



# Montana Department of LABOR & INDUSTRY

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2 Division: Workforce Services Division  
3 Category: WIOA  
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6 Policy No.: 04-18

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## Monitoring, Audits, Performance and Sanctions Policy

9 **Background:** Monitoring and evaluation are essential parts of Montana Department of Labor and  
10 Industry's (MDLI) responsibilities to ensure compliance with appropriate WIOA laws, regulations, plans, provider  
11 agreements, policies, and procedures and to provide the opportunity to strengthen and continuously improve  
12 WIOA programs and systems. The MDLI Program Monitoring Unit may conduct supplemental reviews of  
13 providers to determine the extent to which providers are assisting with the growth and operation of workforce  
14 development activities. The Program Monitoring staff may recommend corrective action if a service provider's  
15 operational deficiencies relate to workforce development; confirm allegations of mismanagement, fraud,  
16 program abuse, or criminal misconduct; or to clarify unusual findings.

17 **Scope:** This policy applies to all service providers operating WIOA programs, WIOA program managers, WIOA  
18 fiscal officers and the WIOA monitors. This policy is effective July 1, 2019.

### 19 Policy:

#### 20 Monitoring Definitions:

- 21 • **Commendation:** Given when the monitor finds consistently good practices the provider is doing.
- 22 • **Compliance Findings:** When the monitor finds a practice that is in violation of law, rule, or policy. Any  
23 time documentation is missing for enrollment, eligibility, MIS standards, etc. this would be a compliance  
24 finding. Deficiencies regarding overall program and/or case management policy would be a compliance  
25 finding. The Compliance Finding would be immediately followed by Action Required. The Compliance  
26 Finding will reference the law, regulation, or policy that is not being followed.
- 27 • **Area of Concern:** When the monitor finds a practice that might lead to non-compliance of law, rule, or  
28 policy. This would be used for a questionable practice but does not meet the threshold of compliance  
29 finding. Depending on the severity of the deficiency, the provider should respond to these on the report.  
30 The Area of Concern will be followed by a Recommendation.
- 31 • **Questioned Cost:** Used when monitors find unallowable purchases and/or incorrect or missing  
32 documentation for activities, services or payments made with program dollars. The payment is  
33 questioned until the provider has a chance to respond and resolve the discrepancy.
- 34 • **Disallowed Cost:** Used when the provider cannot provide the documentation to support a questioned  
35 cost that is a clear violation of policy, rule or law. The provider has the responsibility to reimburse the  
36 program with non-federal funds. Providers can collect repayment from the client, if applicable, but it is  
37 at their discretion and the responsibility lies with the provider to repay the cost within the  
38 report/response deadline.

39 **Monitoring Process:**

- 40 • The Program Monitoring Unit conducts program, data and fiscal monitoring of service providers.  
41 Monitoring will be conducted to review the time period from the most previous monitoring to the current  
42 date.
- 43 • Monitoring and/or limited scope reviews may consist of interviews with appropriate staff and reviews of  
44 policies, procedures, accounting reports, source documents, and other records as considered necessary  
45 pertaining to any or all of the WIOA activities including:
  - 46 ○ Fiscal,
  - 47 ○ Adult,
  - 48 ○ Youth,
  - 49 ○ Dislocated Worker,
  - 50 ○ National Dislocated Worker Grant (NDWG),
  - 51 ○ Management Information System (MIS),
  - 52 ○ Eligible Training Provider List (ETPL),
  - 53 ○ The One Stop System including One Stop Operators, Centers and Service Providers, and
  - 54 ○ Equal Opportunity (EO).
- 55 • Members or representatives of entities such as MDLI, State Workforce Innovation Board (SWIB), or U.S.  
56 Department of Labor (USDOL) may accompany on-site monitors.
- 57 • Regular monitoring of WIOA activities and providers of basic and individualized career services is  
58 conducted to ensure compliance with WIOA requirements including:
  - 59 ○ Compliance with the uniform administrative requirements described in WIOA Title I Section 181  
60 and USDOL uniform administrative requirements in 2 CFR 200, including the appropriate  
61 administrative requirements and applicable cost principles at WIOA Reg. Subpart B for all  
62 entities receiving WIOA Title IB funds;
  - 63 ○ Compliance with applicable state laws and regulations;
  - 64 ○ Determining that expenditures have been made against the cost categories and within the cost  
65 limitations specified in the Act and Regulation;
  - 66 ○ Compliance with the nondiscrimination, disability and equal opportunity requirements of WIOA  
67 section 188 and 29 CFR part 38;
  - 68 ○ Compliance with data collection and reporting system policies and procedures; and
  - 69 ○ Determining whether there is compliance with other provisions of the Act and the WIOA  
70 regulations and other applicable laws and regulations.
- 71 • If, as a result of financial and compliance audits or otherwise, the Programs Monitoring Unit has  
72 determined that noncompliance with the uniform administrative requirements found at 2 CFR 200, 29  
73 CFR part 95 or part 97, as appropriate, the requirements referred to in WIOA Sections 181 and 184, 29  
74 CFR Part 37, or any other substantial violation of WIOA Title I, MDLI's Workforce Services Division  
75 (WSD) will recommend corrective action to secure prompt compliance.
- 76 • If, because of financial and compliance audits or otherwise, the Programs Monitoring Unit has  
77 determined a violation of specific provisions of WIOA Title I, and compliance with corrective action has  
78 not been taken, the SWIB and/or MDLI's Workforce Services Division may:
  - 79 ○ Coordinate technical assistance as necessary and appropriate;
  - 80 ○ Prohibit the use of eligible providers;
  - 81 ○ Select an alternative entity to provide services; or
  - 82 ○ Terminate contract with service provider.

83 **Service Provider Performance:**

- 84 • Federal performance measures are applied to the service providers and they must meet these  
85 measures. Service providers are also given goals at the beginning of each program year and must meet  
86 these goals or may be subject to sanctions.

87 Program Sanctions:

- 88 • The Programs Monitoring Unit will evaluate service provider’s performance as per individual  
89 agreements. The evaluation of performance will be provided to the Program Manager. The Program  
90 Manager will provide assistance to the service provider based on planned versus actual expenditures of  
91 funds and fulfillment of the terms and provision and scope of services. The process may include  
92 monthly program and fiscal desk review; regular communication with service providers; attendance at  
93 training and technical assistance sessions; monthly status reports; and agreement modifications and  
94 monitoring.
- 95 • Service providers found deficient in any of the areas will submit a corrective action plan to the Programs  
96 Monitoring Unit. Program Managers will provide appropriate technical assistance.
- 97 • Should a service provider fail to fulfill the corrective action, and the program managers have exhausted  
98 the viability of technical assistance as a remedy to correct the problem, the Programs Monitoring Unit  
99 will forward the information to the appropriate committee of the SWIB.
- 100 • Sanctions may result in recommending de-obligation of funds and/or that the service provider become  
101 ineligible for any future funding consideration.
- 102 • In cases of claims of known or suspected incidents of fraud, malfeasance, misfeasance, nonfeasance,  
103 misapplication of funds, gross mismanagement, or other criminal activities in federally funded  
104 programs, MDLI’s WSD will report all known information on the Federal Incident Report. In addition,  
105 MDLI’s WSD may initiate a special investigation or audit of the incident. The special investigation or  
106 audit may include, but is not limited to, additional onsite monitoring and/or a financial audit conducted  
107 by a third-party auditing firm. For the purpose of this section the following definitions apply:
  - 108 ○ Fraud, Misfeasance, Nonfeasance or Malfeasance Fraud: Misfeasance, nonfeasance or  
109 malfeasance should be considered broadly as any alleged deliberate action that is in violation of  
110 federal statutes and regulations. This category includes, but is not limited to, indications of  
111 bribery, forgery, extortion, embezzlement, theft of client checks, kickbacks from clients,  
112 intentional payment to a contractor or service provider without the expectation of receiving  
113 services, payment to ghost enrollees, misuse of appropriated funds, and misrepresenting  
114 information in official reports.
  - 115 ○ Misapplication of funds is considered as use of funds, assets, or property not authorized or  
116 provided for under WIOA regulations, grants, agreements or contracts. This category includes,  
117 but is not limited to, nepotism, political patronage, use of clients for political activities, ineligible  
118 clients, conflict of interest, failure to report income from federal funds, violation of  
119 agreement/contracts/grant procedures, and the use of federal funds for other than specified  
120 purposes.
  - 121 ○ Gross mismanagement is considered as actions or situations arising out of management  
122 ineptitude or oversight, leading to major violations of WIOA processes, regulation, or  
123 agreement/contract/grant provisions which could severely hamper the accomplishment of  
124 program goals. These include situations that lead to waste of government resources and could  
125 jeopardize future support for a project. This category includes, but is not limited to, non-  
126 auditable records, unsupported costs, highly inaccurate fiscal or program reports, payroll  
127 discrepancies, payroll deductions not paid to the Internal Revenue Service, and the lack of good  
128 internal control procedures.
  - 129 ○ Employee/client misconduct is considered as actions occurring during or outside work hours  
130 that reflect negatively on USDOL, the State of Montana, or the WIOA program. Misconduct may  
131 include, but is not limited to, conflict of interest involving outside employment, business, and  
132 professional activities, the receipt or giving of gifts, fees, entertainment and favors, misuse of  
133 federal property, misuse of official information and such other activities as might adversely  
134 affect the confidence of the public, as well as serious violations of federal and state laws.
- 135 • All program activities may be suspended during the time that a special investigation or audit is being  
136 conducted. Following completion of the special investigation or audit, action taken may include, but is  
137 not limited to:

- 138 ○ Reinstatement;
- 139 ○ For audits, resolution as outlined below;
- 140 ○ Reduction or de-obligation of all or part of the funds awarded to a service provider or operator;
- 141 ○ Termination of all or part of the operator or provider agreement with possible repayment of
- 142 funds; and
- 143 ○ Civil or criminal prosecution, if warranted.

#### 144 Debt Collection:

- 145 ● Repayment of debts that result from monitoring or audit finding must be paid within 30 days of
- 146 establishment of the debt. Repayment of debts will be in the form of a cash payment unless negotiation
- 147 between the SWIB Administrative Entity and the debtor mutually agree on another method. Cash from a
- 148 non-federal source is the required method of repayment where there is misuse of funds due to willful
- 149 disregard of requirements of the Act, gross negligence, or failure to observe accepted standards of
- 150 administration. Settlement of debts on a non-cash basis will be by exception.
- 151 ● If an established debt is not paid within 30 days of the final determination or if established installment
- 152 payments are more than 30 days late, a letter will be sent from the SWIB Administrative Entity stating
- 153 that payment is due immediately. At 45 days, another letter will be sent stating the account will be sent
- 154 to the Attorney General's Office if not paid within 15 days. At 60 days, the account is turned over to the
- 155 Attorney General and the SWIB will consider whether to continue to do business with the debtor.

#### 156 Methods of Repayment of Debt:

- 157 ● **Lump Sum:** payment in full may be made by certified check, money order, cashier's check, or bank
- 158 draft.
- 159 ● **Installment Payments:** cash installment repayment agreements are usually short-term duration, from
- 160 three to twelve months, and are limited to 36 months by the Federal Claims Collection Standards.
- 161 Duration is negotiated based on the size of the debt and the debtor entity's ability to pay.
- 162 ● **Adjustment in Payments:** when cash repayment in lump sum or in installments is impossible, an
- 163 agreement may be entered into with the debtor whereby the contract is reduced by the amount of the
- 164 debt repayment while the program is maintained at an undiminished cost level through nonfederal
- 165 contributions.
- 166 ● **Withholding:** this repayment method will involve withholding amounts owed the debtor for past services
- 167 or for other considerations already provided in satisfaction of the debt owed.
- 168 ● **Offset:** this method involves reducing the contract up to the amount of the debt. The SWIB
- 169 Administrative Entity may use this option with the approval of the U.S. Secretary of Labor.
- 170 ● Non-Cash methods must be negotiated with the SWIB Administrative Entity prior to being considered as
- 171 a method for debt recovery.
  - 172 ○ **Stand-in Costs:** this method is not actually a debt repayment, but is a way of "erasing" the debt.
  - 173 The debtor must identify allowable non-federal costs associated with the contract but not
  - 174 charged to the contract, and substitute those costs for the disallowed costs, thus erasing the
  - 175 debt. These expenditures must have been reported to the SWIB Administrative Entity with the
  - 176 quarterly financial status report or closeout package for the year the costs were incurred to be
  - 177 considered for disallowed costs incurred during that same period. This method would require
  - 178 negotiation and agreement with the debtor that such costs are subject to audit. Documentation
  - 179 that will establish a clear audit trail must be maintained when such agreements are made.

#### 180 References:

- 181 ● [2 CFR 200 Uniform Administrative Requirements](#)
- 182 ● [WIOA Section 181 Requirements and Restrictions](#)
- 183 ● [29 CFR 37 Nondiscrimination and Equal Opportunity](#)
- 184 ● [WIOA Section 188 Nondiscrimination](#)