

## **Interim Policy on Record Retention**

### **Reference:**

Workforce Innovation and Opportunity Act, Section 185; 2 CFR § 200.37; 2 CFR § 200.69; 2 CFR § 200.74; 2 CFR § 200.92; 2 CFR § 200.93; 2 CFR § 200.333; 2 CFR § 200.336; 2 CFR § 200.337; Nebraska Records Management Act, Neb. Rev. Stat. 84-1201, et seq.; Nebraska Public Records Law, Neb. Rev. Stat. 84-712, et seq.; Interagency Workfare Contract between Nebraska Department of Labor and Nebraska Department of Health and Human Services.

### **Background:**

Recipient and sub-recipients of Workforce Innovation and Opportunity Act (WIOA) funds are required to keep records that are sufficient to prepare required reports and to trace funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully.<sup>1</sup>

### **Action:**

After a 10-day review period, this Policy will be considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox: [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

### **Policy:**

#### **Record Keeping Generally**

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

#### Definitions

**Federal awarding agency** means the Federal agency that provides a Federal award directly to a non-Federal entity.<sup>2</sup>

**Non-Federal entity** means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.<sup>3</sup>

**Pass-through entity** means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.<sup>4</sup>

**Subaward** means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.<sup>5</sup>

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<sup>1</sup> WIOA Sec. 185 (a)(1)

<sup>2</sup> 2 CFR § 200.37

<sup>3</sup> 2 CFR § 200.69

<sup>4</sup> 2 CFR § 200.74

<sup>5</sup> 2 CFR § 200.92

**Subrecipient** means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.<sup>6</sup>

Retention Period<sup>7</sup>

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of **3 years** from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient.

Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

- a. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b. When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- c. Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
- d. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
- e. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

Pursuant to interagency contract between the Nebraska Department of Labor and the Nebraska Department of Health and Human services, all records related to the delivery of services under the Workfare program must be maintained for a period of 6 years from the date of final payment, or until all issues related to an audit, litigation, or other actions are resolved, whichever is longer.

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

- allow access by the grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examinations, excerpts, and transcriptions; and
- mandate retention of all required records for 3 years after grantees or sub-grantees make final payments or for a period of not less than 3 years from the date of resolution of a complaint, whichever date is later.

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<sup>6</sup> 2 CFR § 200.93

<sup>7</sup> 2 CFR § 200.333

**Access to Records<sup>8</sup>**

The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

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

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

**Public Access to Records<sup>9</sup>**

No Federal awarding agency may place restrictions on the non-Federal entity that limits public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under 2 CFR § 200.315 Intangible property. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. However, public access to certain types of records may fall under the Nebraska Public Records Law, Neb. Rev. STAT. 84-712, et seq., accessible at <http://nebraskalegislature.gov/laws/statutes.php?statute=84-712>.

The recipients and sub-recipients shall be responsible to establish information security procedures to safeguard confidential data in all records retained.

**Destruction of Hard Copy Records**

All request for the destruction of any records must comply with the record retention requirements found in this policy in addition to the requirements set forth in the Nebraska Records Management Act, Neb. Rev. Stat. 84-1201, et seq. and must be consistent with Nebraska Department of Labor Record Retention and Disposition Schedules found on the Record Management Division's website at <http://www.sos.ne.gov/records-management/laborschedule.html>.

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<sup>8</sup> 2 CFR § 200.336

<sup>9</sup> 2 CFR § 200.337

**Enforceability and Legal Effect of Digital/Electronic Files**

Electronic records will not be denied legal effect or enforceability as related to this policy. All records, regardless of the media on which they reside must be retained for the minimum retention period required by the nature of the record.

**Disclaimer:**

This interim policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional Federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final Federal regulations are released in early 2016.