

UNILATERAL DE-OBLIGATION

EXECUTIVE SUMMARY

This policy provides the guidance and establishes the procedures regarding the de-obligation or cancellation of funds when a project is lagging. This policy applies to subrecipients of the *Workforce Innovation and Opportunity Act (WIOA) Governor's Discretionary and 25 Percent Additional Assistance, Rapid Response (RR), and Layoff Aversion funds*, and is effective on the date of issuance.

This policy contains only state-imposed requirements.

This directive finalizes Workforce Services Draft Directive *Unilateral De-obligation (WSDD-144)*, issued for comment on June 13, 2016. The Workforce Development Community submitted one comment during the draft comment period. A summary of comments is provided as Attachment 1.

This policy supersedes Workforce Services Directive *Unilateral De-obligation (WIAD04-11)*, dated November 18, 2004. Retain this directive until further notice.

REFERENCES

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- WIOA Sections 128(b) and 133(b)
 - Workforce Services Directive WSD14-3, Subject: *Rapid Response and Layoff Aversion Activities* (September 3, 2014)
 - Workforce Investment Act Directive WIAD05-18, Subject: *Dislocated Worker 25 Percent Funding Policy Requirements* (June 14, 2006)
 - Workforce Investment Act Directive WIAD02-14, Subject: *15 Percent Project Requirements* (April 24, 2003)
 - Workforce Services Information Notice WSIN12-62, Subject: *Late Monthly, Quarterly, Closeout, Audit and Participation Reports* (May 23, 2013)

BACKGROUND

The Central Office Workforce Services Division's (COWSD) experience with WIOA Governor's Discretionary and 25 Percent grants has indicated that some projects do not make ongoing and timely use of awarded funds or lag in serving participants. Consequently, the state has established criteria that will guide state action to ensure timely and effective use of available WIOA Governor's Discretionary and 25 Percent resources.

POLICY AND PROCEDURES

This policy applies only to special projects funded with WIOA Governor's Discretionary and 25 Percent funds allotted to the state under WIOA Sections 128(a) and 133(a). This directive does not apply to adult, dislocated worker, and youth funding provided on a formula allocation basis to Local Areas, in accordance with WIOA Sections 128(b) and 133(b).

In accordance with WIOA Section 134(a)(2)(A), the state will also "recapture" any funds reserved for RR and Layoff Aversion that remain unspent at the end of the program year of obligation and utilize them for state set-aside activities. A statewide recapture waiver may be granted to provide flexibility in certain circumstances.

The COWSD staff will review projects monthly, quarterly, or as needed to determine whether projects are achieving their goals and making timely use of awarded funds. The COWSD will use a 20 percent variance of planned vs. actual expenditure and participant data in determining if a project is "lagging." A project that exceeds the 20 percent variance is subjected to having their project funding unilaterally de-obligated. If COWSD staff finds a project to be lagging, either programmatically or fiscally, the COWSD may exercise the option to unilaterally de-obligate and recapture excess funds or terminate the project. The COWSD will notify the subrecipient well in advance of either planned action.

Projects with Lagging Expenditures

Projects with lagging expenditures are subject to funding de-obligation or termination based on the percentage of the project expenditures found to be below plan. For example, if a project is 40 percent below the planned expenditure level, COWSD could reduce the project's overall funding by 40 percent. Project termination would be an option if the spectrum of lagging factors is such that the project appears unlikely to be successful.

Projects with Lagging Participant Service Attainments

Projects with lagging participants are also subject to funding de-obligation or termination, based on the percentage the project participant service attainments found to be below plan. For example, if a project's enrollments are 40 percent below plan, COWSD could reduce the project's overall funding by 40 percent. Project termination would be an option if the spectrum

of lagging factors is such that the project appears unlikely to be successful. However, if funding is reduced due to low expenditures it will not be further reduced for low participant service attainments.

Combined Factors

Staff will compare the rates of expenditure and participation to determine the viability of the project. If the percentage of actual to planned expenditures exceeds the percentage of actual to planned participants by more than 20 percentage points, the state will consider the project to be lagging. For example, a project is lagging if its expenditures are 111 percent of plan and its enrollments are 90 percent of plan.

In response to the above example, the COWSD could reduce the project's overall funding. Project termination would be an option if the spectrum of lagging factors significantly exceeds that of the example, to the extent that the project appears unlikely to be able to succeed.

Mitigating Factors

In conducting the review, COWSD staff will take into account any mitigating factors, such as the following:

- How long the recipient actually has had the funding (e.g., whether the project is in its initial stages).
- Whether unforeseen temporary barriers caused low expenditures or client services (e.g., the fact that the project is lagging is not indicative of its future operations).
- Whether the project's lagging performance reflects a past performance issue, which then was overcome in the subsequent operation of the project.
- Whether the project operator currently has other state projects serving similar populations that are lagging.
- Whether the project operator has a corrective action plan that appears likely to be successful.
- Whether the project operator is executing the project in accordance with the scope and purpose of the contract.

The COWSD staff will make recommendations to COWSD management regarding all lagging projects. Recommendations will be to reduce funding, terminate the project, let it continue to operate unchanged, or let it continue to operate with stipulations (which may include a probationary period wherein improvements are to be shown, a viable corrective action plan, or other agreed-upon actions which have the potential to ensure the success of the project). The COWSD Chief will review and approve all recommendations to reduce funding or to terminate projects before they are implemented.

These policies and procedures depend on initial implementation of sound, realistic participant and expenditure plans and on maintenance of these plans on an ongoing basis. It is essential for project operators to work with their assigned Regional Advisor or Project Manager to develop and receive approval of a realistic initial plan and to make timely changes as circumstances dictate. Mere submission of revised participant and/or expenditure plans will not constitute adequate corrective action. Any requested changes, and in particular requests for “time-only” extensions, must be accompanied by strong justification and supporting documentation. The Regional Advisor or Project Manager will consider the quality of such requests in making his/her recommendation.

Incremental and Split-year Funding Decisions

These policies, procedures, and other considerations also apply to incrementally and split-year funded projects. If the analysis of current expenditures or participant services indicates the project is lagging and its funding is at risk of being reduced or terminated, the award of previously-reserved incremental funding and/or funding for the subsequent year may be affected. Such funding may be reduced or denied, consistent with any de-obligation decision which has been reached regarding the project’s current program year funding.

ACTION

Please bring this directive to the attention of appropriate staff.

INQUIRIES

If you have any questions, contact your assigned [Regional Advisor](#) or Project Manager.

/S/ JOSÉ LUIS MÁRQUEZ, Chief
Central Office Workforce Services Division

Attachment is available on the internet:

[Summary of Comments](#)