



**To:** Indiana's Workforce System

**From:** Indiana Department of Workforce Development

**Date:** October 16, 2017

**Subject:** DWD Policy 2017-04  
State Funding Mechanism

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## Purpose

To provide guidance to Indiana's local workforce development boards (WDB's), Chief Elected Officials (CEOs), and all one-stop partners regarding appropriate funding levels for infrastructure costs of local one-stop centers and delivery systems when local negotiations between local WDB's and required one-stop partners fail to reach consensus. In the event consensus cannot be reached, the state funding mechanism will be triggered and implemented. This policy sets forth the requirement for notification, implementation, and appeals process for the state funding mechanism.

## References

- Workforce Innovation and Opportunity Act (WIOA) Sections 121, 134
- WIOA Regulations, 20 CFR §§678.700 – 678.755
- Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR Parts 200 and 2900
- TEGL 17-16: Infrastructure Funding of the One-Stop Delivery System, Released January 18, 2017

## Content

### Background

The Workforce Innovation and Opportunity Act (WIOA) requires each local WDB to develop and finalize a Memorandum of Understanding (MOU) amongst itself and its WIOA-required one-stop partners with the agreement of the CEO for each local Workforce Development Area (LWDA). The MOU coordinates the operation for the local one-stop delivery system, provision of programs and services, and apportionment of costs. The MOU must include two types of funding agreements pertaining to the costs

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of the local one-stop centers and delivery system in each LWDA: Infrastructure Funding Agreement(s) (IFA) and Additional Cost Funding Agreement(s). The Department of Workforce Development (DWD) has previously issued guidance on the development of the MOU<sup>1</sup> and local agreements regarding one-stop infrastructure and additional cost funding<sup>2</sup>.

In the event a local WDB is unable to reach consensus locally with all *required* one-stop partners on the funding of *infrastructure* costs, DWD must be notified and the Governor must administer the state funding mechanism formula to determine the appropriate share of infrastructure contributions for all required partners for the program year impacted.

Please note: The state funding mechanism is only triggered when *required* partners cannot reach consensus on *infrastructure* costs. The state funding mechanism is **NOT** applicable to *additional* partners or failure to reach consensus on *additional* costs.

### ***Notification***

If the Local WDB, one-stop partners, and CEO(s) cannot reach consensus on methods of sufficiently funding a one-stop center's infrastructure costs and the amounts to be contributed by each local partner program, the Local WDB is required to notify DWD by **July 1, 2017** (or after the applicable extension of time deadline, if granted). The notification form can be found in "Attachment C" of *DWD Policy 2016-08: Local Agreements Regarding One-Stop Infrastructure and Additional Cost Funding*. Even if all required partners, except one, agree to the terms of the IFA, consensus is NOT reached and the state funding mechanism will be triggered.

### ***Implementation***

Once notified of failure to reach local consensus on the funding of infrastructure costs by all partners, the Governor will administer the state funding mechanism formula to determine the appropriate share of infrastructure contributions for all required partners for the program year impacted. The following steps will be followed:

- **Step One: Local negotiation materials provided to the Governor.** In order to assist the Governor in making these calculations and determinations, the Local WDB must provide the appropriate and relevant materials and documents used in the local negotiations to DWD, when notifying DWD of the failure to reach consensus. At a minimum, the Local WDB must give DWD:
  - the cost allocation methodology or methodologies proposed by the partners to be used in determining the proportionate share;
  - the proposed amounts or budget to fund infrastructure costs and the amount of partner funds included;
  - the type of funds (cash, non-cash, and third-party in-kind contributions) available;

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<sup>1</sup> DWD Memorandum: "Memorandum of Understanding and Shared Infrastructure Costs," Dated April 15, 2016

<sup>2</sup> DWD Policy 2016-08: Local Agreements Regarding One-Stop Infrastructure and Additional Cost Funding

- any proposed or agreed upon one-stop center or system budget; and
- any partially agreed upon, proposed, or draft IFAs.

The Local WDBs also may give DWD additional materials that they or the DWD find to be appropriate.

- **Step Two: The Governor determines one-stop center infrastructure budget(s).** The Governor must determine the infrastructure budget(s). Depending on the local delivery system structure, there may be more than one infrastructure budget, each of which is contained in a one-stop operating budget. While the Governor should take into account the one-stop center's operating budget, the Governor only has the power to determine the infrastructure budget under the state funding mechanism. The Governor must determine the infrastructure budget in one of the following two ways:
  - If, as a result of an agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the infrastructure budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance.
  - If; however, an infrastructure budget or budgets were not agreed upon in the local negotiations, or the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the resources available to that local area in accordance with the Governor's guidance on one-stop infrastructure funding, then the Governor must use a formula determined by the State Workforce Innovation Council (SWIC). This formula will identify the factors, as well as each factor's corresponding weight, that the Governor must use in determining the one-stop center infrastructure budget. At a minimum, these factors will include:
    - the number of one-stop centers in a local area;
    - the total population served by such centers;
    - the services provided by such centers; and
    - any factors relating to the operations of such centers in the local area that the SWIC determines are appropriate (20 CFR 678.745, 34 CFR 361.745, and 34 CFR 463.745).
- **Step Three: Governor establishes cost allocation methodology.** After an infrastructure budget has been determined, the Governor will establish a cost allocation methodology that determines the distribution of infrastructure funding costs among the local one-stop partners in accordance with the principles of proportionate use of the one-stop center and relative benefit received. This allocation methodology must be consistent with the Federal Cost Principles of the Uniform Guidance in 2 CFR part 200, all relevant Federal regulations and statutes, further regulatory guidance, and the partner programs' authorizing laws and regulations. Beyond these requirements, the determining factor can be a wide range of variables, such as number of customers served, square footage used, or a different basis that is agreed upon for determining each partner's contribution level for infrastructure costs.

- **Step Four: Partners' proportionate shares are determined.** Once a methodology is established, the Governor will use this methodology to determine each required one-stop partner's proportionate share of infrastructure funding costs. The Governor will take into account a number of factors in reaching a proportionate share determination including:
  - the costs of administration of the one-stop delivery system for purposes not specifically related to a one-stop center for each partner (such as costs associated with maintaining the Local WDB or information technology systems);
  - statutory requirements for each partner program;
  - each one-stop partner's ability to fulfill such requirements; and
  - all other applicable legal requirements.

The Governor may draw upon any proportionate share determinations made during the local negotiations, including any agreements reached at the local level by one or more partners, as well as any other materials or documents from the negotiating process. For other required partner programs in which grant awards are made to entities that are independent of the authority of the Governor, such as Job Corps center contractors or grant recipients of the DOL-administered national programs, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers continues to be made by the Governor, through the authority granted to the Governor by WIOA and its implementing regulations.

- **Step Five: Governor calculates statewide caps.** Once the Governor has created a cost allocation methodology, the Governor will then calculate the statewide caps to determine the maximum amounts that required partner programs could be required to contribute toward infrastructure funding in that local area. The statewide caps are a statutory requirement for purposes of the state funding mechanism, even when only one local area is unable to reach consensus on an IFA through local negotiation. However, the caps only restrict those infrastructure cost contributions required by one-stop partners within the local area(s) that has (or have) not reached consensus. The caps used in the application of the state funding mechanism are referred to as the applicable program caps, which will be calculated by the Governor using the five sub-steps listed below. In the event that more than one local area in a State does not reach consensus, then the aggregate of the infrastructure funding costs that must be contributed by each required one-stop partner in all of the local areas that did not reach consensus is restricted by the applicable program cap.
  - For example, if three of seven local areas within a State did not reach consensus, then the required infrastructure funding contributions of each required one-stop partner under a particular program in these three areas would be added together, the sum of which could not exceed the calculated applicable program cap.

The Governor will take five sub-steps to calculate the applicable program cap for any given program.

- The Governor will apply a partner's individual applicable limiting percentage (the statutory percentages listed in WIOA sec. 121(h)(2)(d))—which is dependent on the type of program (see chart below)—to the total Federal funding which that program receives for the affected program year to reach the maximum potential cap (MPC). The

applicable limiting percentage for a program is listed below and in WIOA sec. 121(h)(2)(d), 20 CFR 678.738(c), 34 CFR 361.738(c), and 34 CFR 463.738(c). Some programs will use previous years' funding to determine the cap due to internal program funding allocation or reallocation methods.

- The Governor will select a determining factor or factors that reasonably indicate the use of one-stop centers in the State. This could be, for example, total population, concentration of wealth, or another factor that is applicable to the State's workforce dynamic.
  - The Governor applies the determining factor(s) to all local areas across the State, and then determines the percentage of the factor(s) that is applicable to those areas that reached consensus, or the consensus areas' factor percentage.
  - The Governor then applies the consensus areas' factor percentage to the MPC to find the consensus areas' portion of the MPC.
  - The Governor subtracts the amount equal to the consensus local areas' portion of the MPC from the MPC. The remaining amount is the applicable program cap for use in the local areas that have not reached consensus and are subject to the state funding mechanism.
- **Step Six: Governor assesses the aggregate total of infrastructure contributions as it relates to the statewide cap.** Once the Governor has determined the applicable program cap for each program, as well as the proportionate share of the infrastructure costs that the Governor has determined under Step Four would be required of each local required one-stop partner in a non-consensus area without regard to the cap, the Governor will ensure that the funds required to be contributed by each partner program in the non-consensus local area(s), in aggregate, do not exceed the applicable program cap. If the aggregate total contributions are below the applicable program cap, then the Governor will direct the one-stop partners to contribute what was determined to be their proportionate shares. If the aggregate total contributions exceed the cap, then the Governor may either:
    - Inquire as to whether those local partner programs that have pushed the aggregate total contributions above the applicable program cap (i.e., those whose contributions would have otherwise exceeded the Statewide cap on contributions) are willing to contribute beyond the applicable program cap in accordance with their proportionate share; or
    - Allow the Local WDB, one-stop partners, and CEO(s) to:
      - Re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments and identify alternate sources of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner; and
      - Reduce infrastructure costs to reflect the amount of funds available without exceeding the applicable program cap level.
  - **Step Seven: Governor adjusts proportionate shares.** The Governor will make adjustments to specific local partners' proportionate share in accordance with the amounts available under the applicable program cap for the associated program, if the Local WDB, CEO(s), and the required

one-stop partners fail to reach agreement on how to address the situation in which the proportionate share exceeds the cap using the approaches described in Step Six. The aggregate total contribution of a program's local one-stop partners under the state funding mechanism may not exceed the applicable program cap.

**Limiting Percentages for Programmatic Statewide Caps on Infrastructure Funding Under the State Funding Mechanism:**

<b><u>Program Type</u></b>	<b><u>Limiting Percentage</u></b>
WIOA Title I Programs (adult, dislocated worker, or youth)	3%
Wagner-Peyser Employment Service	3%
Adult Education and Family Literacy Act	1.5%
Perkins IV	1.5% of funds made available for postsecondary level programs and activities and funds used to administer postsecondary level programs and activities in the prior year
Vocation Rehabilitation	
PY 2017	0.75% of Fiscal Year 2016 Federal VR funding
PY 2018	1% of Fiscal Year 2017 Federal VR funding
PY 2019	1.25% of Fiscal Year 2018 Federal VR funding
PY 2020 and subsequent years	1.5% of Fiscal Year 2019 (or applicable previous year) Federal VR funding
Temporary Assistance for Needy Families	1.5% of funds from the previous year spent on work, education, and training activities, plus any associated administrative costs
Community Services Block Grant	1.5% of funds from the previous year spent by local CSBG-eligible entities to provide employment and training activities, plus any associated administrative costs
Other required partners including Job Corps; YouthBuild; Native American programs; Migrant and Seasonal Farmworker (National Farmworker Jobs Program) programs; Senior Community Service Employment Program; Trade Adjustment Assistance; Unemployment Compensation; Housing and Urban Development employment and training programs; and programs authorized under sec. 212 of the Second Chance Act of 2007	1.5%
Additional (non-required) partners	State Funding Mechanism does not apply

## ***Appeals Process***

The Governor will make the final determination of each required partner's proportionate share of statewide infrastructure costs under the state funding mechanism as described in these guidelines.

A required partner may appeal the Governor's determination on the basis of a claim that:

- The Governor's determination is inconsistent with the proportionate share requirements of 20 CFR 678.735(a).
- The Governor's determination is inconsistent with the cost contribution caps described in 20 CFR 678.735(b).
- The Governor's determination is inconsistent with the cost contribution caps described in 20 CFR 678.738.

## **Administrative Review**

A required one-stop partner may request a review of the Governor's determination. The request for review for the above reasons must be submitted to the DWD Policy division within ten (10) business days after the one-stop partner is notified of the Governor's determination of the partner's proportionate share of infrastructure costs under the state funding mechanism.

The request for review shall include, but is not limited to, the following items: Name of Partner and Program, date, justification for review, any documentation to support the partner's justification for review.

The Governor will appoint a committee of three staff members who were not involved in the initial decision to conduct a review and send notice of its decision to the required partner within thirty (30) business days of receiving the request for review.

## **Appeal of Review Decision**

Required partners may request an appeal of the Governor's administrative review decision by submitting a written petition for review within fifteen (15) business days of receipt of the notice of administrative decision.

A review committee made up of one to three individuals designated by Governor who have not been involved in the initial decision or the administrative review will hold an administrative hearing not more than sixty (60) business days after the department receives the written request. The hearing shall include an opportunity for the petitioner and the respondent to submit written and verbal information to the presiding committee. Following the hearing, the committee will issue a decision within ninety (90) business days of the completion of the hearing. The Governor shall serve as the ultimate authority.

## **Effective Date**

Immediately

## **Ending Date**

Upon rescission.

## **Questions**

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