



## State Policy

## Workforce Innovation and Opportunity Act (WIOA)

<p>Nebraska Department of Labor (NDOL) Office of Employment and Training 550 South 16<sup>th</sup> Street Lincoln, NE 68508 402.471.2022 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a></p>	<p><b>Policy category</b> Administrative Requirements</p> <p><b>Effective date</b> October 11, 2017</p> <p><b>Supersedes</b> Preliminary Policy on Correction of Records in the State's Integrated MIS, NEworks (Rev. 6/8/2015) Preliminary Policy on Data Validation (Rev. 6/8/2015) Preliminary Policy on Electronic Case Files (Rev. 6/8/2015) Interim Policy on Record Retention (Rev. 11/20/2015)</p>
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## Records Management

### REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

### BACKGROUND

Recipients and subrecipients of Federal financial assistance, including WIOA<sup>1</sup> funds, are required to keep records that are sufficient to:<sup>2</sup>

- prepare required reports on program performance and outcomes; and
- trace funds to a level of expenditure adequate to ensure that funds have been spent lawfully.

<sup>1</sup> WIOA refers to the Workforce Innovation and Opportunity Act of 2014.

<sup>2</sup> WIOA Secs. 185(a)(1) and (e)(1); 2 CFR Parts 200 and 2900

## ACTION

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This policy supersedes and cancels the State's:<sup>3</sup>

- Preliminary Policy on Correction of Records in the State's Integrated MIS, NEworks (Rev. 6/8/2015);
- Preliminary Policy on Data Validation (Rev. 6/8/2015);
- Preliminary Policy on Electronic Case Files (Rev. 6/8/2015); and
- Interim Policy on Record Retention (Rev. 11/20/2015).

The State provides a thirty (30) day review period for this policy, during which questions and comments may be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

### (a) Local WIOA Title IB (Youth, Adult, and Dislocated Worker) programs

For local WIOA Title IB (Youth, Adult, and Dislocated Worker) programs, each local board must:

- ensure the establishment and maintenance of a local area management information system;
- ensure the submission or availability of the reports, records, supporting documentation, and data required under WIOA Title I;
- create and manage records according to the requirements of this policy, including record corrections;
- retain and provide access to records according the requirements of this policy; and
- if using third-party records management systems (other than NEworks), adhere to the requirements regarding third-party systems established in this policy.

### (b) Programs administered by NDOL's Office of Employment and Training

For programs administered by the Nebraska Department of Labor (NDOL) Office of Employment and Training, program staff must:

- create and manage records according to the requirements of this policy, including record corrections; and
- retain and provide access to records according the requirements of this policy.

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<sup>3</sup> The term "State" refers to the Nebraska Workforce Development Board and the Nebraska Department of Labor (acting on the Governor's behalf pursuant to the Governor's Executive Order No. 15-03).

## POLICY

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This policy establishes records management requirements for:

- local WIOA Title IB (Youth, Adult, and Dislocated Worker) programs; and
- the following programs administered by NDOL’s Office of Employment and Training:
  - Jobs for Veterans State Grant (JVSG) program;
  - Trade Adjustment Assistance (TAA) program;
  - WIOA Title III (Wagner-Peyser) programs; and
  - applicable discretionary grant programs.

This policy is organized in six (6) sections and one (1) appendix.

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### Section I. General requirements

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NDOL must report on the data elements specified in the participant individual record layout (PIRL) issued by the US Department of Labor (USDOL) Employment and Training Administration.<sup>4</sup>

#### (a) Local WIOA Title IB (Youth, Adult, and Dislocated Worker) programs

Each local board receiving WIOA Title IB (Youth, Adult, and Dislocated Worker) funds must, for reporting, monitoring, and evaluation purposes:<sup>5</sup>

- ensure the establishment and maintenance of a local area management information system designed to facilitate uniform compilation, cross tabulation, and analysis of programmatic, participant, and financial data, including data necessary to comply with the nondiscrimination provisions of WIOA Sec. 188 and 29 CFR Part 38; and
- submit or make available through electronic means the reports, records, supporting documentation, and data required under WIOA Title I.

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<sup>4</sup> TEGL 10-16 Change 1

<sup>5</sup> WIOA Sec. 185(c); TEGL 10-16 Change 1

### (1) Required reports, records, and data

The reports, records, and data required under WIOA Title I include information regarding programs and activities, including:<sup>6</sup>

- demographic characteristics (including race, ethnicity, sex, and age) and other related information regarding participants;
- programs and activities in which participants are enrolled and the length of time participants are engaged in the programs and activities;
- outcomes of programs and activities for participants, including information on participant occupations and placement of participants in nontraditional employment;
- costs of the programs and activities;<sup>7</sup> and
- information necessary to prepare reports to comply with the nondiscrimination provisions of WIOA Sec. 188 and 29 CFR Part 38.

### (b) Programs administered by NDOL's Office of Employment and Training

NDOL's Office of Employment and Training administers the following Federally-funded programs:

- Jobs for Veterans State Grant (JVSG) program;
- Trade Adjustment Assistance (TAA) program;
- WIOA Title III (Wagner-Peyser) programs; and
- applicable discretionary grant programs.

Records for these programs must be managed according to the:

- requirements of each program's authorizing legislation, grant agreements, and the applicable requirements of the Uniform Guidance,<sup>8</sup> and
- requirements established in this policy.

## Section II. Records management systems

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NEworks is NDOL's management information system. NEworks is the system of record for the State of Nebraska with regard to Federal reporting for local WIOA Title IB programs and the NDOL-administered programs listed in [Section I\(b\)](#).

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<sup>6</sup> WIOA Sec. 185(d)

<sup>7</sup> Refer to the State's policy on quarterly reporting and NDOL's Financial Request and Reporting System for additional information on reporting of obligations and expenditures of WIOA Title IB funds.

<sup>8</sup> The term *Uniform Guidance* refers to 2 CFR Parts 200 and 2900

### (a) Local WIOA Title IB (Youth, Adult, and Dislocated Worker) programs

To meet the local board's obligations described in [Section I\(a\)](#), local area staff must use:

- NEworks<sup>9</sup> or a third-party management information system; and
- NDOL's Enterprise Content Management (ECM) system or a third-party content management system.

For local areas using NEworks and the ECM system, NDOL provides local area staff with access to and training on the use of systems. Requests for training on NEworks should be submitted to Brian Potters at [brian.potters@nebraska.gov](mailto:brian.potters@nebraska.gov).

#### (1) Third-party systems<sup>10</sup>

If a local board elects to use third-party management information or content management systems, and in order for NDOL to obtain local area program performance data and adhere to Federal reporting requirements, the third-party systems must:

- successfully interface NEworks;
- provide reportable data to NEworks;
- adhere to confidentiality requirements on the use of education data under the Family Educational Rights and Privacy Act, established under Section 444 of the General Education Provisions Act;
- adhere to the requirements of Section 7 of the Privacy Act of 1974 regarding collection and use of Social Security Numbers;<sup>11</sup> and
- not be used for the development of a national database of personally identifiable information (PII) on individuals receiving services under WIOA Title I.

In addition, if a local board elects to use third-party systems, the local board must establish:

- a policy or procedures manual that defines data gathering procedures to facilitate monitoring activities, including procedures for:
  - accessing the third-party systems;
  - appropriate use of the third-party systems;

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<sup>9</sup> NDOL assesses a prorated fee for use of NEworks by local area staff.

<sup>10</sup> WIOA Sec. 501(b); 20 CFR Part 603 Subpart B; 20 CFR §§ 658.604(a), 677.175, and 683.220. Use of third-party systems is at the local board's sole cost and expense. The local board is also responsible for all aspects of the systems, including training local area staff on systems use.

<sup>11</sup> Privacy Act Sec. 7(a)(1) [5 USC § 552a note]: "It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number." Neither WIOA nor its implementing regulations allow or require states to request or require SSNs as a condition of program participation or for receipt of any form of financial assistance, which would be a violation of the Privacy Act of 1974.

- collection and storage of supporting documentation;<sup>12</sup> and
- correction of records in the third-party systems;
- internal control structures and written policies that provide safeguards to protect personally identifiable information (PII), records, sensitive information, and other information that is readily or easily exchanged in the open market, or that USDOL, NDOL, the local board consider sensitive, consistent with applicable Federal, state and local privacy and confidentiality laws.

#### (b) Programs administered by NDOL's Office of Employment and Training

For the NDOL-administered programs listed in [Section I\(b\)](#), program staff must use NEworks and must use the ECM system if supporting documentation is required according to the programs' authorizing legislation or discretionary grant award.

### Section III. Electronic case files

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The following programs must complete and document all program activities electronically:

- local WIOA Title IB (Youth, Adult, and Dislocated Worker) programs;
- Jobs for Veterans State Grant (JVSG) program;
- Trade Adjustment Assistance (TAA) program;
- WIOA Title III (Wagner-Peyser) programs; and
- applicable discretionary grant programs.

#### (a) Elements

For local area staff using NEworks, the following records and data are captured and stored exclusively in NEworks:

- program applications;
- eligibility determinations;
- participant enrollments;
- exits and follow-ups;
- case notes; and
- all other information relevant to program activities.

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<sup>12</sup> TEGL 22-15 provides details on documentation requirements, which apply until USDOL issues further guidance.

For local staff using the ECM system, all supporting documentation is stored exclusively in the ECM system.

**IMPORTANT.** Paper records are not permitted and are not considered during monitoring or for data validation purposes.

#### (b) Case notes

Case notes add context to elements in the electronic case file that are not clearly evidenced, such as participant enrollment activities and consultation activities regarding training.

Case notes must be directly related to and are necessary supplemental information that support employment and training services provided to the participant.

If a program activity is planned to last more than one (1) day, the case manager must document actual service delivery in case notes.

### Section IV. Records correction

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Records in management information and content management systems that contain errors must be corrected. However, requests for correction of records will not be processed if the records are included in an annual report that has been submitted to USDOL.

To request a record correction in NEworks or the ECM system, local area staff must complete a record correction form.<sup>13</sup> The request must include supporting documentation. The request must be reviewed by local area management prior to submission to NDOL's NEworks administrator.

Record corrections in third-party systems are the responsibility of the local area staff using those systems and are processed according to the local board's policies or procedures manuals.

**IMPORTANT.** A correction-of-records process must not be used to enhance program performance or distort actual events.

### Section V. Records retention<sup>14</sup>

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For the programs listed in [Section III](#), financial records, supporting documents, statistical records, and all other non-Federal entity records pertaining to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report, as reported to the Federal awarding agency, or pass-through entity in the case of a subrecipient.

Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities, except under the following circumstances.

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<sup>13</sup> The record correction form is part of the ECM e-form document workflow.

<sup>14</sup> 2 CFR § 200.333

- If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- Records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.
- When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three (3) year retention requirement is not applicable to the non-Federal entity.
- *Records for program income transactions after the period of performance.* In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- *Indirect cost rate proposals and cost allocations plans.* This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
  - *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three (3) year retention period for its supporting records starts from the date of such submission.
  - *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three (3) year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

## Section VI. Records access

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### (a) Rights of access<sup>15</sup>

The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of a non-Federal entity which pertain to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also

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<sup>15</sup> 2 CFR § 200.336(a)

includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Expiration of right of access<sup>16</sup>

The rights of access described above are not limited to the required retention period described in [Section VI](#). The rights of access last as long as the records are retained by the non-Federal entity. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

(c) Public access to records<sup>17</sup>

Unless required by Federal, state, local, or tribal statute, non-Federal entities are not required to permit public access to their records.

No Federal awarding agency may place restrictions on a non-Federal entity that limit public access to the entity's records pertaining to a Federal award, except:

- records that include protected personally identifiable information (PII); or
- when the Federal awarding agency can demonstrate that the records will be kept confidential and would have been:
  - exempted from disclosure pursuant to the Freedom of Information Act (FOIA);<sup>18</sup> or
  - deemed as controlled unclassified information<sup>19</sup> pursuant to Executive Order 13556, if the records had belonged to the Federal awarding agency.

Records provided to a Federal agency by a non-Federal entity are, in general, subject to FOIA and applicable exemptions.

## DISCLAIMER

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This policy is based on NDOL's reading of the applicable statutes, regulations, rules, and guidance released by the U.S. Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

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<sup>16</sup> 2 CFR § 200.336(c)

<sup>17</sup> 2 CFR § 200.337

<sup>18</sup> 5 USC § 552; FOIA does not apply to records that remain under a non-Federal entity's control, except as required under 2 CFR § 200.315 (intangible property).

<sup>19</sup> Controlled unclassified information (CUI) is unclassified information belonging to the Executive Branch of the U.S. Government that requires safeguarding or dissemination controls.

## APPENDIX I. Definitions

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**PURPOSE.** Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

### 1. common exit<sup>20</sup>

*Common exit* means a participant is exited only when all of the *exit* criteria described in the definition of *exit* (item 3 below) are met for each program in which the participant is enrolled.

**Example:** Participant Joe is a worker covered by a Trade Certification and is co-enrolled in the Dislocated Worker and Wagner-Peyser programs. Joe's last date of service under Wagner-Peyser is August 1<sup>st</sup>. Joe's last date of service under the Dislocated Worker program is September 15<sup>th</sup>. Joe's last date of service under the Trade program is October 1<sup>st</sup>. Joe receives no additional services from the Trade, Dislocated Worker, and Wagner-Peyser programs. Joe's common exit date is October 1<sup>st</sup>.

### 2. data validation

*Data validation* confirms the accuracy of:

- aggregate reports on program activity and performance outcomes; and
- individual data elements.

In general, data validation occurs on an annual basis according to timelines issued by USDOL using a methodology determined by NDOL.

### 3. exit (program exit)<sup>21</sup>

*Exit* (or *program exit*) is the last date of service.

The last day of service cannot be determined until at least ninety (90) days have elapsed since the participant last received services.

Services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

This criteria for determining program exit applies to the:

- Adult, Dislocated Worker, and Youth programs (WIOA Title IB);
- Wagner-Peyser Employment Service programs (WIOA Title III);

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<sup>20</sup> 20 CFR § 677.150(c)(3)(ii)

<sup>21</sup> 20 CFR § 677.150(c)

- Jobs for Veterans State Grant (JVSG) program; and
- Trade Adjustment Assistance (TAA) program.

#### 4. Federal financial assistance

*Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:<sup>22</sup>

- grants;
- cooperative agreements;
- non-cash contributions or donations of property (including donated surplus property);
- direct appropriations;
- food commodities; and
- other financial assistance, excluding:
  - loans;
  - loan guarantees;
  - interest subsidies; and
  - insurance.

#### 5. non-Federal entity

*Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.<sup>23</sup> For purposes of the policy, non-Federal entity may refer to NDOL, local boards, or other non-Federal entities, depending on the context.

#### 6. pass-through entity

*Pass-through entity* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.<sup>24</sup> For purposes of this policy, pass-through entity may refer to NDOL or local boards, depending on the context.

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<sup>22</sup> 2 CFR § 200.40

<sup>23</sup> 2 CFR § 200.69

<sup>24</sup> 2 CFR § 200.74

7. recipient<sup>25</sup>

*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 term recipient does not include subrecipients. For purposes of this policy, recipient refers to NDOL.

8. subaward<sup>26</sup>

*Subaward* means 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. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program (*i.e.*, a program participant). A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

9. subrecipient<sup>27</sup>

*Subrecipient* means 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 (*i.e.*, a program participant).

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<sup>25</sup> 2 CFR § 200.86

<sup>26</sup> 2 CFR § 200.92

<sup>27</sup> 2 CFR § 200.93