

## GENERAL PROVISIONS & ASSURANCES

November 1, 2020

## PROVISIONS AND ASSURANCES

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## SERIES 100 - ADMINISTRATIVE PROVISIONS

**Section 101. DEFINITIONS.** The words and terms defined below shall have the meaning set forth when used in this agreement.

ACT. The Workforce Innovation and Opportunity Act (WIOA), Public Law 113-128, 29 USC 3101, 20 CFR Parts 603, 651, 652, 653, 654, 658, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, and 688.

### ALLOWABLE COST CATEGORIES, WIOA TITLE I-B:

**ADMINISTRATIVE COSTS:** The term “administrative costs” means expenditures incurred by State boards and local boards, direct recipients (including State grant recipients under subtitle B of Title I and recipients of awards under subtitles C and D of Title I), local grant recipients, local fiscal agents or local grant Subrecipients, and one-stop operators *in the performance of administrative functions and in carrying out activities under Title I-B that are not related to the direct provision of workforce investment services (including services to participants and employers).* **I-BI-B**

**PROGRAM COSTS:** The costs identified as program are that portion of necessary and allowable costs associated under subtitle B of Title I, which are related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect.

**ALLOCATED COSTS AND OTHER COSTS** Personnel and related non-personal costs of staff who perform both administrative and programmatic functions are to be allocated as administrative or program costs to the benefiting cost objectives based on documented distributions of actual time worked or other equitable cost allocation methods.

Personnel and related non-personnel costs of the Recipient’s or Subrecipient’s staff, including project directors, that perform services or activities that benefit two or more of the cost objectives/categories identified in this section may be allocated to the benefiting cost objectives/categories based on documented distributions of actual time worked and related costs.

Indirect or overhead costs normally shall be charged to administration, except that specific costs charged to an overhead or indirect cost pool that can be identified directly with a WIOA cost objective/category other than administration may be charged to the WIOA cost objective/category directly benefited. Documentation of such charges shall be maintained.

Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost are to be charged as a program cost. Documentation of such charges must be maintained.

Whether a cost is charged as a direct cost or as an indirect cost shall be determined in accordance with the descriptions of direct and indirect costs contained in 2 CFR 200.413 and 200.414

Costs of another Federal grant, WIOA program, or cost category may not be shifted to a WIOA grant, Subgrant, program, or cost category to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

Only that portion of the costs of One Stop operators which are associated with the performance of

the administrative functions described above and awards to Subrecipients or vendors that are solely for the performance of administrative functions are classified as administrative costs. All other costs of One-Stop operators are classified as program costs.

**RAPID RESPONSE ASSISTANCE COSTS:** Funds provided to plan for and respond as quickly as possible to a permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster, that results in mass job dislocation. The purpose of rapid response is to promote economic recovery and vitality by developing an ongoing, comprehensive approach to identifying, planning for, responding to layoffs and dislocations, and preventing or minimizing their impacts on workers, businesses, and communities. A successful rapid response system includes:

- Informational and direct reemployment services for workers, including but not limited to information and support for filing unemployment insurance claims, information on the impacts of layoff on health coverage or other benefits, information on and referral to career services, reemployment-focused workshops and services, and training;
- Delivery of solutions to address the needs of businesses in transition, provided across the business lifecycle (expansion and contraction), including comprehensive business engagement and layoff aversion strategies and activities designed to prevent or minimize the duration of unemployment;
- Convening, brokering, and facilitating the connections, networks and partners to ensure the ability to provide assistance to dislocated workers and their families through items such as home heating assistance, legal aid, and financial advice; and
- Strategic planning, data gathering and analysis designed to anticipate, prepare for, and manage economic change.

**ADMINISTRATIVE ENTITY:** The Governor has designated the Idaho Department of Labor as both the State WIOA Administrative Entity and the local WIOA Administrative Entity. When referenced in this agreement, the term Administrative Entity shall mean the Idaho Department of Labor.

**AGREEMENT:** The written agreement that sets forth the binding legal relationship between the Administrative Entity and a public or private nonprofit Subrecipient, including, but not limited to: the Signature Page, Statement of Work, Program Planning Summary, Budget, and the Provisions and Assurances, State Procurement Rules and Regulations, and any other documents referred to or attached to the agreement.

**AWARDING AGENCY (or FEDERAL AWARDING AGENCY):** The federal agency that provides a Federal award directly to a non-Federal entity.

**BUDGET:** That part of the final signed agreement between the Administrative Entity and the Subrecipient that sets forth expenditures planned under the agreement and authorizes said expenditures.

**CONTRACTOR (or CONSULTANT):** Sometimes referred to as a vendor or independent contractor, is a dealer, distributor, merchant or other seller providing goods or services to many different purchasers that are required for the conduct of a Federal program (2 CFR 200.23). Additional guidance on distinguishing between a Subrecipient and a Contractor (vendor) is provided in 2 CFR 200.330. When procuring contractor provided goods and services, Recipients and Subrecipients must follow the procurement requirements at 2. CFR 200.317.

**CONSULTANT:** Sometimes referred to as a vendor or independent contractor, is paid at a fixed

negotiated hourly rate; considered “work for hire” and intellectual property information is assigned to IDOL.

**EXPENDABLE PERSONAL PROPERTY:** Tangible personal property including consumable materials and supplies, equipment or other property having a unit cost of less than \$2000 and a useful life of less than one year. Ownership of expendable personal property remains with the Subrecipient.

**FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA):** FFATA legislation requires information on federal awards (federal financial assistance and expenditures be made available to empower every American with the ability to hold the government accountable for each spending decision.

**IDAHO WORKFORCE DEVELOPMENT COUNCIL (State Board):** The Council is appointed by the Governor, who designates one nongovernmental (usually business) member to be chairperson. The Council is composed of members who are representatives of business and industry, state agencies and organizations, organized labor, community-based organizations and educational agencies. It is the responsibility of the Council to advise the Governor in planning, coordinating and maintaining Idaho's workforce development system.

**MEMORANDUM OF UNDERSTANDING (MOU):** WIOA requires Title I program participation in the local one-stop delivery system. The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the State Council and the one-stop partners, with the agreement of the Governor and the one-stop partners, relating to the operation of the one-stop delivery system in the local area.

**MODIFICATION:** Any change in the term or condition of this agreement that affects the Subrecipient's operation or procedures.

**NONEXPENDABLE PERSONAL PROPERTY:** Property having an acquisition cost of \$2000 or more, per item, regardless of estimated useful life is considered nonexpendable property. The Administrative Entity is responsible for disposition of items so purchased. Any item purchased with WIOA funds which has a unit cost of over \$2000 remains the property of the state, and must be disposed of in accordance with applicable federal and state regulations. The Subrecipient must obtain prior approval from the Administrative Entity for purchase of property having a unit acquisition cost of \$2000 or more.

**OBLIGATIONS:** When used in connection with a non-Federal entity's utilization of funds under a Federal award, obligations means orders placed for property and services, contracts and subaward made, and similar transactions during a given period that require payment by the non- Federal entity during the same or a future period.

**PASS THROUGH ENTITY:** See RECIPIENT.

**PARTICIPANT:** Individuals are considered participants when they have received a Workforce Innovation and Opportunity Act (WIOA) service other than self-service or information-only activities and have satisfied all applicable programmatic requirements for the provision of services, such as eligibility determination, and registration.

**PLACEMENT:** The act of securing unsubsidized employment (full or part time) for or by a participant. Unsubsidized employment means employment in private-for-profit firms, public, or nonprofit agencies not financed from funds provided under the Act. Placement shall include entry into the armed forces, entry

into employment in a registered apprenticeship program, and self-employment.

**RECIPIENT (or PRIME AWARDEE or PASS THROUGH ENTITY (PTE)):** Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The Governor of the State of Idaho has designated the Idaho Department of Labor as the grant recipient for WIOA Title I and Title III programs.

**REGISTRATION:** Registration is the process for collecting information to support a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application. Individuals are considered participants when they have received a Workforce Innovation and Opportunity Act (WIOA) service other than self-service or information-only activities and have satisfied all applicable programmatic requirements for the provision of services, such as eligibility determination.

Adults and dislocated workers who receive services funded under WIOA title I other than self-service or information-only activities must be registered and must be a participant.

EO data, (race and ethnicity, age, sex, and disability), must be collected on every individual who is interested in being considered for WIOA Title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the grant recipient or designated service provider.

**SELF-SUFFICIENCY:** An employed individual enrolled in the Adult program shall be considered self-sufficient if the family income exceeds 155% of the Lower Level Standard Income Level (LLSIL). For the Dislocated Worker program, an individual employed in a permanent position is considered self-sufficient if the position pays at least 90 percent of the job of dislocation wage.

**STATEMENT OF WORK:** That part of the final signed agreement between the Subrecipient and the Administrative Entity that sets forth the work and/or services to be provided under the agreement, and required performance standards to be achieved during the period of the agreement.

**SUBGRANT/SUBAWARD:** An award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity. Typically includes collaboration on the project with IDOL, with the lead agency. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**SUBRECIPIENT/SUBAWARDEE:** A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

**UNLIQUIDATED OBLIGATION:** For financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

**UNOBLIGATED BALANCE:** The amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative

amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

SESA: State Employment Security Agency, now referred to as SWA or State Workforce Agency.

SUBMISSION DATE: Date by which the requested material is to be received by the Administrative Entity or Subrecipient.

SUSPENSION: An action of the Administrative Entity that temporarily suspends the contractual relationship established under the agreement pending corrective action by the Subrecipient or a decision to terminate the agreement by the Administrative Entity.

TERMINATION: Cancellation of the contractual relationship established under the agreement, in whole or in part, at any time prior to the date of completion.

UNALLOWABLE COSTS: Those charges to the agreement that are determined to be unallowable under the provisions of the Act, federal regulations, state rules and/or terms and conditions of the agreement.

VENDOR: See CONTRACTOR.

WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA): (Pub. L. 113– 128) Comprehensive legislation that reforms and modernizes the public workforce system. WIOA reaffirms the role of the public workforce system, and brings together and enhances several key employments, education, and training programs. This law provides resources, services, and leadership tools for the public workforce system to help individuals find good jobs and stay employed and improves employer prospects for success in the global marketplace. It ensures that the public workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity for those it serves and continuously improves the quality and performance of its services. Title I-B of WIOA governs the core Adult, Dislocated Worker and Youth programs as well as the Job Corps and national programs administered by the US Department of Labor; Title III amends the Wagner-Peyser Act Employment Service (ES) program. Title II of WIOA authorizes program-specific requirements of the Adult Education and Family Literacy Act (AEFLA); Title IV of WIOA amends program-specific requirements for programs authorized under the Rehabilitation Act of 1973.

WORKFORCE INVESTMENT ACTIVITIES: The array of activities permitted under Title I-B of WIOA, which include employment and training activities for adults and dislocated workers, as described in WIOA sec. 134, and youth activities, as described in WIOA sec. 129.

## **Section 102. COMPLIANCE WITH ACT**

The Subrecipient agrees that all activities conducted under authority of this agreement shall be in strict compliance with the provisions of the Act, federal regulations and state rules promulgated thereunder, including general fiscal and administrative provisions as provided in 20 CFR Part 683... Reference <https://www.doleta.gov/wioa/> for additional resource information.

## **Section 103. INCORPORATION BY REFERENCE**

The Subgrant/contract agreement is augmented by the included attachments and Provisions and Assurances, as well as other special provisions attached as exhibits, appendices or attachments. All such documents affixed or referred to in the agreement are hereby incorporated by reference. Such documents constitute part of the agreement and are enforceable as provided herein. If any provision set forth in the

statement of work or any annual plan is more restrictive than the Provisions and Assurances, the more restrictive provisions will apply.

#### **Section 104. REVISIONS TO AGREEMENT**

The Subrecipient acknowledges and agrees that notification from the Administrative Entity regarding changes requiring modification to this agreement and these Provisions and Assurances may be necessary, due to new or revised legislation or regulations, and that changes which do not materially alter the program design or costs shall be incorporated into this agreement. If the Subrecipient responds within ten days after date of notice that it cannot comply with the revised requirements, the Administrative Entity shall have the right to terminate the agreement upon receipt of such notice. Changes in law or regulations that require modification to the statement of work or program design of a substantive nature may result in termination of the agreement.

#### **Section 105. AVAILABILITY OF FUNDS**

It is understood that all funding is contingent upon the availability of federal funds and continued federal authorization for program activities, and is subject to amendment due to lack of funds or authorization. In the event federal funds are reduced or terminated, the financial participation of the Administrative Entity shall be reduced accordingly or terminated.

#### **Section 106. LIMITATIONS ON USE OF FUNDS**

**Employment Generating Activities.** Under sec. 181(e) of WIOA, Title I-B funds must not be spent on employment generating activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, unless they are directly related to training for eligible individuals. For purposes of this prohibition, employer outreach and job development activities are directly related to training for eligible individuals, which may include: contact with potential employers for placement of WIOA participants; participation in business associations, joint labor management committees; participation on economic develop boards and commissions and work with economic development agencies; active participation in local business resource centers to provide technical assistance to small/new businesses.

**Construction.** WIOA Title I-B funds must not be spent on construction, purchase of facilities or building, or other capital expenditures for improvements to land or buildings, except with the prior written approval of the secretary.

**Exception:** Construction costs are allowable to: (a) Purchase equipment, materials, and supplies for use by participants while on the job and for use in the training of such participants (examples of such equipment, materials, and supplies are hand tools, work clothes, and other low cost items); and (b) Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training, tools, books, and needs-based payments, or other financial assistance to participants.

**Business Relocation:** Section 181(d) of WIOA states that funds must not be used or proposed to be used for: The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location; Customized training, skill training, on-the-job training, incumbent worker training, transitional employment, or company specific assessments of job applicants for or employees of any business or part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

**Foreign Travel:** WIOA formula funds available to States and local areas under Title I-B must not be used for foreign travel.

**Religious Activities:** Section 188(a)(3) of WIOA prohibits the use of funds to employ participants to carry out the construction, operation, or maintenance of any part of any facility used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or worship and are operated by organizations providing services to WIOA participants.

29 CFR part 2, subpart D, governs the circumstances under which Department support, including WIOA Title I-B financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. That subpart also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries.

Violations will be handled in accordance with the Department's nondiscrimination regulations implementing sec. 188 of WIOA.

**Other Activities:**

Funds must not be spent on:

- The wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system;
- Public service employment, except as specifically authorized under Title I-B of WIOA;
- Expenses prohibited under any other Federal, State or local law or regulation;
- Subaward or contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities; or,
- Contracts with persons falsely labeling products made in America.

The following costs are NOT allowable charges to the WIOA program:

- Costs of fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws and regulations;
- Back pay, unless it represents additional pay for WIOA services performed for which the individual was underpaid;
- Entertainment costs, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities);
- Bad debts expense;
- Insurance policies offering protection against debts established by the Federal Government;
- Contributions to a contingency reserve or any similar provision for unforeseen events;
- Costs prohibited in the Act related to lobbying restrictions, or costs of any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States; and
- Legal services furnished by the chief legal officer of a State or local government or staff

- solely for the purpose of discharging general responsibilities as a legal officer;
- Legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge.

#### **Section 107. BUDGETARY LIMITATIONS**

The total cost to the Administrative Entity for the performance of this agreement shall not exceed costs set forth in the budget . If at any time during the agreement period the Subrecipient has reason to believe that the total cost to the Administrative Entity for the performance of this agreement may exceed the budget, the Subrecipient shall promptly notify the Administrative Entity in writing, giving the revised estimate of total cost and the reasons for the possible increase. Following negotiations between the Administrative Entity and the Subrecipient, a modification may be affected as necessary, to revise the budget. The same practice shall be followed if the Subrecipient anticipates that the total cost will be less than eighty percent of the amount shown on the budget.

#### **Section 108. CHANGES AND MODIFICATIONS**

General: The Administrative Entity may request changes in the general scope of this agreement, but such changes shall be limited to changes that would expedite achievement of the objectives and would not require substantive changes to the program design.

Adjustment of Costs: If any change under this section causes an increase or decrease in the cost or time required of the Subrecipient for the performance of any part of the work or services under this agreement, an equitable adjustment, to the mutual satisfaction of both parties, may be made and the agreement modified in writing accordingly. Any claim for adjustment of cost by the Subrecipient must be made in writing, stating the justification for such claim. The adjustments proposed must be made on the budget format used for the agreement. No claim in conjunction with such changes shall be allowed for costs incurred prior to approval of the Subrecipient's request for an adjustment unless specific approval is granted in writing.

Official Budget: The approved budget included in this agreement, or the most recent modification signed by the Subrecipient and the Administrative Entity or his appointed agent, shall be the official budget.

#### **Section 109. SUSPENSION**

The Administrative Entity may, upon 30 calendar days' written notice to the Subrecipient, suspend this agreement in whole or in part if it is determined that the Subrecipient has materially failed to comply with the terms and conditions of this agreement. No obligations incurred by the Subrecipient during such period of suspension shall be allowable under this suspended agreement, except that the Administrative Entity may, at its discretion, allow necessary and proper costs that the Subrecipient could not reasonably avoid during the period of suspension. Appropriate adjustments to payments under the suspended agreement will be made either by withholding payments or by not allowing the Subrecipient credit for disbursements that are made in the liquidation of authorized obligations incurred during the period of suspension. Suspension of the agreement shall remain in effect until the Subrecipient has taken corrective action to the satisfaction of the Administrative Entity, or given assurances satisfactory to the Administrative Entity that corrective action will be taken, or until the Administrative Entity terminates the agreement.

#### **Section 110. TERMINATION FOR CONVENIENCE**

The Administrative Entity or the Subrecipient may terminate this agreement in whole or in part when both parties agree that the continuation of the agreement would not produce results commensurate with further expenditure of funds. The two parties shall agree upon the termination conditions, including effective date, and in the case of partial terminations, the portion to be terminated.

#### **Section 111. TERMINATION FOR CAUSE**

This agreement may be terminated in whole or in part by the Administrative Entity at any time before the date of completion. Notice of termination will be given to the Subrecipient in writing. Except in those instances described in Sections 104 and 105, the notice of termination will be issued at least 30 calendar days prior to the effective date of termination. Termination for cause may be affected:

- Upon receipt by the Administrative Entity of Notice of Suspension or Termination of the Administrative Entity's Grant under which this agreement is made.
- For failure of the Subrecipient to perform according to the terms of this agreement, including failure to accomplish program objectives, comply with agreement assurances, or comply with any applicable laws and regulations.
- Due to unforeseen circumstances which would require a major modification to the design.

The Administrative Entity shall give the Subrecipient notice of intent to terminate the agreement which shall include a statement of the cause for termination and indicate what action by the Subrecipient is necessary to correct the deficiency. The notice shall set a date for the Subrecipient to implement or complete corrective action or to indicate that corrective action will not be taken. The notice shall also set a date for termination if the Subrecipient takes no corrective action.

Upon receipt of notice of termination, the Subrecipient shall not incur new obligations for the remaining period of the agreement and shall cancel as many outstanding obligations as possible. The Administrative Entity shall, however, allow full credit for non-cancelable obligations, properly incurred, prior to the effective date of the termination.

#### **Section 112. SEVERABILITY OF PROVISIONS**

If any provision of this agreement is held invalid, the remainder of the agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable laws, ordinances, statutes, and regulations.

#### **Section 113. ORAL AGREEMENT**

No oral agreement or conversation with any officer, agent or employee of the Administrative Entity, either before or after execution of the agreement, shall affect or modify any of its terms. Any such oral agreement or conversation shall be considered as unofficial information, in no way binding upon the Administrative Entity or Subrecipient.

#### **Section 114. INTERPRETATION OF AGREEMENT**

If the Subrecipient is in doubt as to the true meaning of any part of this agreement, it may submit a written request for an interpretation to the Administrative Entity. The Administrative Entity shall respond within 14 calendar days of receipt of such request. Any interpretation made in response to such a request shall not be binding unless it is in writing and duly signed by the Administrative Entity and mailed or delivered to the party requesting the interpretation. Such interpretation shall then become an official attachment to this agreement, provided that a written response disagreeing with the interpretation is not

received within 14 calendar days. If such disagreement is received within the appropriate time, setting forth the reasons for disagreement, the Administrative Entity and the Subrecipient will negotiate. In the event an agreement is not reached within 14 calendar days, the Administrative Entity's decision on the issues involved will be final.

#### **Section 115. DISPUTES**

The Subrecipient agrees to attempt to resolve disputes arising from the agreement by administrative process and negotiations in lieu of litigation. Continued performance during disputes is assured.

Any dispute concerning a question of fact arising under this agreement, which is not settled by informal means, shall be decided by the Director of the Idaho Department of Labor who shall render his/her decision in writing, and mail or otherwise furnish a copy thereof to the Subrecipient within 14 calendar days after submission.

#### **Section 116. APPEAL PROCEDURES**

The Subrecipient may formally protest administrative decisions made by the Administrative Entity that impact this agreement by filing a written complaint as authorized in Section 209 – Complaints Procedures of this document.

#### **Section 117. AUTHORITY OF THE ADMINISTRATIVE ENTITY**

It is understood and agreed that performance under this agreement is to be accomplished to the satisfaction of the Administrative Entity; that the Administrative Entity will interpret all reports and will determine the acceptability of performance and the progress thereof; that the Administrative Entity will determine the amount, classification, and quality of work to be performed, and the amounts to be paid under the agreement; that the Administrative Entity shall be the judge of the validity and acceptability of claims, if any, made by the Subrecipient for extra payments; and that the Administrative Entity's decision shall be final, conclusive and binding upon the Subrecipient. The above referenced authority shall, however, be subject to the outcome of any formal appeal procedures initiated by the Subrecipient.

#### **Section 118. REALLOCATION AUTHORITY**

The Administrative Entity may reallocate funds originally obligated under this agreement upon determination that the Subrecipient will be able to complete performance of this agreement without expending all funds obligated, and that such surplus funds cannot reasonably be expected to be required by the Subrecipient during the remainder of the agreement period to further promote the objectives of the agreement.

Upon such determination, a formal modification will be prepared to incorporate the necessary adjustment to the compensation authorized under the agreement.

#### **Section 119. SUBCONTRACTING FOR WORK OR SERVICES**

Unless specified in the statement of work, none of the work and/or services covered by this agreement shall be subcontracted without the prior written approval of the Administrative Entity. Any work or services subcontracted hereunder shall be specified in a written agreement and shall be subject to each applicable provision of this agreement. This does not preclude the Subrecipient from purchasing

goods and services from vendors in support of program activities.

#### **Section 120. ASSIGNABILITY**

The Subrecipient shall not assign any interest in this agreement and shall not transfer any interest in the same (whether by assignment or notation) without the prior written consent of the Administrative Entity.

#### **Section 121. INTELLECTUAL PROPERTY RIGHTS**

The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes:

- the copyright in all products developed under the grant, including a Subgrant or contract under the grant or Subgrant; and
- any rights of copyright to which the Award Recipient, Subrecipient or a Contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials).

Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or license fee for use of a copyrighted work, or the cost of acquiring by purchase a copyright in a work, where the Department has a license or rights of free use in such work, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income must be used in accordance with the terms and conditions of the Awarding Agency and 2 CFR 200.307.

If applicable, the following needs to be on all products developed in whole or in part with grant funds:

*“This workforce product was funded by a grant awarded by the U.S. Department of Labor’s Employment and Training Administration. The product was created by the recipient and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This product is copyrighted by the institution that created it.”*

#### **Section 121.A. Creative Commons License Requirement**

Pursuant to 2 CFR 2900.13, to ensure that the Federal investment of DOL funds has as broad an impact as possible and to encourage innovation in the development of new learning materials the recipient will be required to license to the public all work created with the support of this grant under a Creative Commons Attribution 4.0 (CC BY) license. Work that must be licensed under the CC BY includes both new content created with the grant funds and modifications made to pre-existing, recipient-owned content using grant funds.

This license allows subsequent users to copy, distribute, transmit, and adapt the copyrighted Work and requires such users to attribute the Work in the manner specified by the recipient. Notice of the license shall be affixed to the Work. For general information on CC BY, please visit <http://creativecommons.org/licenses/by/4.0>.

Instructions for marking your work with CC BY can be found at [http://wiki.creativecommons.org/Marking\\_your\\_work\\_with\\_a\\_CC\\_license](http://wiki.creativecommons.org/Marking_your_work_with_a_CC_license).

Only work that is developed by the Subrecipient in whole or in part with grant funds is required to be licensed under the CC BY license. Pre-existing copyrighted materials licensed to, or purchased by the Subrecipient from third parties, including modifications of such materials, remains subject to the intellectual property rights the Subrecipient receives under the terms of that specific license or purchase. In addition, works created by the Subrecipient without grant funds do not fall under the CC BY license requirement.

**Section 122. DESIGNATION OF PROGRAM LIAISON**

The Subrecipient shall designate a person who shall be administratively responsible for activities funded under this agreement and who shall be available to the Administrative Entity to provide information or discuss matters pertaining to this agreement.

**Section 123. ATTENDANCE AT MEETINGS**

The Subrecipient agrees that the Administrative Entity may schedule meetings from time to time to discuss program matters. Upon notification of such meetings, the Subrecipient shall make reasonable effort to assure attendance by members whose presence is requested.

Similarly, the Subrecipient may schedule meetings for the purpose of discussing program operations or administration of the agreement. Upon notification of such meetings, reasonable effort to provide for attendance of staff members of the Administrative Entity whose presence may be requested shall be made.

**Section 124. COMPENSATION**

All compensation made under this agreement shall be issued in accordance with the payment plan described in the "Method of Payment" section of the agreement unless otherwise specified in writing by the Administrative Entity. All payments to the Subrecipient under this agreement shall be made through warrants issued by the Idaho Department of Labor. All compensation made under this agreement to program participants and/or participating agencies shall be made through warrants authorized by the Idaho Department of Labor as specified in the Statement of Work unless otherwise specified in writing. Every effort will be made to minimize the time elapsing between the receipt of requests for reimbursement from the Subrecipient and the authorizing of warrants by the Administrative Entity, but at no time shall this period exceed fourteen days, provided that such requests are submitted as required.

**Section 125. ALLOWABLE COSTS**

To be allowable, a cost shall be necessary and reasonable for the proper and efficient administration of the program, be allocable to the program and, except as provided herein, not be a general expense required to carry out the overall responsibilities of the Governor or a Subrecipient. Costs charged to the program shall be accorded consistent treatment through application of generally accepted accounting principles appropriate to the WIOA program. Costs identified as not being necessary and/or reasonable may be questioned and/or disallowed.

For the performance of this agreement, the Administrative Entity shall pay the Subrecipient the costs as approved by the Administrative Entity in this agreement, allowable in accordance with current rules

and regulations for WIOA, and procurement and fiscal standards as set forth in 29 CFR Subtitle A Part 95 and Part 97, OMB Circular for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance" – 2 CFR 200), and the Treasury Circulars which prescribe cost principles to be used in determining allowable WIOA costs. The Subrecipient shall be paid only those costs incurred, expended or obligated in compliance with this agreement and federal regulations.

The Administrative Entity is responsible for controlling, monitoring, auditing and reporting all WIOA expenditures. Therefore, review and approval for payments to the Subrecipient are required by the Administrative Entity prior to payment of WIOA funds.

WIOA funds may be used for all reasonable costs including food and beverages at WIOA meetings and at other group meetings where the purpose of the meetings is to disseminate technical information about WIOA, and where WIOA funds are not otherwise being used to compensate such expenses (e.g., through per diem reimbursement). WIOA funds may not be used for the costs of alcoholic beverages, or for any function that can be considered entertainment, as defined in Section 106 of this document. Subrecipient must obtain prior approval from the Administrative Entity before holding any conference (which includes meeting, retreat, seminar, symposium, training activity or similar event held in either Federal or non-Federal space), or any activity related to holding a conference, including, but not limited to, obligating or expending WIOA funds, signing contracts for space or services, announcing Administrative Entity's or WIOA involvement in any conference, and using Administrative Entity official's name or Administrative Entity's name or logo. Administrative Entity retains the right to obtain information from the Subrecipient about any conference that is funded in whole or in part with WIOA funds.

The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and related expenses incurred in accordance with the organization's established policy for the improvement or working conditions and employee performance are allowable, unless the function can be considered to be entertainment, as defined in Section 106. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

Personal liability insurance for organizations associated with program policymaking, administration, and management are allowable WIOA costs.

The cost of legal expenses required in the administration of grant programs is allowable.

#### **Section 126. COVENANT AGAINST CONTINGENT FEES**

The Subrecipient warrants that no person or agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the Subrecipient. For breach or violation of this covenant, the Administrative Entity shall have the right to annul this agreement without liability, or at its discretion to deduct from the agreement cost or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

#### **Section 127. FINANCIAL OBLIGATION OF THE SUBRECIPIENT**

It is expressly agreed by and between the parties to this agreement that the implementation and execution of this agreement by the Subrecipient in no way creates a charge upon the local cash funds

of the Subrecipient, except where (1) the Administrative Entity has determined that the Subrecipient is liable for disallowed costs; or (2) the Administrative Entity has determined that expenditure of WIOA funds for all or part of a program must be suspended for failure to comply with the terms and conditions of this agreement, as provided for and following procedures set forth in Section 108 of these Provisions and Assurances.

#### **Section 127.A. INDEMNIFICATION**

The Subrecipient shall defend, protect, and hold harmless the Administrative Entity and the State of Idaho, its officers, employees, and agents against all claims, suits or actions arising from any negligent act of omission or commission of the Subrecipient or any employee or agent thereof while performing its agreement with the Administrative Entity or its agreement with the participants served under this Agreement.

#### **Section 128. GENERAL FISCAL AND ADMINISTRATIVE RULES**

**All Recipients, Subrecipients, Contractors or Subcontractors must follow 2 CFR 200, including any exceptions identified at 2 CFR 2900, and 20 CFR 683 as applicable.**

#### **Section 129. SEGREGATION OF FUNDS**

The Subrecipient shall be required to ensure that funds received under this agreement are accounted for separately with respect to other funds the Subrecipient receives from other sources.

#### **Section 130. PERMISSIBLE CHANGES IN AGREEMENT**

The Subrecipient assures that no changes will be made in an approved budget except in accordance with WIOA procedures as summarized below. See Sections 107 and 108 for modifications to increase/decrease budget amounts. Except for revisions to a materials and supplies list, all changes within the total budget allowed must be initiated by a letter of request to the Workforce Administration Division. The Subrecipient must state which line items are to be increased and which to be correspondingly decreased so that the total budget remains unchanged. If the changes are approved, the Workforce Administration Division will respond with a formal modification to the agreement.

Materials and supplies lists may be revised by the Subrecipient if the budget for materials and supplies will not be increased and "Miscellaneous" as a category does not exceed \$25, provided that all purchases are in support of the agreement's allowable activities.

Any changes in the budget other than as stated above require formal modification to be submitted to the Workforce Administration Division.

#### **Section 131. MANAGEMENT AND DISPOSITION OF PERSONAL PROPERTY**

The federal requirements governing the title, use, and disposition of real property, equipment, and supplies purchased with funds provided under this title shall be the Federal requirements generally applicable to Federal grants to States and local governments.

Nonexpendable personal property, including equipment (per unit cost of \$5,000 or more and having a tangible life of more than one year), purchased in whole or in part from funds provided under a cost reimbursable agreement shall be managed in accordance with requirements specified at 29 CFR Part 97. The state retains ownership of nonexpendable property purchased with WIOA funds and is

responsible for ultimate disposition of such property. These items will be tracked on the State and local property inventories and kept current by the Subrecipient. A physical inventory will be conducted at least once every two years. Upon request, the Subrecipient shall furnish the Administrative Entity with an inventory of nonexpendable personal property so purchased.

All residual inventory of unused supplies with an aggregate fair market value of \$5,000 or more are to be disposed of in accordance with 29 CFR, Part 97.33 upon termination or completion of the grant support. If the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantees shall compensate the awarding agency for its share.

### **Section 132. USE OF PERSONAL PROPERTY BY EMPLOYERS**

Services, facilities, or equipment funded under this agreement may be used, as appropriate, on a fee-for-service basis, by employers in a local area in order to provide employment and training activities to incumbent workers—a) when such services, facilities, or equipment are not in use for the provision of services for eligible participants under this agreement; b) if such use for incumbent workers would not have an adverse effect on the provision of services to eligible participants under this agreement; and c) if the income derived from such fees is used to carry out the programs authorized under this title.

### **Section 133. SPECIAL LIMITATION ON PROPERTY OR EQUIPMENT PURCHASE, LEASE OR RENTAL**

Nonexpendable equipment, including purchased software with a unit purchase, lease or rental price of \$5000 or more, of which a percentage of the cost is funded with WIOA funds, shall not be purchased unless specific written approval is granted by the Administrative Entity and the Awarding Agency

No real property shall be purchased in whole or in part without specific written approval of the Administrative Entity, the Awarding Agency and the State. Subrecipients shall notify the Administrative Entity immediately upon determining their intent to acquire real property with WIOA funds. Such notification shall include the location of the real property and the Federal share percentage.

Rental costs are allowable to the extent that the rates are reasonable considering such factors as: rental costs of comparable property; market conditions in the area; alternatives available; the type, life expectancy, condition and value of the property leased. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization or governmental unit continued to own the property.

Rental costs under less-than - arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization or governmental unit. A less-than - arms-length lease is one under which one party to the lease can control or substantially influence the actions of the other. Such leases include but are not limited to:

- divisions of the same organization or governmental unit;
- organizations under common control through common officers, directors, or members; and
- an organization and a director, trustee, officer or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest; or
- In the case of a state or local governmental unit, they create an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

#### **Section 134. SPECIAL LIMITATION ON SALARY COSTS**

Pursuant to P.L. 113-114, Division H, Title I, Section 105, none of the funds made available in the agreement may be used by a Subrecipient to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. The Executive Level II salary may change yearly and is located on the OPM.gov website (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/> - scroll down to review executive salaries). The salary and bonus limitation does not apply to contractors (vendors) providing goods and services as defined in 2 CFR 200.330.

In cost reimbursable agreements, salaries shall be paid only as specified in the budget. Changes to administrative or program salaries identified in the budget must receive prior written approval of the Administrative Entity.

#### **Section 135. BONDING AND INSURANCE**

Subrecipient must follow relevant federal, state and Award Agency terms and conditions with respect to bonding and insurance requirements. Reference 2 CFR 200.304 and 2 CFR 200.310. At a minimum, Subrecipient must provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the Subrecipient. Federally owned property need not be insured unless required by the terms and conditions of the Awarding Agency.

Pursuant to 15 U.S.C. 2225a, the Subrecipient must ensure that all space for conferences, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (P.L. 101-391, as amended). Recipients may search the Hotel Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property complies, or to find other information about the Act.

Additionally, the Subrecipient assures that it will protect and hold harmless the State of Idaho and Administrative Entity against claims arising from the ownership, maintenance, or use of a motor vehicle. The Subrecipient will ensure that there is automobile liability insurance covering bodily injury and property damage. Minimum coverage required is \$500,000 single combined limits per occurrence.

#### **Section 136. PROGRAM INCOME**

Program income is defined gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in 2 CFR 200.307 paragraph (f). (See 2 CFR 200.77 Period of performance.) Reference 2 CFR 200.80 for further clarification on Program Income.

A Subrecipient may retain any program income earned by the Subrecipient consistent with requirements described in 2 CFR 200.307. I-B

All expenditures of program income are subject to audit. Subrecipients shall ensure that their own financial systems provide fiscal control and accounting procedures that permit the tracing of program income.

#### **Section 137. REPAYMENTS**

The Subrecipient agrees to repay, within sixty (60) calendar days of end of Subaward or date of reported audit findings, whichever occurs sooner, to the Administrative Entity amounts found not to

have been expended in accordance with this agreement.

### **Section 138. FINANCIAL REPORTING REQUIREMENTS**

The Subrecipient shall submit reports to the Administrative Entity as required in the Statement of Work.

The Administrative Entity may audit the financial records any time during the agreement period and within three years after termination. Payments to the Subrecipient may be subject to adjustment for amounts that are found, based on audit, to constitute costs not allowable under the agreement or found to be excess reimbursement.

Applicable credits such as rebates, discounts, refunds, and overpayment adjustments, as well as interest earned on any of them, shall be credited as a reduction of costs if received during the same funding period that the cost was initially charged. Credits received after the funding period shall be returned to the Administrative Entity.

The Subrecipient agrees to complete a close-out package for the period of the agreement within 30 days after the ending date and within 30 days after the end of the first program year if the agreement is in operation during two program years.

This information must be submitted to the Administrative Entity before the awarded funds are released to the Subrecipient.

### **Section 138.A. STAND-IN COSTS**

Stand-in costs mean costs paid from non-Federal sources which a Subrecipient proposes to substitute for Federal costs which have been disallowed as a result of an audit or other review. In order to be considered as valid substitutions, the costs (1) must have been reported by the Subrecipient as uncharged program costs under the same Title and in the same year in which the disallowed costs were incurred and (2) must have been incurred in compliance with laws, regulations, and contractual provisions governing WIOA.

If the Subrecipient intends to propose the use of stand-in costs as substitutes for otherwise unallowable costs, the proposal shall be included with the audit resolution report. To be considered, the proposed stand-in costs shall have been reported as uncharged WIOA program costs, included within the scope of the audit, and accounted for in the Subrecipient's financial system as required by 2 CFR 200. To be accepted, stand-in costs shall be from the same title, cost category, and funding period as the costs which they are proposed to replace. The Subrecipient will submit the WIOA Financial Status Report (WIOA 33-34-35) on a monthly basis or quarterly basis, as outlined in the Subrecipient's agreement, in order to report any stand-in costs.

### **Section 139. RECORDS AND REPORTS, PRIVACY ACT**

The Subrecipient shall comply with the Privacy Act (5 USC 552a) and Awarding Agency Terms and Conditions regarding collection, disclosure and access to records maintained on individuals.

The Subrecipient shall keep records that are sufficient to permit the preparation of reports required by this agreement and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully. In order to allow for the preparation of reports, recipients shall maintain standardized records for all individual participants. The Subrecipient agrees to submit reports regularly in accordance with the requirements set forth in the Statement of Work.

Reported expenditures and program income, including any profits earned, must be on the accrual basis of accounting and cumulative by fiscal year of appropriation.

Recipients may charge fees sufficient to recover costs applicable to the processing of requests for such records.

The Subrecipient shall keep and maintain records that accurately reflect the provision of services to program participants and agrees to submit reports regularly in accordance with the requirements set forth in the Statement of Work.

#### **Section 140. RETENTION REQUIREMENT FOR RECORDS**

The Subrecipient shall maintain all records pertinent to this agreement for a period of five years after final payment under this agreement, which is usually at the end of the program year that payment occurred. Such records may be required to be retained beyond said period if an audit by the Administrative Entity has begun but is not completed, or if audit findings have not been resolved at the end of the required retention period. In such cases, the records shall be retained until resolution of the audit findings.

Records for nonexpendable property shall be retained for a period of three years after final disposition of the property.

In the event that the Subrecipient should go out of existence prior to the required retention period, it shall transfer required records to the Administrative Entity for continued retention.

#### **Section 141. PERSONALLY IDENTIFIABLE INFORMATION, RIGHT TO RECORD ACCESS**

The Subrecipient shall recognize and safeguard personally identifiable information (PII) except where disclosure is allowed by prior written approval of the Awarding Agency Grant Officer or by court order. The Subrecipient must meet the requirements in Training and Employment Guidance letter (TEGL 39-11, Guidance on the Handling and Protection of Personally Identifiable Information (PII), located at [https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_39\\_11\\_Acc.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_39_11_Acc.pdf)

Identifying information obtained by Recipients and Subrecipients regarding WIOA participants and work and training contracting employers and institutions is confidential. In order to evaluate and review programs of the WIOA, the United States Department of Labor, and the Administrative Entity shall have access to and the right to copy any books, accounts, records, correspondence, or other documents pertinent to such programs that are in the possession, custody or control of any Subrecipient who receives funds under the Act, except where prohibited by law or regulation. No Recipient or Subrecipient shall disclose identifying work and training contract or client information, with the exception of confirmation of a client's participation in the WIOA program, to entities other than those specified above, unless such disclosure is necessary to further a valid purpose of the Idaho WIOA program. Disclosure of identifying information may also occur in cases where the Administrative Entity has entered into a disclosure of information agreement.

In addition, the Administrative Entity, the US Department of Labor (including the Department of Labor's Office of the Inspector General), and the Comptroller General of the United States, or any of their authorized representatives, have the right of timely and reasonable access to any books, documents, papers, computer records, or other records of Recipients and Subrecipients that are pertinent to the grant, in order to conduct audits and examinations, and to make excerpts, transcripts,

and photocopies of such documents. This right also includes timely and reasonable access to Recipient and Subrecipient personnel for the purpose of interview and discussion related to such documents.

The right of access in this section is not limited to the required retention period but shall last as long as the monitoring, audit and resolution period is effective.

#### **Section 142. MONITORING, AUDIT AND RESOLUTION**

The Administrative Entity shall be responsible for assuring that monitoring requirements are met with respect to funds received for both internal and Subrecipient activities.

Annual monitoring reviews shall be performed, consistent with 2 CFR 200.328 and .331, by program, function or activity. Monitoring will include:

- Reviewing of financial and performance reports required by the Administrative Entity;
- Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the subagreement as detected through audits, on-site reviews, and other means;
- Issuing a management decision for audit findings pertaining to the subagreement.

Compliance assessment monitoring of subagreements shall include reviews of compliance with the Act and Regulations, and where applicable, financial management systems, procurement procedures, program management procedures, record keeping procedures, participant activities and treatment, performance of agreement terms, corrective action processes and performance of eligibility verification functions.

##### **Program Review:**

The Administrative Entity's monitoring and audit efforts shall include those activities aimed at:

- Assessment of agreement operation at a given point in time;
- Comparison of actual performance versus established performance standards;
- Identification of agreement accomplishments and/or deficiencies in operation, administration, and compliance; and
- Evaluation of agreement results, benefits, and impact upon program's objectives.

The Subrecipient shall, upon request of said parties, furnish all documents, reports, forms, invoices, ledgers, and other supporting data pertinent to activities covered under this agreement in connection with audits, monitoring activities, or grant management activities.

The Administrative Entity will provide the Subrecipient with advance written notice prior to conducting the program review and compliance audit.

#### **Section 143. SYSTEMS EVALUATION**

The Administrative Entity or his/her designee shall have the right to evaluate both the management and financial systems of the Subrecipient to ascertain that there is compliance with all the provisions contained in this agreement. In determining the adequacy of these systems, the Administrative Entity shall utilize his/her own staff or arrange for an independent certified public accounting firm to: (a) survey the Subrecipient's system to obtain information through discussion, inquiry and observation of

what the system is stated to be; (b) appraise the adequacy of the system in terms of standards prescribed herein; (c) select a number of transactions and trace them through the records to ascertain whether the system is actually followed and is effective; and (d) interview Subrecipient staff members to determine management and organizational needs.

**Section 144. PROGRAM ASSESSMENT AND CONTINUOUS IMPROVEMENT**

The Subrecipient will maintain an ongoing analysis of program performance as it relates to program goals and objectives. Whenever the Subrecipient determines that goals are not being met as specified in the agreement, the Subrecipient will develop an action plan to meet those goals. On a quarterly basis, the Subrecipient will be required to submit a report of the action taken or planned. Unless otherwise specified in the statement of work, the report will be due no later than the 25th of the month following the end of the quarter.

**Section 145. MAINTENANCE OF SCOPE OF WORK AND LEVEL OF EFFORT**

The Subrecipient will maintain the staffing level, average length and cost of participant training, average cost of supportive services, and other cost factors as described in the statement of work and/or used as the basis for determining allowable costs of this agreement. The Subrecipient will maintain the contemplated level of effort within reasonable bounds throughout the duration of this agreement. Failure to maintain the planned level of effort will subject this agreement to modification, corrective action, questioned and/or disallowed costs, and/or termination for cause as described in these provisions.

**Section 148. ENERGY EFFICIENCY REQUIREMENTS**

The Subrecipient will comply with mandatory standards and policies relating to energy efficiency that are contained in the Idaho Energy Plan, adopted by the State Legislature in 2012.

**Section 147. PATENT RIGHTS**

The Subrecipient is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401/2 CFR 200.315, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements."

**Section 150. ENVIRONMENTAL STANDARDS**

The Subrecipient will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

If applicable, Subrecipients will comply with:

- Flood Insurance Purchase Requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4002) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance in an amount at least equal to its development or project cost.
- The Wild and Scenic Rivers Act of 1968 (P.L. 90-542, 16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers systems.
- Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.C.S. 469a.1 et seq.).
- P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- The Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.
- The Toxic Substances Control (15 U.S.C. Ch. 53 et seq.) which prohibits the use of toxic substances, including lead-based paint.

**Section 151. CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS.**

The Subrecipient certifies to the best of its knowledge and belief, that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
- Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the Subrecipient is unable to certify to any of the statements in this certification, Subrecipient shall attach an explanation to the proposal, plan, or agreement.

**Section 152. DRUG FREE WORKPLACE**

The Drug-Free Workplace Act of 1988, 41 U.S.C. 702 et seq., and 2 CFR 182 require that all organizations receiving grants from any Federal agency maintain a drug-free workplace. The recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for suspension or debarment.

**Section 153. PUBLIC ANNOUNCEMENTS**

Pursuant to P.L. 115-141, Division H, Title V, Section 505, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all recipients receiving Federal funds shall clearly state:

- The percentage of the total costs of the program or project which will be financed with Federal money;
- The dollar amount of Federal funds for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

The requirements of this part are separate from those in the 2 CFR 200 and, when appropriate, both must be complied with.

**SERIES 200 - GENERAL ASSURANCES FOR STAFF AND PARTICIPANTS**

**Section 201. NONDISCRIMINATION & EQUAL OPPORTUNITY ASSURANCE:**

As a condition to the award of financial assistance from the Idaho Department of Labor under Title I of WIOA, the grant applicant assures that it will comply fully with the nondiscrimination and equal Opportunity provisions of the following laws:

- Section 188 prohibits discrimination against individuals in any WIOA Title I–financially assisted program or activity, which includes job training for adults and youth and programs or activities provided by recipients at American Job Centers (one-stop centers). These programs or activities may not refuse to offer or provide services to individuals because of their race, color, religion, sex (includes pregnancy, childbirth, and related medical conditions; and transgender status, gender identity, and sex stereotyping), national origin (includes limited English proficiency), age, disability, or political affiliation or belief. Beneficiaries, applicants, and participants – as defined by the Final Rule – cannot be denied covered services because of their citizenship status, and cannot be denied their rights because of participation in a WIOA Title I–financially assisted program or activity. The rule applies to recipients of WIOA Title I financial assistance and to programs and activities that are operated by American Job Center partners (one-stop partners) as part of the American Job Center system (one-stop delivery system), such as Unemployment Insurance, Temporary Assistance for Needy Families, adult education, Trade Adjustment Assistance, and others.
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;
- The Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008, ensuring access to people with disabilities; Titles I, II, III, and V of the original law are codified in Title 42, chapter 126, of the United States Code beginning at section 12101. Title IV of the original law is codified in Title 47, chapter 5, of the United States Code
- Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; and
- Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of handicaps.
- The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended, relating to nondiscrimination on the basis of drug abuse;
- The Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

- Sections 543 of the Public Health Service Act (amended 2018 through P.L. 115-408, 42 U.S.C. 290 dd.3 and 290 ee-3) as amended, relating to confidentiality of alcohol and drug abuse patient records;
- Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- The requirements of any other non-discrimination statute(s) which may apply to the applicant.

The grant applicant also assures that it will comply with 29 CFR Part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I – financially assisted program of activity, and to all agreements the grant applicant makes to carry out the WIOA Title I – financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

### **Section 201A. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY**

As clarified by Executive Order 13166, dated August 11, 2000, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, recipients must take reasonable steps to ensure that LEP persons have meaningful access to programs in accordance with DOL's Policy Guidance on the Prohibition of National Origin Discrimination as it Affects Persons with Limited English Proficiency [05/29/2003] Volume 68, Number 103, Page 32289-32305. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipients are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding your LEP obligations, go to <http://www.lep.gov>.

### **Section 201B. ARCHITECTURAL BARRIERS**

The Architectural Barriers Act of 1968, 42 U.S.C. 4151 et seq., as amended, the Federal Property Management Regulations (41 DFR 102-76) and the Uniform Federal Accessibility Standards Issued by GSA (36 CFR 1191, Appendixes C and d) set forth requirements to make facilities accessible to, and usable by, the physically handicapped and include minimum design standards. All new facilities designed or constructed with grant support must comply with these requirements.

### **Section 202. EMPLOYMENT PRACTICES**

Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in employment practices in the administration of, or in connection with any WIOA Title I financially assisted program or activity; and any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIOA, to the extent that the program or activity is being conducted as part of

the One-Stop delivery system.

The employment practices of WIOA Recipients must also comply with the following regulations:

- The Equal Employment Opportunity Commission's (EEOC's) Uniform Guidelines on Employee Selection Procedures, 41 CFR Part 60-3.
- The Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in the Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).
- 29 CFR part 32, subparts B and C and Appendix A, which implement the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation.
- Titles I and II of the ADA for WIOA Recipients that are also employers, employment agencies, or other entities covered by those titles. See 29 CFR part 1630 and 28 CFR part 35.
- The anti-discrimination provision of the Immigration and Nationality Act for WIOA Recipients that are employers covered by those provisions. See 8 U.S.C. 1324b, as amended.
- All consistent State and local requirements.

### **Section 203. INTIMIDATION AND RETALIATION PROHIBITED**

WIOA recipients must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has filed a complaint alleging a violation of Section 188 of WIOA; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA; or furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to the administration of the nondiscrimination and equal opportunity provisions of WIOA, the exercise of authority under those provisions, or the exercise of privilege secured by those provisions; or otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIOA or this part.

The sanctions and penalties contained in Section 188(b) of WIOA or in the nondiscrimination and equal opportunity provisions of WIOA may be imposed against any WIOA Recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

### **Section 204. POLITICAL ACTIVITIES**

No funds received under WIOA shall be used to provide financial assistance for any program under the Act that involves political activities. Subgrantees will comply with the provisions of the Hatch Act (U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees

whose principal employment activities are funded in whole or in part with Federal funds.

**Section 205. LOBBYING PROHIBITED**

The Subrecipient certifies that funds provided under this grant shall not be used for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress or any state or local legislature or legislative body, except in presentation to the Congress or any state or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government, except in presentation to the executive branch of any state or local government itself. The Subrecipient further certifies that no grant funds will be used to pay the salary or expenses of any recipient or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive Order proposed or pending before the Congress, or any state government, state legislature, or local legislature body other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local, or tribal government in policymaking and administrative processes within the executive branch of that government.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of a Member of Congress in connection with this grant, the undersigned shall complete and submit a “Disclosure of Lobbying Activities,” (Form SF LLL) in accordance with its instructions.

The signature on this grant agreement certifying to this provision is construed as a material representation of fact upon which reliance was placed when this transaction was entered into. By agreeing to the terms of this agreement, the Administrative Entity regards the Subrecipient as certifying to the requirements of 1352, Title 31, U.S.C., regarding the limitation on use of appropriated funds to influence transactions. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

**Section 206. RELIGIOUS FACILITIES AND ACTIVITY**

Section 188(a)(3) of WIOA prohibits the use of funds to employ participants to carry out the construction, operation, or maintenance of any part of any facility used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or worship and are operated by organizations providing service to WIOA participants.

29 CFR part 2, subpart D governs circumstances where WIOA title I may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly.

**Section 207. CONFLICT OF INTEREST**

For any entity in which they have a financial or personal interest, members of the Council or its committees, or any Title I Subrecipient organization and its staff, shall not:

- Vote on any matter under consideration:

Regarding the provision of services by such member, or by an entity that such member represents; or

That would provide direct financial benefit to such member or the immediate family of such member.

- Engage in any business transaction or private arrangement that could reasonably be expected to result in a conflict between the private interest of a member and his or her official Council or committee responsibility, or an individual representing the Subrecipient's organization.
- Participate in:
  - The negotiation of, or decision to award contracts or grants;
  - The settlement of any claims or charges in any contracts or grants; or
  - The certification or selection of one-stop operators;
- Engage in any activity determined by the Governor or by state law to constitute a conflict of interest.

It shall be the duty of all Council and committee members, and Subrecipients to:

- Recuse themselves from their duties if it is determined that there is a conflict of interest.
- Seek legal advice from counsel if they have any doubts that a specific situation involves a real or potential conflict of interest.
- If the legal advice is that a conflict may exist, they shall prepare a written statement describing the potential conflict of interest and the matter to be acted upon, and shall deliver the statement to their appointing authority and the Administrative Entity.

A Council or committee member as a recipient, Subrecipient, or contractor may contract for personal and property services funded with state and local workforce development funds, provided that:

- The member notifies the Council and the Administrative Entity in writing as soon as they are aware that a potential conflict of interest exists;
- The Council records the notice, along with its reasons for awarding the contract, and indicates why the award is in the public's best interest; and
- The member, after giving proper notice, abstains from voting on any matter involving such conflict of interest.

## **Section 208. SAFETY PRECAUTIONS**

The Administrative Entity assumes no responsibility with respect to accidents, illness or claims arising out of any work undertaken with the assistance of funds provided under this agreement. The Subrecipient is expected to take reasonable steps to insure or protect itself and its personnel. The Subrecipient agrees to indemnify and hold harmless the Administrative Entity and the State of Idaho from any claims, suits, actions or obligations arising as a result of injury or illness of any employee, agent, office, person, or participant connected with the Subrecipient.

Health and safety standards established under State and Federal law, otherwise applicable to working conditions of employees, shall be equally applicable to working conditions of participants. Any participant in a program conducted under WIOA, who is engaged in activities which are not covered by health and safety standards under the Occupational Safety and Health Act of 1970, the regulations prescribed by the Secretary of Labor, which are deemed necessary to protect the health and safety of such participants shall apply.

Participants enrolled under this agreement shall not be required or permitted to work, be trained or receive services in buildings or surroundings or under conditions that are unsanitary, hazardous or dangerous to their safety or health. The Subrecipient agrees to indemnify and hold harmless the Administrative Entity and the State of Idaho for any claim based on work or any activity that occurs in a place that is in violation of the above stated prohibition.

The Subrecipient shall ensure that all OJT participants are covered by Worker's Compensation insurance under the OJT employer's policy. Participants in all other components will automatically be provided with insurance coverage upon enrollment.

Contributions to a reserve for a self-insurance program, to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks, are allowable and are chargeable to participant support or training as appropriate.

## **Section 209. COMPLAINT PROCEDURES**

The appropriate complaint resolution process to be followed depends on the nature of the complaint. Complaints fall into two categories:

- Program complaints involving the proper application of the Workforce Investment Opportunity Act (WIOA) and its regulations and policies, and
- Discrimination complaints.

A complaint may be amended prior to a scheduled hearing or withdrawn at any time. To the extent practical, information that could lead to the identification of the person filing the complaint must be kept confidential. The identity of any person who furnishes information relating to, or assisting in, an investigation shall be kept confidential to the extent possible. No entity receiving financial assistance under the Act may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted or participated in any manner in an investigation or hearing.

### **PROGRAM COMPLAINTS AGAINST LOCAL WIOA PROGRAMS AND POLICIES**

**Who may file:** Participants, One-Stop partners, service providers, and other interested parties may file complaints alleging nondiscriminatory, non-criminal violations of the WIOA agreements, policies or activities of a Local Administrative Entity or local service provider. Local program complaints shall be in writing and shall be filed with the local service provider or local administrative entity against whom the complaint is made. A complaint may be amended prior to a scheduled hearing or withdrawn by the complainant at any time. Information about the identity of the person filing the complaint or to the identity of any person who furnishes information relating to, or assisting in, an investigation, shall be kept confidential from non-parties to the complaint process unless disclosure is required by law. No entity receiving financial assistance under WIOA may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted, or participated in any manner in an investigation or hearing.

**Time and place for filing:** Local program complaints must be filed with the local service provider or local administrative entity within 180 days from the date of the event or condition that is alleged to be a

violation of WIOA.

**Procedure to be followed:**

**Step 1 - Initial Review.** Written complaints shall be taken by the local service provider or local administrative entity from the complainant or the complainant's designated representative. All complaints will be logged. If the complaint alleges a violation of any statute, regulation, policy, or program that is not part of WIOA, the complaint will be referred to the appropriate enforcement agency. Notice of the referral will be sent to the complainant. If the complaint is retained, a complaint file should be established that contains:

- all application and enrollment forms, if appropriate,
- the written complaint statement and form,
- chronological log of events,
- relevant correspondence, and
- a record of the resolution attempted.

**Step 2 - Informal Resolution.** An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within ten (10) days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file.

**Step 3 – Formal Resolution.** When no informal resolution is possible, the local WIOA service provider will forward the complaint and a copy of the complaint to the local administrative entity who will review the complaint file, conduct a further investigation if necessary, and issue a determination within twenty (20) days from the date the complaint was filed. If further review of the determination is not requested, the complaint will be considered resolved. The complaint file will then be closed and documented accordingly.

**Step 4 – Request for Hearing.** Any party dissatisfied with the determination may request a hearing within ten (10) days of the date of the determination. The request shall be in writing and must be filed with the local administrative entity. The local administrative entity shall forward the program complaint to a hearing officer for resolution. The local administrative entity will monitor the processing of the complaint.

**Step 5 – Hearing.** The hearing officer will schedule a formal hearing by a written notice, mailed to all interested parties at least seven (7) days prior to the hearing. The notice will include the date, time, and place of the hearing, which must be conducted within forty-five (45) days from the date the initial (?) complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

**Step 6 – Final Decision.** The local administrative entity will review the recommendation of the hearing officer and will issue a final decision within sixty (60) days from the date the complaint was filed.

**Step 7 - Request for Review.** Any party dissatisfied with the local administrative entity's final decision, or any party who has not received a decision or a final resolution within sixty (60) days from the date the complaint was filed, may file a Request for Review. A request for review must be filed with the state administrative entity within ninety (90) days from the date the complaint was originally filed.

**PROGRAM COMPLAINTS AGAINST STATEWIDE WIOA PROGRAMS AND POLICIES.**

Participants, One-Stop partners, service providers and other interested parties may file complaints alleging nondiscriminatory, non-criminal violations of statewide WIOA agreements, policies or activities. Statewide program complaints shall be in writing and shall be filed with the statewide service provider or the state administrative entity. A complaint may be amended prior to a scheduled hearing or withdrawn at any time. Information about the identity of the person filing the complaint or to the identity of any person who furnishes information relating to, or assisting in, an investigation, shall be kept confidential from non-parties to the complaint process unless disclosure is required by law. No entity receiving financial assistance under the Act may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted, or participated in any manner in an investigation or hearing.

**Time and place for filing:** State program complaints must be filed with the statewide service provider or state administrative entity within 180 days from the date of the event or condition that is alleged to be a violation of WIOA. Address - WIOA Administrative Entity, Idaho Department of Labor, 317 W. Main, Boise, ID 83735; or

**Procedure to be followed:**

**Step 1 - Initial Review.** Written complaints shall be taken from the complainant or the complainant's designated representative. All complaints shall be logged. If the complaint alleges a violation of local WIOA programs, policies or agreements, the complaint shall be referred to the local administrative entity for processing under the complaint procedures for program complaints against local WIOA programs. If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIOA, the complaint shall be referred to the appropriate organization for resolution. Notice of the referral shall be sent to the complainant. If the complaint is retained, a complaint file should be established that contains:

- All application and enrollment forms, if appropriate;
- The written complaint and complaint form;
- A chronological log of events;
- All relevant correspondence; and
- A record of any resolution attempted.

**Step 2 - Informal Resolution.** An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within ten (10) days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file.

**Step 3 - Formal Resolution.** When informal resolution is not possible, the statewide service provider shall forward the complaint and a copy of the file to the state administrative entity who shall review the complaint file, conduct a further investigation if necessary, and issue a determination within twenty (20) days from the date the complaint was filed. If the determination

is not contested as noted under Step 4, the complaint shall be considered resolved and the complaint file will be closed and documented accordingly.

**Step 4 - Request for Hearing.** Any party dissatisfied with the state administrative entity's determination may request a hearing within ten (10) days of the date of the determination. The request shall be in writing and must be timely filed with the state administrative entity. The state administrative entity shall forward the program complaint to a hearing officer for resolution. The state administrative entity will monitor the processing of the complaint.

**Step 5 - Hearing.** The hearing officer shall schedule a formal hearing by written notice, mailed to all interested parties at least seven (7) days prior to the hearing. The notice shall include the date, time, and place of the hearing. The hearing must be conducted within forty-five (45) days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative and may request that records and documents be produced. All testimony shall be taken under oath or affirmation. The hearing shall be recorded. The hearing officer's recommended resolution shall include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

**Step 6 - Final Decision.** The state administrative entity shall review the recommendation of the hearing officer and shall issue a final decision within sixty (60) days from the date the complaint was filed.

#### **Section 209A. SEXUAL HARASSMENT POLICY**

It is the policy of the Idaho Department of Labor to absolutely prohibit the sexual harassment of any WIOA employee, participant, eligible applicant/recipient or applicant. Additionally, a person who is qualified for but denied an employment or training benefit because of another's submission to sexual harassment is protected by this policy.

Unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature, constitute sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a training program; or
- Submission to or rejection of such conduct by an individual is used as the basis for decision affecting that individual's status as an employee or as a participant in a training program.
- Such conduct has the purpose or effect of unreasonably interfering with an individual's performance as an employee or as a participant in a training program, or creating an intimidating, hostile, or offensive work or training environment.

The WIOA State Administrative Entity has designated the Equal Opportunity Officer of the Idaho Department of Labor as the official responsible for receiving and investigating complaints of sexual harassment. Any supervisor, manager, employee or participant who is made aware of an alleged incident of sexual harassment will take immediate action to bring the matter to the attention of the Equal Opportunity Officer who will take action pursuant to this policy.

Any participant who feels he/she has been the victim of such unwelcome advances may file a complaint as outlined below. Due to the sensitivities associated with complaints of sexual harassment, any person or step normally part of the complaint procedure may be bypassed if the complainant feels it is necessary to do so.

- Bring the matter to the attention of his/her immediate supervisor and continue the complaint procedure; or
- File a complaint directly with the Equal Opportunity Officer, Idaho Department of Labor, 317 W. Main, Boise, ID 83735; or
- If he/she so chooses, the participant may bypass the WIOA complaint procedure entirely and file a sex discrimination claim directly with the Idaho Human Rights Commission and/or the Director, Civil Rights Center, USDOL, 200 Constitution Ave. NW, Room N-4123, Washington DC 20210.

### **Section 209B. DISCRIMINATION COMPLAINTS**

Discrimination prohibited by WIOA includes discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, citizenship or status as a lawfully admitted immigrant authorized to work in the United States, or participation in any WIOA Title I- B financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

This also includes discrimination against an individual or individuals because they:

- Filed a complaint alleging a violation of Section 188 of WIOA;
- Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA;
- Furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to any of the following:
  - Administration of the nondiscrimination and equal opportunity provisions of WIOA;
  - (ii) Exercise of authority under those provisions; or
  - (iii) Exercise of privilege secured by those provisions; or
- Otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIOA.

**Who may file:** Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIOA or its implementing regulations may file a written complaint, either by him/herself or through an authorized representative. Complaints alleging discrimination shall be in writing and may be filed by the

complainant or the complainant's designated representative.

**Time and place for filing:** Discrimination complaints must be filed within 180 days of the alleged discrimination. However, a complainant may petition the Director of the Civil Rights Center for an extension of the filing time.

Discrimination complaints shall be filed with the state or local administrative entity, state or local WIOA service provider, One- Stop Operator, directly with:

Equal Opportunity Officer  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735

or

The Director  
Civil Rights Center (CRC)  
U.S. Department of Labor  
200 Constitution Ave. NW, Room N-4123  
Washington D.C. 20210.

All complaints shall be promptly forwarded to the WIOA Equal Opportunity Officer for processing.

**Time limit for completing complaint processing procedures:** The discrimination complaint processing procedures must be completed, and a written Notice of Final Action issued within 90 days from the date the complaint was filed.

#### **DISCRIMINATION COMPLAINT PROCESSING PROCEDURES (07-2019)**

**01. Contents.** Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

- The complainant's name, mailing address, and, if available, email address (or another means of contacting the complainant);
- The identity of the individual or entity that the complainant alleges is responsible for the discrimination (respondent);
- A description of the complainant's allegations in enough detail to allow an initial determination of jurisdiction, timeliness and the apparent merit of the complaint to show noncompliance with the nondiscrimination provisions of WIOA; and
- The complainant's or the complainant's authorized representative written or electronic signature

**02. Complaint Log.** All complaints shall be logged. The log shall include:

- the name and address of the complainant,
- the basis for the complaint,
- a description of the complaint,
- the disposition and date of disposition of the complaint, and any other pertinent information.

**03. Confidential Information.** Information that could lead to the identification of the person filing the complaint shall be kept confidential unless disclosure is required by law or is necessary for conducting an investigation or engaging in enforcement activities.

**04. Jurisdiction.** The jurisdiction of the discrimination complaint must be determined. In order to have jurisdiction to process and adjudicate a discrimination complaint:

- the respondent against whom the complaint was filed must be a WIOA recipient,
- the complaint must allege a basis for discrimination that is prohibited by WIOA, and
- the complaint must be filed within one hundred eighty (180) days of the alleged discrimination.

**a. Notice of Lack of Jurisdiction.** If a determination is made that there is no jurisdiction to process the complaint, a Notice of Lack of Jurisdiction must be sent to the complainant that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with the Civil Rights Center within thirty (30) days from receipt of the Notice of Lack of Jurisdiction.

**b. Joint Jurisdiction.** Where the complaint alleges discrimination by a WIOA recipient or service provider on a basis that is prohibited by both WIOA and by a civil rights law independently enforced by that WIOA recipient or service provider, the complaint must be referred to that WIOA recipient or service provider for processing under their procedures. For example, WIOA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIOA recipient or service provider and they are also prohibited under their own regulations from discriminating on the basis of national origin, then the complaint shall be referred to that WIOA recipient or service provider for processing according to their regulations. Notice of the referral must be sent to the complainant.

**c. Sole Jurisdiction.** Where the complaint alleges discrimination by a WIOA recipient or service provider on a basis that is prohibited by WIOA and is not covered by a civil rights law independently enforced by that WIOA recipient or service provider (e.g. religion, political affiliation or belief, citizenship or participation in WIOA Title I- B), the complaint shall be processed by that WIOA recipient or service provider under these procedures.

When it is determined that WIOA has sole jurisdiction over the discrimination complaint, the complaint will be referred to the Equal Opportunity (EO) Officer of the Idaho Department of Labor.

**05. Formal Resolution.** The State EO Officer shall send written notice to the complainant stating that the complaint has been received.

- a. The notice must list the issues raised in the complaint and state for each issue whether it has been accepted for investigation or rejected and the reason for its rejection.
- b. The notice must advise that the complainant has the right to be represented by an attorney or another person of the complainant's choice. The Notice must also give the complainant the right to choose between an alternate dispute resolution (ADR) process or a hearing.

**06. The ADR Process.** If the party filing the complaint requests to use the ADR process for resolving the complaint, the State EO Officer shall request a mediator and monitor the processing of the complaint.

- a. The mediator shall schedule mediation by written notice, mailed to all interested parties at least seven (7) days prior to the first mediation session. The notice shall include the date, time, and place of the mediation.
- b. The mediation process must be concluded within forty-five (45) days from the date the complaint was filed. The complaint is considered resolved when all parties to the complaint enter into a written agreement resolving the issues raised in the complaint.
- c. The written agreement must give notice that if the terms of the agreement are breached, the nonbreaching party may file a complaint with CRC within thirty (30) days of the date the non-breaching party learns of the breach.
- d. If the parties do not reach an agreement, the State EO Officer shall forward the complaint to a hearing officer for a hearing.

**07. The Hearing Process.** If the party filing the complaint requests a hearing to resolve the complaint, or if the ADR process fails to result in an agreement, the State EO Officer shall forward the complaint to the hearing officer and monitor the processing of the complaint.

- a. The hearing officer shall schedule a formal hearing by written notice, mailed to all interested parties at least seven (7) days prior to the hearing. The notice shall include the date, time, and place of the hearing.
- b. The hearing must be conducted within sixty (60) days from the date the complaint was filed.
- c. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or other designated representative and may request that records and documents be produced.
- d. All testimony shall be taken under oath or affirmation.
- e. The hearing will be recorded.
- f. The hearing officer's recommended resolution shall include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.
- g. The hearing officer's recommended resolution must be completed and sent to the State EO Officer within seventy-five (75) days from the date the discrimination complaint was filed.

**08. Notice of Final Action.** The Department shall review the recommendation of the hearing officer and shall issue a Notice of Final Action within ninety (90) days from the date the discrimination complaint was filed. The Notice of Final Action shall contain the following:

- a. Department's decision on each issue and the reasons for the decision;
- b. A description of the way the parties resolved the issue; and
- c. Notice that the complainant has the right to file an appeal with CRC within thirty (30) days from the date the Notice of Final Action is issued if dissatisfied with the Department's final action on the complaint. (See CRC address above)

**Section 210. THEFT OR EMBEZZLEMENT; IMPROPER INDUCEMENT; OBSTRUCTION OF INVESTIGATIONS, INCIDENT REPORTS**

Pursuant to P.L. 115-141, Division E, Title VII, Section 743, as an entity receiving federal funds, the Subrecipient shall not require employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

The Subrecipient agrees to adhere to the following provisions:

- Shall not knowingly hire an ineligible individual or individuals, embezzle, willfully misapply, steal or obtain by fraud any of the monies, funds, assets, or property that are the subject of the agreement.
- Shall not induce any participant to give up any money or a thing of value under threat of dismissal.
- Shall not willfully obstruct or impede an investigation or inquiry arising from activities under the agreement.
- Shall not directly or indirectly promise any employment, position, compensation, contract, appointment, or other benefit provided for or made possible in part or in whole by WIOA funds to any person as consideration, favor or reward for any political activity or for the support of, or opposition to, any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.
- Shall not directly or indirectly knowingly cause or attempt to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation or the threat of the denial or deprivation of any employment or benefits funded under WIOA.
- Understands that criminal penalties resulting from theft or embezzlement may result in a fine or imprisonment or both.
- Shall immediately report all alleged or suspected incidents of fraud, waste, abuse, or other criminal activity relating to the operation of WIOA to the Administrative Entity and the Office of the Inspector General (OIG). Individuals should use form OIG 1-156 and send to

the appropriate location as instructed. The OIG 1-156 (IR) Form and Instructions can be found here:

[https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_2\\_12\\_att\\_c.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_2_12_att_c.pdf)

Persons may also seek additional information at this weblink:

<https://www.oig.dol.gov/hotline.htm>, or submit complaints through the OIG's Hotline at 1-800-347-3756 or call (202) 693-6999, or they may be emailed to [hotline@oig.dol.gov](mailto:hotline@oig.dol.gov). Written complaints may be sent to Attn: Hotline, Office of Inspector General, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, D.C. 20210

### **Section 211. KICKBACKS, GIFTS, FAVORS, AND GRATUITIES**

No member of any council or committee, or employee, officer or agent of any council or committee member, or any employee, officer or agent of any grantee or Subrecipient under WIOA shall solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors or parties to subagreements. This prohibition shall not apply to unsolicited trivial benefits, not to exceed a value of fifty dollars (\$50.00), that are incidental to personal, professional, or business contacts and that do not involve a substantial risk of undermining official impartiality.

### **Section 212. MAINTENANCE OF EFFORT**

The Subrecipient agrees that no WIOA Title I participant shall be employed in or assigned to a job:

- when any other individual is on layoff from the same or any substantially equivalent job, or
- when the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant; or the job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.

All training opportunities shall result in an increase in employment and training opportunities over those which would otherwise be available.

No currently employed worker shall be displaced by a participant (including partial displacement such as a reduction in non-overtime work, wages or employment benefits).

No program or activity authorized under Title of WIOA shall impair existing contracts for services or existing collective bargaining agreements. When a program or activity would be inconsistent with a collective bargaining agreement, the employer and the appropriate labor organization must provide written concurrence before the program or activity begins.

Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures.

### **Section 213. DUPLICATION OF SERVICE**

Funds provided under WIOA shall not be used to duplicate facilities or services available in the area

(with or without reimbursement) from Federal, State, or local sources, unless the Subrecipient can establish that alternative services or facilities would be more effective or more likely to achieve performance goals.

#### **Section 214. PROHIBITION OF NEPOTISM**

No Recipient or Subrecipient, including employers participating in work-based program activities such as On-the-Job training, may hire or engage a person in any position or program activity funded under WIOA/TAA, if a member of that person's immediate family is engaged in any administrative or management capacity related to the hiring, selection, placement, supervision (to the second degree) responsibilities and/or funding organization. No employer may hire a member of his/her immediate family into a work-based training position. In addition, no individual (neither new hire nor incumbent worker) may enter a WIOA/TAA-funded work-based program activity if a member of his/her family is engaged in a capacity noted above.

For purposes of this rule, the term "member of the immediate family" includes persons related by blood, marriage or decree of court, within the second degree, to the WIOA work-based training or program activity participant. This includes the spouse, child, parent, sibling, grandparent, aunt, uncle, niece, nephew, cousin, stepparent, stepchild, grandchild, corresponding in-laws to these family members, or any other persons related by decrees of court within the second degree.

For purposes of this rule, the term "administrative or management capacity" includes overall administrative responsibility for the obtaining of and/or approval of any grant or Subgrant funded under the Act, as well as other persons who have influence or control over the administration of the program, including employees who have selection, hiring, placement, or supervisory responsibilities for the program participants.

## **SERIES 300 - ASSURANCES FOR PROGRAM OPERATION**

### **Section 301. SERVING THOSE WITH BARRIERS TO EMPLOYMENT**

Each Subrecipient shall provide employment and training opportunities that meet the purposes of W I O A Title I- B, which include:

- Increasing access to, and opportunities for individuals to receive the employment, education, training, and support services necessary to succeed in the labor market, with a particular focus on those individuals with disabilities or other barriers to employment including out of school youth with the goal of improving their outcomes;
- Streamlining service delivery across multiple programs to make the system understandable and accessible for individuals, including individuals with disabilities and those with other barriers to employment, and businesses;
- Improving the quality and labor market relevance of workforce investment, education, and economic development efforts by promoting the use of industry and sector partnerships, career pathways, and regional service delivery strategies in order to both provide America's workers with the skills and credentials that will enable them to secure and advance in employment with family-sustaining wages, and to provide America's employers with the skilled workers the employers need to succeed in a global economy.

### **Section 302. TRAINING CONSISTENT WITH CAPABILITIES OF PARTICIPANT**

The Subrecipient will ensure that training and related services shall be consistent with each individual's fullest capabilities and shall lead to employment opportunities that will enable participants to become economically self-sufficient and contribute to their upward mobility, occupational development, development of new careers, and overcoming sex-stereotyping in occupations traditional for the other sex.

Placements made in unsubsidized employment shall be, to the extent practicable, in occupational areas related to the training provided to the participant.

### **Section 303. CAREER PLANNING**

The Subrecipient will incorporate career planning as the foundation of individualized participant services. The term career planning means the provision of a client-centered approach in the delivery of services, designed— (A) to prepare and coordinate comprehensive employment plans, such as service strategies, for participants to ensure access to necessary workforce investment activities and supportive services, using, where feasible, computer-based technologies; and (B) to provide job, education, and career counseling, as appropriate during program participation and after job placement.

Special consideration will be given to the filling of jobs that provide sufficient prospects for advancement or suitable continued employment by providing complementary training and supportive services designed to (1) promote the advancement of participants to employment or training opportunities which lead to the individual's self-sufficiency, whether in the public or private sector of the economy; (2) provide participants with skills for which there is an anticipated high demand; or (3) provide participants with self-development skills.

**Section 304. MILITARY SELECTIVE SERVICE ACT**

The Subrecipient shall ensure that each individual participating in any program or activity established under this title, or receiving any assistance or benefit under this title, has not violated section 3(a) of the Military Selective Service Act (50 USC. App. 453) by not presenting and submitting to registration as required pursuant to such section.

**Section 305. PARTICIPANT BENEFITS**

**WAGES** - Individuals in on-the-job training or individuals employed in activities under Title I- B of WIOA shall be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. Such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law.

**EMPLOYMENT CONDITIONS** – Individuals in on-the-job training or individuals employed in programs and activities under this title, shall be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

**HEALTH AND SAFETY**– Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in programs and activities under Title I- B of WIOA. To the extent that State workers' compensation law applies, workers' compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment.

**Section 307. DAVIS-BACON, COPELAND, AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Subrecipients will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40.327-333), regarding labor standards for federally assisted construction subagreements.

Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the same geographic area as the proposed employment to be funded under this Act, an opportunity shall be provided for such organization to submit comments with respect to such proposal.

**Section 308. APPROPRIATE WORK-BASED TRAINING**

The Subrecipient agrees that the conditions of employment and training will be appropriate and reasonable considering such factors as the type of work, the geographic region available to the participant and the proficiency of the participant.

**Section 309. APPRENTICEABLE TRAINING**

The Subrecipient will, when appropriate, consult with the cognizant apprenticeship agency concerning any training activities in apprentice occupations. The Idaho Department of Labor may provide Subrecipients assistance in pursuing apprenticeship opportunities for program participants.

### **Section 310. COLLECTIVE BARGAINING**

No funds under this agreement will be used to assist, promote or deter union organizing; no work experience, on-the-job training, internship, or job shadowing participant may be placed into, or remain working, in any position affected by labor disputes involving a work stoppage.

### **Section 311. LABOR ORGANIZATION CONSULTATION AND/OR CONCURRENCE**

All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating, of projects, buildings, and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Act of March 3, 1931 (40 U.S.C. 276a-276a-5), popularly known as the Davis-Bacon Act. The Secretary shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 1, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276 (c)). The provisions of this subsection shall not apply to a bona fide trainee in a training program under this Act.

The Subrecipient assures that it will consult with appropriate labor organizations in the planning, design and content of the training, work experience, OJT and other appropriate work-based activities with respect to job descriptions, wage rates, training standards and arrangements, and occupations planned.

The Subrecipient will obtain written concurrence from the appropriate bargaining agent where a collective bargaining agreement exists with the participating employer covering occupations in which training or subsidized employment is proposed. Such concurrence shall apply to the elements of the proposed activity which affect the bargaining agreement such as wages and benefits. If no notice is received within 30 days after written notification to the collective bargaining agent, the program may proceed.

### **Section 312. CHILD LABOR STANDARDS**

The Subrecipient shall ensure that it complies with the Fair Labor Standards Act Child Labor provisions (29 CFR, Subtitle B, Chapter V, Subchapter A, Part 570) for hazardous occupations (Subpart E) as it applies to the participation of youth under 18 years of age.

For programs that are exempt (29 CFR, Subtitle B, Chapter V, Subchapter A, Subpart G: 570.72 & 570.122-130) from these orders by means of youth participants, the following format must be followed to assure compliance of the Fair Labor Standards Act; the youth participant is employed under a written agreement which provides:

- that the work of the youth participant in the occupations declared particularly hazardous shall be incidental to the training;
- that such work shall be intermittent and for short periods of time, and under close

- supervision of a qualified and experienced person;
- that safety instructions shall be given by the training institution (if a component of the training) and correlated by the employer with on-the-job training; and
- that a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of the youth participant and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the training institution and the employer.

**Section 313. LINKAGE TO OCCUPATIONS IN DEMAND**

Work-based training provided with funds available under WIOA shall be only for occupations for which there is a demand in the geographic area served or in another geographic area to which the participant is willing to relocate, and consideration in the selection of training programs may be given to training in occupations determined to be in sectors of the economy which have a high potential for sustained demand or growth.

**Section 314. ELIGIBLE TRAINING PROVIDERS**

Idaho local workforce boards are charged with establishing procedures in determining the eligibility of a training provider for WIOA Title I-B purposes. Except for customized training, each local workforce board shall place on a list the providers determined to be eligible to receive funds for the provision of training services in their respective Service Delivery Areas. As outlined in WIOA Final Rules , Subpart D, 680.400, et.al. and the Idaho Workforce Development Council's [Eligible Training Provider Policy](#).

**Section 315. DELETED**

**Section 316. DELETED**

**Section 317. BENEFITS AND WORKING CONDITIONS**

All program participants employed in jobs subsidized by WIOA funds shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work by the employer.

**Section 318. RETIREMENT SYSTEMS**

No funds available under WIOA may be used for contributions on behalf of any program participant to retirement systems or plans.

**Section 319. RELOCATION**

No funds provided under the Act shall be used, or proposed for use, to encourage or to induce the relocation of an establishment, or part thereof that results in the loss of employment for any employee of such establishment at the original location and such location is within the United States. Reference 20 CFR 683.260 for additional information.

**Section 320. NON-DUPLICATION OF SERVICES**

Funds provided under this title shall only be used for activities which are in addition to those which would otherwise be available in the geographic area in the absence of such funds.

**Section 322. STATE AND FEDERAL EDUCATIONAL STANDARDS**

All education programs for youth supported with funds provided under Title I- B of WIOA shall be consistent with applicable state and local educational standards.

**Section 323. AWARDING OF ACADEMIC CREDIT – EDUCATIONAL STANDARDS**

Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under such chapter shall be consistent with the requirements of applicable state and local law, including regulation.

**Section 324. NONINTERFERENCE AND NONREPLACEMENT OF REGULAR ACADEMIC REQUIREMENTS**

No funds for youth programs shall be used to provide an activity for eligible youth who are not school dropouts if participation in the activity would interfere with or replace the regular academic requirements of the youth.

**Section 325. PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION**

No provision of this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution, school, or school system.

**Section 326. PUBLIC SERVICE EMPLOYMENT**

No funds available under the Act may be used for public service employment except as specifically authorized under WIOA Title I- B.

**Section 327. CHARGING OF FEES**

No person or organization may charge an individual a fee for the placement or referral of an individual in or to a training program under WIOA Title.

**Section 328. ON-THE-JOB TRAINING REIMBURSEMENT**

An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience and the participant's individual employment plan.

To account for the extra costs of training, supervision and possible lower productivity, employers may

be reimbursed up to 50% of the wage rate of an OJT participant or up to 75% when certain conditions are met.

Employers do not need to document the extraordinary costs of training to receive reimbursement. However, any employers receiving financial reimbursement for training must complete WIOATAA19C, ensuring that no workers are displaced.

OJT contracts may be written for eligible employed workers when: (a) the employee is not earning a self-sufficient wage (see below) as determined by State or local policy; (b) the OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified in the local Plan; and, (c) the position meets all other OJT requirements.

On the job training contracts under this title shall not be entered into with employers who have received payments under previous contracts and have exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

Registered apprenticeship programs or participating employers in registered apprenticeship programs for the on-the-job training portion of the registered apprenticeship program may also be considered, provided they meet OJT eligibility criteria. Depending on the length of the registered apprenticeship, an OJT may cover some or all of the registered apprenticeship training.

OJT employers may also be reimbursed for the actual costs incurred in providing Basic/Occupational Skills Training and supportive services to WIOA participants, including reimbursement for the cost of participant wages paid by the employer for time spent in such activities during working hours. Any such additional reimbursements shall be only for training and for support over and above that provided to regular employees and must be documented by the employer.

OJT participants shall be compensated by the employer at the same rates, including periodic increases not related to individual performance, as similarly situated employees or trainees, but in no event less than the highest of the minimum wage prescribed under the Fair Labor Standards Act of 1938, as amended, or applicable State or local minimum wage laws.

### **Section 329. CONSTRUCTION COSTS**

Funds available under this Agreement must not be spent on construction or purchase of facilities or buildings except:

- To meet a Recipient's (as the term is defined in 29 CFR 31.2(h)), obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended;
- To fund repairs, alterations and capital improvements of:
  - SESA real property, identified at WIOA section 194, using a formula that assesses costs proportionate to space utilized;

- WIOA owned property which is transferred to WIOA Title I- B programs;
- For Job Corps facilities, as authorized by WIOA section 160(3)(B); and
- To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area.

Construction costs may be allowable training or participant support costs only when funds are used to:

- Purchase equipment, materials, and supplies for use by participants while on the job and for use in the training of such participants. Examples of such equipment, materials and supplies are hand tools, work clothes, and other low-cost items; and
- Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and needs-based payments and compensation to participants.

### **Section 330. COORDINATION WITH PROGRAMS UNDER TITLE IV OF THE HIGHER EDUCATION ACT INCLUDING THE PELL GRANT PROGRAM**

When financial assistance programs under Title IV of the Higher Education Act (HEA) (the Pell Grant program, the Supplemental Education Opportunity Grant program, the Work Study program, the Perkins loan program, the Family Education Loan program -- including Stafford, PLUS and Supplemental Loans for Students programs -- and the Direct Loan Demonstration program), which provide student financial aid programs for postsecondary education, are available to WIOA participants, coordination procedures and contractual safeguards shall be established to ensure that WIOA funds are in addition to funds otherwise available in the geographic area.

Subrecipients shall document in the participant's Individual Service Strategy its determination with the educational institution of the participant's training-related financial assistance needs and the proper mix of WIOA and Pell Grant funds, since a Pell Grant may be used for applicable living expenses as well as for tuition, fees, and books. The Subrecipient shall provide to the educational institution's financial aid officer the names of WIOA participants who are to attend such institution and for whom WIOA payments will be made.

In completing the objective assessment and developing the Individual Service Strategy for a Title participant, the Subrecipient shall ensure, to the extent practicable, that available Federal, State, and local resources are coordinated sufficiently to meet the training and education-related costs of services, so that the participant can afford to complete the agree-upon program successfully.

### **Section 333. VETERAN'S PRIORITY**

The Jobs for Veterans Act (Public Law 107-288) requires recipients to provide priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. The regulations implementing this priority of service can be found at 20 CFR part 1010. In circumstances where a grant recipient must choose between two qualified candidates for a service, one of whom is a veteran or eligible spouse, the veterans priority of service provisions require that the grant recipient give the veteran or eligible spouse priority of service by first providing him or her that service. To obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. Recipients

must comply with DOL guidance on veterans' priority. ETA's Training and Employment Guidance Letter (TEGL) No. 10-09 (issued November 10, 2009) provides guidance on implementing priority of service for veterans and eligible spouses in all qualified job training programs funded in whole or in part by DOL. [TEGL No. 10-09](#) (See link).