



To: Workforce Development Board Chairs
Workforce Development Board Directors
Regional Chief Elected Officials

From: Regina Ashley, Associate Chief Operations Officer for Policy *RAA*
Indiana Department of Workforce Development

Date: April 17, 2015

Subject: WIOA T1 (107) – P3
Policy Guidance for Local Workforce Development Board Functions

Purpose

To provide policy guidance to local workforce areas regarding board functions and staffing considerations.

Rescission

DWD Policy 2010-12, Local Workforce Investment Board Staffing Guidance and DWD TAB 2007-08.

References

Workforce Innovation and Opportunity Act (WIOA) Section 107(d); DWD Technical Assistance Bulletins (TABs) 2007-08 and 2007-10.

Content

The Workforce Innovation and Opportunity Act (WIOA) empowers boards to serve in various “intermediary” capacities, such as convener and broker, in order to gain significant positive impacts/outcomes in regional demand-driven talent development. Congress intended the boards to be more strategic and provide greater leadership to their local areas than ever before. The functions of the board as outlined in section 107 (d) of WIOA may necessitate re-examination of staffing levels, position types, and skills.

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Many functions continue as they were under WIA, including certification of WorkOne operators; procurement of service providers; identification of eligible training providers; budget development; performance standards negotiation; conducting program oversight; promoting employer participation; and assisting in the development of a statewide employment statistics system. These functions remain in law, yet some have been expanded or redefined as delineated below.

WIA	WIOA
<p>Employer linkages – the local board shall coordinate the workforce investment activities authorized under this subtitle and carried out in the local area with economic development strategies and develop other employer linkages with such activities.</p>	<p>Employer Engagement – the local board shall lead efforts to engage with a diverse range of employers and with entities in the region involved:</p> <ul style="list-style-type: none"> (A) To promote business representation (particularly representatives with optimum policymaking or hiring authority from employers whose employment opportunities reflect existing and emerging employment opportunities in the region) on the local board; (B) To develop effective linkages (including the use of intermediaries) with employers in the region to support employer utilization of the local workforce development system and to support local workforce investment activities; (C) To ensure that workforce investment activities meet the needs of employers and support economic growth in the region, by enhancing communication, coordination, and collaboration among employers, economic development entities, and service providers; and (D) To develop and implement proven or promising strategies for meeting the employment and skill needs of workers and employers (such as the establishment of industry and sector partnerships), that provide the skilled workforce needed by employers in the region, and that expand employment and career advancement opportunities for workforce development system participants in in-demand industry sectors or occupations.

<p>Connecting, brokering and coaching – the local board shall promote the participation of private sector employers in the statewide workforce investment system and ensure the effective provision, through the system of connecting, brokering, and coaching activities, through intermediaries such as the one-stop operator in the local area or through other organizations, to assist such employers in meeting hiring needs.</p>	<p>Convening, brokering, and leveraging - the local board shall convene local workforce development system stakeholders to assist in the development of the local plan under section 108 and in identifying non-federal expertise and resources to leverage support for workforce development activities. The local board, including standing committees, may engage such stakeholders in carrying out the functions described in this subsection.</p>
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In addition, WIOA outlines *new* board functions that reinforce the boards’ strategic leadership role:

- **Career Pathways Development** – with representatives of secondary, postsecondary, and adult education, lead or support existing efforts in the local area to develop and implement career pathways by aligning the employment, training, education, and supportive services that are needed by adults and youth;
- **Proven and Promising Practices** – lead efforts to identify, promote and disseminate proven and promising strategies and initiatives;
- **Technology** – develop strategies for using technology to maximize accessibility and effectiveness of the local workforce development system by facilitating connections among the intake and case management information systems of partner programs; facilitating access to services, including access in remote areas; and using technology to better meet the needs of individuals with barriers to employment, including improving digital literacy skills.
- **Coordination with education and training providers** – the local board is to:
 - review applications to provide adult education activities under Title II to determine whether the applications are consistent with the board’s local plan;
 - make recommendations to the eligible agency to promote alignment with the plan; and
 - replicate cooperative agreements¹ in accordance with the Rehabilitation Act of 1973 and implement the agreements with the local agency administering plans under Title I of the Rehabilitation Act to enhance services to individuals with disabilities such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and so forth (Sec. 107 (d)(11) (A-C).

¹ “Cooperative agreement” means an agreement entered into by a State designated agency for rehabilitation services

- **Accessibility for individuals with disabilities** – the board must annually assess the physical and programmatic accessibility of all one-stop centers in the local area in accordance with provisions of the Americans with Disabilities Act.

To accomplish these functions, the board is permitted to hire staff. Options for staffing are:

- **Direct hiring.** No competitive process is required, but the board must ensure hiring is done in accordance with lawful employment practices.
- **Contract with a third party entity.** If a board contracts with a third party to provide staffing, procurement must follow state and federal procurement guidelines. This includes leasing arrangements with a staffing firm.

Regardless of whether the board hires, leases, or contracts for staff, the board must be able to justify the number and type of staff to meet its leadership and management obligations and ensure that all work performed by staff is allowable under WIOA. Boards should thoughtfully consider the new and intensified functions of the boards when determining size, type, and skills of staff.

The proposed regulations at §679.400 state that local board staff may only assist the local board in fulfilling the required board functions in 107(d). If the board selects an entity to staff the board that provides additional workforce functions beyond those in 107(d), the entity must enter into a written agreement with the local board and CEOs to clarify roles and responsibilities. In other words, if the board contracts with the one-stop operator to also provide its staffing rather than hiring staff itself, there has to be a clear written agreement separating the roles.

The board is required by law to establish and apply a set of objective qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and assist in carrying out the functions of the local board [Sec. 107(f)(2)]. This requirement applies regardless of whether the director is hired or procured. The DWD Oversight Unit will review to determine that the set of objective qualifications for the position of director and appropriate performance benchmarks are on file at the board director's office. No recipient or subrecipient of WIOA Title I funds may pay salary and bonuses to any individual, either as a direct or indirect cost, at a rate in excess of the annual rate of basic pay prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code² [Section 194 (15)].

Procurement of Operator(s) and Service Providers

Procurement of the WorkOne Operator(s) and service providers is an important function of the board. WIOA Sec. 107 (d) requires the board to competitively procure one-stop operator(s) with no

² The schedule may be found at <http://www.gpo.gov/fdsys/granule/USCODE-2011-title5/USCODE-2011-title5-partIII-subpartD-chap53-subchapII-sec5313>

exceptions for consortia of partners.³ Different operators may be procured for different WorkOne centers at the board's discretion.

- The procurement for operator may include provision of Career Services. If the operator does not provide Career Services, then the board must competitively procure such providers following state and local procurement guidelines.
- Contracts for provision of youth services must be awarded on a competitive basis. Exception: The board may sole-source youth contracts if the board determines there are insufficient numbers of eligible providers of youth workforce activities in the area. There is no option for the board to request approval to provide youth services.

Optional Board Functions

1. **WorkOne Operator and/or Career Services Provider.** Sec. 107 (g)(2) indicates the board may provide Career Services for adults and dislocated workers as described in 134 (c)(2) and/or be designated or certified as the one-stop operator with the agreement of the chief elected official and the Governor. The Notice of Proposed Rulemaking at §678.635 states, "By **June 30, 2016**, every Local Board must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis." It also states, "No later **than June 30, 2017**, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop." While local boards previously approved to be the operator and/or services provider under WIA may continue to do for PY 15, those boards need to be taking steps now to determine how they will prepare for either sole source justification or competitive procurement. No additional boards will be approved by the Governor to act as one-stop operator and/or service provider until the WIOA regulations are final.⁴

Sole source approval is likely to be very rare. The preamble to the Notice of Proposed Rulemaking for WIOA Title I says, "Because of the potential for abuse of the sole source selection method, DOL intends to set a high bar for justifying that there is only one possible operator. Local Boards cannot use their past experience with an entity being the one-stop operator or one response to Requests for Information (RFI) alone as justification. Robust market research, combined with other methods, including but not limited to an RFI and a detailed cost and price analysis, will help a Local Board meet the burden of demonstrating they meet the requirement of proposed § 678.605(d)(3)(i) for utilizing sole source selection. Additionally, the

³ Consortia may apply, but cannot be designated absent a competitive process. Elementary and secondary schools are not eligible to bid, but non-traditional public secondary schools and career and technical education schools are.

⁴ USDOL is requesting comments on their interpretation of the Act, so the final determination on this issue has not yet been made. It is advisable to prepare for the likelihood of competition.

Local Board must comply with its own procurement policies regarding sole source procurements.”

It is advisable that local boards currently acting as operator and/or service provider begin to plan for a competitive process. The board may run this competitive process unless it intends to bid itself. If the latter, the board may contract with an outside entity to:

- a. Develop the Request for Proposals. The board cannot be involved in the development of the RFP as that would provide unfair advantage.
- b. Conduct a bidder’s conference and respond to questions.
- c. Manage the scoring process.
- d. Conduct interviews with top scorers.
- e. Make the award decision. No members of the board and no board staff may be involved in the decision-making process.

Under WIOA, the roles of operator and Career Services provider are distinct. The operator may provide Career Services, “but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local Board level regarding oversight, monitoring, and evaluation of performance of the service provider (§678.625).

A one-stop operator may not perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); 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; and develop and submit budget for activities of the Local Board in the local area. An entity serving as a one-stop operator may perform some or all of these functions **if it also serves in another capacity, and if it has established sufficient firewalls and conflict of interest policies.**

2. **Training provider.** Generally, no local board may provide training services. However, a local board may request a waiver of this prohibition by sending a letter to the Governor, signed by the board chairperson, that includes:
 - a. Satisfactory evidence that there is an insufficient number of eligible providers of a program of training to meet local demand in the area.

- b. Information demonstrating that the board meets the requirements for an eligible provider of training services under section 122;
- c. Information demonstrating that the program of training prepares individuals for an in-demand industry sector or occupation in the local area;
- d. Documentation that the board made the proposed request available to eligible providers of training and other interested members of the public for not less than 30 days, and any comments received from the providers or the public.

Consistent with Section 107(g)(1)(C), the waiver, if approved, will apply for a period that will not exceed the duration of the local plan, but may be renewed for additional periods, not to exceed the duration of subsequent plans. The Governor retains the authority to revoke the waiver during the plan period if the Governor determines the waiver is no longer needed or that the board is engaged in a pattern of inappropriate referrals to training services operated by the local board. Waiver requests should be titled "WDB Training Waiver Request and sent via U.S. mail or scanned/emailed to policy@dwd.in.gov .

Within 30 days of receiving the letter, the board chairperson will be notified of the Governor's decision whether to approve or deny the request. If denied, the reasons will be clearly outlined. If approved, the Governor will stipulate any conditions of the approval.

Effective Date

July 1, 2015

Ending Date

Upon rescission.

Contact for Questions

policy@dwd.in.gov

Action

Take action as necessary to ensure compliance with this policy. Board staff, WorkOne Operators and adult, dislocated worker, and youth service providers that have already been competitively procured to operate in PY 2015 do not need to be re-procured, but contracts should be examined and modified to be consistent with the requirements of WIOA. If current contracts cannot be modified to fulfill the requirements for WIOA, or a service provider is not willing or capable of providing services as described in WIOA, re-procurement will be necessary. If the board contracts with the one-stop operator to also provide its staffing rather than hiring staff itself, there has to be a clear written agreement separating the roles on file at the WDB office.