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BACKGROUND:

WIOA requires all subrecipients expending WIOA funds to comply with Federal and State debt collection requirements. Among the required controls specified in 20 CFR §683.420(a)(i) is a process for collecting debts. Information on appeals, waivers and offsets is contained in the Department of Labor, One-Stop Comprehensive Financial Management Technical Assistance Guide Part II, Chapter II-13-Disposition of Disallowed Costs.

POLICY AND PROCEDURES:

DEFINITIONS:

Final determination is the awarding agency's decision to allow or disallow questioned costs and resolve any non-monetary findings.

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

POLICY:

The SBWIB, Inc. is responsible for local subrecipient audit resolution and aggressive debt collection action. At the State level, audit resolution and debt collection are the responsibility of the Employment Development Department's (EDD) Compliance Review Division (CRD).

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

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

The SBWIB, Inc. will maintain records that document the actions taken with respect to debt collection, restoration, or other debt

resolution activities. The SBWIB, Inc. must also document why the actions were taken to support their decisions.

Any debt involving fraud or abuse shall be repaid in cash. Funds collected in settlement of these debts will be returned to Employment Development Department (CRD). The refund check will identify the title and year to which the misexpenditure was originally charged.

When the debt was not a result of fraud, malfeasance, misapplication of funds or other serious violations or illegal acts, the cash repayment of the disallowance is a credit to the title and year to which it was originally charged. The credit reduces the expenditures of the period of cost that was refunded. If the year of allocation is still open, SBWIB, Inc. may expend the funds within the cost limits. Cash payments received after the fund availability period must be remitted to CRD.

PROCEDURES:

1. When a debt is established as a result of an audit, a monitoring finding, investigation or other means, the SBWIB, Inc. will notify the debtor by certified mail, return receipt of the following:
 - a. The amount of the disallowed cost;
 - b. Date on which the debt was established as a final decision;
 - c. The debt, if not resolved or if a satisfactory alternative repayment plan has not been negotiated, will become delinquent 30 calendar days from the date the debt was established as final;
 - d. The sanctions for non-payment, which may include but are not limited to debarment;
 - e. The interest rate charged, if any which will be based on the prime rate from the date the debt was established as final; and
 - f. The debtor's administrative appeal rights.
2. SBWIB, Inc. Fiscal Unit will maintain a record of outstanding debt in its account receivable system.

3. SBWIB, Inc. standards and specifications for terminating, compromising, and litigating debts unless specifically stipulated in contract provisions will be the following: It is not our policy to compromise debts. Debts may proceed to litigation if no response is received within 30 days of the final debt collection letter. Debts will not be terminated unless approved by agreement with the Department of Labor (DOL) through EDD (CRD).
4. The SBWIB, Inc. will attempt to negotiate resolution of the debt or establish an agreed upon repayment schedule. Cash repayment from non-Federal funds is the preferred method of collection. Delinquent debts may be recovered by unilateral adjustment to payments, withholding of funds or litigation. If the debtor is a subrecipient/contractor who is willing and can demonstrate an inability to make full repayment, collections procedures may include installment payments, negotiated bilateral adjustment to payments, or provision of services of equal value in lieu of cash payments or offset against future funding.
5. The SBWIB, Inc. will establish and maintain a permanent record of all debt collection cases and their status. The record will document all actions taken and will include the Initial Determination letter, The Second Notice letter sent 30 days later, and a Final Notification letter sent 30 days following the date of the Second Notice letter:
 - a. Description of the specific debt and the basis upon which the debt owed to SBWIB, Inc. was determined.
 - b. Copies of each written notification, with certified mail return receipt of delivery, sent to the sub recipient/contractor.
 - c. All other correspondence regarding the debt and its collection. This will include, but not limited to, notes, memos and/or transcripts of each discussion and/or meeting (telephone, e-mail, video conference, in-person or hearing) with representative of the sub recipient/contractor regarding the specific debt, its collection and/or repayment actions or plans.
 - d. A log identifying the current status of the case.

6. If the debt is not repaid within thirty (30) days of the first notification, two (2) more follow-up letters will be sent to the debtor at 30 days intervals. At any time during the date of the initial notice to the third notification, the debtor may appeal the determination and/or enter into negotiation for the settlement of the debt. If an appeal has been lodged by the debtor, no further notification or collection action may be pursued until the appeal is settled.
7. If no appeal is filed, the debt is considered delinquent and legal action may be initiated or a second more strongly worded thirty (30) day notices may be sent. If no satisfactory resolution occurs at the end of the sixty (60) day period, a third and final collection letter will be issued.

The final collection letter will indicate that the SBWIB, Inc. will impose one or more of the following sanctions:

- a. Withholding payments due the subrecipient.
 - b. Initiate litigation against the subrecipient.
 - c. Withholding of future funding in accordance with the guidance at 29 CFR 97.36 (b).
 - d. Termination of current agreements.
 - e. Initiate debarment.
7. If the debt is not repaid as a result of the sanctions imposed above and it is still outstanding after the ninety (90)-day period, the SBWIB, Inc. will make a determination regarding other means of resolution. It may, at its own discretion, request that CRD submit a waiver of liability to the U.S. Department of Labor of any disallowed cost if it can be demonstrate that such a request would satisfy the requirement as outlined in 20CFR 683.730 of the WIOA regulations.
 8. To be relieved of liability for a subrecipient's debt, SBWIB, Inc. will submit a written request that EDD seeks Department of Labor (DOL) agreement to forego collection action to CRD. Requests will include documentation and other demonstrations of facts showing compliance with WIOA Section 683.730. Mere statement of compliance and recitation of the criteria will not be submitted. Examples of appropriate documentation which may be included, but are not limited to, proof that debt collection letters were sent (e.g., returned certified mail receipts), litigation was conducted and withholding of funds was attempted. Without the prior approval of both CRD and DOL, SBWIB, Inc. will remain responsible for repayment of the entire debt.

Unless other arrangement have been documented and approved by CRD, SBWIB, Inc. and (when appropriate) the contractor, all WIOA debts must be paid within 30 calendar days of the date on which the debt was established as final. When the debtor is unable to make restitution in full, an installment repayment agreement may be negotiated. Installment repayment agreements will be of short duration, from 3 to 12 months, with a maximum of 36 months. The length of the repayment agreement will be negotiated based on the size of the debt and the debtor's ability to pay. The CRD must approve all installment repayment agreements.

The CRD will:

- Instruct the Fiscal Programs Division (FPD) to issue an invoice with payment due date and the interest charge, if any, to the local area once a final debt is established is established.
- Notify FPD to issue two additional invoices to the local area at 30 calendar day intervals, when payment has not been received or a satisfactory alternative repayment plan has not been negotiated.
- Determine whether to use another method of collection if the debt is still outstanding after 90 calendar days. In making the determination, consideration will be given to the amount of the debt, the cost of further debt collection, the amount collected to day, and the probable success of pursuing further collection action.
- Notify the Chief Elected Official of each relevant unit of general local government, if the agreed upon payment is not received within the 90 calendar days after the date of the third invoice. When multiple units of general local government are designated as the local area, the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

ACTION:

Bring this directive to the attention of all affected staff and subrecipient.

INQUIRES:

If you have questions regarding information contained herein, please contact the SBWIB, Inc. Finance Manager at (310)-970-7700.



Jan Vogel
Executive Director

Approved Executive Committee Meeting: 4/12/2017