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Area of Responsibility: BWDA/Policy Coordination

Certified by: PC  
(Michael White)

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This policy establishes Pennsylvania Department of Labor & Industry, or L&I, sanctions and related appeals processes for all subrecipients of federal grant awards and state grants where applicable.

### **Summary of Changes**

On Oct. 20, 2016, L&I issued Workforce System Policy No. 184-02, *Sanctions*. This change to the original policy incorporates the following revisions:

- This section, *Summary of Changes*, was added to reflect the changes from the original policy;
- The term “subrecipients” was clarified throughout the policy to include local workforce development boards.
- Formatting, grammar, mechanics and usage.
- Clarified “subrecipients” to include local workforce development boards.
- Subrecipients meeting minimum expectations for performance and compliance are now “not-at-risk” risk status, where they were formerly designated “low-risk.”
- Sections VI(B) and VI(C) are retitled
- The following terms were added or expanded in Appendix B, Definitions:
  - Adjusted Goals or Adjusted Levels of Performance
  - Negotiated Goals or Negotiated Levels of Performance
  - Performance
  - Sanction
- Formatting, grammar, mechanics and usage revisions were made

- I. **Background.** Subrecipients are held accountable to meet local workforce development system needs. The policy leads to improved performance outcome measures, ensures compliance with applicable federal and state laws, regulations, policies, guidance and terms and conditions of applicable awards, contracts and provides adequate returns on Pennsylvania’s workforce investments in support of the Commonwealth’s pursuit of its workforce development goals. To accomplish these responsibilities, and to satisfy its oversight role, L&I 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 nonperformance or noncompliance.

*Note:* Attached appendices for references, definitions and appeal process accompany this policy.

## II. Processes.

**A. Risk-assessment process.** As applicable, L&I may evaluate a subrecipient's risk of nonperformance and noncompliance during pre-award and post-award periods. As a result of this evaluation, L&I 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, L&I will notify the subrecipient, (and local board, if the local board is not the subrecipient), of any remedial action required and conditions or penalties assessed. If a subrecipient is determined to be at-risk, L&I 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. L&I will provide notification when the risk designation is 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) identified by a subrecipient must be reported to L&I no more than 30 calendar days from the date upon which the violation was identified. Such reporting is required to ensure effective risk assessment and management. L&I will report to the U.S. Department of Labor any subrecipient placed into a high-risk sanction status, or a sanction status, as deemed appropriate. L&I will communicate with the subrecipient and chief elected official to resolve any errors and 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, L&I will render a determination as to whether or not a sanctionable act has occurred. If a sanctionable act has occurred and a sanction will be imposed, L&I will determine the sanction status assignment, the remedial action required and penalty assessed when such violation is resolved or action and 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.

## III. Determinations.

**A. Risk determination.** L&I may assess a 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, L&I will follow the risk-assessment process described herein.

- Determination. L&I 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, L&I will provide written notice to the subrecipient with information regarding such determination.
- Notice. L&I 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 is administratively possible to provide opportunity to appeal the risk determination and 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, and should include the following information:
  - nature of the penalties, conditions or remedial actions associated with the risk designation
  - justification for the risk designation

- actions needed to remediate or remove the penalties, conditions and the risk-status designation
- timeline for completing any remedial actions or removing any conditions
- method for appealing the management decision (i.e., **Appendix C: Sanction Appeal Process**)

**B. Sanction determination.** If L&I determines that a sanctionable act has occurred, L&I will follow the sanction process described herein.

- ***Determination.*** L&I will render a determination regarding any sanctionable act. If a sanctionable act has occurred and if a sanction will be imposed, L&I will provide written notice to the subrecipient with information regarding such determination.
- ***Notice of intent.*** L&I will issue a written notice to the subrecipient (and local board chairperson as applicable) regarding any identified sanctionable act and any sanction to be imposed. Such notice will be sent as early as is administratively possible to provide opportunity for appealing the sanction determination and sanction (i.e., in most instances notice will be provided 30 calendar days in advance of the sanction's effective date). 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 or subrecipient, and should include the following information:
  - sanctionable act upon which the sanction was based
  - sanction status level into which the subrecipient is placed
  - nature of the remedial action and penalty, and its effective date
  - timeline for completing the remedial action and penalty
  - method for appealing the management decision (i.e., **Appendix C: Sanction Appeal Process**)

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

**IV. Status.** L&I may place a subrecipient into a risk designation status and a sanction status once a determination is made regarding such risk and violations. It is at L&I's discretion to determine the appropriate status level for the applicable subrecipient.

**A. Risk status.** There are three risk status levels L&I may assign to a subrecipient depending upon the identification of internal and external risks that may prevent the subrecipient from meeting compliance or performance requirements.

- ***Not-at-risk.*** A not-at-risk status 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 are likely to be met.
- ***At-risk.*** An at-risk status is assigned to a subrecipient who is determined to be likely to fail compliance and performance requirements. Such designation is based on compliance and performance reviews, the presence of risk indicators (e.g., previous year failed performance, identified lack of internal controls) or other oversight assessment activities and may be determined at various phases of the award lifecycle. Subrecipients with at-risk designations may be notified of such determination, and may have remedial actions and additional conditions imposed, as determined appropriate by L&I.
- ***High Risk.*** A high-risk status is assigned to a subrecipient who is determined to have recurrent deficiencies, a lack of effective governance and administrative provisions and a recent pattern of poor outcomes (e.g., demonstration of a lack of fiscal integrity or 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 high-risk will be notified of such determination, and are likely to have remedial actions and additional conditions or penalties imposed.

- B. Sanction status.** There are three sanction status levels that may be assigned by L&I to a subrecipient depending upon the nature and severity of the sanctionable act, mitigating circumstances surrounding the sanctionable act, or other relevant factors. Sanction status levels may change as deemed appropriate by L&I.
- Level one. Level one sanction status is assigned for relatively less-significant failure to perform or comply as required by L&I, and may result in the imposition of conditions, remedial actions and 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 the provisions found in L&I'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
    - first-year nonperformance
  - 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 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 L&I) resolve or implement remedial action on a level-one sanction within the time provided and detailed in the notice of intent
    - second consecutive of year nonperformance
  - Level three. Level three sanction status is assigned for extreme failure to perform or comply as required by L&I. A level three sanction status may result in the imposition of the most severe conditions, extensive remedial actions and 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 terms and conditions of applicable awards, contracts
    - 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 U.S. Department of Labor Training and Employment Guidance Letter No. 2-12)
    - failure to meet adjusted performance levels for the same performance measure for two or more consecutive program years
    - third consecutive year nonperformance
    - failure to sufficiently (as determined by L&I) resolve or implement remedial action while placed in a level two sanction within 180 calendar days of notice
    - committing three or more violations within three consecutive program years

**V. Conditions, Remedial Actions and Penalties.** The conditions, actions and 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.

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

- L&I will consider the totality of circumstances surrounding the risk-status assignment and the sanctionable act.
  - source, type, nature and frequency of finding
  - severity, nature, duration and extent of the sanctionable act and risk
  - experience of L&I, 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)
- other criteria not listed that may be deemed appropriate by L&I (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 L&I's discretion to determine the appropriate condition, action and penalty.

**B. Commonwealth Response to Nonperformance.** L&I may increase risk-status assignment and impose sanctions on a subrecipient for failure to achieve adjusted levels of overall performance, an individual indicator of performance or any other statutory, program-specific or state-initiated performance-related requirements (i.e., not limited to formula funds). Performance thresholds for subrecipients can be found in L&I's performance policy. Remedies regarding measures other than primary indicator performance levels will be assessed as deemed appropriate by L&I. 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 or more individual adjusted performance levels in a single program year, the subrecipient must develop a performance improvement plan, or PIP, within 45 calendar days of the final performance outcome. L&I may also require the local board to modify its local plan and 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 or more local adjusted performance levels for the same performance measure for a second consecutive program year, L&I will review the identified performance deficiencies and impose the appropriate action and penalty. Such action and penalty will include technical assistance, formal monthly performance reviews and may include local board organizational change, financial penalties and other remedial action 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 or more local adjusted performance levels for the same performance measure for a third consecutive program year, L&I will review the performance deficiencies and make a recommendation to the governor to impose a reorganization plan for the local area, a restructuring of the local board – including decertification of the current local board and the appointment and certification of a new local board – and the prohibition of the use of eligible providers and one-stop system partners identified as achieving or contributing to poor performance levels. L&I 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 or more of the following:

- selecting an alternate entity to administer the program for the local workforce area involved
- local workforce development area re-designation
- other such changes or penalties as L&I or the governor deem necessary to ensure performance

*Note:* The amount of monetary sanctions imposed for nonperformance will not exceed 5 percent 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.

- **Subrecipient performance improvement plan.** The PIP is used to resolve performance issues when a subrecipient does not meet adjusted levels of performance as. Each PIP must minimally include the following:
  - list of performance measures for which the subrecipient failed to achieve adjusted level of performance for the applicable indicators or measures
  - detailed analysis and explanation of failure to achieve the 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
  - 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 L&I. Each PIP must be fully implemented and completed as directed by L&I, and may be modified by L&I 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. Commonwealth Response to Noncompliance.** L&I may increase risk-status assignment and impose sanctions upon a subrecipient for failure to comply with federal, state or local laws, regulations, policies or terms and conditions of applicable awards and contracts. Remedial actions and penalties will be applied in accordance with applicable laws, regulations, policies, directives, award or contract provisions and may include, but are not limited to:

- **Determination of costs as disallowed.** L&I may make a determination that costs charged to an award are unallowable.
- **Reorganization plan.** L&I 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 alternative entity to administer the program for the local workforce area involved
  - redesignation of the local area
  - other organizational changes L&I deems necessary to ensure compliance
- **Repayment.** L&I 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 (e.g., WIOA Section 184 (c)(4))
- repayment of sources other than federal funds for unallowable expenditures where liability arises (e.g., as defined by U.S. Department of Labor Training and Employment Guidance Letter, or TEG, No. 2-12)

*Note:* L&I 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 development area should be held liable pursuant to TEG, 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. L&I may reduce or de-obligate all or part of funds awarded.
- Reallocation of funds. L&I 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. L&I 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, L&I may impose one or more of the following actions and penalties for each occurrence of a sanctionable act and at-risk or high-risk status:

- mandatory participation in technical and quality assurance activities
- mandatory participation in training
- L&I-developed and subrecipient-implemented corrective action plan to address identified weaknesses
- specific corrective 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 L&I or its designee to monitor and help with daily operations of a local board or other subrecipient
- L&I meetings with the local area's chief elected officials, local board chairperson, local board members, local board executive director and subrecipient
- L&I approval of specified actions (e.g., prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval of L&I)
- 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 L&I's 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 subrecipient
- initiation of suspension or debarment proceedings
- other actions deemed appropriate by L&I to help the chief elected official or subrecipient in correcting deficiencies and ensure compliance

**VI. 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 L&I, subrecipients may apply for funds to support technical assistance initiatives.

**A. Limits.** Applicable subrecipients may request from L&I funds to be used to support technical assistance activities related to sanctions. Upon such request, L&I will evaluate the request and determine the appropriate resources and activities to be used providing such technical assistance.

State-funded technical assistance limits may be imposed (e.g., a subrecipient 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:

- using 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
- follow-up services

*Note:* Notwithstanding any lawful requirements, it is at L&I's discretion to determine the extent to which L&I will provide technical assistance.

**VII. Resolution.**

**A. Risk process resolution.**

- If penalties or conditions were added, or remedial actions imposed, L&I 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 instructed.
- Once the subrecipient submits a response to the penalties or additional conditions and completes the remedial actions imposed, L&I will review the response, documentation and remedial actions and make a determination.
- If L&I determines the subrecipient's response and action are acceptable, L&I will remove the additional conditions that were adequately addressed and make any adjustments as deemed appropriate to the subrecipient's risk level.

- L&I will issue a timely, written notice to the appropriate subrecipient regarding the removal of any penalties or conditions and termination of any required remedial actions imposed.
- If L&I 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, L&I may consider other conditions, actions and penalties as allowable or determined appropriate.

**B. Sanctions process resolution.**

- L&I will issue a written notice to the appropriate subrecipient regarding a resolution determination for a sanctionable act and sanction, and changes if any, to an applicable entity's sanction status assignment.
- L&I will issue a sanction resolution determination to the subrecipient (and local board chair and chief elected officials as appropriate) indicating the conclusion of the remedial actions and penalties, and the removal or change in the sanction status associated with the applicable sanction and entity.
- A notice of resolution will be sent to the subrecipient and appropriate local board's chairperson. 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).

**VIII. Appeal.** All management decisions issued by L&I may be appealed pursuant to the process provided in **Appendix C: Sanction Appeal Process.**

**IX. Contact Entity.** Requests for technical assistance and 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](mailto:RA-LI-BWDA-Policy@pa.gov)

**X. 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 L&I and commonly accepted administrative and fiscal practices. This includes broad guidelines and detailed procedures (e.g., generally-accepted auditing standards and generally-accepted accounting principles).

**Adjusted Goals or Adjusted Levels of Performance** are the negotiated levels of performance after being revised at the end of the program years using the statistical adjustment model (established under §677.170). The statistical adjustment model is run before the program year and after the close of the program year to account for actual economic conditions and characteristics of participants served.

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

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

**Negotiated Goals or Negotiated Levels of Performance** are the levels of performance for each primary indicator of performance for each core program, agreed to by the state and the Secretary of Labor and the Secretary of Education prior to the start of the program years. These negotiated levels of performance must be incorporated into the unified or combined state plan.

**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 or local plans.

**Nonperformance** is any instance or occurrence of failure to perform as required or adjusted, based on applicable federal, state and local laws, regulations, contract provisions or grant agreements or conditions, policies, official directives and regional or local plans. Nonperformance includes, but is not limited to, failure to achieve adjusted levels of performance for primary indicators of performance described in WIOA Section 116(b)(2)(A) and §677.170.

**Performance** is defined in U.S. Department of Labor Employment and Training Administration TEGL 9-17. Performance is reported outcomes relative to negotiated and adjusted goals. The manner of these goals' derivation is detailed therein.

**Performance Improvement Plan** is a formal process used by L&I to resolve performance issues when a subrecipient did not meet one or more of the levels of performance as negotiated with and adjusted by L&I. The goals of a performance action plan include, but are not limited to: create open dialog between L&I 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 is required 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., the three levels of risk designation: not-at-risk, at-risk and high-risk).

**Sanction** is a penalty imposed or assessed or a remedial action required for nonperformance or noncompliance with applicable federal, state and local laws, regulations, contract provisions or grant agreements or conditions, policies, official directives and regional or local plans. Sanctions can only be applied once negotiated levels and year-end adjusted levels of performance are determined using a statistical adjustment model that contains at least two full program years of data for a given measure.

**Sanctionable Act** is violation of federal, state and local laws, regulations, contract provisions, grant agreements, policies, official directives and regional or local plans as determined by L&I or the U.S. Department of Labor, 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, or 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 L&I as addressed in this policy may be appealed pursuant to the process provided herein.

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

PA Department of Labor & Industry  
Deputy Secretary for Workforce Development  
651 Boas Street, 17<sup>th</sup> 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
- 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 for workforce development will review and investigate the appeal request and issue a written initial appeal determination within 30 calendar days of receipt of the request. The determination will include:

- initial appeal determination
- reason for the determination
- 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 L&I, or a representative appointed by the 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 for workforce development will:
  - arrange for the hearing
  - ensure a hearing is held within 30 days of the filing
  - prepare a written notice of hearing and forward to all affected and interested parties
2. The written notice of hearing will include:
  - identity of the hearing officer, date, time and place of hearing, how the hearing will be conducted and issues to be decided
  - opportunity to withdraw the request before the hearing; this request must be received in writing, and must be received by the deputy secretary for workforce development prior to the hearing date
  - opportunity to bring witnesses, documentary evidence or both
  - opportunity to be represented by an attorney
  - opportunity to have records or documents relevant to the issues to be decided at the hearing produced by the subrecipient's custodian
  - opportunity to question any witness or parties

- 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 L&I within 30 calendar days from the hearing date. The decision will include:
    - a statement of issues presented at the hearing
    - hearing officer's decision
    - reason for decision
    - recommended remedies to be applied
  4. The secretary will evaluate the appeal and the proposed decision, and issue a final order or determination. This is considered L&I'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.