No. 23-15, Process for Making High Risk Determinations after Award and the Associated Risk Mitigation Procedures
- Pennsylvania Workforce Innovation and Opportunity Act (WIOA) PY 2016 – PY 2019 Combined State Plan
- Pennsylvania Workforce System Directives:
[<http://www.dli.pa.gov/Businesses/Workforce-Development/Pages/Pennsylvania's-Workforce-System-Directives.aspx>]
- Pennsylvania Management Directives:
[[http://www.portal.state.pa.us/portal/server.pt/community/management_directives/711/management_administrative_support_\(205-260\)/208571](http://www.portal.state.pa.us/portal/server.pt/community/management_directives/711/management_administrative_support_(205-260)/208571)]

Note: This policy and related guidance may encompass other federal, state and local statutes, regulations, terms and conditions of an award or contract, as well as issuances, policies and official directives not listed above.

Appendix B: Definitions

Acceptable Standards of Administration are a collection of rules, procedures and conventions that define Department and commonly accepted administrative and fiscal practices; includes broad guidelines and detailed procedures (e.g., generally-accepted auditing standards; generally-accepted accounting principles).

Corrective Action Plan is a formal process used by the Department to resolve issues whereas a local board or other applicable workforce-related entity violated federal, state, and/or local laws, regulations, contract provisions/grant agreements or conditions, policies, official directives, and regional/local plans.

Management Decision is the determination by the federal awarding agency or pass-through entity (e.g., determination of findings and corrective actions plans, and the issuance of a written decision to an entity as to what remedial action is necessary, or penalty is imposed/assessed).

Noncompliance is any instance or occurrence of failure to comply with applicable federal, state and local laws, regulations, contract provisions, grant agreements, policies, official directives and regional/local plans.

Nonperformance is any instance or occurrence of failure to perform as required or negotiated/adjusted, based on applicable federal, state, and local laws, regulations, contract provisions/grant agreements or conditions, policies, official directives, and regional/local plans. Nonperformance includes, but is not limited to, failure to achieve negotiated/adjusted levels of performance for primary indicators of performance described in WIOA Section 116(b)(2)(A) (or, if applicable, core indicators of performance described in section 136(b)(2)(A) of WIA); other statutory, program-specific, or state-initiated performance-related requirements.

Performance Improvement Plan is a formal process used by the Department to resolve performance issues when a local board or other subrecipient did not meet one (1) or more of the levels of performance as negotiated with/adjusted by the Department. The goals of a performance action plan include, but are not limited to: create open dialog between the Department and subrecipient; improve and sustain desired performance results; address performance discrepancies; initiate action steps to be taken to correct performance—including identification of technical assistance and other resources available; provide a timetable outlining the dates by which improvement will be necessary; and evaluate performance at agreed-upon intervals and make adjustments to the plan as appropriate.

Remedial Action is corrective action or progressive series of actions taken by an entity to resolve an identified deficiency relating to noncompliance or nonperformance, produce recommended improvement, or demonstrate that a finding is either invalid or does not warrant action.

Risk Designation is a formal status assigned to a subrecipient regarding the entity's likelihood of noncompliance or nonperformance (e.g., three (3) levels of risk designation “low-risk” “at-risk” and “high-risk”).

Sanction is a penalty imposed/assessed or a or remedial action required for nonperformance or noncompliance with applicable federal, state and local laws, regulations, contract provisions/grant agreements or conditions, policies, official directives and regional/local plans.

Sanctionable Act is violation of federal, state and local laws, regulations, contract provisions, grant agreements, policies, official directives, and regional/local plans as determined by the Department or USDOL; primarily involving an occurrence of noncompliance or nonperformance. Such failures may occur during or after the program, grant, fiscal, contract, or calendar year.

Subrecipient is a non-federal entity that receives a sub-award to carry out part of a federal program; but does not include an individual that is a beneficiary of such program (e.g., local workforce development boards, other partners, contracted service providers and intermediaries are subrecipients). A subrecipient may also be a recipient of other awards directly from a federal or non-federal awarding agency.

Uniform Guidance (commonly referred to as “Super Circular”) is the Office of Management and Budget (OMB) final rule that encapsulates multiple OMB circulars into one. The formal name is “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Appendix C: Sanction Appeal/Review Process

Management decisions issued by the Department as addressed in this policy may be appealed pursuant to the process provided herein.

- A. Request for appeal.** A subrecipient who chooses to appeal a management decision issued by the Department must submit a formal written correspondence to the Department. Such requests must be received by the Department within fifteen (15) calendar days of the date of the Department's determination. Requests must be sent to following address:

PA Department of Labor & Industry
Deputy Secretary of Workforce
651 Boas Street, 17th Floor
Harrisburg, PA 17121

The request for appeal must include, but is not limited to the following:

- The purpose for the request;
- An explanation with regard to why such a sanction may not be warranted; and
- Mitigating factors.

Note: Other elements may be included relevant to the subrecipient's appeal as deemed appropriate by such subrecipient.

- B. Investigation and initial determination.** The Deputy Secretary of Workforce will review and/or investigate the appeal request and issue a written initial appeal determination within thirty (30) calendar days of receipt of the request. The determination will include:

- Initial appeal determination;
- Reason for the determination; and
- Opportunity for the subrecipient to request a hearing if not satisfied with the determination.

- C. Hearing.** If the subrecipient is not satisfied with the initial appeal determination, such subrecipient may request a hearing before the Secretary of the Department, or a representative appointed by Secretary. The request for a hearing must be filed within fifteen (15) days of receipt of the initial appeal determination. Such hearing will be conducted in accordance with the General Rules of Administrative Practice and Procedure (GRAPP), Title 1 Pa. Code, Part II.

1. If a hearing is requested, the Deputy Secretary of Workforce will:

- Arrange for the hearing;
- Ensure a hearing is held within thirty (30) days of the filing; and
- Prepare a written notice of hearing and forward to all affected/interested parties.

2. The written notice of hearing will include:

- Identity of the hearing officer, date, time, and place of hearing, how hearing will be conducted and issues to be decided;

Appendix C: Sanction Appeal/Review Process (Continued)

- The opportunity to withdraw the request before the hearing. This request must be received in writing, and must be received by the Deputy Secretary of Workforce prior to the hearing date;
 - The opportunity to bring witnesses or documentary evidence, or both;
 - The opportunity to be represented by an attorney;
 - The opportunity to have records or documents relevant to the issues to be decided at the hearing produced by the subrecipient's custodian;
 - The opportunity to question any witness or parties; and
 - The opportunity to amend the appeal request prior to the hearing.
3. The presiding officer, who serves as the hearing officer, will issue a proposed decision to the Secretary of the Department within thirty (30) calendar days from the date of the hearing. The decision will include:
- A statement of issues presented at the hearing;
 - Hearing officer's decision;
 - Reason for decision; and
 - Recommended remedies to be applied.
4. The Secretary will evaluate the appeal and the proposed decision, and issue a final order/determination. This is considered the Department's final appeal determination.
- D. Other Remedies.** This policy shall not prohibit a subrecipient from pursuing a remedy if such action is authorized under federal, state or local law.