

## DEBT COLLECTION POLICY

### EXECUTIVE SUMMARY

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This policy provides the procedures for debt collection associated with WIOA subrecipient misexpenditure of funds under Workforce Innovation Opportunity Act and the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

### REFERENCES

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Workforce Innovation and Opportunity Act (WIOA) Section 184; Title 2 Code of Federal Regulations (CFR) Part 180; Title 20 CFR Section 627.706; 20 CFR 645.250 (a)(2); 20 CFR 683.740; State of California Employment Development Department (EDD) Workforce Investment Act Directive WIAD01-5, Debt Collection, September 10, 2001, and EDD Workforce Services Directive WSD18-06: Subrecipient and Contractor Distinctions, September 5, 2018.

### PROCEDURAL GUIDANCE

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This policy will apply when liability for any disallowed costs is determined to be at the subrecipient level for any reason, including a determination that is a result of an audit, a monitoring finding, an investigation, or other means.

Local Workforce Investment Areas (LWIA) are responsible for their subrecipient audit resolution and aggressive debt collection action. At the State level, audit resolution and debt collection are the responsibility of the State of California's Employment Development Department's (EDD) Compliance Review Division (CRD).

The settlement of all debts resulting from fraud, malfeasance, misapplication of funds or other serious violations or illegal acts must be cash from nonfederal sources. Funds collected by LWIAs in settlement of these debts must be returned to CRD immediately on their receipt. The mailing address for CRD is:

Employment Development Department  
Compliance Review Division,  
MIC 22M  
P. O. Box 826880  
Sacramento, CA 94280-0001

The LWIA must maintain records that document the actions taken with respect to debt collection, restoration, or other debt resolution activities. The LWIA must also document why the actions were taken to support their decisions.

## **Definitions:**

**Final Determination** means the final decision of the Monterey County Workforce Development Board (MCWDB) to allow or disallow questioned costs and resolve any nonmonetary findings.

**Final debt** means the amount owed based on MCWDB's final determination (a) if an appeal is not filed or (b) based on the decision issued in response to an appeal. Included in final debts are funds due from illegal acts, but not limited to, incidents of fraud, malfeasance, misapplication of funds and other serious violations or illegal acts.

## **Policy & Procedures:**

### **Requirements for Written Notification of Subrecipient Liability**

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

- Possible sanctions if the debt is not repaid.
- Notification of appeal rights under the MCWDB Grievance and Complaint procedures.
- Options available, if any, for the method of repayment. If a method of payment other than cash has previously been negotiated, the notice will provide the negotiated terms.

### **Establishment of a Debt**

After the time allowed for appeals has lapsed or after a decision is rendered that establishes a debt 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 MCWDB.
- Notification of the date the debt will be considered delinquent.
- Whether interest will be charged on the debt and at what rate.
- Possible sanctions if the debt is not paid.
- Notification of appeal rights under the MCWDB Grievance and Complaint procedures.
- A statement that the final decision of MCWDB 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 the MCWDB to use another method of collection. In making this determination, consideration will be given to 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**

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, MCWDB has several 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 the 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 full MCWDB Board must approve all installment repayment agreements.
- **Withholding:** This repayment method will involve withholding amounts owed the MCWDB for past services or other considerations already provided in satisfaction of the debt owed.
- **Offset:** In this case, the grant amount is simply reduced up to the amount of the debt.

## Waivers

When MCWDB is unable to collect a debt in whole or in part from a subrecipient, it may request the Grantor Agency (Employment Development Department, or EDD) to waive imposition of sanctions against MCWDB. In making such a request, MCWDB must demonstrate that it has met the four criteria as stated below:

- Established and adhered to an appropriate system for the award and monitoring of contracts with subrecipient that contains acceptable standards for ensuring accountability.
- Entered into a written contract with such subrecipient which established clear goals and obligations in unambiguous terms.
- Acted with due diligence to monitor the implementation of the subrecipient 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 subrecipient.

Such demonstration shall not be a mere statement of compliance and recitation of the criteria. MCWDB must demonstrate how it has met the criteria (i.e., documented efforts such as debt letter was sent, litigation was conducted or withholding of funds was attempted).

## Accounts Receivable System & Records Maintenance

The MCWDB will maintain an accounts receivable system. The MCWDB is responsible for maintaining permanent records and monitoring status with respect to debt collection, reinvestment, or other debt resolution actions which will support the appropriateness of such actions.

## Discharge from Liability Request

To be relieved of liability for a subrecipient's debt, MCWDB must submit a written request to the State Employment Development Department Compliance Review Division (CRD) to seek Department of Labor (DOL) agreement to forgo collection action, in accordance with the State of California EDD WIA Directive Number WIAD01-5. **Please note that as of this writing, EDD has not issued a new directive on Debt Collection.**

Without the prior approval of both CRD and DOL, MCWDB will remain responsible for repayment of the entire debt.

## Debarment for Failure to Pay

If the subrecipient fails to repay its debt, MCWDB will initiate a suspension or debarment proceeding authorized under Title 2 CFR Part 180 and EDD Directive 18-06.

## Settlement

When the debt was not a result of fraud, malfeasance, misapplication of funds or other serious violations or illegal acts, and the contractors' agreement term is still open, the credit reduces the expenditures of the period of the cost that was refunded. Cash payments received after the agreement term must be remitted to MCWDB's Fiscal Unit. MCWDB is responsible for returning the funds collected to the State Compliance Review Division.

## INQUIRIES

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If you have questions, please contact staff at (831) 796-6434.

CHRISTOPHER DONNELLY, Executive Director  
Monterey County Workforce Development Board