

To: work2future Staff & Subrecipients
From: work2future Director
Effective Date: May 2020
SUBJECT: Debt Collection
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OPERATIONAL DIRECTIVE

Purpose:

This guideline transmits the policy and procedures for debt collection associated with the mis expenditure of funds under *Workforce Innovation Opportunity Act (WIOA)* and the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*; Final Rule (Uniform Guidance).

Scope:

The information in this policy applies to all sub-recipients receiving WIOA funds.

Effective Date:

This directive is effective upon date of issue.

REFERENCES:

- WIOA (Public Law 113-128) Sections 184 (Fiscal controls; sanctions), 134(Use of funds for Adult and Dislocated Worker Employment and Training Activities), and 129 (Use of funds for Youth Workforce Investment Activities)
- Title 2 *Code of Federal Regulations* (CFR) Part 200 (Uniform Guidance) and 2900 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)
- Training and Employment Guidance Letter (TEGL) 15-14, *Implementation of the New Uniform Guidance Regulations* (December 19, 2014)
- Workforce Services Directive (WSD) 17-08 Procurement of Equipment and Related Services)
- WSD 16-16, Subject: Allowable Costs and Prior Written Approval
- WIAD 01-05 Debt Collection

BACKGROUND:

The policies and procedures described below have been used for other federal programs and will be used for WIOA.

POLICY AND PROCEDURES:

Definitions:

Final Determination is San Jose Silicon Valley Workforce Development Board (SJ/SVWDB)'s final decision to disallow the cost and the status of nonmonetary findings.

Final debt is the amount owed based on SJ/SVWDB's final determination if an appeal is not filed, or the decision in response to an appeal. Included in final debts are funds due from, but not limited to, incidents of fraud, malfeasance, misapplication of funds and other serious violations of illegal acts.

Policy & Procedures:

Liability of Subrecipients

This policy will apply when responsibility for any disallowed costs is determined to be the fault of a subrecipient of SJ/SVWDB for any reason including a determination as the result of an audit, a monitoring finding, an investigation, or other means.

Written Notification

A written notification to the subrecipient establishing a proposed debt will be issued by SJ/SVWDB. The notice will include:

- The source of the finding and a description of the conditions that caused the finding as well as SJ/SVWDB's authority to disallow costs and establish a debt.
- The letter will provide an explanation of appeal rights and grievance procedures,
- The letter will explain the possible sanction(s) if the debt is not repaid.
- The letter will provide options available, if any, for the method of repayment.

Establishment of a Debt

After the time allowed for appeals has lapsed or after a decision that established a debt is rendered following an appeal, a written notification (sent by certified mail) will be issued to the subrecipient establishing a final debt. The notice will include:

- An invoice issued by SJ/SVWDB.
- Notification of the date the debt will be considered due and delinquent.
- Whether interest will be charged on the debt, the start date when interest will begin, and the interest rate.
- Possible sanctions if the debt is not paid.
- Notification of appeal rights under the SJ/SVWDB and the State of California's Employment Development Department's Complaint Resolution Procedures.
- A statement that the final decision of SJ/SVWDB is subject to review by the State and by the Department of Labor (DOL).

Delinquent Notices

A 30-day and 60-day notice will be sent to the subrecipient if payment has not been received or a satisfactory alternative repayment plan has not been negotiated.

Methods of Collection

If the debt is still outstanding after 90 days, a determination will be made by SJ/SVWDB to use another method of collection. In making this determination, SJ/SVWDB will consider the following factors:

- The amount of the debt.
- Cost of further debt collection.
- The amount collected to date.
- The probable success of pursuing further action to collect the debt.

Methods of Repayment or Other Resolution Options

While cash is the required method of repayment where there is a disallowed expenditure of funds due to willful disregard of the requirements of the Act, gross negligence, or failure to observe accepted standards of administration, SJ/SVWDB has other options for the resolution of debts. Other options include:

- **Installment payments:** Cash installment repayment agreements will usually be of short duration, from three to twelve months, with a maximum of 36 months. Duration is negotiated based on size of the debt and the debtor's ability to pay. Use of cash installment repayment is suggested for instances when debt collection efforts are impeded by an inability to pay the full debt amount in a lump sum. The City Attorney's Office must approve all installment repayment agreements.
- **Withholding:** This repayment method will involve withholding amounts claimed by the debtor for ongoing WIOA services or other considerations already provided in satisfaction of the debt owed.

Waivers

When a SJ/SVWDB is unable to collect a debt in whole or in part from a subcontractor, it may request the Grantor Agency (Employment Development Department) to waive imposition of sanctions against SJ/SVWDB and the subrecipient (pursuant to the provisions of CFR Section 627.706). In making such a request, SJ/SVWDB must demonstrate that it has met the four criteria stated below:

- Established and adhered to an appropriate system for the award and monitoring contracts with subcontractors which contains acceptable standards for ensuring accountability.
- Entered into a written contract that established clear goals and obligations in unambiguous terms.
- Acted with due diligence to monitor the implementation of the subcontractor contract, including the carrying out of the appropriate monitoring activities at reasonable intervals.
- Taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of the Act or the regulations under the Act by such subcontractor.

EDD requires SJ/SVWDB to demonstrate how it has met the criteria, i.e. document efforts such as debt letter was sent, litigation was conducted or withholding of funds was attempted. SJ/SVWDB will verify such information before forwarding a request for approval of the proposed action to the City Attorney's Office.

Accounts Receivable System & Records Maintenance

The City of San Jose Finance Department will maintain an account receivable system. The City of San Jose Finance Department is responsible for maintaining permanent records and monitoring status with respect to debt collection, reinvestment, or other debt resolution actions and which will support the appropriateness of SJ/SVWDB's decisions with respect to such actions.

Discharge from Accountability Request

If SJ/SVWDB is satisfied the subrecipient has taken all reasonable steps to resolve the issue and cannot pay off the debt, SJ/SVWDB will request discharge from accountability from EDD in accordance with State of California WIA Directive Number WIAD01-5.

An approved discharge from accountability of the debt due to SJ/SVWDB does not release any firm, person, or corporation from other money due and owed to the state.

Debarment for Failure to Pay

If the subrecipient fails to repay its debt, SJ/SVWDB will apply Debarment of Service Providers: EDD WIA Information Bulletin NUMBER WIAB01-18 (Exhibit B).

Settlement

SJ/SVWDB subrecipients are responsible for their audit resolution and aggressive debt collection action arising from contracts or agreements they have as a pass-through agency using WIOA funds.

The settlement of all debts resulting from fraud, malfeasance, misapplication of funds or other serious violations or illegal acts must be from nonfederal sources. Funds collected by subrecipients in settlement of these debts must be returned to SJ/SVWDB Fiscal Unit immediately upon receipt. The mailing address is:

San Jose Silicon Valley Workforce Development Board (work2future)
5730 Chambertin Dr.
San Jose, CA 95118
Attn: SJ/SVWDB Fiscal Unit

SJ/SVWDB is responsible for returning the fund collected to the State Compliance Review Division.

SJ/SVWDB subrecipients must maintain records that document the actions taken with respect to debt collection, restoration, or other debt resolution activities. Subrecipients must also document why the actions were taken to support their decisions.

When the debt was not a result of fraud, malfeasance, misapplication of funds or other serious violations or illegal acts, and the subrecipients agreement term has not been closed out by SJ/SVWDB, the repayment reduces the expenditures of the period. Cash payments received after the subrecipient's contract is closed out must be remitted to SJ/SVWDB Fiscal Unit. SJ/SVWDB is responsible for returning the fund collected to the State Compliance Review Division.

ACTION:

Bring this policy to the attention of all affected staff and subrecipients.

INQUIRIES:

If you require further information regarding this policy, please contact the work2future Finance Manager at 408-794-1146.