

To: Indiana's Workforce System

From: Indiana Department of Workforce Development (DWD)

Date: August 29, 2022

Subject: DWD Policy 2022-05
Local Workforce Innovation and Opportunity Act (WIOA) Governance: Single Entity Fulfilling Multiple Roles in Local Workforce Areas

Purpose

This policy provides guidance on WIOA required agreements for when Local Workforce Development Boards (LWDBs) have a single entity fulfilling more than one role. The guidance describes the necessary level of agreement between the LWDB, Regional Chief Elected Official (RCEO), and the State (as applicable). This policy highlights the importance of internal controls and practices to avoid conflicts of interest.

Rescissions

- DWD Policy 2007-33 *Guidance on Indiana Code § 22-4.5-7-6, 22-4.5-7-7, and 22-4.5-7-8*

References

- WIOA Sections 107(d); 121(d)(4)(A) and (C)
- 20 CFR 678.615 - 625
- 20 CFR 679.370
- 20 CFR 679.410 - 430
- 20 CFR 680.160
- Training and Employment Guidance Letter (TEGL) 15-16, *Competitive Selection of One-Stop Operators*

Content

LWDBs, their leadership, and their staff have obligations to ensure organizational and personal integrity and ethical behavior. As a LWDB determines how its workforce system will operate and which duties will be procured, LWDBs must consider reporting structures with clear separations of job duties and responsibilities. LWDBs must establish policies and implement procedures sufficient to create adequate firewalls as an internal control to ensure integrity in decision making, compliance with WIOA, corresponding regulations, and relevant OMB circulars. This requirement applies any time an entity is serving in more than one of the following roles: local WDB staff, local fiscal agent, one stop operator (OSO), and direct provider of services.¹

¹ 20 CFR 679.430.

WIOA requires Local Workforce Development Areas (LWDAs) to have agreements in place when the same entity fulfills more than one of these roles in administering the adult, dislocated worker, and youth programs.² While these roles may be filled by the same entity or different entities based on what the LWDB determines is best for meeting the needs of its customers and geographic area, the roles must be clearly articulated as part of the procurement and selection process.

Single Entity / Multiple Role Agreements

The possibility that a conflict of interest may arise is inherent when one entity is performing, or seeking to perform, multiple functions within the workforce development system. Written agreements are intended to mitigate conflicts that may occur when an entity making decisions and taking actions as part of one of its roles may unfairly benefit itself in its other role. An entity's judgments³ may not be, or may not appear to be, objective and impartial. Therefore, proper firewalls must be in place to ensure the transparency and integrity of the work being performed and to demonstrate to the public that decisions are made impartially with no preferential treatment being given to a particular entity.

LWDB / RCEO Agreement. To demonstrate internal controls and prevent conflict of interest, 20 CFR 679.430 requires any organization that has been selected or otherwise designated to perform multiple roles develop a written agreement with the LWDB and the RCEO to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget (OMB) circulars, and the State's and region's conflict of interest policies.⁴ This agreement should clearly articulate which party is responsible for each specific role; lines of authority and responsibility; and which party is responsible for carrying out reporting, monitoring, and other oversight activities.

LWDB/RCEO/State Agreement. Under certain circumstances, local area structures may require an additional layer of agreement by the RCEO and the Governor, via DWD's Commissioner as the Governor's designee (State-level agreement). Structures requiring this additional layer of agreement include:

- When staff to the board have been selected to serve as the OSO.⁵
- When the local WDB seeks to act as a provider of career services.⁶

NOTE: The restrictions on the provision of career and training⁷ services by the local WDB, as one-stop operator, also apply to staff of the local WDB.⁸

² 20 CFR 679.430. The written agreement must be between the local board, the RCEO, and the entity fulfilling the functions to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy.

³ Such judgments may revolve around competitive procurements, selection, or termination of OSOs or service providers, oversight functions, negotiation of performance measures, or development of budgets.

⁴ This regulation applies regardless of whether the roles are procured on a competitive basis.

⁵ 20 CFR 679.410(a).

⁶ 20 CFR 679.410(b) and 20 CFR 680.160.

⁷ See 20 CFR 679.410(c) - A local LWDB is prohibited from providing training services unless the Governor grants a waiver in accordance with the provisions in WIOA sec. 107(g)(1).

⁸ 20 CFR 679.410(d).

When State-level agreement is required per the conditions above, local areas must submit a written request to DWD through the Policy inbox: policy@dwd.in.gov. The request must be signed by both the LWDB Chair and RCEO and contain the following:

- Description of desired structure and procurement/selection process used to determine the single entity as provider for multiple services (including the years for which the structure would be in place);
- Acknowledgement of specific structure/roles requiring State-level agreement; and
- Clear delineation of roles and management structure (see above reference to contents of RCEO agreement), depicting necessary separation of duties and firewalls to ensure adequate internal control and avoid conflict of interest.

Internal Controls: Firewalls/Separation of Duties

When a single entity may potentially fulfill multiple roles, it is vital that procurement, selection, contracting, and management processes adequately address internal controls to avoid conflicts of interest. As discussed above, establishment of the required single entity/multiple role agreements assure that firewalls are in place with clear separation of duties.

However, consideration must also be given to these controls in both the pre-selection and post-selection phases. During the procurement/selection process, solicitation materials (e.g., Request for Proposals or other appropriate procurement methods) must clearly define the expected roles and functions of each role being procured and must allow a prospective applicant to apply for one or multiple roles. In the post-selection phase, there must be adequate coverage and contractual oversight to evaluate continued adherence to established controls.

In addition to defining roles and specific functions for each entity, some approaches that may be helpful for local areas to demonstrate adequate firewalls include, but are not limited to:

- Developing a tool or matrix covering separation of duties when a single entity covers multiple roles;
- Conducting regular or ongoing risk assessments of the LWDB's systemwide program and administrative operations to identify areas of overlapping responsibility and where firewalls can be improved;
- Putting firewall and internal control provisions into writing, through procurement, contract, policy, and/or other documents;
- Independent monitoring of entity performance;
- Requiring bidders vying to serve in multiple roles to identify their own firewalls so that these can be evaluated during the selection process; and
- Establishing a comprehensive oversight and monitoring system covering all entities that provide WIOA services and/or perform administrative functions within the local area.

Action

Local areas interested in the procurement of a single entity to serve in multiple roles must follow the provisions covered in this policy and applicable federal regulations. These requirements should be

considered in the development of requests for proposals for service providers, one-stop operators, fiscal agents, and board staff.

Where not already in place, local areas are encouraged to proactively adopt policies on conflicts of interest and firewalls.

DWD's WIOA Title I monitoring will include review of roles and responsibilities, and how these are being implemented.

Attachments

Attachment A – Local WIOA Governance Roles Summary

Effective Date

Immediately.

Ending Date

Upon rescission.

Additional Information

Questions regarding the content of this publication should be directed to policy@dwd.in.gov.

Attachment A

Local WIOA Governance Roles Summary

NOTE: The following summary of WIOA roles and responsibilities is provided for general reference and is not intended to be an exhaustive list. Please reference applicable regulations for further information.

Staff to the LWDB

Per 20 CFR 679.400 staff to the board may assist with fulfilling LWDB's required functions as outlined in 20 CFR 679.370 which may include:

- In partnership with the RCEO, develop and submit a local plan.
- Conduct workforce research and regional labor market analysis.
- Convene local workforce development system stakeholders to develop local plan.
- Lead efforts to engage with a diverse range of employers and entities.
- With secondary and postsecondary education programs, lead efforts to develop and implement career pathways.
- Identify and promote proven and promising strategies for meeting employer and jobseekers' needs.
- Develop strategies for using technology to maximize accessibility and effectiveness of the workforce system.
- Conduct program oversight activities.
- Negotiate and reach agreement on local performance accountability measures.
- Select one-stop operators and service providers.
- Coordinate with education and training providers.
- Develop a budget for the board's activities.
- Assess annually the physical and programmatic accessibility of all one-stop centers in the local area.

Local Fiscal Agent

20 CFR 679.420 provides the Local Fiscal Agents may:

- Receive funds.
- Ensure sustained fiscal integrity and accountability for expenditures of funds.
- Respond to audit financial findings.
- Maintain proper accounting records and adequate documentation.
- Prepare financial reports.
- Provide technical assistance to subrecipients regarding fiscal issues.
- At the direction of the LWDB, the fiscal agent may also:
 - Procure contracts or obtain written agreements.
 - Conduct financial monitoring of service providers.
 - Ensure independent audit of all employment and training programs.

One Stop Operator

20 CFR 678.620 provides the following guidance for One Stop Operators:

- The OSO shall coordinate the service delivery of required one-stop partners and service providers.
- LWDBs may establish additional roles of the one-stop operator, including, but not limited to: being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.
- An OSO **may not** perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans; be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; or develop and submit budget for activities of the LWDB in the local area.
- The OSO may also serve a different role within the one-stop system if it has established sufficient firewalls and conflict of interest policies and procedures as they conform to 20 CFR 679.430.

As indicated in WIOA Section 107(d), LWDBs will determine when the OSO shall also provide career services or if career services shall be provided by other contracted entities. LWDBs will develop service provider roles and responsibilities based upon the needs of community jobseekers and employers.

Service Providers

20 CFR 680.140 and 20 CFR 680.160 provide that Service Providers may:

- Provide direct services including but not limited to participant intake, orientation, initial assessments, employment services, and referrals to other partners and services.
- Provide individualized direct services including but not limited to comprehensive and specialized assessments, case management, individual employment plans, career planning and vocational counseling.
- If the OSO is also the service provider, appropriate firewalls must be in place for the competition and subsequent oversight, monitoring, and evaluation of the service provider.⁹ The firewalls must conform to federal regulations for demonstrating internal controls and preventing conflicts of interest.¹⁰ In instances when the LWDB operates as a provider of career services, both the RCEO and State-level agreement are needed.¹¹

⁹ 20 CFR 678.625

¹⁰ 20 CFR 679.430

¹¹ 20 CFR 680.160