

GENERAL PROVISIONS & ASSURANCES

June 1, 2011

PROVISIONS AND ASSURANCES

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SERIES 100 - ADMINISTRATIVE PROVISIONS

Section 101. DEFINITIONS

The words and terms defined below shall have the meaning set forth when used in this agreement.

ACT. The Workforce Investment Act (WIA). (29 USC 2801)

ALLOWABLE COST CATEGORIES:

1. ADMINISTRATION for Adult, Dislocated Worker, and Youth programs: The costs of administration are that allocable portion of necessary and allowable costs associated under subtitle B of Title I which are not related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect. The costs of administration are the costs associated with performing the following:

- A. Overall general administrative functions and coordination of those that include:
 - Accounting, budgeting, financial and cash management functions;
 - Procurement and purchasing functions;
 - Property management functions;
 - Personnel management functions;
 - Payroll functions;
 - Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports;
 - Audit functions;
 - General legal services functions; and
 - Developing systems and procedures, including information systems required for these administrative functions;
- B. Performing oversight and monitoring responsibilities related to WIA administrative functions, i.e. monitoring a subrecipient that performs payroll functions.
- C. Costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;
- D. Travel costs incurred for official business in carrying out administrative activities or the overall management of the WIA system; and
- E. Cost of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting and payroll systems) including the purchase, systems development and operating costs of such systems.

2. ALLOCATED COSTS

- A. Only that portion of the costs of One Stop operators which are associated with the performance of the administrative functions described above and awards to subrecipients or vendors that are solely for the performance of administrative functions are classified as administrative costs. All other costs of One-Stop operators are classified as program costs.
- B. Personnel and related non-personal costs of staff who perform both administrative and programmatic functions are to be allocated as administrative or program costs to the benefiting cost objectives based on documented distributions of actual time worked or other equitable cost allocation methods.

C. Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost are to be charged as a program cost. Documentation of such charges must be maintained.

3. WIA PROGRAM costs for Adult, Dislocated Worker, and Youth: The costs identified as program are that portion of necessary and allowable costs associated under subtitle B of Title I which are related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect.

4. RAPID RESPONSE ASSISTANCE: Activities provided by a State or by an entity designated by a State, with funds provided by the State under section 134(a)(1)(A), in the case of a permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster, that results in mass job dislocation, in order to assist dislocated workers in obtaining reemployment as soon as possible, with services including—

- A. The establishment of onsite contact with employers and employee representatives—
 - (i) immediately after the State is notified of a current or projected permanent closure or mass layoff; or
 - (ii) in the case of a disaster, immediately after the State is made aware of mass job dislocation as a result of such disaster;
- B. The provision of information and access to available employment and training activities;
- C. assistance in establishing a labor management committee, voluntarily agree to by labor and management, with the ability to devise and implement a strategy for assessing the employment and training needs of dislocated workers and obtaining services to meet such needs;
- D. the provision of emergency assistance adapted to the particular closure, layoff, or disaster; and
- E. the provisions of assistance to the local community in developing a coordinated response and in obtaining access to State economic development assistance.

ADMINISTRATIVE ENTITY. The Idaho Department of Labor is designated as the State Administrative Entity and the local Administrative Entity. When referenced in this agreement, the term Administrative Entity shall mean the Idaho Department of Labor.

AGREEMENT. The written agreement that sets forth the binding legal relationship between the Administrative Entity and a public or private nonprofit Subrecipient, including, but not limited to: the Signature Page, Statement of Work, Program Planning Summary, Budget Summary and the Provisions and Assurances, State Rules and Regulations, and any other documents referred to or attached to the agreement.

BUDGET SUMMARY. That part of the final signed agreement between the Administrative Entity and the Subrecipient that sets forth expenditures planned under the agreement and authorizes said expenditures.

EXPENDABLE PERSONAL PROPERTY. Tangible personal property including consumable materials and supplies, equipment or other property having a unit cost of less than \$2000 and a useful life of less than one year. Ownership of expendable personal property remains with the Subrecipient.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) - FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to empower every American with the ability to hold the government accountable for each spending decision.

IDAHO WORKFORCE DEVELOPMENT COUNCIL (State Council). The Council is appointed by the Governor, who designates one nongovernmental member to be chairperson. The Council is composed of members who are representatives of business and industry, state agencies and organizations, organized labor, community-based organizations and educational agencies. It is the responsibility of the Council to advise the Governor in planning, coordinating and maintaining Idaho's workforce development system.

MEMORANDUM OF UNDERSTANDING (121). The memorandum of understanding shall contain—

- (A) provisions describing the services to be provided through the one-stop delivery system; how the costs of such services and the operating costs of the system will be funded; methods for referral of individuals between the one-stop operator and the one-stop partners, for the appropriate services and activities; and the duration of the memorandum and the procedures for amending the memorandum during the term of the memorandum; and
- (B) such other provisions, consistent with the requirements of the Act, as the parties to the agreement determine to be appropriate.

MODIFICATION. Any change in the term or condition of this agreement which affects the Subrecipient's operation or procedures.

NONEXPENDABLE PERSONAL PROPERTY. Property having an acquisition cost of \$2000 or more, per item, regardless of estimated useful life is considered nonexpendable property. The Administrative Entity is responsible for disposition of items so purchased. Any item purchased with WIA funds which has a unit cost of over \$2000 remains the property of the state, and must be disposed of in accordance with applicable federal and state regulations. The Subrecipient must obtain prior approval from the Administrative Entity for purchase of property having a unit acquisition cost of \$2000 or more.

PARTICIPANT. An individual who has been determined to be eligible to participate in and who is receiving services (except follow-up services authorized under this title) under a program authorized by this title. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the individual is registered and begins receiving subsidized employment, training, or other services provided under this title.

PLACEMENT. The act of securing unsubsidized employment (full or part time) for or by a participant. Unsubsidized employment means employment in private-for-profit firms, public, or nonprofit agencies not financed from funds provided under the Act. Placement shall include entry into the armed forces, entry into employment in a registered apprenticeship program, and self-employment.

RECIPIENT. The Governor of the State of Idaho has designated the Idaho Department of Labor as the Grant Recipient.

SELF-SUFFICIENCY. An employed adult shall be considered self-sufficient if the family income exceeds 200% of OMB's poverty income level guidelines. A re-employed dislocated worker shall be considered self-sufficient if the family income exceeds 200% of OMB's poverty income level, OR, he/she is employed in a permanent position that pays at least 90% of the qualifying layoff wage, whichever is higher.

STATEMENT OF WORK. That part of the final signed agreement between the Subrecipient and the Administrative Entity that sets forth the work and/or services to be provided under the agreement, and required performance standards to be achieved during the period of the agreement.

SUBRECIPIENT. The participating entity that is charged with responsibility for carrying out the requirements of the agreement.

SUBMISSION DATE. Date by which the requested material is to be received by the Administrative Entity or Subrecipient.

SUSPENSION. An action of the Administrative Entity that temporarily suspends the contractual relationship established under the agreement pending corrective action by the Subrecipient or a decision to terminate the agreement by the Administrative Entity.

TERMINATION. Cancellation of the contractual relationship established under the agreement, in whole or in part, at any time prior to the date of completion.

UNALLOWABLE COSTS. Those charges to the agreement that are determined to be unallowable under the provisions of the Act, federal regulations, state rules and/or terms and conditions of the agreement.

Section 102. COMPLIANCE WITH ACT

The Subrecipient agrees that all activities conducted under authority of this agreement shall be in strict compliance with the provisions of the Act, federal regulations and state rules promulgated thereunder. Copies of the Act and regulations are public documents available upon request from the Administrative Entity.

Section 103. INCORPORATION BY REFERENCE

The subgrant/contract agreement is augmented by the included attachments and Provisions and Assurances, as well as other special provisions attached as exhibits, appendices or attachments. All such documents affixed or referred to in the agreement are hereby incorporated by reference. Such documents constitute part of the agreement and are enforceable as provided herein. If any provision set forth in the statement of work or any annual plan is more restrictive than the Provisions and Assurances, the more restrictive provisions will apply.

Section 104. REVISIONS TO AGREEMENT

The Subrecipient acknowledges and agrees that notification from the Administrative Entity regarding changes requiring modification to this agreement may be necessary, due to new or revised legislation or regulations, and that changes which do not materially alter the program design or costs shall be incorporated into this agreement. If the Subrecipient responds within ten days after date of notice that it cannot comply with the revised requirements, the Administrative Entity shall have the right to terminate the agreement upon receipt of such notice. Changes in law or regulations that require modification to the statement of work or program design of a substantive nature may result in termination of the agreement.

Section 105. AVAILABILITY OF FUNDS

It is understood that all funding is contingent upon the availability of federal funds and continued federal authorization for program activities, and is subject to amendment due to lack of funds or authorization. In the event federal funds are reduced or terminated, the financial participation of the Administrative Entity shall be reduced accordingly or terminated.

Section 106. LIMITATIONS ON USE OF FUNDS (181)

No funds available under this title shall be used for employment generating activities or economic development activities unless directly related to training for eligible individuals, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities that are not directly related to training for eligible individuals under this title.

Formula funds shall not be used for foreign travel.

Funds must not be spent on: (1) public service employment, except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA; (2) expenses prohibited under any other Federal, State or local law or regulation; (3) business relocation as specified in Section 314 of this document.

Section 107. BUDGETARY LIMITATIONS

The total cost to the Administrative Entity for the performance of this agreement shall not exceed costs set forth in the Budget Summary. If at any time during the agreement period the Subrecipient has reason to believe that the total cost to the Administrative Entity for the performance of this agreement may exceed the budget, the Subrecipient shall promptly notify the Administrative Entity in writing, giving the revised estimate of total cost and the reasons for the possible increase. Following negotiations between the Administrative Entity and the Subrecipient, a modification may be effected as necessary, to revise the budget. The same practice shall be followed if the Subrecipient anticipates that the total cost will be less than eighty percent of the amount shown on the budget.

Section 108. CHANGES AND MODIFICATIONS

- a) General. The Administrative Entity may request changes in the general scope of this agreement, but such changes shall be limited to changes that would expedite achievement of the objectives and would not require substantive changes to the program design.
- b) Adjustment of Costs. If any change under this section causes an increase or decrease in the cost or time required of the Subrecipient for the performance of any part of the work or services under this agreement, an equitable adjustment, to the mutual satisfaction of both parties, may be made and the agreement modified in writing accordingly. Any claim for adjustment of cost by the Subrecipient must be made in writing, stating the justification for such claim. The adjustments proposed must be made on the budget format used for the agreement. No claim in conjunction with such changes shall be allowed for costs incurred prior to approval of the Subrecipient's request for an adjustment unless specific approval is granted in writing.
- c) Official Budget. The approved budget included in this agreement, or the most recent modification signed by the Subrecipient and the Administrative Entity or his appointed agent, shall be the official budget.

Section 109. SUSPENSION

The Administrative Entity may, upon 30 days' written notice to the Subrecipient, suspend this agreement in whole or in part if it is determined that the Subrecipient has materially failed to comply

with the terms and conditions of this agreement. No obligations incurred by the Subrecipient during such period of suspension shall be allowable under this suspended agreement, except that the Administrative Entity may, at his/her discretion, allow necessary and proper costs that the Subrecipient could not reasonably avoid during the period of suspension. Appropriate adjustments to payments under the suspended agreement will be made either by withholding payments or by not allowing the Subrecipient credit for disbursements that are made in the liquidation of authorized obligations incurred during the period of suspension. Suspension of the agreement shall remain in effect until the Subrecipient has taken corrective action to the satisfaction of the Administrative Entity, or given assurances satisfactory to the Administrative Entity that corrective action will be taken, or until the Administrative Entity terminates the agreement.

Section 110. TERMINATION FOR CONVENIENCE

The Administrative Entity or the Subrecipient may terminate this agreement in whole or in part when both parties agree that the continuation of the agreement would not produce results commensurate with further expenditure of funds. The two parties shall agree upon the termination conditions, including effective date, and in the case of partial terminations, the portion to be terminated.

Section 111. TERMINATION FOR CAUSE

This agreement may be terminated in whole or in part by the Administrative Entity at any time before the date of completion. Notice of termination will be given to the Subrecipient in writing. Except in those instances described in Sections 104 and 105 and paragraphs a) and b) of this Section, the notice of termination will be issued at least 30 calendar days prior to the effective date of termination. Termination for cause may be effected:

- a) Upon receipt by the Administrative Entity of Notice of Suspension or Termination of the Administrative Entity's Grant under which this agreement is made.
- b) For failure of the Subrecipient to perform according to the terms of this agreement, including failure to accomplish program objectives, comply with agreement assurances, or comply with any applicable laws and regulations.
- c) Due to unforeseen circumstances which would require a major modification to the design.

The Administrative Entity shall give the Subrecipient notice of intent to terminate the agreement which shall include a statement of the cause for termination and indicate what action by the Subrecipient is necessary to correct the deficiency. The notice shall set a date for the Subrecipient to implement or complete corrective action or to indicate that corrective action will not be taken. The notice shall also set a date for termination in the event that the Subrecipient takes no corrective action.

Upon receipt of notice of termination, the Subrecipient shall not incur new obligations for the remaining period of the agreement and shall cancel as many outstanding obligations as possible. The Administrative Entity shall, however, allow full credit for non-cancelable obligations, properly incurred, prior to the effective date of the termination.

Section 112. SEVERABILITY OF PROVISIONS

If any provision of this agreement is held invalid, the remainder of the agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable laws, ordinances, statutes, and regulations.

Section 113. ORAL AGREEMENT

No oral agreement or conversation with any officer, agent or employee of the Administrative Entity, either before or subsequent to execution of the agreement, shall affect or modify any of its terms. Any such oral agreement or conversation shall be considered as unofficial information, in no way binding upon the Administrative Entity or Subrecipient.

Section 114. INTERPRETATION OF AGREEMENT

If the Subrecipient is in doubt as to the true meaning of any part of this agreement, it may submit a written request for an interpretation to the Administrative Entity. The Administrative Entity shall respond within 14 days of receipt of such request. Any interpretation made in response to such a request shall not be binding unless it is in writing and duly signed by the Administrative Entity and mailed or delivered to the party requesting the interpretation. Such interpretation shall then become an official attachment to this agreement, provided that a written response disagreeing with the interpretation is not received within fourteen days. If such disagreement is received within the appropriate time, setting forth the reasons for disagreement, the Administrative Entity and the Subrecipient will negotiate. In the event an agreement is not reached, the Administrative Entity's decision on the issues involved will be final.

Section 115. DISPUTES

- a) The Subrecipient agrees to attempt to resolve disputes arising from the agreement by administrative process and negotiations in lieu of litigation. Continued performance during disputes is assured.
- b) Any dispute concerning a question of fact arising under this agreement, which is not settled by informal means, shall be decided by the Director of the Idaho Department of Labor who shall render his/her decision in writing, and mail or otherwise furnish a copy thereof to the Subrecipient within 14 days after submission.

Section 116. APPEAL PROCEDURES

The Subrecipient may formally protest administrative decisions made by the Administrative Entity that impact this agreement by filing a written complaint as authorized in the State Rules and Grievance Procedure.

Section 117. AUTHORITY OF THE ADMINISTRATIVE ENTITY

It is understood and agreed that performance under this agreement is to be accomplished to the satisfaction of the Administrative Entity; that the Administrative Entity will interpret all reports and will determine the acceptability of performance and the progress thereof; that the Administrative Entity will determine the amount, classification, and quality of work to be performed, and the amounts to be paid under the agreement; that the Administrative Entity shall be the judge of the

validity and acceptability of claims, if any, made by the Subrecipient for extra payments; and that the Administrative Entity's decision shall be final, conclusive and binding upon the Subrecipient. The above referenced authority shall, however, be subject to the outcome of any formal appeal procedures initiated by the Subrecipient.

Section 118. REALLOCATION AUTHORITY

The Administrative Entity may reallocate funds originally obligated under this agreement upon determination that the Subrecipient will be able to complete performance of this agreement without expending all funds obligated, and that such surplus funds cannot reasonably be expected to be required by the Subrecipient during the remainder of the agreement period to further promote the objectives of the agreement.

Upon such determination, a formal modification will be prepared to incorporate the necessary adjustment to the compensation authorized under the agreement.

Section 119. SUBCONTRACTING FOR WORK OR SERVICES

Unless specified in the statement of work, none of the work and/or services covered by this agreement shall be subcontracted without the prior written approval of the Administrative Entity. Any work or services subcontracted hereunder shall be specified in a written agreement and shall be subject to each applicable provision of this agreement. This does not preclude the Subrecipient from purchasing goods and services from vendors in support of program activities.

Section 120. ASSIGNABILITY

The Subrecipient shall not assign any interest in this agreement, and shall not transfer any interest in the same (whether by assignment or notation) without the prior written consent of the Administrative Entity.

Section 121. COPYRIGHTS AND INTELLECTUAL PROPERTY RIGHTS

If activities or work authorized under this or any other Federal grant result in a book or other copyrightable material, the author is free to copyright the work, but the Administrative Entity reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material that can be copyrighted.

The federal government reserves a paid-up, nonexclusive and irrevocable license to reproduce, public or otherwise use, and to authorize others to use for federal purposes: i) the copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses included, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

Section 122. DESIGNATION OF PROGRAM LIAISON

The Subrecipient shall designate a person who shall be administratively responsible for activities funded under this agreement and who shall be available to the Administrative Entity to provide information or discuss matters pertaining to this agreement.

Section 123. ATTENDANCE AT MEETINGS

The Subrecipient agrees that the Administrative Entity may schedule meetings from time to time to discuss program matters. Upon notification of such meetings, the Subrecipient shall make reasonable effort to assure attendance by members whose presence is requested.

Similarly, the Subrecipient may schedule meetings for the purpose of discussing program operations or administration of the agreement. Upon notification of such meetings, reasonable effort to provide for attendance of staff members of the Administrative Entity whose presence may be requested shall be made.

Section 124. COMPENSATION

All compensation made under this agreement shall be issued in accordance with the payment plan described in the "Method of Payment" section of the agreement unless otherwise specified in writing by the Administrative Entity. All payments to the Subrecipient under this agreement shall be made through warrants issued by the Idaho Department of Labor. All compensation made under this agreement to program participants and/or participating agencies shall be made through warrants authorized by the Idaho Department of Labor as specified in the Statement of Work unless otherwise specified in writing. Every effort will be made to minimize the time elapsing between the receipt of requests for reimbursement from the Subrecipient and the authorizing of warrants by the Administrative Entity, but at no time shall this period exceed fourteen days, provided that such requests are submitted as required.

Section 125. ALLOWABLE COSTS

a) To be allowable, a cost shall be necessary and reasonable for the proper and efficient administration of the program, be allocable to the program and, except as provided herein, not be a general expense required to carry out the overall responsibilities of the Governor or a Subrecipient. Costs charged to the program shall be accorded consistent treatment through application of generally accepted accounting principles appropriate to the WIA program.

Costs identified as not being necessary and/or reasonable may be questioned and/or disallowed by the Governor.

b) For the performance of this agreement, the Administrative Entity shall pay the Subrecipient the costs as approved by the Administrative Entity in this agreement, allowable in accordance with current rules and regulations for WIA, and procurement and fiscal standards as set forth in 29 CFR Subtitle A Part 95 and Part 97, OMB Circulars, A-21, A-122, and A-87, and the Treasury Circulars which prescribe cost principles to be used in

determining allowable WIA costs. The Subrecipient shall be paid only those costs incurred, expended or obligated in compliance with this agreement and federal regulations.

- c) The Administrative Entity is responsible for controlling, monitoring, auditing and reporting all WIA expenditures within the Workforce Investment Area. Therefore, review and approval for payments to the Subrecipient are required by the Administrative Entity prior to payment of WIA funds.
- d) WIA funds may be used for all reasonable costs including food and beverages at WIA meetings and at other group meetings where the purpose of the meetings is directly related to the business of the WIA program, and where WIA funds are not otherwise being used to compensate such expenses (e.g., through per diem reimbursement). WIA funds may not be used for the costs of alcoholic beverages, or for any function that can be considered to be entertainment, as defined in “h(3)”, below.
- e) The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and related expenses incurred in accordance with the organization’s established policy for the improvement or working conditions and employee performance are allowable, unless the function can be considered to be entertainment, as defined in “h(3)”, below. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.
- f) Personal liability insurance for organizations associated with program policymaking, administration, and management are allowable WIA costs.
- g) The cost of legal expenses required in the administration of grant programs is allowable.
- h) The following costs are NOT allowable charges to the WIA program:
 - (1) Costs of fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws and regulations;
 - (2) Back pay, unless it represents additional pay for WIA services performed for which the individual was underpaid;
 - (3) Entertainment costs, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities);
 - (4) Bad debts expense;
 - (5) Insurance policies offering protection against debts established by the Federal Government;
 - (6) Contributions to a contingency reserve or any similar provision for unforeseen events;

- (7) Costs prohibited in the Act related to lobbying restrictions, or costs of any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States; and
- (8) Costs of activities prohibited in §667.264, Public service employment prohibition; §667.275, Nondiscrimination and nonsectarian activities; §667.268, Relocation; §667.262, Employment generating activities; and §667.270, Displacement.
- (9) Legal services furnished by the chief legal officer of a State or local government or staff solely for the purpose of discharging general responsibilities as a legal officer.
- (10) Legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge.
- (11) Construction costs are not allowable costs except for funds used to: (a) Purchase equipment, materials, and supplies for use by participants while on the job and for use in the training of such participants (examples of such equipment, materials, and supplies are hand tools, work clothes, and other low cost items); and (b) Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training, tools, books, and needs-based payments, or other financial assistance to participants.

Section 126. COVENANT AGAINST CONTINGENT FEES

The Subrecipient warrants that no person or agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the Subrecipient. For breach or violation of this covenant, the Administrative Entity shall have the right to annul this agreement without liability, or at its discretion to deduct from the agreement cost or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

Section 127. FINANCIAL OBLIGATION OF THE SUBRECIPIENT

It is expressly agreed by and between the parties to this agreement that the implementation and execution of this agreement by the Subrecipient in no way creates a charge upon the local cash funds of the Subrecipient, except where (1) the Administrative Entity has determined that the Subrecipient is liable for unallowed costs; or (2) the Administrative Entity has determined that expenditure of WIA funds for all or part of a program must be suspended for failure to comply with the terms and conditions of this agreement, as provided for and following procedures set forth in Section 108 of these Provisions and Assurances.

Section 127A. INDEMNIFICATION

The Subrecipient shall defend, protect, and hold harmless the Administrative Entity and the State of Idaho, its officers, employees, and agents against all claims, suits or actions arising from any negligent act of omission or commission of the Subrecipient or any employee or agent thereof while performing its agreement with the Administrative Entity or its agreement with the participants served under this Agreement.

Section 128. ACCOUNTING SYSTEM

UNIFORM ADMINISTRATIVE REQUIREMENTS –

- A) **IN GENERAL** – each state (including the Governor of the State) and provider receiving funds under this title shall have the legal authority to apply for Federal Assistance and the institutional managerial and financial capability to ensure proper planning, management, and completion of the Statement of Work included in the provider Agreement. Further, providers shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget. Each entity receiving WIA funds will be responsible for identification of those administrative principles applicable to its organization and maintenance of procurement procedures consistent with those requirements, within the bidding thresholds established and included in the local Plan and WIA Procurement Policies established by the State.
- B) **ADDITIONAL REQUIREMENT** – Procurement transactions under this title between the Administrative Entity and units of State of local governments shall be conducted only on a cost-reimbursable basis.
- C) **THE SUBRECIPIENT SHALL** - establish and maintain a financial management system which complies with the applicable standards prescribed in OMB Circulars A-21, A-87, OMB A-122, and 29 CFR Subtitle A Part 95 and 97, and provides for:
- 1) Accurate, current, and complete disclosure of the financial results of agreement activities;
 - 2) Ability to identify adequately the source and application of agreement funds;
 - 3) Effective control over and accountability for all agreement funds;
 - 4) Comparison of actual agreement expenditures or earnings with budgeted amounts;
 - 5) Accounting records that are supported by source documentation and which provide for proper allocation among the several cost categories described in Section 101 of the General Provisions and Assurances.
 - 6) Fiscal accounts maintained in a manner sufficient to permit the reports required by the State Administrator to be prepared therefrom.
 - 7) Submission of completed Financial Status Reports (Forms I-81-WIA-33/34/35) to the Administrative Entity no later than the fifth day of each month during the period covered by this agreement to report accrued expenditures.
 - 8) Each Subrecipient shall report program outlays on an accrual basis. If the Subrecipient's accounting records are not normally kept on the accrual basis, the Subrecipient shall develop such accrual information through an analysis of the documentation on hand. (667.300)

- 9) Subrecipients requesting payments from the Administrative Entity based on unpaid liabilities (accruals) must disburse the cash requested within three days of receipt.

Section 129. SEGREGATION OF FUNDS

The Subrecipient shall be required to ensure that funds received under this agreement are accounted for separately with respect to other funds of the Subrecipient.

Section 130. PERMISSIBLE CHANGES IN AGREEMENT

The Subrecipient assures that no changes will be made in an approved Budget Summary except in accordance with WIA procedures as summarized below. See Section 107 for modifications to increase/decrease budget amounts. Except for revisions to a materials and supplies list, all changes within the total budget allowed must be initiated by a letter of request to the WIA Grants Management section of the Workforce Development Division. The Subrecipient must state which line items are to be increased and which to be correspondingly decreased so that the total budget remains unchanged. If the changes are approved, the Workforce Systems Bureau will respond with a formal modification to the agreement.

Materials and supplies lists may be revised by the Subrecipient if the budget for materials and supplies will not be increased and "Miscellaneous" as a category does not exceed \$25, provided that all purchases are in support of the agreement's allowable activities.

Any changes in the budget other than as stated above require formal modification to be submitted to the Workforce Development Division.

Section 131. MANAGEMENT AND DISPOSITION OF PERSONAL PROPERTY

The federal requirements governing the title, use, and disposition of real property, equipment, and supplies purchased with funds provided under this title shall be the Federal requirements generally applicable to Federal grants to States and local governments. (§195)

Nonexpendable personal property, including equipment, purchased in whole or in part from funds provided under a cost reimbursable agreement shall be managed in accordance with requirements specified at 29 CFR Part 97. Upon request, the Subrecipient shall furnish the Administrative Entity with an inventory of nonexpendable personal property so purchased. Said inventory shall be kept current by the Subrecipient.

All aggregate supplies with a fair market value of \$500 or more are to be disposed of in accordance with 29 CFR, Part 97.33 upon termination or completion of the grant support. If the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

Section 132. USE OF PERSONAL PROPERTY BY EMPLOYERS

Services, facilities, or equipment funded under this agreement may be used, as appropriate, on a fee-for-service basis, by employers in a local area in order to provide employment and training activities to incumbent workers—a) when such services, facilities, or equipment are not in use for the provision of services for eligible participants under this agreement; b) if such use for incumbent

workers would not have an adverse affect on the provision of services to eligible participants under this agreement; and c) if the income derived from such fees is used to carry out the programs authorized under this title. (195)

Section 133. SPECIAL LIMITATION ON PROPERTY OR EQUIPMENT PURCHASE, LEASE OR RENTAL

No nonexpendable equipment shall be purchased under a cost reimbursable agreement that has not been specified in the budget. Property or equipment, including purchased software, with a unit purchase, lease or rental price of \$2000 or more, of which a percentage of the cost is funded with WIA funds, shall not be purchased unless specific written approval is granted by the Administrative Entity. The state retains ownership of nonexpendable property purchased with WIA funds, and is responsible for ultimate disposition of such property. These items will be tracked on the State and local property inventories. A physical inventory will be conducted at least once every two years. Nonexpendable personal property having an acquisition cost of \$2000 or more may be disposed of only in accordance with federal regulations.

No real property shall be purchased in whole or in part without specific written approval of the State. Subrecipients shall notify the Administrative Entity immediately upon acquisition of real property with WIA funds. Such notification shall include the location of the real property and the Federal share percentage.

Rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property; market conditions in the area; alternatives available; the type, life expectancy, condition and value of the property leased. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization or governmental unit continued to own the property.

Rental costs under less- than - arms- length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization or governmental unit. A less- than - arms- length lease is one under which one party to the lease is able to control or substantially influence the actions of the other. Such leases include but are not limited to: (1) divisions of the same organization or governmental unit; (2) organizations under common control through common officers, directors, or members; and (3) an organization and a director, trustee, officer or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest; or (4) in the case of a state or local governmental unit, they create an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

Section 134. SPECIAL LIMITATION ON SALARY COSTS

In cost reimbursable agreements, salaries shall be paid only as specified in the budget. Changes to administrative or program salaries identified in the agreement budget must receive prior written approval of the Administrative Entity. No classification of positions may be utilized that is not included in the budget.

Section 135. BONDING AND INSURANCE

Subrecipients who receive a working capital cash advance of WIA funds shall assure that every officer, director, agent or employee who is authorized to act on behalf of the Subrecipient for the

purpose of receiving or depositing funds into program accounts, or issuing financial documents, checks, or other instruments of payments, shall be bonded to provide protection against loss. The amount of coverage prescribed in 41 CFR Part 29-70 is the lower of: (1) \$100,000; (2) the largest advance or payment received by the Subrecipient during the previous grant year; or (3) for new Subrecipients, the largest advance or payment planned to be received during the current agreement year. Evidence of bonding, in the form of a bond certificate, must be obtained from the bonding insurance agency and submitted to the Administrative Entity with the request for an advance. No funds shall be advanced without evidence of bonding.

The Subrecipient assures that it will protect and hold harmless the State of Idaho and Administrative Entity against claims arising from the ownership, maintenance, or use of a motor vehicle. The Subrecipient will ensure that there is automobile liability insurance covering bodily injury and property damage. Minimum coverage required is \$500,000 single combined limits per occurrence.

Section 136. PROGRAM INCOME

Program income is defined as earnings realized from grant supported activities. Such earnings may include but are not limited to income from service fees, conferences, sale of commodities, interest earned, rental fees, revenues in excess of expenditures realized from a fixed unit or performance based agreement.

A Recipient or Subrecipient may retain any program income earned by the Recipient or Subrecipient only if such income is added to the funds committed to the particular WIA grant or subgrant under which it was earned and such income is used for WIA purposes and under the terms and conditions applicable to the use of the grant funds. The classification of costs in 667.220 shall apply to such funds.

When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program. Any excess revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income.

Each Recipient and Subrecipient shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments. Program Income generated will be reduced from the WIA-33, Cash Request by the Administrative Entity, in the month it is generated.

Subrecipients unable to use program income shall return all unused program income funds to the cognizant Administrative Entity on or before submission of the final financial report for the funding period of the program year to which the earnings are attributable. Program income returned to an Administrative Entity shall be used to reduce expenses in the local Workforce Area (where applicable) and the Program in which the program income was earned.

On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIA to provide employment and training activities to incumbent workers: (i) when the services, facilities, or equipment are not being used by eligible participants; (ii) if their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and (iii) if the income generated from such fees is used to carry out programs authorized under this title.

All expenditures of program income are subject to audit. Subrecipients shall ensure that their own financial systems provide fiscal control and accounting procedures that permit the tracing of program income.

Section 137. REPAYMENTS (184)

The subrecipient agrees to repay to the Administrative Entity amounts found not to have been expended in accordance with this agreement.

Section 138. FINANCIAL REPORTING REQUIREMENTS

- a) The Subrecipient shall make reports to the Administrative Entity as required in the "Statement of Work."
- b) The Administrative Entity may audit the financial records any time during the agreement period and within three years after termination. Payments to the Subrecipient may be subject to adjustment for amounts that are found on the basis of such audit to constitute costs not allowable under the agreement or found to be excess reimbursement.
- c) Applicable credits such as rebates, discounts, refunds, and overpayment adjustments, as well as interest earned on any of them, shall be credited as a reduction of costs if received during the same funding period that the cost was initially charged. Credits received after the funding period shall be returned to the Administrative Entity.
- d) The Subrecipient agrees to complete a close-out package for the period of the agreement within 30 days after the ending date and within 30 days after the end of the first program year if the agreement is in operation during two program years.
- e) The Subrecipient agrees to provide the Administrative entity the necessary information to comply with Federal Funding Accountability and Transparency Act (FFATA) requirements. This reporting legislation requires the disclosure of information of entities receiving Federal awards (federal financial assistance and expenditures) over \$25,000 through a single, searchable, public website that houses award information on sub-awards and executive compensation.

The following subrecipients are not subject to the reporting requirements:

- Grants that are funded by the Recovery Act and related sub-awards;
- Federal awards to subrecipients that had a gross income, from all sources, of less than \$300,000 in the subrecipients' previous tax year; and
- Federal awards, if the required reporting that would disclose classified information.

Basic sub-award data required for reporting:

- Name of subrecipient receiving award, including DBA
- DUNS number (or Parent Org DUNS may be required)
- Amount of award (net federal funds awarded, including modifications)
- Date the Subaward Agreement signed with IDOL
- Location of the entity (including congressional district)

- o Place of performance (including congressional district)

Executive Compensation data required if:

- o The subrecipient received 80% or more of annual gross revenue in US federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements **and** \$25,000,000 or more in annual gross revenues from the above, then it must also report the names and total compensation of the top 5 highest compensated officials in its organization

This information must be submitted to the Administrative Entity before the awarded funds are released to the subrecipient.

Section 138A. STAND-IN COSTS

Stand-in costs mean costs paid from non-Federal sources which a Subrecipient proposes to substitute for Federal costs which have been disallowed as a result of an audit or other review. In order to be considered as valid substitutions, the costs (1) must have been reported by the Subrecipient as uncharged program costs under the same Title and in the same year in which the disallowed costs were incurred and (2) must have been incurred in compliance with laws, regulations, and contractual provisions governing WIA.

If the Subrecipient intends to propose the use of stand-in costs as substitutes for otherwise unallowable costs, the proposal shall be included with the audit resolution report. To be considered, the proposed stand-in costs shall have been reported as uncharged WIA program costs, included within the scope of the audit, and accounted for in the Subrecipient's financial system as required by CFR §627.425, of the part, Standards for financial management and participant data systems. To be accepted, stand-in costs shall be from the same title, cost category, and funding period as the costs which they are proposed to replace. The Subrecipient will submit the WIA Financial Status Report (WIA 35) on a monthly basis in order to report any stand-in costs.

Section 139. RECORDS AND REPORTS

The Subrecipient shall keep records that are sufficient to permit the preparation of reports required by this agreement and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully. In order to allow for the preparation of reports, recipients shall maintain standardized records for all individual participants. The Subrecipient agrees to submit reports regularly in accordance with the requirements set forth in the Statement of Work.

Reported expenditures and program income, including any profits earned, must be on the accrual basis of accounting and cumulative by fiscal year of appropriation.

Except as provided below, records maintained by such recipients shall be made available to the public upon request:

- (i) information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and
- (ii) trade secrets, or commercial or financial information, that is obtained from a person and privileged or confidential.

Recipients may charge fees sufficient to recover costs applicable to the processing of requests for such records.

The Subrecipient shall keep and maintain records that accurately reflect the provision of services to program participants, and agrees to submit reports regularly in accordance with the requirements set forth in the Statement of Work.

Section 140. RETENTION REQUIREMENT FOR RECORDS

The Subrecipient shall maintain all records pertinent to this agreement for a period of three years subsequent to final payment under this agreement. Such records may be required to be retained beyond said period if an audit by the Administrative Entity has begun but is not completed, or if audit findings have not been resolved at the end of the required retention period. In such cases, the records shall be retained until resolution of the audit findings.

Records for nonexpendable property shall be retained for a period of three years after final disposition of the property.

In the event that the Subrecipient should go out of existence prior to the required retention period, it shall transfer required records to the Administrative Entity for continued retention.

Section 141. RIGHT TO RECORD ACCESS

Identifying information obtained by Recipients and Subrecipients regarding WIA participants and work and training contracting employers and institutions is confidential. In order to evaluate and review programs of the WIA, the United States Department of Labor, and the Administrative Entity shall have access to and the right to copy any books, accounts, records, correspondence, or other documents pertinent to such programs that are in the possession, custody or control of any Subrecipient who receives funds under the Act, except where prohibited by law or regulation. No Recipient or Subrecipient shall disclose identifying work and training contract or client information, with the exception of confirmation of a client's participation in the WIA program, to entities other than those specified above, unless such disclosure is necessary to further a valid purpose of the Idaho WIA program. Disclosure of identifying information may also occur in cases where the Administrative Entity has entered into a disclosure of information agreement.

In addition, the Administrative Entity, the US Department of Labor (including the Department of Labor's Office of the Inspector General), and the Comptroller General of the United States, or any of their authorized representatives, have the right of timely and reasonable access to any books, documents, papers, computer records, or other records of Recipients and Subrecipients that are pertinent to the grant, in order to conduct audits and examinations, and to make excerpts, transcripts, and photocopies of such documents. This right also includes timely and reasonable access to Recipient and Subrecipient personnel for the purpose of interview and discussion related to such documents.

The right of access in this section is not limited to the required retention period but shall last as long as the records are retained.

Section 142. MONITORING, AUDIT AND RESOLUTION

a) Monitoring

The Administrative Entity shall be responsible for assuring that monitoring requirements are met with respect to funds received for both internal and Subrecipient activities.

Annual monitoring reviews shall be performed on all subagreements. Fifteen percent of the work/training sites active at the time of review scheduling shall be monitored.

Compliance assessment monitoring of subagreements shall include reviews of compliance with the Act and Regulations, and where applicable, financial management systems, procurement procedures, program management procedures, record keeping procedures, participant activities and treatment, performance of agreement terms, corrective action processes and performance of eligibility verification functions.

b) Program Review

The State Administrator's monitoring and audit efforts shall include those activities aimed at: (1) assessment of agreement operation at a given point in time; (2) comparison of actual performance versus established performance standards; (3) identification of agreement accomplishments and/or deficiencies in operation, administration, and compliance; and (4) evaluation of agreement results, benefits, and impact upon program's objectives.

At any time during the period of the agreement or the required retention period, all records pertinent to this agreement shall be made available by the Subrecipient to the Administrative Entity, the State of Idaho, the U. S. Department of Labor, the Comptroller General of the United States, or any of their authorized representatives for examination and review. The Subrecipient shall, upon request of said parties, furnish all documents, reports, forms, invoices, ledgers, and other supporting data pertinent to activities covered under this agreement in connection with audits, monitoring activities, or grant management activities.

The Administrative Entity will provide the Subrecipient with advance written notice prior to conducting the program review and compliance audit.

c) Independent Organizational Audit

Each Subrecipient is required to have an independent organizational audit. This audit shall be performed by a licensed CPA firm or, if a State agency, an agency designated by State statute, i.e., Legislative Auditor. The Subrecipient's failure to comply with these requirements will delay issuance of WIA funds.

The guidelines for the independent audit are:

- 1) State and local governments, institutions of higher education, hospitals, and non-profit organizations are subject to the requirements of OMB Circular A-133 for the conduct of their own audits. The audit shall encompass the entire organization.

- 2) Private-for-profit organizations shall have an audit in accordance with the American Institute of Certified Public Accountants' Audit and Accounting Guide. This audit need only cover the WIA segment of the organization.
- 3) Commercial organizations that expend \$300,000 or more a year in Federal funding must have either:
 - (a) A program specific annual independent financial and compliance audit conducted and prepared in accordance with generally accepted government auditing standards; or
 - (b) An organization-wide audit that includes coverage of the WIA program within its scope. WIA funds can only be used to pay for the WIA portion of the audit.
- 4) Audits shall be performed annually unless the Subrecipient is a State agency, whose audits may then be conducted on a biennial basis, provided each of the two year's receipts are included.
- 5) Subrecipients subject to the Single Audit Act shall submit a copy of the audit to their designated cognizant Federal agency. They shall submit correspondence to the Administrative Entity verifying the submission to and acceptance of the audit by the agency. The Administrative Entity shall also be notified promptly of any findings and determinations made by their cognizant agency.

Audit requirements are summarized from Office of Management and Budget Circular A-133, but apply to all Subrecipients of WIA funds:

- 1) The audit shall be made by an independent auditor in accordance with appropriate audit provisions and generally accepted auditing standards.
- 2) As a minimum, the auditor shall determine whether:
 - (a) The financial statements of the Subrecipient present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles.
 - (b) The Subrecipient has internal accounting and other control systems that provide reasonable assurance it is managing Federal financial programs in compliance with applicable laws and regulations. As a part of this review, the auditor shall test whether these internal control systems are functioning in accordance with prescribed procedures.
 - (c) The Subrecipient has complied with laws and regulations that may have material effect on its financial statements and on each Federal program.
- 3) In making a test of transactions, the auditor shall determine whether:
 - (a) The amounts reported as expenditures were for allowable services, and

- (b) The records show those who received services or benefits were eligible to receive them.
- 4) The auditor shall determine whether matching requirements, levels of effort, and earmarking limitations were met.
 - 5) The audit shall identify all WIA funds received and expended and programs under which they were received. This shall include funds received directly from state agencies as well as local governments.
 - 6) As a minimum, the audit report shall:
 - (a) Identify the provisions under which the audit was conducted (OMB Circular A-133, etc.)
 - (b) Contain the auditor's report on financial statements and on a schedule of WIA funds, showing the total expenditures for each WIA grant.
 - (c) Identify the Subrecipient's significant internal accounting controls and other controls designed to provide reasonable assurance Federal programs are being managed in compliance with the laws and regulations. It shall also identify the controls evaluated, those not evaluated, and material weaknesses noted as a result of the evaluation.
 - (d) Identify the Subrecipient's WIA revenues and expenses separately from other revenues and expenses.
 - (e) Contain the auditor's report on compliance; with positive assurance with respect to those items tested, negative assurance on those items not tested, a summary of all instances of noncompliance, and an identification of questioned costs, if any, as a result of noncompliance.
 - (f) Have reported "stand-in" costs as uncharged WIA program costs, included within the scope of the audit, and accounted for in the Subrecipient's financial system as required by CFR §627.425, of the part, Standards for financial management and participant data systems.
 - (g) Identify any program income earned or expended.
 - 7) If the audit identifies administrative findings or questioned costs, the Subrecipient shall ensure appropriate corrective action is taken within 180 days after receipt of the audit. The audit report shall be forwarded to the Administrative Entity within 30 days from receipt of the auditor's report, or no later than nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency.
 - 8) In cases of inability or unwillingness to have a proper audit, sanctions may include:
 - (a) Withholding a percentage of payments to the Subrecipient until the audit is completely satisfactory,

- (b) Withholding or disallowing overhead costs, and
 - (c) suspending the agreement until an audit is made.
- d) Resolution of Findings
- 1) As a result of an audit, investigation, on-site visit or other monitoring, Administrative Entities and subrecipients must:

- (a) Establish an audit or monitoring resolution file to document the disposition of any reported questioned costs and the corrective actions taken for all findings.
- (b) If findings are identified, issue a letter of Initial Determination based on the audit, investigation, monitoring or oversight review. A copy of the Initial Determination should be provided to the Administrative Entity.

The Initial Determination letter should include:

- A list of all questioned costs.
 - Whether the costs are allowed or disallowed, including the reasons with appropriate citations for such actions.
 - Acceptance or rejection of any corrective action taken to date, including corrective action on administrative findings.
 - Possible sanctions.
 - The opportunity for informal resolution of no more than 45 days from the date of Initial Determination.
- (c) During informal resolution, the subrecipient may provide documentation to support allowability of costs and propose corrective actions for administrative findings. Informal resolution discussions may be held by telephone, if necessary, but in person is preferable. Negotiations of repayments can be initiated at this time, except that the State Administrative Entity retains the exclusive right to authorize repayments other than cash. The informal resolution process should be documented.
- (d) Stand-in Costs: The application of stand-in costs is an informal resolution activity. If the auditee agrees that the Awarding Agency's questioned cost is unallowable and wishes to propose the use of stand-in costs as substitutes for otherwise unallowable costs, the proposal shall be included with the response to the Initial Determination and submitted during the informal resolution period.

Stand-in costs are substitutes, disbursed or accounted for from non-Federal funds, for unallowable Federal costs identified in the audit report. To be considered as valid substitutions, the costs must:

- (1) Not be caused by the willful disregard of the requirements of the Act, gross negligence, failure to observe accepted standards of

- administration, or fraud;
- (2) Be allowable Federal costs that were actually incurred by a Federal program, but paid by a non-Federal source;
 - (3) Have been reported as uncharged Federal program costs;
 - (4) Have been included within the scope of the subrecipient's audit;
 - (5) Have been accounted for in the auditee's financial system; and
 - (6) Be adequately documented in the same manner as all other Federal program costs. This means that the unbilled expense must be treated in a manner consistent with cost principles affecting other expenses, including, but not limited to the cost allocation methodology, cost classification methodology and supporting documentation requirements.

To be accepted, stand-in costs must come from the same Federal Title/Program and program year as the costs that they are proposed to replace, and they must not cause a violation of the cost limitations.

- (e) Issue a written Final Determination. A copy of the Final Determination should be provided to the Administrative Entity.

The Final Determination letter should include:

- Reference to the Initial Determination.
 - Summary of the informal resolution process, if attempted.
 - Decisions regarding the disallowed costs, listing each disallowed cost and noting the reasons for each disallowance.
 - Questioned costs that have been allowed and the basis for the allowance.
 - Demand for repayment of the disallowed costs.
 - Description of the debt collection process and other sanctions that may be imposed if payment is not received.
 - Rights to a hearing.
 - The status of each administrative finding.
- 2) Hearing. The subrecipient has 15 days after receipt of the Final Determination to file a written request for a hearing with the entity that conducted the audit or monitoring review. The entity that conducted the audit or monitoring review will appoint a hearing officer and hold a hearing within 30 days of the filing date. A decision will be issued by the hearing officer within 60 days of the filing date.
 - 3) Appeal to the Administrative Entity. If either party receives an unsatisfactory decision or if the hearing officer fails to issue a decision within the prescribed timelines, either party may appeal, in writing, to the Administrative Entity. The Administrative Entity shall be given all necessary information, including, but not limited to, the following:
 - The complaint.
 - A summary of the efforts to informally resolve the complaint.
 - Tapes of and exhibits from the hearing.
 - The hearing officer's decision.

The Administrative Entity will review the complaint to ensure that the hearing process was followed and that the applicable regulations were correctly interpreted. The Administrative Entity will complete the review within 45 days from the date the request was received. The Administrative Entity may assign disallowed costs and demand repayment, negotiate alternative payments, or impose any other remedies or sanctions allowed by law. There is no administrative appeal beyond this level.

If the entity that conducted the audit or monitoring review is the Administrative Entity, then the hearing officer will issue a recommended resolution for consideration by the Administrative Entity. The Administrative Entity will review the hearing officer's recommendation and issue a final decision within 45 days from the date of the hearing officer's recommendation.

- 4) The entity that conducted the audit or monitoring review shall ensure the correction of any unresolved administrative findings. It should determine the status of the unresolved administrative findings through its monitoring process and determine that appropriate corrective action has been taken. A copy of the monitoring report substantiating the implementation of the appropriate corrective action must be filed with the audit report.

In the event the subrecipient fails to take corrective action to secure compliance with the Act and regulations, the Administrative Entity may impose sanctions and corrective actions to secure prompt compliance.

e) Debt Collection Procedures

- 1) When the resolution process results in a final order by the Awarding Agency that WIA funds were misspent, a debt is established on the part of the subgrant recipient or contractor and the Awarding Agency will maintain an accounts receivable control sheet on the amount in question.

The Awarding Agency is expected to collect the debt. However, if a subgrant recipient or contractor appeals, no further collection action will be taken pending the outcome of the appeal.

The Awarding Agency will give written notice to the subgrant recipient or contractor of the following:

- (a) The amount of the liability;
 - (b) The reason for establishing the debt; and
 - (c) Give notice that the debt will become delinquent within 30 days if not resolved or if a satisfactory alternative repayment plan has not been negotiated.
- 2) The preferred corrective action for disallowed costs is non-Federal cash repayment. With prior approval from the SAA, other options for debt resolution that may be offered by the Awarding Agency include offsets against subsequent grants or a reduction in payments.

- 3) If the debt is not repaid or resolved in 30 days, a second more strongly worded 30 day notice will be sent. If no satisfactory resolution occurs at the end of the second 30 day period, a third and final collection letter will be sent.

The final collection letter will indicate that the Awarding Agency will impose one or more of the following sanctions:

- (a) Withhold payments due the contractor.
 - (b) Initiate litigation.
 - (c) Withhold future funding where appropriate.
 - (d) Terminate the current contractor agreement.
 - (e) Initiate debarment.
- 4) If the debt is still outstanding after 90 days, a determination will be made by the Awarding Agency to use other methods of collection. In making this determination, consideration will be given to the following factors:
 - (a) Amount of the debt.
 - (b) Cost of further collection.
 - (c) Amount collected to date.
 - (d) Probable success of collection.
 - 5) Before any debt is compromised or terminated, approval must be obtained from the SAA. The Awarding Agency may request that the SAA submit a waiver of liability to the U.S. Department of Labor for uncollected disallowed costs if it can be demonstrated that such a request would satisfy the requirements of 20 CFR § 667.720.
 - 6) Any debt involving fraud or abuse shall be repaid in cash. Funds collected in settlement of these debts must be returned to the SAA. The refund check must identify the year to which the misexpenditures were originally charged.

When the debt was not the result of fraud or abuse, the cash repayment of the disallowance will be treated as a credit for the year in which it was originally charged. If the year of allocation is still open, the Awarding Agency may expend the funds for program purposes. Cash payments received after the fund availability period must be returned to the SAA.

Section 143. SYSTEMS EVALUATION

The Administrative Entity or his/her designee shall have the right to evaluate both the management and financial systems of the Subrecipient to ascertain that there is compliance with all of the provisions contained in this agreement. In determining the adequacy of these systems, the Administrative Entity shall utilize his/her own staff or arrange for an independent certified public accounting firm to: (a) survey the Subrecipient's system to obtain information through discussion, inquiry and observation of what the system is stated to be; (b) appraise the adequacy of the system in terms of standards prescribed herein; (c) select a number of transactions and trace them through the records to ascertain whether the system is actually followed and is effective; and (d) interview Subrecipient staff members to determine management and organizational needs.

Section 144. PROGRAM ASSESSMENT AND CONTINUOUS IMPROVEMENT

The Subrecipient will maintain an ongoing analysis of program performance as it relates to program goals and objectives. Whenever the Subrecipient determines that goals are not being met as specified in the agreement, the Subrecipient will develop an action plan to meet those goals. On a quarterly basis, the Subrecipient will be required to submit a report of the action taken or planned. Unless otherwise specified in the statement of work, the report will be due no later than the 20th of the month following the end of the quarter.

Section 145. MAINTENANCE OF SCOPE OF WORK AND LEVEL OF EFFORT

The Subrecipient will maintain the staffing level, average length and cost of participant training, average cost of supportive services, and other cost factors as described in the statement of work and/or used as the basis for determining allowable costs of this agreement. The Subrecipient will maintain the contemplated level of effort within reasonable bounds throughout the duration of this agreement. Failure to maintain the planned level of effort will subject this agreement to modification, corrective action, questioned and/or disallowed costs, and/or termination for cause as described in these provisions.

Section 146. OTHER COST CLASSIFICATION GUIDANCE

- (a) Personnel and related non-personnel costs of the Recipient's or Subrecipient's staff, including project directors, that perform services or activities that benefit two or more of the cost objectives/categories identified in this section may be allocated to the benefiting cost objectives/categories based on documented distributions of actual time worked and related costs.
- (b) Indirect or overhead costs normally shall be charged to administration, except that specific costs charged to an overhead or indirect cost pool that can be identified directly with a WIA cost objective/category other than administration may be charged to the WIA cost objective/category directly benefited. Documentation of such charges shall be maintained.
- (c) Whether a cost is charged as a direct cost or as an indirect cost shall be determined in accordance with the descriptions of direct and indirect costs contained in the OMB Circulars identified in DOL's regulations at 29 CFR 97.22(b).
- (d) Costs of another Federal grant, WIA program, or cost category may not be shifted to a WIA grant, subgrant, program, or cost category to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

Section 147. BUY AMERICAN

Entities receiving WIA funding must comply with Sec. 505. Buy American requirements under the WIA. In the case of any equipment or product with a unit cost of \$2000 purchased with financial assistance made available under Title I of WIA, entities receiving the assistance should purchase only American made equipment and products.

Section 148. ENERGY EFFICIENCY REQUIREMENTS

The Subrecipient will comply with mandatory standards and policies relating to energy efficiency that are contained in the Idaho Energy Conservation Plan.

Section 149. PATENT RIGHTS

The Subrecipient is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

Section 150. ENVIRONMENTAL STANDARDS

- a) The Subrecipient will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- b) Subrecipients will comply:
 - (1) If applicable, with Flood Insurance Purchase Requirements of Section 102(A) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
 - (2) With the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers systems.
 - (3) With Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a.1 et seq.).
 - (4) With P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
 - (5) With the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

- (6) With the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

Section 151. CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS.

- a) The Subrecipient certifies to the best of its knowledge and belief, that it and its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
 - d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b) Where the prospective primary Subrecipient is unable to certify to any of the statements in this certification, such prospective Subrecipient shall attach an explanation to the proposal, plan, or agreement.

Section 152. DRUG FREE WORKPLACE

The Subrecipient will ensure that it will or will continue to provide a drug-free workplace by:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b) Establishing an ongoing drug-free awareness program to inform employees about-
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and

- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the work place;
- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a);
- d) Notifying the employee in the statement required by paragraph a) that, as a condition of employment under the grant, the employee will-
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d) (2) from the employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number (s) of each affected grant;
- e) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d) (2), with respect to any employee who is so convicted-
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency;
- f) Making good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a), b), c), d), e), f).

Section 153. PUBLIC ANNOUNCEMENTS

When issuing statements, press releases, requests for proposals, bid solicitation, and other documents describing project or programs funded in whole or in part with Federal money, *all awardees* receiving Federal funds, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.

SERIES 200 - GENERAL ASSURANCES FOR STAFF
AND PROGRAM PARTICIPANTS

Section 201. NONDISCRIMINATION & EQUAL OPPORTUNITY ASSURANCE:

As a condition to the award of financial assistance from the Idaho Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal Opportunity provisions of the following laws:

- (1) Section 188 of the Workforce Investment Act of 1998 (WIA) which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I –financially assisted program or activity;
- (2) Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;
- (3) Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps;
- (4) The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; and
- (5) Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of handicaps.
- (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended, relating to nondiscrimination on the basis of drug abuse;
- (7) The Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-3) as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- (11) The requirements of any other non-discrimination statute(s) which may apply to the applicant.

The grant applicant also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I – financially assisted program of activity, and to all agreements the grant applicant makes to carry out the WIA Title I – financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

Section 202. EMPLOYMENT PRACTICES

Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in employment practices in the administration of, or in connection with any WIA Title I financially assisted program or activity; and any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system.

The employment practices of WIA Recipients must also comply with the following regulations:

1. The Equal Employment Opportunity Commission's (EEOC's) Uniform Guidelines on Employee Selection Procedures, 41 CFR Part 60-3.
2. The Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in the Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).
2. 29 CFR part 32, subparts B and C and Appendix A, which implement the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation.
3. Titles I and II of the ADA for WIA Recipients that are also employers, employment agencies, or other entities covered by those titles. See 29 CFR part 1630 and 28 CFR part 35.
4. The anti-discrimination provision of the Immigration and Nationality Act for WIA Recipients that are employers covered by those provisions. See 8 U.S.C. 1324b, as amended.
5. All consistent State and local requirements.

Section 203. INTIMIDATION AND RETALIATION PROHIBITED

WIA Recipients must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has filed a complaint alleging a violation of Section 188 of WIA; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA; or furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to the administration of the nondiscrimination and equal opportunity provisions of WIA, the exercise of authority under those provisions, or the exercise of privilege secured by those provisions; or otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIA or this part.

The sanctions and penalties contained in Section 188(b) of WIA or in the nondiscrimination and equal opportunity provisions of WIA may be imposed against any WIA Recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

Section 204. POLITICAL ACTIVITIES

No funds received under WIA shall be used to provide financial assistance for any program under the Act that involves political activities. Subgrantees will comply with the provisions of the Hatch Act (U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Section 205. LOBBYING PROHIBITED

The Subgrantee certifies that funds provided under this agreement shall not be used for publicity or propaganda purposes designed to support or defeat legislation in any national, state, county or municipal legislative or executive body. The Subrecipient further certifies that no funds will be paid for attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any Federal contract, the making of any Federal Grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of a Member of Congress in connection with this grant, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

The signature on this grant agreement certifying to this provision is construed as a material representation of fact upon which reliance was placed when this transaction was entered into. By agreeing to the terms of this agreement, the Administrative Entity regards the subrecipient as certifying to the requirements of 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

Section 206. RELIGIOUS FACILITIES AND ACTIVITY

Funds, materials, property or services provided directly or indirectly under this agreement shall not be used for the purpose of religious worship or the advancement of religious or anti-religious activities. Participants enrolled under authority of this agreement shall not be employed under this title to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place of religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).

Section 207. CONFLICT OF INTEREST

Members of the state council shall not;

- a) Vote on a matter of consideration regarding the provision of WIA Title I funded services by such members, or by an entity that such member represents; or that would provide direct financial benefit to such member or the immediate family of such member.
- b) Engage in any business transaction or private arrangement that could reasonably be expected to result in a conflict between the private interest of a member and his or her official council responsibility.
- c) Participate in:
 - 1) The designation of any local workforce investment areas;
 - 2) The negotiation of or decision to award any contracts or grants;
 - 3) The settlement of any claims or charges in contracts or grants;
 - 4) The certification of any eligible providers; or
 - 5) The selection of One-Stop operators

For any entity in which they have a financial interest.

- d) Engage in any other activity determined by the governor or by state law to constitute conflict of interest.
- e) No employee, officer or agent of the grantee or subgrantee shall participate in the selection, award or administration of a contract supported by WIA funds if a conflict of interest, real or apparent, would occur. Such a conflict would occur when the employee, officer or agent; any member of his immediate family; his or her partner; or an organization which employs, or is about to employ any of the above has a financial or other interest in the firm selected for award.

As specified in the State Plan, WIA Code of Conduct, it shall be the duty of all Council members to:

- a. Seek legal advice from the Attorney General or from independent counsel if they have any doubts that a specific situation involves a real or potential conflict of interest.
- b. If the legal advice is that a conflict may exist, they shall prepare a written statement describing the potential conflict of interest and the matter to be acted upon, and shall deliver the statement to their appointing authority;
- c. Recuse themselves from their duties if it is determined that there is a conflict of interest.

Section 208. SAFETY PRECAUTIONS

- a) The Administrative Entity assumes no responsibility with respect to accidents, illness or claims arising out of any work undertaken with the assistance of funds provided under this agreement. The Subrecipient is expected to take reasonable steps to insure or protect itself and its personnel. The Subrecipient agrees to indemnify and hold harmless the Administrative Entity and the State of Idaho from any claims, suits, actions or obligations arising as a result of injury or illness of any employee, agent, office, person, or participant connected with the Subrecipient.

Health and safety standards established under State and Federal law, otherwise applicable to working conditions of employees, shall be equally applicable to working conditions of participants. Any participant in a program conducted under WIA, who is engaged in

activities which are not covered by health and safety standards under the Occupational Safety and Health Act of 1970, the regulations prescribed by the Secretary of Labor, which are deemed necessary to protect the health and safety of such participants shall apply.

- b) Participants enrolled under this agreement shall not be required or permitted to work, be trained or receive services in buildings or surroundings or under conditions that are unsanitary, hazardous or dangerous to their safety or health. The Subrecipient agrees to indemnify and hold harmless the Administrative Entity and the State of Idaho for any claim based on work or any activity that occurs in a place that is in violation of the above stated prohibition.
- c) The Subrecipient shall ensure that all OJT participants are covered by Worker's Compensation insurance under the OJT employer's policy. Participants in all other components will automatically be provided with insurance coverage upon enrollment.
- d) Contributions to a reserve for a self-insurance program, to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks, are allowable and are chargeable to participant support or training as appropriate.

Section 209. COMPLAINT PROCEDURES

The appropriate complaint resolution process to be followed depends on the nature of the complaint. Complaints fall into two categories: 1) program complaints involving the proper application of the Workforce Investment Act (WIA) and its regulations and policies, and 2) discrimination complaints.

A complaint may be amended prior to a scheduled hearing or withdrawn at any time. To the extent practical, information that could lead to the identification of the person filing the complaint must be kept confidential. The identity of any person who furnishes information relating to, or assisting in, an investigation shall be kept confidential to the extent possible. No entity receiving financial assistance under the Act may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted or participated in any manner in an investigation or hearing.

PROGRAM COMPLAINTS AGAINST WIA PROGRAMS AND POLICIES

Who may file: Applicants, participants, service providers, recipients and other interested parties, may file a complaint alleging a non-criminal violation of statewide WIA policies, activities or agreements.

Time and place for filing: Program complaints must be filed with the Service Provider or Administrative Entity within 180 days from the date of the event or condition that is alleged to be a violation of WIA.

Procedure to be followed:

Step 1 - Initial Review. Written complaints will be taken from the complainant or the complainant's designated representative. All complaints will be logged.

If the complaint alleges a violation of any statute, regulation, policy, or program that is not part of WIA, the complaint will be referred to the appropriate enforcement agency. Notice of the referral will be sent to the complainant.

If the complaint is retained, a complaint file should be established that contains: 1) all application and enrollment forms, if appropriate, 2) the written complaint statement and form, 3) chronological log of events, 4) relevant correspondence, and 5) a record of the resolution attempted.

Step 2 - Informal Resolution. An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within 10 days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file.

Step 3 – Formal Resolution. When no informal resolution is possible, the WIA service provider will forward the complaint and a copy of the complaint to the state Administrative Entity who will review the complaint file, conduct a further investigation if necessary, and issue a Determination within 20 days from the date the complaint was filed. If further review of the Determination is not requested, the complaint is considered resolved and the complaint file should be documented accordingly.

Any party dissatisfied with the Determination may request a hearing within 10 days of the date of the Determination. The state Administrative Entity will schedule the hearing and forward the program complaint to the hearing officer for resolution and monitor the processing of the complaint.

Step 4 – Hearing. The hearing officer will schedule a formal hearing by a written notice, mailed to all interested parties at least seven (7) days prior to the hearing. The notice will include the date, time, and place of the hearing, which must be conducted within 45 days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

Step 5 – Final Decision. The state Administrative Entity will review the recommendation of the hearing officer and will issue a Final Decision within 60 days from the date the complaint was filed.

Section 209A. SEXUAL HARASSMENT POLICY

It is the policy of the Idaho Department of Labor to absolutely forbid the sexual harassment of any WIA employee, participant, eligible applicant/recipient or applicant. Additionally, a person who is qualified for but denied an employment or training benefit because of another's submission to sexual harassment is protected by this policy.

Unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature, constitute sexual harassment when:

Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a training program; or

Submission to or rejection of such conduct by an individual is used as the basis for decision affecting that individual's status as an employee or as a participant in a training program.

Such conduct has the purpose or effect of unreasonably interfering with an individual's performance as an employee or as a participant in a training program, or creating an intimidating, hostile, or offensive work or training environment.

The WIA State Administrative Entity has designated the Equal Opportunity Officer of the Idaho Department of Labor as the official responsible for receiving and investigating complaints of sexual harassment. Any supervisor, manager, employee or participant who is made aware of an alleged incident of sexual harassment will take immediate action to bring the matter to the attention of the Equal Opportunity Officer who will take action pursuant to this policy.

Any participant who feels he/she has been the victim of such unwelcome advances may file a complaint as outlined below. Due to the sensitivities associated with complaints of sexual harassment, any person or step normally part of the complaint procedure may be bypassed if the complainant feels it is necessary to do so.

1. Bring the matter to the attention of his/her immediate supervisor and continue the complaint procedure; or
2. File a complaint directly with the Equal Opportunity Officer, Idaho Department of Labor, 317 W. Main, Boise, ID 83735; or
3. If he/she so chooses, the participant may bypass the WIA complaint procedure entirely and file a sex discrimination claim directly with the Idaho Human Rights Commission and/or the Director, Civil Rights Center, USDOL, 200 Constitution Ave. NW, Washington DC 20210.

Section 209B. DISCRIMINATION COMPLAINTS

Who may file: Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or its implementing regulations may file a written complaint, either by him/herself or through an authorized representative.

Discrimination prohibited by WIA includes discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, discrimination on the basis of either citizenship or status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

Time and place for filing: Discrimination complaints must be filed within 180 days of the alleged discrimination. However, a complainant may petition the Director of the Civil Rights Center for an extension of the filing time.

Discrimination complaints shall be filed with the state Administrative Entity, WIA Service Provider, One-Stop Operator, directly with the Equal Opportunity Officer, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735 or with the Director of the Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Ave. NW, Room N-4123, Washington D.C. 20210. All complaints shall be promptly forwarded to the State Equal Opportunity Officer for processing.

Time limit for completing complaint processing procedures: The discrimination complaint processing procedures must be completed and a written Notice of Final Action issued within 90 days from the date the complaint was filed.

Procedure to be followed:

Step 1: Initial Review of Written Complaints. Written complaints will be taken by the state Administrative Entity, Service Provider, or One-Stop Operator from the complainant or the complainant's designated representative. A written complaint must include: 1) the complainant's name and address; 2) the identity of the individual or entity that the complainant alleges is responsible for the discrimination; 3) a description of the complainant's allegations in enough detail to allow an initial determination of jurisdiction, timeliness and the apparent merit of the complaint; and 4) the complainant's signature or the signature of the complainant's authorized representative.

Record keeping. All complaints must be logged. The log must include: 1) the name and address of the complainant, 2) the basis for the complaint, 3) a description of the complaint, 4) the disposition and date of disposition of the complaint, and any other pertinent information. Information that could lead to the identification of the person filing the complaint must be kept confidential.

Jurisdiction of the discrimination complaint must be determined. In order to have jurisdiction to process the discrimination complaint: 1) the respondent against whom the complaint was filed must be a WIA recipient, 2) the complaint must allege a basis for discrimination that is prohibited by WIA, and 3) the complaint must be filed within 180 days of the alleged discrimination.

Notice of Lack of Jurisdiction. If a determination is made that there is no jurisdiction to process the complaint, a Notice of Lack of Jurisdiction must be sent to the claimant that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with the Civil Rights Center within 30 days from receipt.

Joint Jurisdiction. Where the complaint alleges discrimination by a WIA Recipient, or Service Provider on a basis that is prohibited by both WIA and by a civil rights law independently enforced by that WIA Recipient or Service Provider, the complaint must be referred to that WIA Recipient or Service Provider for processing under its procedures. For example, WIA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIA Recipient or Service Provider that is also prohibited under its own regulations from discriminating on the basis of national origin, then the complaint will be referred to the WIA recipient or service provider for processing according to its own regulations. Notice must be sent to the complainant about the referral.

Sole Jurisdiction. Where the complaint alleges discrimination by a WIA Recipient or Service Provider on a basis that is prohibited by WIA and is not covered by a civil rights law independently enforced

by that WIA Recipient or Service Provider (e.g. religion, political affiliation or belief, citizenship or participation in WIA Title I), the complaint must be processed by that WIA recipient or Service Provider under these procedures.

When it is determined that WIA has sole jurisdiction over the discrimination complaint, the complaint will be referred to the Equal Opportunity (EO) Officer of the Idaho Department of Labor.

Step 2: Formal Resolution. The EO Officer must send written notice to the complainant stating that the complaint has been received. The notice must list the issues raised in the complaint and state for each issue whether it has been accepted for investigation or rejected and the reason for its rejection. The Notice must advise that the complainant has the right to be represented by an attorney or another person of the complainant's choice. The Notice must also give the complainant the right to choose between A) an alternative dispute resolution (ADR) process or B) a hearing.

A) **ADR Process.** If the party filing the complaint requests to use the ADR process for resolving the complaint, the EO Officer will request a mediator and monitor the processing of the complaint. The mediator will schedule mediation by written notice, mailed to all interested parties at least 7 days prior to the first mediation session. The notice will include the date, time, and place of the mediation, which must be concluded within 45 days from the date the complaint was filed.

The complaint is considered resolved when all parties to the complaint enter into a written agreement resolving the issues raised in the complaint. The written agreement must give notice that if the terms of the agreement are breached, the non-breaching party may file a complaint with CRC within 30 days of the date the non-breaching party learns of the breach.

If the parties do not reach an agreement, the EO Officer will forward the complaint to a hearing officer for a hearing.

B) **Hearing Process.** If the party filing the complaint requests a hearing to resolve the complaint, or if the ADR process fails to result in an agreement, the EO Officer will forward the complaint to the hearing officer and monitor the processing of the complaint. The hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 days prior to the hearing. The notice will include the date, time, and place of the hearing, which must be conducted within 60 days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or other designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based. The hearing officer's recommended resolution must be completed and sent to the State EO Officer within 75 days from the date the discrimination complaint was filed.

Step 3: Notice of Final Action. The Idaho Department of Labor will review the recommendation of the hearing officer and will issue a Notice of Final Action within 90 days from the date the discrimination complaint was filed.

The Notice of Final Action must contain: 1) the Idaho Department of Labor's decision on each issue and the reasons for the decision, 2) a description of the way the parties resolved the issue, and 3) notice that the complainant has the right to file an appeal with CRC within 30 days from the date the Notice Final Action is issued if dissatisfied with the Idaho Department of Labor's final action on the complaint.

Section 210. THEFT OR EMBEZZLEMENT; IMPROPER INDUCEMENT; OBSTRUCTION OF INVESTIGATIONS, INCIDENT REPORTS

The Subrecipient agrees to adhere to the following provisions:

- a) Shall not knowingly hire an ineligible individual or individuals, embezzle, willfully misapply, steal or obtain by fraud any of the monies, funds, assets, or property that are the subject of the agreement.
- b) Shall not induce any participant to give up any money or a thing of value under threat of dismissal.
- c) Shall not willfully obstruct or impede an investigation or inquiry arising from activities under the agreement.
- d) Shall not directly or indirectly promise any employment, position, compensation, contract, appointment, or other benefit provided for or made possible in part or in whole by WIA funds to any person as consideration, favor or reward for any political activity or for the support of, or opposition to, any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.
- e) Shall not directly or indirectly knowingly cause or attempt to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation or the threat of the denial or deprivation of any employment or benefits funded under WIA.
- f) Understands that criminal penalties resulting from theft or embezzlement may result in a fine or imprisonment or both.
- g) Shall immediately report all alleged or suspected incidents of fraud, waste, abuse, or other criminal activity relating to the operation of WIA to the Administrative Entity. Persons may also contact the U.S. DOL Office of the Inspector General through the OIG Hotline at 1-800-347-3756.:

Section 211. KICKBACKS

No member of the state council, or employee, officer or agent of any grantee or subgrantee under WIA shall solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors or parties to subagreements. This prohibition shall not apply to unsolicited trivial benefits, not to exceed a value of fifty dollars (\$50.00), that are incidental to personal, professional, or business contacts and that do not involve a substantial risk of undermining official impartiality.

Section 212. MAINTENANCE OF EFFORT

The Subrecipient agrees that no participant shall be employed or job opening filled (a) when any other individual is on layoff from the same or any substantially equivalent job, or (b) when the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under the Act.

All training opportunities shall result in an increase in employment and training opportunities over those which would otherwise be available.

No currently employed worker shall be displaced by a participant (including partial displacement such as a reduction in non-overtime work, wages or employment benefits).

No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.

No program under this Act shall impair existing contracts for services or existing collective bargaining agreements, unless the employer and the labor organization concur in writing with respect to any elements of the proposed activities which affect such agreement, or either such party fails to respond to written notification requesting its concurrence within 30 days of receipt thereof.

Section 213. DUPLICATION OF SERVICE

Funds provided under WIA shall not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless the Subrecipient can establish that alternative services or facilities would be more effective or more likely to achieve performance goals.

Section 214. PROHIBITION OF NEPOTISM

No Recipient or Subrecipient may hire a person in any position funded under WIA, if a member of that person's immediate family is engaged in any administrative or support function in the hiring and/or funding organization. No employer may hire a member of his immediate family into a training position.

For purposes of this rule, the term "member of the immediate family" includes spouse, child, parent, sibling, grandparent, aunt, uncle, niece, nephew, cousin, stepparent, stepchild, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law and sister-in-law, or any other persons related by decrees of court within the second degree.

For purposes of this rule, the term "administrative or support function" includes overall administrative responsibility for the obtaining of and/or approval of any grant or subgrant funded under the Act, as well as other persons who have influence or control over the administration of the program, such as the project director, deputy director and unit chiefs, and persons who have selection, hiring, placement, or supervisory responsibilities for On-The-Job Training participants.

SERIES 300 - ASSURANCES FOR PROGRAM OPERATION

Section 301. SERVING THOSE MOST IN NEED

Each Subrecipient shall provide employment and training opportunities to those who can benefit from, and who are most in need of, such opportunities. In addition, efforts shall be made to develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.

Section 302. TRAINING CONSISTENT WITH CAPABILITIES OF PARTICIPANT

The Subrecipient will ensure that training and related services shall be consistent with each individual's fullest capabilities and shall lead to employment opportunities that will enable participants to become economically self-sufficient and contribute to their upward mobility, occupational development, development of new careers, and overcoming sex-stereotyping in occupations traditional for the other sex.

Placements made in unsubsidized employment shall be, to the extent practicable, in occupational areas related to the training provided to the participant.

Section 303. EMPLOYABILITY DEVELOPMENT

Special consideration will be given to the filling of jobs that provide sufficient prospects for advancement or suitable continued employment by providing complementary training and manpower services designed to (1) promote the advancement of participants to employment or training opportunities which lead to the individual's self-sufficiency, whether in the public or private sector of the economy; (2) provide participants with skills for which there is an anticipated high demand; or (3) provide participants with self-development skills.

Section 304. MILITARY SELECTIVE SERVICE ACT

The subrecipient shall ensure that each individual participating in any program or activity established under this title, or receiving any assistance or benefit under this title, has not violated section # of the Military Selective Service Act (50 USC. App. 453) by not presenting and submitting to registration has required pursuant to such section.

Section 305. PARTICIPANT BENEFITS

- a) **WAGES** - Individuals in on the job training or individuals employed in activities under this title shall be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills, and such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law. (§ 181)
- b) **EMPLOYMENT CONDITIONS** – Individuals in on the job training or individuals employed in programs and activities under this title, shall be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

- c) HEALTH AND SAFETY – Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in specified activities. To the extent that State workers’ compensation law applies, workers’ compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment.

Section 306. LIMITATIONS ON ACTIVITIES THAT IMPACT WAGES

No funds provided under this title shall be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system.

Section 307. DAVIS-BACON, COPELAND, AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Subrecipients will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40.327-333), regarding labor standards for federally assisted construction subagreements.

Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the same area as that proposed to be funded under this Act, an opportunity shall be provided for such organization to submit comments with respect to such proposal.

Section 308. APPROPRIATE TRAINING

The Subrecipient agrees that the conditions of employment and training will be appropriate and reasonable in light of such factors as the type of work, the geographic region available to the participant and the proficiency of the participant.

Section 309. APPRENTICEABLE TRAINING

The Subrecipient will, when appropriate, consult with the cognizant apprenticeship agency concerning any training activities in apprenticeable occupations.

Section 310. COLLECTIVE BARGAINING

No funds under this agreement will be used to assist, promote or deter union organizing; no Work Experience, On-The-Job Training, Internship, or Job Shadowing participant may be placed into, or remain working, in any position affected by labor disputes involving a work stoppage.

Section 311. LABOR ORGANIZATION CONSULTATION AND/OR CONCURRENCE

All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating, of projects, buildings, and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Act of March 3, 1931 (40 U.S.C. 276a-276a-5), popularly known as the Davis-Bacon Act. The Secretary shall have, with respect to such labor standards, the authority and functions set forth in

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 1, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276 (c)). The provisions of this subsection shall not apply to a bona fide trainee in a training program under this Act. The provisions of section 167(a)(4) shall apply to such trainees.

The Subrecipient assures that it will consult with appropriate labor organizations in the planning, design and content of the training, Work Experience, vocational exploration program, OJT and other appropriate activities with respect to job descriptions, wage rates, training standards and arrangements, and occupations planned.

The Subrecipient will obtain written concurrence from the appropriate bargaining agent where a collective bargaining agreement exists with the participating employer covering occupations in which training or subsidized employment is proposed. Such concurrence shall apply to the elements of the proposed activity which affect the bargaining agreement such as wages and benefits. If no notice is received within 30 days after written notification to the collective bargaining agent, the program may proceed.

Section 312. CHILD LABOR STANDARDS

The Subrecipient shall ensure that it complies with the Hazardous Occupation Orders as they apply to the participation of youth under 18 years of age and with the Child Labor Standards as they apply to youth 14 and 15 years of age.

For programs that are exempt from these orders by means of student-learners, the following format must be followed to assure compliance of the Hazardous Occupation Orders; the student-learner is employed under a written agreement which provides: 1) that the work of the student-learner in the occupations declared particularly hazardous shall be incidental to the training; 2) that such work shall be intermittent and for short periods of time, and under close supervision of a qualified and experienced person; 3) that safety instructions shall be given by the school and correlated by the employer with on-the-job training; and 4) that a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of the student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer.

Section 313. LINKAGE TO OCCUPATIONS IN DEMAND

Training provided with funds available under WIA shall be only for occupations for which there is a demand in the area served or in another area to which the participant is willing to relocate, and consideration in the selection of training programs may be given to training in occupations determined to be in sectors of the economy which have a high potential for sustained demand or growth.

Section 314. ELIGIBLE PROVIDERS OF TRAINING (122)

The Governor shall establish a procedure for use by the Administrative Entity in determining the eligibility of a training provider. Except for OJT or customized training, the Administrative Entity shall place on a list providers determined to be eligible to receive funds for the provision of training services in the state. A provider of such services shall meet the following requirements:

- (A) A postsecondary educational institution that—
 - (i) is eligible to receive Federal funds under title IV of the Higher Education Act of 1965 (20 USC 1070 et seq.); and
 - (ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate;
- (B) An entity that carries out programs under the National Apprenticeship Act; (50 Stat. 664, chapter 663; 29 USC 50 et seq.); or
- (C) Another public or private provider of a program of training services.
- (D) The entity provides the required performance information, program cost information, and other information required for the program annually to the Administrative Entity at such time and in such manner as may be required; and
- (E) Annually meet the performance levels identified in the agreements.

Section 315. ELIGIBLE TRAINING PROVIDERS ~ STATE LIST

The Administrative Entity shall compile a single list of the eligible training providers and disseminate such list to the one-stop delivery system within the State. Such list and information shall be made widely available to participants in employment and occupational skills training activities authorized under this Act and others through the one-stop delivery system.

Section 316. SELECTION FROM STATE LIST

Subrecipients will insure that only eligible training providers identified on the State List will be considered when selecting/purchasing occupational skills training services for adult, dislocated worker and youth participants. The Subrecipient also ensures that individuals eligible to receive occupational skills training services under WIA shall have the opportunity to select any of the eligible providers that are included on the State List.

Section 317. BENEFITS AND WORKING CONDITIONS

All individuals employed in subsidized jobs shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

Section 318. RETIREMENT SYSTEMS

No funds available under WIA may be used for contributions on behalf of any participant to retirement systems or plans.

Section 319. RELOCATION

No funds provided under the Act shall be used, or proposed for use, to encourage or to induce the relocation of an establishment, or part thereof, that results in the loss of employment for any employee of such establishment at the original location and such location is within the United States.

For 120 days after the commencement or the expansion of commercial operations at the new location of a relocating establishment, no funds provided under this Act shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any relocating establishment or part thereof at a new, or expanded location, if the

relocation of such establishment or part thereof results in a loss of employment for any employee of such establishment at the original location.

For the purposes of this section, "relocating establishment" means a business entity, including a successor in interest, which is moving any operations from a facility in one labor market area within the United States and its territories to a new or expanding facility in another labor market area.

To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, a standardized pre-award review shall be completed and documented jointly by the service delivery area or substate grantee with the establishment as a prerequisite to WIA assistance.

Pre-award review. To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area with the establishment as a prerequisite to WIA assistance. The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

Section 320. NON-DUPLICATION OF SERVICES

Funds provided under this title shall only be used for activities which are in addition to those which would otherwise be available in the area in the absence of such funds.

Section 321. SCHOOL TO WORK LIMITATIONS

None of the funds made available under this Act may be used to provide funding under the School to Work Opportunities Act of 1994 or to carry out, through programs funded under this Act, activities that were funded under the School to Work Opportunities act of 1994, unless the programs funded under this Act serve only those participants eligible to participate in the programs under this Act.

Section 322. STATE AND FEDERAL EDUCATIONAL STANDARDS

All education programs for youth supported with funds provided under Title II of WIA shall be consistent with applicable state and local educational standards.

Section 323. AWARDING OF ACADEMIC CREDIT – EDUCATIONAL STANDARDS

Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under such chapter shall be consistent with the requirements of applicable state and local law, including regulation.

Section 324. NONINTERFERENCE AND NONREPLACEMENT OF REGULAR ACADEMIC REQUIREMENTS

No funds for youth programs shall be used to provide an activity for eligible youth who are not school dropouts if participation in the activity would interfere with or replace the regular academic requirements of the youth. (129)

Section 325. PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION

No provision of this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution, school, or school system.

Section 326. PUBLIC SERVICE EMPLOYMENT

No funds available under the Act may be used for public service employment except as specifically authorized under this title.

Section 327. CHARGING OF FEES

No person or organization may charge an individual a fee for the placement or referral of an individual in or to a training program under this Title.

Section 328. ON-THE-JOB TRAINING REIMBURSEMENT

In most cases, on-the-job training is not an appropriate work experience activity for youth participants under age 18. Local program operators may choose, however, to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant.

An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience and the participant's individual employment plan.

The employer may be reimbursed up to 90 percent of the wage rate to compensate for the employer's extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants. The state has established following on-the-job training reimbursement costs based on a sliding scale for employers. Under this scale, the following OJT reimbursement amounts will be permitted:

- a) up to 90% for employers with 50 or fewer employees;
- b) up to 75% for employers with 50 - 250 employees; and
- c) up to 50% for employers with 251 or more employees

The sliding scale would be based on the following factors:

- Labor market demand for the occupation for which OJT is being delivered;
- Labor market demand for the industry in which training is being delivered;
- Percentage of successful completers who are hired by the employer or employers;

- Size of the potential employer's workforce; and
- Demographic characteristics of the trainees with an emphasis on encouraging training individuals with multiple barriers to employment.

No reimbursement greater than 50 percent will remain in effect longer than three months.

OJT contracts may be written for eligible employed workers when: (a) the employee is not earning a self-sufficient wage (see below) as determined by State or local policy; (b) the OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified in the local Plan; and, (c) the position meets all other OJT requirements.

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

- a) the employee is not earning a self-sufficient wage (see above) as determined by local policy;
- b) the training is designed to meet the special requirements of an employer or group of employers; is conducted with a commitment by the employer to employ, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training; and the employer pays for not less than 50 percent of the cost of the training.
- c) The customized training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified in the local Plan.

On the job training contracts under this title shall not be entered into with employers who have received payments under previous contracts and have exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

The Employability Plan developed for each OJT participant shall document how the training length was determined.

Payments to employers for OJT are deemed to be in compensation for the extraordinary cost associated with training participants and in compensation for the costs associated with the lower productivity of such participants. Employers are not required to maintain separate records to document the extraordinary costs actually incurred.

OJT contracts shall specify the types and duration of OJT and other services to be provided in sufficient detail to allow for a fair analysis of the reasonableness of proposed costs and otherwise to comply with the applicable requirements of the Act.

Each contract with an OJT employer, at a minimum, shall specify the number of participants to be trained, participant wage rates, and the method and maximum amount of reimbursement; and shall provide a job description and brief training outline, including training hours by skill area or task.

OJT employers shall maintain adequate time and attendance, payroll and other records to support amounts reimbursed under OJT contracts.

OJT employers may also be reimbursed for the actual costs incurred in providing Basic/Occupational Skills Training and supportive services to WIA participants, including reimbursement for the cost of participant wages paid by the employer for time spent in such activities during working hours. Any such additional reimbursements shall be only for training and for support over and above that provided to regular employees, and must be documented by the employer.

OJT participants shall be compensated by the employer at the same rates, including periodic increases not related to individual performance, as similarly situated employees or trainees, but in no event less than the highest of the minimum wage prescribed under the Fair Labor Standards Act of 1938, as amended, or applicable State or local minimum wage laws.

Only those participants who have been assessed and for whom OJT has been documented as an appropriate activity in the participant's Employability Plan shall be referred to an employer for participation in OJT.

An individual referred to the WIA program by an employer may be enrolled in an OJT program with such employer only upon completion of an objective assessment and Employability Plan in which OJT with such employer has been determined to be an appropriate activity and the employer has not already hired such individual.

A temporary employment agency may serve as the employer of record for purposes of providing OJT to a participant in employment only when such participants are treated as all other agency employees and not when such agency provides probationary seasonal, temporary, or intermittent employment.

Section 329. NEEDS RELATED PAYMENTS

Needs-related payments provide financial assistance to participants for the purpose of enabling individuals to participate in training. Needs related payments may be provided if the participant has been accepted in a training program that will begin within 30 calendar days. Adult and dislocated worker funds allocated to a local area may be used to provide needs related payments to:

An adult who is unemployed and does not qualify for (or ceased to qualify for) unemployment compensation, and is enrolled in a program of training services under WIA.

A dislocated worker who is unemployed, and: has ceased to qualify for unemployment compensation or trade readjustment assistance under TAA or NSFTA-TAA; is enrolled in a program of training services under WIA; and only if such worker was enrolled in the training services—

- (i) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility for employment and training activities for dislocated workers under this title; or
- (ii) if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months.

Section 330. LEVEL OF NEEDS RELATED PAYMENTS

The needs related payment level for adults must be established and included in the local Plan and shall be reflected in the Subrecipient's agreement.

The level of a needs related payment made to a dislocated worker shall not exceed the greater of –

- (i) for participants who were eligible for unemployment compensation as a result of the qualifying dislocation, the payment may not exceed the applicable weekly level of unemployment compensation benefit; or
- (ii) for participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level must be adjusted to reflect changes in total family income as determined by local policies.

Section 331. CONSTRUCTION COSTS

Funds available under this Agreement must not be spent on construction or purchase of facilities or buildings except:

- (a) To meet a recipient's (as the term is defined in 29 CFR 31.2(h)), obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended;
- (b) To fund repairs, alterations and capital improvements of:
 - (1) SESA real property, identified at WIA section 193, using a formula that assesses costs proportionate to space utilized;
 - (2) WIA owned property which is transferred to WIA title I programs;
- (c) For Job Corps facilities, as authorized by WIA section 160(3)(B); and
- (d) To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area.

Construction costs may be allowable training or participant support costs only when funds are used to:

- a) Purchase equipment, materials, and supplies for use by participants while on the job and for use in the training of such participants. Examples of such equipment, materials and supplies are hand tools, work clothes, and other low cost items; and
- b) Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and needs-based payments and compensation to participants.

Section 332. COORDINATION WITH PROGRAMS UNDER TITLE IV OF THE HIGHER EDUCATION ACT INCLUDING THE PELL GRANT PROGRAM

When financial assistance programs under Title IV of the Higher Education Act (HEA) (the Pell Grant program, the Supplemental Education Opportunity Grant program, the Work Study program, the Perkins loan program, the Family Education Loan program -- including Stafford, PLUS and Supplemental Loans for Students programs -- and the Direct Loan Demonstration program), which provide student financial aid programs for postsecondary education, are available to WIA participants, coordination procedures and contractual safeguards shall be established to ensure that WIA funds are in addition to funds otherwise available in the area.

Subrecipients shall document in the Employability Plan its determination with the educational institution of the participant's training-related financial assistance needs and the proper mix of WIA and Pell Grant funds, since a Pell Grant may be used for applicable living expenses as well as for tuition, fees, and books. The Subrecipient shall provide to the educational institution's financial aid officer the names of WIA participants who are to attend such institution and for whom WIA payments will be made.

In completing the objective assessment and developing the Employability Plan for a Title I participant, the Subrecipient shall ensure, to the extent practicable, that available Federal, State, and local resources are coordinated sufficiently to meet the training and education-related costs of services, so that the participant can afford to complete the agree-upon program successfully.

Section 333. BASIC PROGRAM REQUIREMENTS, ADULTS AND DISLOCATED WORKERS

All programs for delivery of services to adults and dislocated workers shall include:

- (a) an objective assessment of the skill levels and service needs of each participant, which shall include a review of basic skills, occupational skills, prior work experience, employability, interests, aptitudes (including interests and aptitudes for nontraditional jobs), and supportive service needs, except that a new assessment of a participant is not required if the program determines it is appropriate to use a recent assessment of the participant conducted pursuant to a one stop partner or another education or training program;
- (b) development of service strategies that shall identify the employment goal (including, in appropriate circumstances, nontraditional employment), appropriate achievement objectives, and appropriate services for participants taking into account the assessments conducted except that a new service strategy for a participant is not required if the program determines it is appropriate to use a recent service strategy developed for the participant under another education or training program;
- (c) a review of the progress of each participant in meeting the objectives of the service strategy; and
- (d) Adult and dislocated worker customers, including those with special needs, will have access to employment and training services delivered in progressively higher stages of intervention from core, intensive and training, as appropriate, to meet their individual needs. A description of core, intensive and training services to be provided with allotments received under Section 132 are listed below.

Core Services:

Determinations of eligibility - registration may occur electronically, by personal interview, or an individual application.

Outreach, intake and orientation to the information and services available through the One-Stop system including services targeted to special populations including migrant and seasonal farm workers, veterans, older workers, minorities groups, and persons with disabilities;

Initial assessment - the process of gathering information about an individual's skill levels, aptitudes, abilities and supportive service needs to make an initial assessment of services or programs most appropriate for an individual.

Job search and placement assistance – activities to provide job seekers with specific and general information that are designed to help them carry out a successful job hunting strategy. Subjects may include labor market information, application/resume writing, interviewing techniques, skills identification, why you're hired, and other work search strategies.

Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including:

1. job vacancy listings in the local labor market area;
2. information on job skills necessary to obtain the jobs listed; and

3. information relating to local occupations in demand and the earnings and skill requirements for such occupations;

Provision of performance information and program cost information on eligible providers of training services;

Provision of information regarding how the local area is performing on the local performance measures and any additional performance information with respect to the one-stop delivery system in the local area;

Provision of accurate information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such services, as appropriate;

Provision of information regarding filing claims for unemployment compensation;

Assistance in establishing eligibility for welfare-to-work activities (not currently available in Idaho), programs of financial aid assistance for training and education programs (PELL grants) and other Federal, state or local resources that are not funded under WIA and are available in the local area. This assistance may include referrals to specific agencies; information relating to, or provision or, required applications or other forms; or specific on-site assistance;

Follow-up services - the process of maintaining contact with participants in-person, by telephone or other procedures, to determine if additional services are required to maintain or obtain employment. Follow-up, for a minimum of 12 months after the first day of the employment, is required for participants who are placed in unsubsidized employment.

Intensive Services – These services are intended to identify obstacles and provide a higher degree of intervention to assist eligible unemployed adults and dislocated workers who are determined unable to obtain or retain employment through core services. Intensive services may also be provided to employed workers to obtain or retain employment that will lead to self-sufficiency as defined by State policy;

Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include:

1. diagnostic testing and use of other assessment tools; and
2. in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

Development of a written individual employment plan, to identify the employment goals, steps and timetables, and combination of services needed for the participant to achieve a specific occupational goal;

Group or individual career counseling: ongoing or one-time assistance from a qualified staff person to aid the participant in gaining a better understanding of themselves so that they can more realistically choose or change an occupation, or make a suitable job adjustment. Career counseling can be provided directly to an individual or through group services.

Case management for participants seeking training services; the provision of on-going one-on-one personal assistance including, but not limited to, providing information and guidance pertaining to vocational choice, assistance in obtaining training and services to reach employability, and follow-up services over a period of time required to obtain employment.

Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training;

Out-of-area job search assistance; financial assistance for travel expenses when traveling outside the normal commuting distance for job interviews or to make direct employer contacts where there is a strong potential for employment.

Literacy activities related to basic workforce readiness; includes training which will enhance the employability of the participant by upgrading basic skills. Participants may be enrolled in remedial education to enhance basic reading and math skills, English as a second language (ESL), GED preparation to obtain a high school equivalency diploma or basic computer skills commonly used in a variety of occupations and industries.

Relocation assistance; financial assistance for moving and relocation expenses when the participant receives a definite, permanent job offer which is contingent upon moving to within commuting distance of the job. Relocation assistance is prohibited to encourage or induce business relocation that would result in a loss of employment at the original site or 120 days after relocation and commencement of business if a loss of employment was encountered at the original site.

Internships; a short-term or part-time work assignment with a private for-profit employer for a participant who needs assistance in becoming accustomed to basic work requirements.

Work experience; a short-term or part-time work assignment with a public, private nonprofit or private-for-profit worksite for a participant who needs assistance in becoming accustomed to basic work requirements; it should promote the development of good work habits and basic work skills.

Training Services – classroom and other occupational training services designed to equip eligible adults and dislocated workers to enter the workforce and/or retain employment. Training services may be made available to employed and unemployed adults and dislocated workers who:

- (a) Have met the eligibility requirements for intensive services, have received at least one intensive service, and have been determined to be unable to obtain or retain employment through such services;
- (b) After an interview, evaluation, or assessment, and case management, have been determined by a One-Stop operator or One-Stop partner, to be in need of training services and to have the skills and qualifications to successfully complete the selected training program;
- (c) Select a program of training services that is directly linked to the employment opportunities either in the local area or in another area to which the individual is willing to relocate;
- (d) Are unable to obtain grant assistance from other sources to pay the costs of such training, including Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIA assistance in addition to other sources of grant assistance, including Federal Pell Grants; and
- (e) For individuals whose services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system.

Occupational skills training is training conducted in a classroom setting and is designed to provide individuals with the technical skills necessary to perform a specific job or group of jobs. Participants may be enrolled in vocational technical skills training or academic skills training.

On-the-job training is training conducted by a private or public sector employer, that occurs while the participant is engaged in productive work, learning the skills and information necessary for full and adequate performance on the job.

Programs that combine workplace training with related instruction, which may include cooperative education programs;

Training programs operated by the private sector;

Skill upgrading and retraining - training provided to an individual already in the workforce, who is in need of additional training to advance in their current employment and attain self-sufficiency;

Entrepreneurial training - training provided to an individual for the purpose of providing the management skills required to start up and operate a business;

Job readiness training - defined as pre-employment/work maturity skills;

Adult education and literacy activities provided in combination with other training services;

Customized training – designed to train individuals for specific occupations in a new or expanding business or industry conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

Permissible local Employment and Training Activities: Adult and dislocated worker funds provided to local areas may also be used to deliver the discretionary activities identified below and authorized in the Act.

1. Customized screening and referral of qualified participants in training services to employment;
2. Customized employment-related services to employers on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act.

Section 334. BASIC PROGRAM REQUIREMENTS FOR YOUTH

All programs for delivery of services to participants shall include:

- (a) an objective assessment of the skill levels and service needs of each participant, which assessment shall include a review of basic skills, occupational skills, prior Work Experience, employability, interests, aptitudes (including interests and aptitudes for nontraditional jobs), and supportive service needs, except that a new assessment of a participant is not required if the program determines it is appropriate to use a recent assessment of the participant under another education or training program;

- (b) development of service strategies that shall identify the employment goal (including, in appropriate circumstances, nontraditional employment), appropriate achievement objectives, and appropriate services for participants taking into account the assessments conducted, except that a new service strategy for a participant is not required if the program determines it is appropriate to use a recent service strategy developed for the participant under another education or training program;
- (c) a review of the progress of each participant in meeting the objectives of the service strategy; and
- (d) each of the following services, which shall be provided either directly or through arrangement with other programs to a participant where the assessment and the service strategy indicate such services are appropriate:
 - (1) Tutoring, study skills training, and instruction leading to secondary school completion, including dropout prevention strategies;
 - (2) Alternative secondary school offerings;
 - (3) Summer employment opportunities directly linked to academic and occupational learning;
 - (4) Paid and unpaid work experiences, including internships and job shadowing;
 - (5) Occupational skills training;
 - (6) Leadership development opportunities, which may include such activities as positive social behavior and soft skills, decision making, teamwork, and other activities.
 - (7) Supportive services;
 - (8) Adult mentoring for a duration of at least twelve months, that may occur both during and after program participation;
 - (9) Follow-up services; and
 - (10) Comprehensive guidance and counseling including drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth.

Section 335. VETERAN'S PRIORITY

The Jobs for Veterans Act (Pub. L. 107-288) provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. Grantees are required to provide priority of services for veterans and eligible spouses pursuant to 20 CFR part 1010, the regulations implementing priority of service for veterans and eligible spouses in Department of Labor job training programs under the Jobs for Veterans Act published at 73 Fed. Reg. 78132 on December 19, 2008. In circumstances where a grant recipient must choose between two equally qualified candidates for training, one of who is a veteran, the Jobs for Veterans Act requires that grant recipients give the veteran priority of service by admitting him or her into the program. To obtain priority of service a veteran must meet the program's eligibility requirements. Grantees must comply with DOL guidance on veterans' priority available at the "Jobs for Veterans Priority Service" website: <http://www.doleta.gov/programs/vets>.