

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 20 WORKFORCE INNOVATION AND OPPORTUNITY ACT CORRECTIVE ACTIONS,
PENALTIES AND SANCTIONS

11.2.20.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)
[11.2.20.1 NMAC - N, 7/1/2018]

11.2.20.2 SCOPE: State workforce development board (state board), department of workforce solutions (DWS), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients, and workforce system partners.
[11.2.20.2 NMAC - N, 7/1/2018]

11.2.20.3 STATUTORY AUTHORITY: Title I of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Chapter 32, Subchapter I; and 50-14-1 *et seq.* 1978 NMSA.
[11.2.20.3 NMAC - N, 7/1/2018]

11.2.20.4 DURATION: Permanent.
[11.2.20.4 NMAC - N, 7/1/2018]

11.2.20.5 EFFECTIVE DATE: July 1, 2018, unless a later date is cited at the end of a section.
[11.2.20.5 NMAC - N, 7/1/2018]

11.2.20.6 OBJECTIVE: To provide comprehensive guidelines for local boards, sub-recipients, and contract service providers on corrective actions, technical assistance, incentives, sanctions, and appeal policies and procedures to be used by DWS in overseeing and monitoring the administration of WIOA formula funds in New Mexico, including roles and responsibilities of affected entities.
[11.2.20.6 NMAC - N, 7/1/2018]

11.2.20.7 CORRECTIVE ACTION AND PENALTIES:

A. General. Failure to ensure compliance with one or more contracted performance measures, grant agreement provisions, federal or state law, federal regulations, or federal or state technical assistance guidance, is considered a sanctionable act or acts. DWS may assess corrective action or penalties based on the totality of the circumstances surrounding the occurrence of a sanctionable act or acts, including the severity, nature, duration, and extent, including previous occurrences of sanctionable acts. In determining corrective action or penalties, DWS may consider efforts by the local board or sub-recipient to prevent the occurrence of the sanctionable act, such as efforts to obtain technical assistance or training, as well as resolved monitoring findings.

B. Types of corrective action and penalties. To assist the local board or sub-recipient in correcting any deficiencies, DWS may assess, for each occurrence of a sanctionable act, one or more of the following corrective action activities or penalties:

- (1) participation in technical and quality assurance activities, including mandatory participation in training;
- (2) on-site visits by DWS, or its designee, to monitor and assist with daily operations of a local board, local board's contractor, or sub-recipient;
- (3) corrective action plan developed by DWS and implemented by the local board to address the identified weaknesses, including strict timelines for completion;
- (4) submission of additional or more detailed financial or performance documentation or reports;
- (5) designation as a high-risk local board or sub-recipient requiring additional monitoring visits;
- (6) requirement for the local administrative entity, or the sub-recipient to report on activities and progress at state board meetings until performance is satisfactory;

- (7) DWS meetings with the local area's chief elected official(s), local board chair, local board members, local board's executive director, or the sub-recipient to check in on progress on corrective action;
- (8) DWS oversight or management of local board operations, such as the appointment of a steward.
- (9) DWS approval of specified actions (i.e. prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval from DWS);
- (10) prohibiting the use of designated service providers or one-stop operators;
- (11) payment restrictions, such as payment by reimbursement only with required supporting documentation;
- (12) delay, suspension, or denial of contract payments;
- (13) requirement of a local board or its sub-recipient(s) to reimburse DWS any costs it deems disallowed in accordance with federal or state law, or regulations;
- (14) issuance of a notice of intent to cease immediately reimbursement of local program costs;
- (15) designation of local board as ineligible for additional discretionary funding, incentives, or other funds;
- (16) contract cancellation or termination;
- (17) issuance of notice to revoke approval of all or part of the local plan affected;
- (18) imposition of a local area reorganization plan;
- (19) other actions deemed appropriate by DWS to secure compliance.

C. Penalties for nonattainment of performance goals:

(1) **First-year nonperformance.** If a local board fails to meet one or more local negotiated performance levels in a single program year based on annual performance outcomes, the local board shall develop a performance improvement plan within 45 days of the final performance outcome reported in the New Mexico WIOA annual report. DWS may also require the local board to modify its local plan or take other action designed to improve the local board's performance.

(2) **Second-year nonperformance.** If a local board failed to meet one or more local negotiated performance levels for the same performance measure(s) for a second consecutive program year, DWS will review the performance deficiencies and may make a recommendation to the governor to impose a reorganization plan for the local area. DWS's recommendation to the governor for reorganization of a local area may include the imposition of one or more of the following penalties:

- (a) requiring modification of the local board's local plan;
- (b) issuing a notice of intent to revoke all or part of the affected local plan;
- (c) restructuring the local board, including decertification of the current local board and a plan for appointment and certification of a new local board;
- (d) selection of an alternate entity to administer the WIOA for the local area; or
- (e) merging of the local area into one or more other local areas.

D. Corrective action plans. If a corrective action plan is required, the local board must submit the plan in writing to DWS within 45 days of receipt of the final monitoring report. The corrective action plan must identify actions the board will take to correct the finding and a timeline for completion of the corrective action. The local board may be required to provide a monthly progress report each month that a corrective action plan is pending. In the event a finding is repeated in subsequent monitoring reviews, monitors will inform DWS who will make the determination of appropriate sanctions.

E. Performance Improvement Plans. If a performance improvement plan is required, the local board must submit the plan in writing to DWS within 45 days of the final performance outcome reported in the New Mexico WIOA annual report, and the plan shall be fully implemented by the end of the current program year (June 30). The performance improvement plan for addressing the failure to meet performance shall include, at a minimum, the following:

- (1) list of the performance measures for which the local board failed to achieve at least 80 percent of the negotiated performance level;
- (2) detailed analysis and explanation of why the local board failed to achieve at least 80 percent of the negotiated performance level;
- (3) description of the corrective action to be taken, and the timeline for such actions, to address performance deficiencies in subsequent program years;
- (4) identification of the technical assistance needed to support successful performance, including the source and type of assistance; and

(5) local board monitoring plan of its sub-recipients with timelines for evaluating effectiveness of the corrective action plan.

F. Intent to sanction. DWS may, but is not required to, issue a notice of intent to sanction to the local board prior to DWS placing a local board in sanction status. This formal notification is intended to communicate expectations, such as corrective action or performance improvement plans, for resolution of local board findings, to prevent escalation into sanction status.

[11.2.20.7 NMAC - N, 7/1/2018]

11.2.20.8 SANCTIONS:

A. Sanction Status. The purpose of imposing sanctions is to ensure accountability of local boards and other sub-recipients in meeting the needs of employers and job seekers, ensure performance in reaching outcome measures, ensure adequate return on New Mexico investments, and support New Mexico in achieving its goals. There are three levels of sanction status that may be assigned by DWS to a local board, or other sub-recipient, for failure to ensure compliance with one or more contracted performance measures, grant agreement provisions, federal or state laws, and related regulations.

(1) **Level one sanction status:** A level one sanction status is assigned for significant inability or failure to perform as determined by DWS. A level one sanction status may be associated with the assessment of one or more corrective actions or penalties as referenced in the corrective actions and penalties section of this rule. Sanctionable acts that occur during or after the program, grant, fiscal, contract, or calendar year, include but are not limited to the following:

- (a) failure to submit timely and accurate required financial or performance reports;
- (b) failure to take corrective action to resolve findings identified during monitoring, investigative or program reviews, including failing to comply with a performance improvement plan;
- (c) failure to resolve all independent audit findings or questioned costs within required time frames;
- (d) failure to submit the annual audit required by WIOA federal regulations;
- (e) breach of administrative and service contract requirements;
- (f) failure to retain required service delivery and financial records; and
- (g) failure to meet one or more local negotiated performance levels in a single program year based on annual performance outcomes.

(2) **Level two sanction status:** A level two sanction status is a higher sanction status than level one and is assigned for severe inability or failure to perform as determined by DWS. A level two sanction may be associated with the assessment of more severe penalties than those assessed to a local board or sub-recipient in level one sanction status. Sanctionable acts that occur during or after the program, grant, fiscal, contract, or calendar year include, but are not limited to the following:

- (a) failure to resolve or implement corrective action on a level one sanction within 180 days of notice.
- (b) committing the same violation a second time within an 18 month period.
- (c) failure to meet negotiated performance levels for the same performance measure(s) for two consecutive program years.

(3) **Level three sanction status:** This is the highest sanction status assigned for extreme inability or failure to perform as determined by DWS. A level three sanction may be associated with the assessment of the most severe penalties being assessed against the local board or sub-recipient. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to the following:

- (a) failure to resolve or implement corrective action on a level one sanction within 360 days of notice.
- (b) failure to resolve or implement corrective action on a level two sanction within 180 days of notice.
- (c) committing the same violation three or more times within a 36 month period.

B. Sanction Determination. If the local board remains in noncompliance after the prescribed timeline for completion of the corrective action, or performance improvement plan has passed, DWS on behalf of the governor, must determine whether it is appropriate to place a local board or sub-recipient in sanction status. DWS must officially notify the non-compliant local board or sub-recipient by sending the appropriate local administrative entity a sanction determination letterA via certified mail and return receipt requested at least 10 working days in advance of the effective date of the sanction. The sanction determination letter must include the following:

- (1) the sanctionable act upon which the sanction was based;
 - (2) the sanction status level in which the local board of sub-recipient is placed and the conditions upon which the local board or sub-recipient may be removed from sanction status;
 - (3) the penalty and the effective date of the penalty;
 - (4) the corrective action required, including the timeline for completing the corrective action;
- and
- (5) the technical assistance requested from DWS or other entity to assist in completing the corrective action.
- [11.2.20.8 NMAC - N, 7/1/2018]

11.2.20.9 APPEALS:

A. Final determination appeals. All final determinations issued by DWS may be appealed pursuant to the process provided in Subpart F of Section 20 CFR 683. A local board or sub-recipient may appeal a sanction determination by filing a written request with the DWS cabinet secretary for appeal of a sanction determination within 10 working days following the receipt of the sanction determination by the local board administrative entity. The DWS cabinet secretary has 30 days to issue a decision to uphold, revoke, or revise the original final determination. If the DWS cabinet secretary takes no action within the 30 day time period, the original final determination becomes the final administrative decision on the appeal.

B. Other appeals. A local area which has been found in substantial violation of WIOA Title I, and has received notice from DWS, on behalf of the governor, that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the secretary of the United States department of labor under WIOA Section 184(b) and that appeal must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization, pursuant to Section 20 CFR 683.650.

[11.2.20.9 NMAC - N, 7/1/2018]

HISTORY OF 11.2.20 NMAC:

History of Repealed Material:

11.2.7 NMAC, Workforce Investment Act (WIA) Performance Accountability Requirements, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.9 NMAC, Workforce Investment Act (WIA) Sanctions and Corrective Actions and Liability, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.21 NMAC, WIA Technical Assistance and Corrective Action - Local Workforce Development Board Failure to Meet Performance, filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.21 NMAC, WIA Technical Assistance and Corrective Action - Local Workforce Development Board Failure to Meet Performance, filed 8-15-2012 - Repealed effective 7-1-2018.