

**WASHINGTON STATE  
WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD  
MEETING NO. 198  
February 24, 2016**

**WIOA POLICY DISCUSSION**

**Background**

Implementation of the Workforce Innovation and Opportunity Act (WIOA) means that many of the policies under the Workforce Investment Act, its predecessor, must be revised to ensure they address the requirements. Some policy changes are merely cosmetic, noting the new statute; others require significant amendments of the previous policies.

The Employment Security Department (ESD) is the state agency responsible for drafting official policies under WIOA. Using the Act as an outline of the requirements, staff works internally and often externally with partners before drafting the policy language. Once completed, the draft is released for a period of public comment. In response to comment submittals, changes may be made. When necessary the revised policy is then sent out for another round of public comment prior to the last stage, policy adoption and final issuance.

Examples of significant change under WIOA are the rules for One-Stop Centers, for local provision of services, and the requirement for competitive procurement. Today the Board will have the opportunity to learn about the issues around procurement and how this policy issue affects other policies.

The WIOA Steering Committee asked a workgroup to undertake the discussion on procurement recommendations, after task forces focused on other complicated recommendations. ESD staff worked with Workforce Board staff and others to analyze the requirements of the Act and received input from a subject matter expert on state and federal procurement guidelines and rules.

A key factor in developing this policy is the Act's stipulation that designation of a One-Stop operator must be determined through a competitive procurement process. Further, grants or contracts for youth service providers must also be selected through a similar process. While the Act is silent on the delivery of Adult and Dislocated Worker programs, Section 107(g)(1) does state that Local Workforce Development Boards cannot provide training services themselves unless granted a written waiver by the Governor. Such a request can only be made with evidence that no other providers are available. A waiver request can only be submitted to the Governor after at least a 30-day public comment period.

The relevant sections of the Act pertaining to procurement are listed on Attachment A.

The Board will hear a presentation on Procurement (Attachment B) and how it interconnects with ESD's internal Firewall Provisions (Attachment C) and the WIOA Dispute Resolution policy (Attachment D).

**Action:** Discussion only – no action anticipated.

## WIOA - Section Excerpts on Procurement

## Section 107(d)(10)

## (10) Selection of operators and providers.--

- (A) Selection of one-stop operators.--Consistent with section 121(d), the local board, with the agreement of the chief elected official for the local area—
- (i) shall designate or certify one-stop operators as described in section 121(d)(2)(A); and
  - (ii) may terminate for cause the eligibility of such operators.
- (B) Selection of youth providers.--Consistent with section 123, the local board--
- (i) shall identify eligible providers of youth workforce investment activities in the local area by awarding grants or contracts on a competitive basis (except as provided in section 123(b)), based on the recommendations of the youth standing committee, if such a committee is established for the local area under subsection (b)(4); and
  - (ii) may terminate for cause the eligibility of such providers.
- (C) Identification of eligible providers of training services.--Consistent with section 122, the local board shall identify eligible providers of training services in the local area.
- (D) Identification of eligible providers of career services.--If the one-stop operator does not provide career services described in section 134(c)(2) in a local area, the local board shall identify eligible providers of those career services in the local area by awarding contracts.
- (E) Consumer choice requirements.--Consistent with section 122 and paragraphs (2) and (3) of section 134(c), the local board shall work with the State to ensure there are sufficient numbers and types of providers of career services and training services (including eligible providers with expertise in assisting individuals with disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities) serving the local area and providing the services involved in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities.

## Section 121 (d)(1-2)

## (d) One-stop Operators.--

- (1) Local designation and certification.--Consistent with paragraphs (2) and (3), the local board, with the agreement of the chief elected official, is authorized to designate or certify one- operators and to terminate for cause the eligibility of such operators.
- (2) Eligibility.--To be eligible to receive funds made available under this subtitle to operate a one-stop center referred to in subsection (e), an entity (which may be a consortium of entities)--
- (A) shall be designated or certified as a one-stop operator through a competitive process; and
  - (B) shall be an entity (public, private, or nonprofit), or consortium of entities (including a consortium of entities that, at a minimum, includes 3 or more of the one-stop partners described in subsection (b)(1)), of demonstrated effectiveness, located in the local area, which may include--
    - (i) an institution of higher education;

- (ii) an employment service State agency established under the Wagner-Peyser Act (29 U.S.C. 49 et seq.), on behalf of the local office of the agency;
- (iii) a community-based organization, nonprofit organization, or intermediary;
- (iv) a private for-profit entity;
- (v) a government agency; and
- (vi) another interested organization or entity, which may include a local chamber of commerce or other business organization, or a labor organization.

Section 134 (c)(2)(C)

- (C) Delivery of services.--The career services described in subparagraph (A) shall be provided through the one-stop delivery system--
- (i) directly through one-stop operators identified pursuant to section 121(d); or
  - (ii) through contracts with service providers, which may include contracts with public, private for-profit, and private nonprofit service providers, approved by the local board.

Section 134 (c)(3)(C)

- (C) Provider qualification.--Training services shall be provided through providers identified in accordance with section 122.

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

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.

**Policy Number:** 5404  
**To:** Washington WorkSource System  
**Effective Date:** March 1, 2016

**Subject:** Procurement and Selection of One-Stop Operators and Service Providers

### 1. Purpose:

To communicate requirements for the procurement and selection of one-stop operators and service providers under the Workforce Innovation and Opportunity Act (WIOA) whose contracts are effective July 1, 2016 or later.

### 2. Background:

WIOA brought about changes to the law and rules governing procurement and selection of one-stop operators and service providers. Changes in procurement requirements also occurred with issuance of Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly known as the OMB Super Circular), which consolidated eight previous circulars into one Uniform Guidance document and introduced new requirements for performance-based contracting.

WIOA sets the expectation for Local Workforce Development Boards (LWDBs) to conduct open and competitive procurement processes to identify appropriate providers of one-stop operator and other services. LWDBs are required to determine whether the amount and quality of providers is sufficient to meet the needs of the community and to work with the Governor and others to increase the availability of service providers as part of their planning process. WIOA sets the expectation that LWDBs will serve as strategic entities and the Department of Labor further clarified that expectation in proposed 20 CFR 679.410(b) by stating that the "Local Board is designed to oversee the one-stop system and services, not provide them." However, WIOA and draft rules identify specific circumstances under which LWDBs may provide one-stop operator and other services.

### 3. Policy:

- a. LWDBs must adhere to applicable sections of the law and regulations and state policy in selecting one-stop operators and service providers and awarding contracts under WIOA.

- b. LWDBs should only serve as one-stop operators and/or provide services as a default, when other options will not effectively meet local needs. The specific processes by which such determinations are made are outlined in Sections 3(g)(i)(E), 3(g)(iii)(A)(5), and 3(g)(iv) of this policy.
- c. LWDBs must inventory the availability and quality of service providers as part of their planning processes. LWDBs may choose a number of approaches to determine if there are insufficient service providers, including, but not limited to, conducting a Request for Information or asset mapping with stakeholders and community partners.
- d. LWDBs must procure one-stop operator and other services through open and competitive processes. This includes providing sufficient public notice of the intent to procure services to board members and the community. Public notice must be provided for at least 30 days in media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, LWDB web site, other community web sites, etc.)
- e. LWDBs must document, in writing, (1) efforts to identify the availability of providers and (2) the allowable procurement process used and how it was followed, including the selection criteria by which bids were scored to award a contract. All of this documentation must be maintained and provided to the State upon request.
- f. The Governor must approve a waiver for LWDBs to provide one-stop operator and/or other services. The appropriate forms for making such requests are referenced in each section below and provided as attachments to this policy.
- g. Procurement-Related Programmatic Requirements
  - i. Procurement of One-Stop Operators
    - A. One-stop operators must be designated and certified through a competitive procurement process.
    - B. The competitive process used by LWDBs to procure one-stop operators must be conducted at least once every four years and follow the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326.
    - C. The allowable forms of competitive procurement processes are as follows:
      - 1. Sealed Bids
      - 2. Competitive Proposals
      - 3. Sole Source, only if documented factors, including published notice(s) of intent made available to the public for at least 30 days in media where prospective local, state, and national bidders typically identify such opportunities, lead to a determination that only one entity could serve as an operator, compelling circumstances outweigh the delay that would result from a competitive solicitation, or results of the competition conducted

per Section 3(g)(i)(C)(1-2) of this policy are determined inadequate, and only with the agreement of the local Chief Elected Official and Governor.

- I. LWDBs may serve as one-stop operators under a sole source agreement for no more than the completion of the contract period or the completion of the program year, whichever comes first.
  - II. LWDBs must have in place and demonstrate adherence to appropriate internal controls and conflict of interest policies and procedures that are approved by the Governor. Such policies must identify the appropriate internal controls.
  - III. Inadequate responses are those judged by a panel of impartial reviewers to score below a pre-determined minimum level on the scoring criteria published as part of the solicitation.
  - IV. Examples of compelling circumstances that outweigh delays that would result from competitive solicitations include the need to avoid a break in services if an operator is terminated for cause or is unable to continue providing services through the end of the contact period.
  - V. LWDBs must complete [Attachment A](#) (Request for Waiver to Serve as a One-Stop Operator) and submit it to the State Workforce Development Board (SWDB).
- D. LWDBs may serve as one-stop operators in the region for which they are designated if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by an impartial third party free of conflicts of interest and that LWDB staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals.

ii. Procurement of Youth Service Providers

- A. LWDBs must competitively award grants/contracts for eligible providers of youth workforce investment activities, except in the case of sole-source awards/contracts and only then if there is satisfactory and demonstrable evidence that there are an insufficient number of providers with the expertise required for serving in-school or out of school youth. Bid solicitations must include a rubric of the selection criteria to be used in this process and must be maintained as documentation of the process.
- B. LWDBs must be able to document, in writing, that they have made their board members and the public aware of the competitive process that will be used identify youth service providers. This includes providing at least 30-day public notice through media where prospective bidders typically identify such opportunities.

- C. LWDBs must establish and use criteria, including the ability of service providers to meet performance accountability measures based on common measures, as well as full and open competition consistent with 2 CFR parts 200 and 2900 in addition to applicable state and local procurement laws to procure eligible providers of youth workforce investment activities.
- D. Design framework services (intake, objective assessment, development of individual service strategies, case management, follow-up services) may be exempted from a competitive process if LWDBs determine that they can more appropriately provide these activities.
- E. LWDBs must establish local policies and procedures to assess the ability of youth program providers to meet performance accountability measures based on the primary federal indicators of performance for the youth program.

iii. Procurement of Adult or Dislocated Worker Training Services

A. LWDBs cannot provide Adult or Dislocated Worker training services unless granted a written waiver by the Governor based on satisfactory and demonstrable evidence that:

1. The LWDB determined that there were an insufficient number of eligible providers with expertise in serving Adults or Dislocated job seekers to meet local demand. Note: LWDBs must have come to this determination after having conducted competitive procurement described in Section 3(g)(i)(C) of this policy;
2. The LWDB meets the requirements of an eligible training provider under Section 122;
3. The LWDB's proposed training services prepare participants for in-demand industry sectors or occupations in the local area; and
4. The LWDB subjected its waiver determination and request to a minimum 30-day public comment period and included all comments received in the final waiver request.
5. LWDBs must complete [Attachment B](#) (Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services) and submit it to the State Workforce Development Board (SWDB).

iv. Procurement of Basic Career Services

LWDBs can only provide (basic and individualized) career services by agreement of the local chief elected official and Governor. LWDBs must complete [Attachment C](#) (Request for Waiver to Provide WIOA Basic and/or Individualized Career Services) and submit it to the State Workforce Development Board (SWDB).

h. Procurement-Related Fiscal Requirements

- i. Subawards are not procurement actions governed by this policy or other procurement laws,

rules or policies unless:

- A. Required by statute;
  - B. Required by own policies and procedures; or
  - C. Awarded on a competitive basis, in which instance the subaward will be governed by procurement rules detailed in 2 CFR 200.318-326.
- ii. When a competitive procurement process is not used in the selection of a subrecipient for a subaward, it must be guided by:
- A. Documented internal controls, including written procedures for employee conduct and conflict of interest provisions;
  - B. The service provider's track record, considering past record of performance, cost principles, record of compliance and audit and monitoring results.
- iii. Procurement standards must ensure fiscal accountability and prevent waste, fraud, and abuse in WIOA programs. Where applicable, standards must support fair and competitive procurement of goods and services.
- iv. Wherever possible and where required, all agreements must be performance-based, as defined in Federal Acquisition Regulations (FAR) 37.6, and include the following minimum requirements:
- A. Performance requirements defined in measurable, mission-related terms;
  - B. Performance standards (e.g., quality metrics, required quantities, and timeliness) tied to performance requirements;
  - C. Quality assurance plan describing how the contractor's performance will be measured against performance standards; and,
  - D. Appropriate positive and negative incentives for performance standards critical to accomplishing agreement objectives.
- v. All other non-federal entities, including LWDBs, must:
- A. Follow general procurement standards established through state law, rule and policy, as well as through 2 CFR 200.318-326;
  - B. Develop and document their own procurement policies, procedures and standards that reflect applicable state law, rule and policy and conform to federal law and standards of OMB Uniform Guidance;

- C. Ensure full and open competition, where necessary;
- D. Use the most economical approach to the procurement of goods and services;
- E. Award only to responsible contractors;
- F. Maintain oversight in order to monitor contractor performance regarding contract terms, conditions and specifications; and,
- G. Maintain records detailing the history of the procurement, including the rationale for the selected method of procurement, selection of contract type, basis for contractor selection or rejection, and basis for contract price.

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

Conflict of interest – Conflict between the official responsibilities and the private interests of a person or entity that is in a position of trust. A conflict of interest would arise when an individual or organization has a financial or other interest in or participates in the selection or award of funding for an organization. Financial or other interest can be established either through ownership or employment.

Contract - a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this policy does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward (see 2 CFR 200.92 - Subaward).

Contractor - an entity that receives a contract as defined in 2 CFR 200.22 (Contracts).

Non-Federal Entity - 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.

Pass-through Entity - a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

Subaward - 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.

Subrecipient – 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.

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

All fiscal policies and guidance letters published for WIOA are governed, as appropriate, under:

- Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Sections 107(g)(1), 121(d)(2)(A), 122, and 123
- Proposed 20 CFR 678.605, 678.610, 678.615, 679.410, 679.430, 680.300 and 681.400
- Title 2, Subpart A, Chapter 11 CFR 200.317-326
- OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Programmatic policies, rules, and guidance:

- Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Sections 107(d)(10), 121(d)(1-2), 134(c)(2)(C), and 134(c)(3)(C)
- Proposed 20 CFR 678.600-615, 680.160 and 680.300
- [Training and Employment Guidance Letter \(TEGL\) 23-14](#), Section 8

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

WIA Title I-B Policy 3405 and WIA Title I-B Policy 3465

#### 7. **Website:**

<http://www.wa.gov/esd/policies/title1b.htm>

#### 8. **Action:**

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

#### 9. **Attachments:**

- [Attachment A – Request for Waiver to Serve as One-Stop Operator \(PDF\)](#)
- [Attachment A – Request for Waiver to Serve as One-Stop Operator \(Word version for local use\)](#)
- [Attachment B – Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services \(PDF\)](#)
- [Attachment B – Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services \(Word version for local use\)](#)
- [Attachment C – Request for Waiver to Provide WIOA Basic and/or Individualized Career Services \(PDF\)](#)
- [Attachment C – Request for Waiver to Provide WIOA Basic and/or Individualized Career Services \(Word version for local use\)](#)

**Direct Programmatic Inquiries To:**

*Employment System Administration and Policy Unit  
Employment System Policy and Integrity Operations Division  
Employment Security Department  
P.O. Box 9046  
Olympia WA 98506-9046  
(360) 902-9666  
SystemPolicy@esd.wa.gov*

**Direct Fiscal Inquiries To:**

*John Mattes  
Contracts and Procurement  
Employment Security Department  
P.O. Box 9046, MS 6000  
Olympia, WA 98507-9046  
(360) 902-9686  
jmattes@esd.wa.gov*

ATTACHMENT A

Request for Waiver to Serve as a One-Stop Operator

Date:

Local Workforce Development Board (LWDB):

Contact Person/Title:

Phone:

E-mail Address:

Mailing Address:

---

Please indicate the one-stop site(s) for which the LWDB is requesting a waiver to serve as the one-stop operator:

- 1.
- 2.
- 3.

Note: Add sites if needed.

The LWDB must provide the following information for each site for which it is requesting a waiver to serve as the one-stop operator:

1. Provide written documentation of the entire process for making a sole-source selection consistent with Section 3(b)(i)(C)(3)\* of WIOA Title I Policy 5404, including why the LWDB was unable to secure any one-stop operator bids in response to its solicitation, what the LWDB's qualifications are to be a one-stop operator, and how the LWDB will balance its role as strategic coordinator of the local one-stop system with the role of one-stop operator.

2. Describe the internal controls, firewalls, and conflict of interest policies and procedures the LWDB will impose upon itself as the operator of the one-stop site.
  
  3. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1 and 2 above) and approves of the waiver request.
- \* Sole Source, only if documented factors, including published notice(s) of intent made available to the public for at least 30 days and directed to prospective local and national non-profit, for-profit, and governmental bidders, lead to a determination that only one entity could serve as an operator, compelling circumstances outweigh the delay that would result from a competitive solicitation, or results of the competition conducted per Section 3(g)(i)(C)(1-2) of this policy are determined inadequate.

Submit the completed waiver request to:

Workforce Training and Education Coordinating Board  
P.O. Box 43105  
Olympia, WA 98504-3105  
[Workforce@wtb.wa.gov](mailto:Workforce@wtb.wa.gov)

ATTACHMENT B

Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services

Date:

Local Workforce Development Board (LWDB):

Contact Person/Title:

Phone:

E-mail Address:

Mailing Address:

---

Please indicate the program(s) for which the waiver request is being submitted:

Adult Program

Dislocated Worker Program

Adult Program (if applicable):

1. Describe the LWDB's competitive procurement conducted as per WIOA Section 3(b)(i)(C) and how its outcome resulted in a determination that there were insufficient eligible providers with expertise in providing training services to Adult participants to meet local demand. Attach supporting documentation.
  
2. Describe how the LWDB meets the requirements of an eligible training provider under WIOA Section 122.
  
3. Describe how the LWDB's proposed training services prepare Adult participants for in-demand industry sectors or occupations in the local area.
  
4. Describe the means by which the LWDB subjected its waiver determination and request to a minimum 30-day public comment period. Attach supporting documentation, including all comments received during the comment period.

5. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1-4 above) and approves of the waiver request.

Dislocated Worker Program (if applicable):

1. Describe the LWDB's competitive procurement conducted as per WIOA Section 3(b)(i)(C) and how its outcome resulted in a determination that there were insufficient eligible providers with expertise in providing training services to Dislocated Worker participants to meet local demand. Attach supporting documentation.
2. Describe how the LWDB meets the requirements of an eligible training provider under WIOA Section 122.
3. Describe how the LWDB's proposed training services prepare Dislocated Worker participants for in-demand industry sectors or occupations in the local area.
4. Describe the means by which the LWDB subjected its waiver determination and request to a minimum 30-day public comment period. Attach supporting documentation, including all comments received during the comment period.
5. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1-4 above) and approves of the waiver request.

Submit the completed waiver request to:

Workforce Training and Education Coordinating Board  
P.O. Box 43105  
Olympia, WA 98504-3105  
[Workforce@wtb.wa.gov](mailto:Workforce@wtb.wa.gov)

ATTACHMENT C

Request for Waiver to Provide WIOA Basic and/or Individualized Career Services

Date:

Local Workforce Development Board (LWDB):

Contact Person/Title:

Phone:

E-mail Address:

Mailing Address:

---

Please indicate the type(s) of services for which permission is being requested:

Basic Career Services                       Individualized Career Services

Basic Career Services (if applicable):

1. Describe the LWDB's competitive procurement and its outcome resulted in a determination that neither the one-stop operator nor contracted service providers could provide basic career services to WIOA participants. Attach supporting documentation.
  
2. Describe what basic career services the LWDB would provide and evidence that it is qualified to provide those services.
  
3. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1 and 2 above) and approves of the waiver request.

Individualized Career Services (if applicable):

1. Describe the LWDB's competitive procurement and its outcome resulted in a determination that neither the one-stop operator nor contracted service providers could provide basic career services to WIOA participants. Attach supporting documentation.
2. Describe what basic career services the LWDB would provide and evidence that it is qualified to provide those services.
3. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1 and 2 above) and approves of the waiver request.

Submit the completed waiver request to:

Workforce Training and Education Coordinating Board  
P.O. Box 43105  
Olympia, WA 98504-3105  
[Workforce@wtb.wa.gov](mailto:Workforce@wtb.wa.gov)



**Workforce Innovation and Opportunity Act Policy  
Employment System Administration and Policy**

---

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.

---

**Policy Number:** 5411  
**To:** Washington WorkSource System  
**Effective Date:** March 1, 2016

**Subject:** Employment Security Department Segregation of Duties, Disclosure and Recusal

**1. Purpose:**

It is the policy of the Employment Security Department (ESD) that divisions and employees engaged in the administration, oversight, and operation of federal Workforce Innovation and Opportunity Act (WIOA) grant programs minimize organizational conflicts of interest through segregation of duties, disclosure, and recusal in order to foster public and partner confidence.

**2. Background:**

ESD's multiple roles under WIOA involve state administrative functions (fiscal, program, and administrative policy development; grants/contracts administration, oversight, and monitoring; data systems; federal performance reporting); mandated participation on state and local boards that develop strategic workforce direction and policies; and local grant/contract sub-recipients and service providers. These roles can create conflicts of interest.

**3. Policy:**

**a. Segregation of Duties:**

**i. ESD will establish and maintain the following segregation of duties among its internal divisions as it relates to responsibilities under WIOA:**

- 1. Financial and Administrative Services Division (FASD).** Responsible for advising on fiscal policy and allocating resources for grants and contracts with LWDBs, reimbursing expenditures related to those contracts, and monitoring those contracts for fiscal and programmatic compliance with the law; and submitting federal financial reports to the U.S. Department of Labor (DOL).
- 2. Labor Market and Performance Analysis (LMPA).** Responsible for producing labor market and workforce data and reports used by the agency, LWDBs, and others to analyze performance, apply for grants, and identify potential projects and for submitting

quarterly and annual performance reports to DOL.

3. **Workforce Development and Strategic Initiatives (WDSI).** Responsible for aligning agency activities with strategic goals and managing the agency's relationship with the State Workforce Development Board (SWDB) and LWDBs.
4. **Employment System Policy and Integrity Operations (ESPIO) Division.** Responsible for developing state WIOA, WorkSource System, and Unemployment Insurance policies and guidance for agency staff, LWDBs, and LWDB contractors as well as final approver of WIOA-related grants and contracts.
5. **Workforce and Career Development Division (WCDD).** Responsible for oversight and administration of agency workforce programs, management of the agency's field structure to deliver those programs, development of grant proposals, including those to provide services in response to requests for proposal issued by LWDBs, and development of contracts with LWDBs.
6. **Internal Audit Unit.** Responsible for assuring that divisions follow agency policies.

ii. **The following procedures will be implemented to further segregate duties and minimize conflicts of interest among the organizational entities cited above:**

1. **Separating Strategy and Administration:** WDSI will develop strategic initiatives in consultation with LWDBs; WCDD will review subsequent proposals and negotiate and recommend funding of LWDBs; ESPIO will serve as the approver of the WCDD recommendations; and WCDD will provide post-approval administration of grants and contracts, including performance-related corrective actions.
2. **Grant Proposals:** For grant applications/proposals developed on behalf of LWDBs, ESD will use criteria developed in collaboration with the Washington Workforce Association (WWA) to determine which LWDBs are included in the proposals.
3. **Data Sharing/Availability:** FASD and LMPA will make WIOA-related financial, participant, and performance data (including federal reports) available to all requesting entities (within the limits of [RCW 50.13](#) and other confidentiality provisions) when those entities are competing for the same contracts or grants.
4. **Signature/Approval Authority:** ESPIO will have signature/approval authority for all WIOA grants and contracts, including those for which WCDD is a local service provider.
5. **Grants Administration Protocol:** ESD staff responsible for administration of WIOA grants and contracts will only engage designated LWDB sub-grantees/contractors. They will not engage sub-sub-grantees/sub-contractors unless explicitly requested by LWDBs in writing.

b. **Disclosure:**

Potential conflicts of interest arise from ESD's required membership on the SWDB and LWDBs that establish strategic direction and policy and issue and approve competitive requests for proposals which ESD may pursue. It is the policy of the agency that staff who serve on such boards as members or proxy members do the following:

- i. Disclose conflicts of interest and recuse themselves from discussions or decisions related to these issues.

- ii. Ensure that disclosures of conflict of interest made during board meetings be documented in meeting proceedings and in approved minutes.
- iii. Contact ESD's Internal Audit Unit with questions regarding possible conflicts of interest.

**c. Recusal/Abstention:**

ESD staff who serve as members or proxy members of the SWDB or LWDBs must recuse themselves from involvement in discussions or decisions in which the agency has a conflict of interest. It is the policy of the agency that staff who serve on such boards do the following:

- i. Abstain from offering motions and/or voting on matters wherein ESD has disclosed a conflict of interest, to include physically leaving the room when such discussions are underway so as not to influence deliberations.
- ii. Abstain from activities that could unduly influence the outcome of the award process (e.g., participating in board discussion, development of RFPs, serving on RFP review and scoring panels or committees).

**d. Nondisclosure:**

ESD staff who serve as members or proxy members of the SWDB or LWDBs are prohibited from sharing with their organization any advanced, non-public information related to RFPs that will be issued by those boards and for which ESD may be a respondent to avoid providing an unfair advantage to the agency in the RFP process.

**e. Reporting and Resolving Conflicts of Interest:**

ESD staff who identify a possible violation of this policy must report it to their direct supervisor and division director (if they are not the same) and ESD's Internal Audit Unit. The division director will work with the Internal Audit Unit to resolve the conflict. The Internal Audit Unit will render a determination and recommend corrective action if a conflict exists and the policy has been violated.

**f. Annual Disclosure and Compliance Statements:**

ESD staff who serve as members or proxy members of the SWDB or LWDBs must annually sign a statement ([Attachment A](#)) affirming that they:

- i. Received a signed and dated copy of this policy
- ii. Read and understand this policy
- iii. Agree to comply with this policy

The signed documents will be retained by ESD's Internal Audit Unit.

**g. Annual Audit:**

The Internal Audit Unit will audit this policy to ensure compliance by reviewing annual

statements, reviewing information gathered by the Workforce Monitoring Unit, and taking such other actions as are necessary for effective oversight.

If at any time during the year, the information in an annual statement changes materially, ESD staff must disclose such changes and revise their annual disclosure forms.

The Internal Audit Unit will review this policy annually and provide a report to the ESD Executive Leadership Team that identifies violations of the policy, resolution of those violations and recommendations for updating or strengthening the policy as needed.

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

Conflict of interest – Conflict between the official responsibilities and the private interests of a person or entity that is in a position of trust. A conflict of interest would arise when an individual or organization has a financial or other interest in or participates in the selection or award of funding for an organization. Financial or other interest can be established either through ownership or employment.

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

- Proposed 20 CFR 697.430
- Proposed 20 CFR 679.430 - Entities performing multiple functions
- Proposed 20 CFR 683.200(c)(5) - Administrative Rules, Costs, Limitations – WIOA Title I and Wagner-Peyser
- 29 CFR 97.36(3)
- [2 CFR 899 Part 200 and Part 2900](#) - Office of Management and Budget Uniform Guidance on administrative, cost, and audit provisions for federal grants
- [Revised Code of Washington \(RCW\) 42.50](#) - Ethics in Public Service.

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

N/A.

#### **7. Website:**

[http://www.wa.gov/esd/1stop/policies/wioa\\_title1.htm](http://www.wa.gov/esd/1stop/policies/wioa_title1.htm)

#### **8. Action:**

Local Workforce Development Boards and their contractors, as well as Employment Security Regional Directors, should 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:**

*Director of Internal Audit  
Office of Internal Audit  
Employment Security Department  
P.O. Box 9046  
Olympia WA 98506-9046  
360-902-9276  
[lscheel@esd.wa.gov](mailto:lscheel@esd.wa.gov)*

*Employment System Administration and Policy Unit  
Employment System Policy and Integrity Operations Division  
Employment Security Department  
P.O. Box 9046  
Olympia WA 98506-9046  
(360) 902-9666  
SystemPolicy@esd.wa.gov*

**ATTACHMENT A**

**Employment Security Department**

**WIOA Segregation of Duties, Disclosure, and Recusal**

By my signature, I acknowledge the following:

- I have read and understand this policy.
- I understand that I will be provided with a signed and dated copy of this policy.
- I have been given the opportunity to discuss this policy with my supervisor and/or the Director of Internal Audit.
- I have had the opportunity to ask any questions I have about the policy and those questions have been answered.
- I agree to adhere to the standards and requirements set forth in this policy.

<hr/> <b>Printed employee name</b>	<hr/> <b>Employee's signature</b>	<hr/> <b>Date</b>
------------------------------------	-----------------------------------	-------------------

By my signature, I acknowledge that I have discussed this policy with this employee and have answered his/her questions. I am satisfied that the employee understands this policy.

<hr/> <b>Supervisor/manager signature</b>	<hr/> <b>Title</b>	<hr/> <b>Date</b>
---	--------------------	-------------------

---

**Division/office**



# Employment Security Department

WASHINGTON STATE

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

---

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.

---

**Policy Number:** 5410  
**To:** Washington WorkSource System  
**Effective Date:** July 1, 2015  
**Subject:** Dispute Resolution and Appeals

### 1. Purpose:

To communicate the requirement that Local Workforce Development Boards (LWDBs) have local WIOA dispute resolution policies and processes and to describe the process by which local WIOA disputes will be handled if the State is either a party to the dispute or in the event a dispute cannot be resolved at the local level.

### 2. Background:

Disputes by LWDBs regarding contracts, allotments, monitoring and oversight outcomes, and administrative agreements and memoranda involving local and/or system partners may occur. Standardized policies and timely processes for addressing and resolving such disputes is required.

### 3. Policy:

- a. LWDBs must have local policies and procedures to resolve disputes at the lowest possible level. LWDBs must follow their local policies and procedures and appropriately document local actions and decisions relating to disputes that arise. Only after local policies and procedures have been exhausted can disputes be elevated to the state level.
- b. If the requirements of a local dispute resolution policy and process have been met and the parties to a dispute cannot reach agreement, they may appeal to the Employment Security Department (ESD) Commissioner for resolution. Decisions by the

Commissioner or his/her designee, as the representative of the Governor, will be made in consultation with appropriate local Chief Elected Official(s) and issued within 30 days of receiving appeals.

- c. If one or more of the parties to the dispute is dissatisfied with the ESD Commissioner's decision, the decision can be appealed to the U.S. Department of Labor as described in WIOA Section 181(c).

**4. Definitions:**

None.

**5. References:**

Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Section 181(c) – Grievance Procedure

**6. Supersedes:**

None.

**7. Website:**

[http://www.wa.gov/esd/1stop/policies/wioa\\_title1.htm](http://www.wa.gov/esd/1stop/policies/wioa_title1.htm)

**8. Action:**

Local Workforce Development Boards and their contractors, as well as Employment Security Regional Directors, should 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 Unit  
Employment System Policy and Integrity Operations Division  
Employment Security Department  
P.O. Box 9046  
Olympia WA 98506-9046  
(360) 902-9666  
SystemPolicy@esd.wa.gov*