

**Nevada Department of Employment, Training and Rehabilitation
(DETR)
Workforce Innovation and Opportunity Act (WIOA)
State Compliance Policy (SCP)**

Policy Number: 5.4

Originating Office: DETR; Workforce Investment Support Services (WISS)

Subject: Record Retention

Issued: NEW; replacing WIA State Compliance Policy 5.4, Approved GWDB Executive Committee, 09-20-17; Ratified GWDB, 10-19-2017

Purpose: To provide guidance with the Workforce Innovation and Opportunity Act (WIOA) requirements in record retention.

State Imposed Requirements: This directive may contain some state-imposed requirements. These requirements are printed in **bold, italic type**.

Authorities/References: Workforce Innovation and Opportunity Act (P.L. 113-128), 2 CFR §200; 29 CFR §38.4; TEGL 39-11; Nevada Administrative Code (NAC) 239.155, 239.711, 239.722, Nevada Revised Statutes (NRS) 239.080; State Administrative Manual (SAM) 0402.

ACTION REQUIRED: Upon issuance bring this guidance to the attention of all WIOA service providers, Local Workforce Development Board (LWDB) members and any other concerned parties. Any LWDB's policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

Background:

Recipient and sub-recipients of Workforce Innovation and Opportunity Act (WIOA) funds are required to keep records that are sufficient to prepare required reports and to trace funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully. Additionally records must be maintained/stored in such a manner that will ensure confidentiality, preserve the integrity and admissibility as evidence in any audit, litigation or other proceeding. The burden of production and authenticity of the documents is on the custodian of the records.

Policy and Procedure:

Records must be retained and stored in a manner which preserves their confidentiality, integrity and admissibility as evidence in any audit or other proceeding. The burden of production and authentication of the record shall be on the custodian of the record.

Handling and Protection of Personally Identifiable Information: (PII) (TEGL 39-11)

Federal law, OMB Guidance, and Departmental and Employment & Training Administration (ETA) polices require that PII and other sensitive information be protected. ETA has examined the ways its grantees, as stewards of Federal funds, handle PII and sensitive information and has determined that to ensure ETA compliance with Federal law and regulations, grantees must secure transmission of PII and sensitive data developed, obtained, or otherwise associated with ETA funded grants.

Grantees must take the steps necessary to ensure the privacy of all PII obtained from participants and/or other individuals and to protect such information from unauthorized disclosure. Grantees must maintain such PII in accordance with the ETA standards for information security described in this TEGL and any updates to such standards provided to the grantee by ETA. Grantees who wish to obtain more information on data security should contact *DETR/WISS* or their Federal Project Officer (FPO).

Grantees further acknowledge that all PII data obtained through their ETA grant shall be stored in an area that is physically safe from access by unauthorized persons at all times and the data will be processed using grantee issued equipment, managed information technology (IT) services, and designated locations approved by ETA. Accessing, processing, and storing of ETA grant PII data on personally owned equipment, at off-site locations e.g., employee's home, and non-grantee managed IT services, e.g., Yahoo mail, is strictly prohibited unless approved by ETA.

Grantees must have their policies and procedures in place under which grantee employees and other personnel, before being granted access to PII, acknowledge their understanding of the confidential nature of the data and the safeguards with which they must comply in their handling of such data as well as the fact that they may be liable to civil and criminal sanctions for improper disclosure.

Recommendations: Protected PII is the most sensitive information that you may encounter in the course of your grant work, and it is important that it stays protected. Grantees are required to protect PII when transmitting information, but are also required to protect PII and sensitive information when collecting, storing and/or disposing of information as well. Outlined below are some recommendations to help protect PII:

- Before collecting PII or sensitive information from participants, have participants sign releases acknowledging the use of PII for grant purposes only.
- Whenever possible, ETA recommends the use of unique identifiers for participant tracking instead of SSNs. While SSNs may initially be required for performance tracking purposes, a unique identifier could be linked to the each individual record. Once the SSN is entered for performance tracking, the unique identifier would be used in place of the SSN for tracking purposes. If SSNs are to be used for tracking purposes, they must be stored or displayed in a way that is not attributable to a particular individual, such as using a truncated SSN.
- Use appropriate methods for destroying sensitive PII in paper files (i.e., shredding or using a burn bag) and securely deleting sensitive electronic PII.
- Do not leave records containing PII open and unattended.
- Store documents containing PII in locked cabinets when not in use.

- Immediately report any breach or suspected breach of PII to the FPO responsible for the grant, and to ETA Information Security at ETA.CSIRT@dol.gov, (202) 693-3444, and follow any instructions received from officials of the Department of Labor.

Access to Records: (2 CFR§ 200.336)

(a) Records of non-Federal entities. 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 the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

Limitation of Public Access to Records:

Personal records of program registrants will be private and confidential, and will not be disclosed to the public. Personal information may be made available to partners or service providers on a selective basis consistent with the registrant's signed "Release of Information" form. In addition, this information may be made available to persons or entities having responsibilities under WIOA including representatives of:

- The Department of Labor
- The Governor
- WIOA Grant Recipients and Public Agencies
- Local Area Sub-recipients

The conditions under which information may be released or withheld are shown below:

- WIOA registrants will have access to all information concerning themselves as individuals unless the records or information are exempted from disclosure.
- The names of LWDB staff and sub-recipient staff in positions funded by WIOA, in part or in whole, will be a matter of public record. Other information pertaining to these recipient or sub-recipient employees will be made available to the public in the same manner and to the same extent as such information is made available regarding staff in positions not funded by WIOA.

Reference WIOA Sec. 185(a)(4).

Fiscal Record Retention Requirements: (2 CFR §200.333(a)-(e))

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, 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. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the [**5 year period State imposed**], the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) 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.

(c) Records for real property and equipment acquired with Federal funds must be retained for [**5 years State imposed**] after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) 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.

Reference 29 CFR §38.43

Required Maintenance of Records by Recipients: (29 CFR §38.43)

(a) Each recipient must maintain the following records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three years [**5 years State imposed**] from the close of the applicable program year:

(1) The records of applicants, registrants, eligible applicants/registrants, participants, trainees, employees, and applicants for employment; and

(2) Such other records as are required under this part or by the Director.

(b) Where a discrimination complaint has been filed or compliance review initiated, every recipient that possesses or maintains any type of hard-copy or electronic record related to the complaint (including records that have any relevance to the underlying allegations in the complaint, as well as records regarding actions taken on the complaint) or to the subject of the compliance review must preserve all records, regardless whether hard-copy or electronic, that may be relevant to a complaint investigation or compliance review, and maintain those records for a period of not less than three years [**5 years State imposed**] from the date of final action related to resolution of the complaint or compliance review.

Document Destruction:

The custodians of record are responsible for the ongoing process of identifying its records, which have met the required retention period, and overseeing their destruction. Destruction of financial personally identifiable information (PII) and personnel-related document will be accomplished by shredding, incineration or approved disposal method which ensures the information contained in the record cannot be retrieved or reconstructed. **Reference NRS 239.080 and NAC 239.711-745.**

Compliance:

Failure on the part of employees to follow the agency policy can result in possible civil and criminal sanctions against the Organization and its employees and possible disciplinary action against responsible individuals. The Custodian of Records and/or the Executive Director will periodically review their procedures with legal counsel or the organization's certified public accountant to ensure that they are in compliance with current regulations.

Eligible Training Provider (ETP):

LWDB and subrecipients, as appropriate, will maintain records on ETPs, participants, complaints and investigations sufficient to track performance, cost, eligibility complaint resolution and American's with Disabilities Act (ADA) and Equal Employment Opportunity (EEO) requirements for a minimum of five (5) years. Reference SCP 1.12 and 1.13 for more detail on ETP and ETPL.

Local Board Policy Requirements Summary:

All records, regardless of the media on which they reside must be retained for the minimum retention period by the nature of the record. Electronic records shall not be denied legal effect or enforceability as related to this policy. The custodian must ensure that the method used ensures that the security safeguards and protections are sufficient for the records to be accepted by a court as evidences. Additionally, the custodian must ensure that a satisfactory plan of recovery exists should critical records be lost in the event of fire, vandalism, or natural/other disaster.

LWDBs must have written policy, approved by their Board, covering aspects of record handling, including PII, retention, retention period(s), document destruction, public access to records, and ETPs.

(WIOA Sec. 185)

All grantee's and sub-grantee's contracts must contain provisions that:

- allow access by the grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examinations, excerpts, and transcriptions; and
- pursuant to WIOA Contract mandate, retention of all required records *is five (5) years* after grantees or sub-grantees make final payments or for a period of not less than *five (5) years* from the date of final resolution of an audit, litigation or other action, whichever date is later.
- The LWDB will ensure all subrecipients will be required to include appropriate record retention procedures in their contractual agreement and must ensure compliance through regular monitoring procedures. In the event of the termination of a relationship with a subrecipient, the LWDB shall be responsible for the maintenance and retention of the subrecipient records for those unable to retain them.

NOTE: Reference SCP 1.6 (Adult/Dislocated Worker) and 2.1 (Youth) for specific participant case file document requirements. TEGL 10-16 Performance Accountability Guidance as required in WIOA Sec 116 and 20 CFR §677.

Definitions:

Federal awarding agency; the Federal agency that provides a Federal award directly to a non-Federal entity.

Non-Federal entity; 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.

Pass-through entity; means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Subaward; 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. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient; 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. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.