



# Employment Security Department

WASHINGTON STATE

## Workforce Innovation and Opportunity Act Title I Policy Employment System Administration and Policy

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Washington envisions a nationally recognized fully integrated One-Stop system with enhanced customer access to program services, improved long-term employment outcomes for job seekers and consistent, high-quality services to business customers. In order to achieve this vision, Employment System Administration and Policy sets a common direction and standards for Washington's WorkSource system through the development of WorkSource system policies, information memoranda, and technical assistance.

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**Policy Number:** 5403, Revision 2

**To:** Washington WorkSource System

**Effective Date:** November 30, 2023

**Subject:** Records Retention and Public Access

### 1. Purpose:

To communicate records retention and public disclosure requirements under Title I-B of the Workforce Innovation and Opportunity Act (WIOA). Revision 2 clarifies the retention schedule when any litigation or audit is under way (section 3.a.vi.).

### 2. Background:

Grantees, subrecipients, and contractors funded under the Workforce Innovation and Opportunity Act (WIOA) must abide by WIOA law, regulations, and guidance, all applicable Office of Management and Budget (OMB) Circulars, state regulations in laws and rules (Revised Code of Washington and Washington Administrative Code), Office of Financial Management (OFM) policies, and state WIOA policies.

### 3. Policy:

Public agencies and non-public agencies will comply with applicable records retention and disclosure laws in regard to WIOA records.

Recipients of WIOA funds must keep records that are sufficient to permit the preparation of reports required by the Secretary of Labor and the tracing of funds to a level of expenditure adequate to ensure that the funds have been spent lawfully.

#### a. **Records Retention**

Grantees, subrecipients, fiscal agents, and contractors are required to maintain and retain records of all fiscal and program activities funded under WIOA. With some exceptions, such records must be available to the public. The minimum requirements, timeframes for records retention, and extent to which such records may be made available to the public are as follows:

- i. Retain all records pertinent to grants, grant agreements, interagency agreements, contracts or any other awards, including financial, statistical, property, and supporting documentation, for a period of at least three (3) years after submittal of the final expenditure report (closeout) for that funding period to the awarding agency.
- ii. Retain all records of non-expendable property for a period of at least three (3) years after final disposition of the property.
- iii. Retain all program and data validation records pertinent to applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment for a period of not less than six (6) years after the end of the fiscal year.
- iv. Retain records regarding complaints and actions taken on complaints for at least three (3) years from the date of resolution of the complaints.
- v. After files have been retained for the appropriate period cited in Section 3.a.i-iv, refer to your organization's guidelines for destroying confidential information.
- vi. Retain all records beyond the required three (3) or six (6) years if any litigation or audit is under way or a claim is instituted involving the grant or agreement covered by the records. The records must be retained for at least six (6) years after the litigation, audit, or claim has been resolved.

In the event of the termination of the relationship between the State and an LWDB's fiscal agent or other WIOA subrecipient, the fiscal agent or subrecipient is responsible for maintaining and retaining their own records as well as the records of any subrecipient unable to maintain and retain its own records. The State, however, is responsible for maintaining and retaining the records of the fiscal agent or subrecipient unable to maintain and retain its own records or those of its subrecipients.

Copies of records made by microfilming, photocopying, or similar methods may be substituted for original records if they are preserved with integrity and are admissible as evidence.

All records retained beyond the mandatory retention period are subject to audit and/or review.

## **b. Limitation of Public Access to Records**

Personal records of WIOA registrants are private and confidential and will not be disclosed to the public. Personal information may be made available to WorkSource partners or service providers on a selective basis consistent with the registrant's signed "Authorization for Release of Requested Information" form. In addition, this information may be made

available to persons or entities having responsibilities under WIOA, including representatives of:

- i. The U.S. Department of Labor
- ii. The Governor
- iii. WIOA Grant Recipients and Public Agencies
- iv. Local Subrecipients

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

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

#### 4. **Definitions:**

**Agency:** Includes all state agencies and all local agencies. "State agency" includes every state office, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

**Note:** In a decision called *Telford v. Thurston County Board of Commissioners*, the court adopted a four-part test to determine if a private entity is to be regarded as a public agency: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government. Under *Telford*, each of these criteria need not be equally satisfied, but rather the criteria on balance should suggest that the private entity in question is the functional equivalent of a state or local agency.

#### 5. **References:**

- [Public Law 113-128](#), Workforce Innovation and Opportunity Act of 2014, Section 185(a)
- [2 CFR 200.333-337](#) – Record retention and access
- [29 CFR 37.37](#) – What are a recipient's responsibilities to collect and maintain data and other information?
- [29 CFR 97.42](#) – Retention and access requirements for records
- [RCW.42.56 – Public records act](#)
- [RCW 40.14 – Preservation and destruction of public records](#)
- [WA Secretary of State \(SOS\) Records Retention Schedule](#)
- [ESD Records Retention Schedule, Version 1 \(Aug. 2020\)](#)
- [Telford v. Thurston County Board of Commissioners](#)

#### 6. **Supersedes:**

**7. Website:**

[Workforce Professionals Center](#)

**8. Action:**

Local Workforce Development Boards and their contractors must distribute this policy broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

**9. Attachments:**

None.

**Direct Inquiries To:**

*Employment System Administration and Policy  
Employment System Policy and Integrity Division  
Employment Security Department  
P.O. Box 9046  
Olympia, WA 98507-9046  
[SystemPolicy@esd.wa.gov](mailto:SystemPolicy@esd.wa.gov)*