

**WORKFORCE ARIZONA COUNCIL – PERFORMANCE EXCELLENCE COMMITTEE
MINUTES *DRAFT***

Tuesday, November 13, 2018
1 PM – 3 PM
100 N. 15th Ave. Suite 103, Phoenix, AZ 85007
Via Conference Call
1-240-454-0879 Access Code: 280-993-715

Members Present

David Martin – Chair - Arizona Chapter of the Association of General Contractors
Jeff Fleetham -Arizona Registrar of Contractors

Members Present via Telephone

Naomi Cramer – Banner Health
Dennis Anthony – Arizona Apprenticeship Advisory Committee

No Members Absent

1. Call to Order

The Performance Excellence Committee was called to order by Chair, David Martin at 1:12 P.M. after a 10 minute delay due to a fire alarm.

2. Welcome/Introductions

Welcome was provided by Committee Chair David Martin.

3. Approval of Minutes

Naomi Cramer moved to approve the minutes with changes recommended by David Martin to change his organizations name to be Arizona Chapter of the Association of General Contractors, the motion was seconded by Jeff Fleetham. The motion passed.

4. Call to the Public

Teri Drew, Regional Director, Northern Arizona Council of Government, where she expressed thanks to Karen Nelson-Hunter, WIOA Coordinator, Arizona Department of Economic Security, Division of Employment and Rehabilitation Services, for the negotiation process on the Local Performance Measures. Teri Drew also recommended that the Committee solicit other's views, perspectives and input on the proposed new policy and policy changes.

5. Approval of Local Board Re-Certifications

Karen Nelson-Hunter, WIOA Coordinator, Arizona Department of Economic Security, Division of Employment and Rehabilitation Services, provided an overview of the Re-certification process and timeline, request forms including the LWDB membership roster, and key areas for clarification needed from LWDB. There was a question from the floor from Rosalyn Boxer,

OEO Workforce Program Administrator, wanting clarification on if the Committee would be voting on this issue. After discussion with the members of the committee, Karen Nelson-Hunter and Ashley Wilhelm, WAC Manager, it was decided that this would be tabled to the next Committee Meeting in February of 2019 due to the need for further clarification and possible technical assistance needed by LWDBs.

6. Local Area Negotiated Performance Measures

Karen Nelson-Hunter discussed the process of how the Performance Measures are negotiated with the Federal Government then the process of how the State negotiated with the LWDB's on their Performance Measures. There was some discussion on the definitions for each Performance Measure, so the committee requested Karen to provide a set of definitions so that everyone understands what the measurements are pertaining to.

7. Review: Conflict of Interest Policy (Draft)

Karen Kurtz, Consultant, presented a draft policy on Conflict of Interest. She provided information from the WIOA Law that there is a necessity to have firewalls for agencies that are serving multiple roles including operations as well as services. There was discussion on the differentiation of what needed to be a Competitive Bid for services and what did not. The Committee asked for staff to compile a list of what entities were providing each function in all of the local areas. The Committee tabled this draft policy requesting that input from the stakeholders on this policy be sought prior to the next Committee meeting.

8. Proposed Review of Workforce Arizona Council Policies

DERS submitted a proposed modification to the local governance policy regarding the local plan modifications. The Committee tabled this proposed modification until the next Committee meeting and asked Ashley to reach out to stakeholders to get their input on the modification prior to the next meeting.

9. Committee Next Steps

February meeting will most likely be longer than usual, due to the items being held for further clarification and discussion. The Committee members specified that they prefer to have a longer meeting to get through everything instead of hosting a Special Meeting on specific topics. Ashley will work with Karen and other Stakeholders to make sure they gather and get the information they need so that the Committee can be informed so they can vote in February.

10. Adjournment

Jeff Fleetham moved to adjourn the meeting, it was seconded by Dennis Anthony. The motion passed, meeting adjourned at 2:30 p.m.

Division of Employment and Rehabilitation Services (DERS)

The purpose of Arizona's Workforce Innovation and Opportunity Act (WIOA) oversight and monitoring responsibilities are to ensure the integrity of the WIOA program operations and functions, review performance, assess compliance with applicable laws and regulations. Program Year 2018 includes monitoring against the Local Workforce Development Area's (LWDA) Local Plan and how it supports the Arizona Unified State Workforce Development Plan and all applicable policies and implementation of WIOA

- DERS provides programmatic, fiscal, and contracts auditing through annual monitoring visits to each Local Workforce Area to assess compliance with 2 CFR part 200
- DERS has established a static calendar for programmatic monitoring to assist each local area with preparations for the onsite monitoring
- Bi-monthly meetings are held with the Quality Assurance and Integrity Administration (QAIA), the Finance, Business and Operations Administration (FBOA), the Office of Equal Opportunity (OEO) and other programmatic entities to work on collaboration of efforts, wherever possible, to reduce interruption of services in the local areas and to identify trends

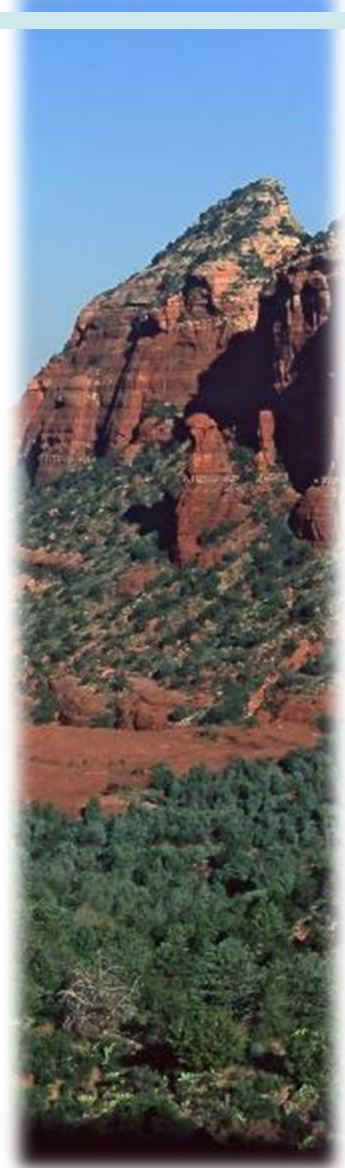


DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Agenda

- Programmatic Monitoring Visits
- Fiscal Monitoring Visits
- One-Stop Operator (OSO) Monitoring Visits
- Audit Results



Programmatic Monitoring Visits

- Annual monitoring components for each LWDA site:
 - Entrance and exit interview
 - Case file reviews. Seven (7) cases will be selected from each funding stream (*adult, dislocated worker, out of school and in-school youth*) for a total of 28 participant files.
 - Review of policies, processes and procedures
 - Implementation of the State Administrative Policies
 - Participant, functional team member and site manager interview (as time allows)



Fiscal Monitoring Visits

- Annual monitoring components for each LWDA site:
 - Entrance and exit interview
 - Review for compliance with applicable federal and state laws, regulations, and policies related to the Workforce Innovation and Opportunity Act (WIOA).
 - Areas of Review [Handout]
 - On-site Monitoring Guide (In website link on final page)

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OSO Monitoring Visits

- OSO Monitoring is conducted after the LWDA has procured a OSO.
 - A statewide comprehensive OSO monitor occurred during FY18
 - Per TEGL 15-16: *The WIOA Joint Final Rule requires that a competitive process be conducted at least once every four years*
- OSO monitoring components for each LWDA site:
 - Entrance and exit interview
 - Review for compliance with applicable federal and state laws, regulations, and policies related to the Workforce Innovation and Opportunity Act (WIOA)
 - WIOA Final Rule
 - Workforce Arizona Council 04-2016 - Policy
 - DOL WIOA TEGL 15-16
 - 2 CFR 200 related to contracts



OSO Monitoring Visits (Continued)

- Review tool:
 - Procurement of OSO - DES Review Tool [Handout]
 - Procurement Process
 - Contract Award
 - Conflict of Interest
 - Additional Requirements
 - Review of backup documentation including RFP documents, potential awardee responses, and, meeting minutes.



Audit Results



- Following the audit, each area should expect the following:
 - Report of trends and errors identified during the audit
 - Detailed list of error findings (if applicable)
 - Request to correct findings
 - Observations of potential trends that could possibly lead to future issues
 - Requests for technical assistance are elevated to DERS WIOA policy personnel for detailed response
 - Upon correction of findings, a closure letter is issued to each area
 - Monitoring tools, procedures, technical assistance and most frequently asked questions are stored on the DES Website, which is accessible to the local areas and partners.

Audit Results (Continued)

- Monitoring materials can be found on the DES website:

Policy and Procedure Manual - Workforce Innovation and Opportunity Act

Policy and Procedure Manual



Exhibits - Policy and Procedures



Fiscal Policies



Exhibits - Fiscal Policies



Monitoring Tools



Broadcasts



WIOA Questions and Answers



<https://des.az.gov/services/employment/workforce-innovation-and-opportunity-act/policy-and-procedure-manual-workforce>

Local Workforce Development Board Recertifications

February 2019

LWDB Recertification Request Process



Local Workforce Development Board Recertification Request

Program Years 2018 and 2019

Local Workforce Development Board

➤ LWDB Submits Request for Recertification Documenting:

- WIOA Implementation (e.g., LMI analysis, employer engagement, use of technology, program/fiscal oversight)
- Assurances (e.g., compliance with policies, OSO procurement, selecting providers, timely data entry, expenditure of funds, and timely/accurate fiscal reporting)
- Names of Adult, Dislocated Worker and Youth service providers



LWDB Recertification Request Process (cont'd)

Includes LWDB membership Roster

Member Name	Full Contact Address	Contact Phone & Email	Organizational Affiliation	In Demand Industry Represented (Be Specific)	Member's Title	Describe Optimum Policy-Making or Hiring Authority of the Appointee. How is it documented?	Which organization nominated this member? Is this nomination in writing?	Term Start & End Date	Geographic Area Represented	Voting Privilege? (Yes or No)
<p>Section A: List the LWDB members representing business in the local area, which must be the majority of the total board membership. The LWDB Chair must be from the business representation. These members must: 1. Represent an in-demand industry or occupation in your local area as documented using State and regional business and labor market projections including labor market information; 2. Must have optimum policy-making or hiring authority as documented by job title (owner, chief executive officer, or chief operating officer) or written documentation from the company; 3. Must be appointed from among individuals nominated by local business organizations and business trade associations; 4. At least two members must represent small business as defined by the US Small Business Administration.</p>										
Please complete the following information for each vacancy in Section A.										
Length of time of vacancy	Efforts made to fill the vacancy		Estimated month and year when vacancy is anticipated to be filled							
<p>Section B: List the LWDB members who represent workforce representation, which must be at least 20% of total board membership. These members: 1. Must include two or more representatives of labor organizations (where such organizations exist) or representatives from other employee representatives (if no labor organizations exist); 2. These labor organization members must be nominated by local labor federations, or other representatives of employees (where labor organizations do not exist); 3. Must include one or more representatives of a joint labor-management, or union affiliated, registered apprenticeship program within the area who must be a training director or a labor organization member. If no union affiliated program exists, a representative of a registered apprenticeship program with no union affiliation must be appointed; 4. May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, including organizations that serve veterans or that provide or support competitive integrated employment for individuals with disabilities; 5. May include representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.</p>										
Please complete the following information for each vacancy in Section B.										
Length of time of vacancy	Efforts made to fill the vacancy		Estimated month and year when vacancy is anticipated to be filled							

Membership Summary	INSERT #s BELOW
Total # of LWDB Individuals Currently Sitting on the Local Board:	
Total # of Vacancies Currently on Local Board:	
Total Local Board Membership:	
Total # of Business Representatives Currently Sitting on the Local Board:	
# of Business Representative Vacancies Currently on Local Board:	
Total # of Local Board Business Representatives:	0
Percentage of Business Representatives:	Do not Insert #s below; % will calculate #DIV/0!
	Must be greater than 50%
Total # of Workforce Representatives Currently Sitting on the Local Board:	
# of Workforce Representative Vacancies Currently on Local Board:	
Total # of Local Board Workforce Representatives:	#REF!
Percentage of Workforce Representatives:	Do not Insert #s below; % will calculate #REF!
	Must not be less than 20%

<p>hip, which must include: 1. At least one eligible provider administering adult education and literacy activities under WIDA title II, nominated from these entities if there is more than entity; 2. At least one eligible provider administering workforce investment activities, including community colleges, nominated from these entities if there is more than entity; 3. At least one representative from economic and community development entities; 4. At least one representative from the Wagner-Peyser Act serving the local area; 5. At least one representative from the programs carried out under title I of the Rehabilitation Act of 1973</p>										
Section C.										
Length of time of vacancy	Efforts made to fill the vacancy		Estimated month and year when vacancy is anticipated to be filled							

LWDB Recertification Request Timeline



LWDB Recertification Request Process (cont'd)

- Additional clarification was sought from LWDBs, mainly in the LWDB's efforts to:
 - Conduct workforce research & regional labor market analysis
 - Provide program oversight, including of youth activities and the appropriate use and management of funds
 - Meet business membership requirements
 - Identification of service providers for youth activities and career services

Summary and Recommendation

- Based on information in the revised Requests for Recertification, LWDBs range in readiness for certification
- All LWDBs but one are affected by the current, draft Council policies
- Given time needed to address areas for certification and wanting to ensure compliance with policies as approved:
 - **Recommend conditional approval for up to one year for all 12 LWDBs**

Local Workforce Development Board Local Plan Modifications

LWDB Local Plan Modifications Timeline

LWDB Plan
Modifications Submitted

LWDB Plan Modifications
Reviewed & Requests
for Clarification Sent

Review Responses

Dec
2018

Jan
2019

Feb
2019

Local Plan Modification Process

- Cross-Partner Committee from each of the core programs reviewed local plan modifications, including representatives from:
 - DES/Adult/Dislocated Worker/Youth Program
 - Arizona Department of Education
 - DES/Wagner-Peyser
 - DES/Vocational Rehabilitation
 - Office of Economic Opportunity

- Responses due end of January – beginning of February for review

Summary and Recommendation

- **Recommend approving local plan modification for:**
 - **Pinal County Local Workforce Board**

- **Recommend conditional approval for remaining LWDBs due to:**
 - Additional time needed to review and apply draft Council policies (including LWDB roles, conflict of interest/firewalls and contract requirements); and
 - Time needed to resolve areas identified.

THANK YOU

**Workforce Arizona Council
Conflict of Interest Policy**

**STATE WORKFORCE CONFLICT OF INTEREST POLICY
POLICY #8**

ISSUING AGENCY: State Workforce Development Board

SCOPE: State Workforce Development Board (Workforce Arizona Council), Arizona Department of Economic Security (DES), Arizona Department of Education, Arizona Commerce Authority/Office of Economic Opportunity, Local Workforce Development Boards (LWDB), Local Workforce Administrative Entities (i.e. grant recipients), One-Stop Operators and Workforce Stakeholders

REFERENCES: Title I of the Workforce Innovation and Opportunity Act (WIOA) of 2014, (Pub. L. 113-128); WIOA Final Regulations – 20 CFR 679.320, 20 CFR 679.410 and 679.430, 20 CFR 678.600 – 678.635, 20 CFR 683.200, 20 CFR 683.220, USDOL Employment and Training Guidance Letters 15-16, 21-16, State Policy #01 Local Governance.

EFFECTIVE DATE: January 2019

OBJECTIVE: To establish guidelines for conflict of interest, firewalls, and internal controls required under WIOA for LWDB's and entities serving in more than one role in the ARIZONA@WORK system.

TABLE OF CONTENTS:

- I. Conflict of Interest Defined – Real, Apparent, Organizational
- II. Written Agreement Required
- III. Requirements for Internal Controls
- IV. Requirements for Conflict of Interest Policies
- V. Requirements for Firewalls

I. Conflict of Interest Defined – Real, Apparent, and Organizational

A. Conflict of interest refers to circumstances where an individual or an organization the individual represents has competing interests that may affect the individual's ability to act objectively and without bias. There may be circumstances or actions that have the potential to undermine the impartiality of an individual because of a possible clash between the individual's own interests and their organizational role, or between competing organizational roles, when an individual serves in more than one organizational role.

**Workforce Arizona Council
Conflict of Interest Policy**

- B. Interests attributed to the individual with the potential conflict include:
1. Interests of the individual's spouse or children;
 2. Interests of the individual's business partner or outside business interests;
 3. Interests of any organization that the individual serves on behalf of or is an employee of;
 4. Any action or transaction both financial and non-financial that could result in benefit to the individual's financial and non-financial well-being.
- C. Conflicts of interest can be real, apparent, or organizational defined as:
1. Real/Actual conflict of interest: A real conflict of interest exists when an individual in his or her official capacity participates in a decision-making process that has a direct effect on the financial interest of his or her personal or business interest or a member of his or her family.
 2. Apparent conflict of interest: The appearance of a conflict of interest arises where an employee is assigned to participate in an official duty matter where an organization with which the employee has a covered relationship is or represents a party to that matter, or where the matter is likely to affect the interests of a household member, and there are circumstances that would cause a reasonable person with knowledge of the relevant facts to question the employee's impartiality in the official matter.
 3. Organizational conflict of interest: An organizational conflict of interest can arise when actions are taken or may appear to be taken by any entity involved in more than one role, such that the performance of that entity in one role affects its interest in its other role(s). Organizational conflicts must be mitigated with complete separation of duties, supervision, and restrictions on information access.

II. Written Agreement Required

- A. The possibility of a conflict of interest is inherent in any organization or entity designated or seeking to be designated to perform more than one of the following functions in the local ARIZONA@WORK system: local fiscal agent, staff to the LWDB, member of the LWDB, one-stop operator (OSO), and direct providers of career services for adults and dislocated worker or youth services.
- B. Any organization or entity that has been selected or otherwise designated to perform more than one of these functions must execute a written agreement with the LWDB and Chief Elected Official (CEO) to specify how the organization will carry out its responsibilities and demonstrate compliance with WIOA and corresponding regulations, Uniform Guidance (2 CFR 200), and the State's conflict of interest policy (20 CFR 679.430).

**Workforce Arizona Council
Conflict of Interest Policy**

The written agreement must include the requirements for internal controls, conflict of interest, and firewalls delineated in this policy.

III. Requirements for Internal Controls

- A. Recipients of WIOA Title I Adult, Dislocated Worker, and Youth Programs, Title II Adult Education, Title III Wagner-Peyser Act, and Title IV Vocational Rehabilitation funds must have an internal control structure and written policies in place that provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market, or that the U.S. Department of Labor (DOL), the State or the grant recipient considers to be sensitive, consistent with applicable Federal, State and local privacy and confidentiality laws (20 CFR 683.220). DOL has issued specific guidance for the handling and protection of personally identifiable information.

Internal controls are processes established and maintained within an organization to ensure that a Federal award is managed in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award including that the organization evaluates and monitors compliance with applicable laws and regulations, and takes prompt action when noncompliance is identified (Uniform Guidance 2 CFR 200.61 and 200.62, and 20 CFR 683.220).

- B. Internal controls must be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (Uniform Guidance 2 CFR 200.303 and 20 CFR 683.220).
- C. Effective internal controls includes:
1. Process for identifying, evaluating, and deciding how to mitigate risk;
 2. Control activities, documented in written policies and procedures, to ensure management directives are implemented. This includes activities that must have adequate separation of duties such as approvals, authorizations, recording and processing payments, conducting reconciliations, custody of assets, and review of performance;
 3. Information systems sufficient to capture data and other documentation, provide reliable reporting, and demonstrate compliance with Federal and State requirements;
 4. Process for sharing information with staff and Board members; and
 5. Process for monitoring the internal controls to ensure their effectiveness.

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Conflict of Interest Policy**

III. Requirements for Conflict of Interest Policies

- A. The LWDB and the non-Federal entity¹ (i.e. grant recipient represented by the CEO) for the Local Workforce Development Area (LWDA) must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a conflict of interest as defined in this policy (2 CFR 200.318 Uniform Guidance).
- B. The LWDB must comply with the conflict of interest provisions included in the State's local governance policy (Arizona WIOA #1, section X, (H) (k 1-7)) and address these provisions in their bylaws.

IV. Requirements for Firewalls

- A. Agencies serving multiple roles must create and maintain appropriate firewalls between roles to ensure the transparency and integrity of the local ARIZONA@WORK system's governance, management, and operation. **It is the responsibility of the LWDB to demonstrate that the established firewalls meet the requirements of this policy. Such firewalls pertain to the elected leadership of the State or local area as well as to the Boards.** Key areas that require firewalls include procurement and financial system functions and responsibilities, and governance roles/functions including the LWDB and committees, staff to the LWDB, grant administrative entities, fiscal agents, and OSOs.
- B. An appropriate firewall must include the following:
 - 1. A complete separation of duties between the staff functions and duties where the firewall is needed must be created and enforced. For example, there must be a clearly defined firewall between the staff who provide or oversee direct services to program participants and the staff assigned to serve the LWDB etc.

Examples of compliance may include, but are not limited to: 1) the LWDB and its staff exist in an organization separate and distinct from the organization that acts as the One Stop Center Operator and/or service provider; or 2) staff to the LWDB operates in one department of the organization and the One Stop Center Operator and/or service provider operates in another separate and distinct department within the same organization. Departments must demonstrate different reporting structures.

¹ *Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient (2 CFR 200.36).

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2. The separation of duties must ensure that staff assigned to a specific role (i.e. direct service provider, OSO, fiscal agent, etc.) perform only the functions assigned to that role and do not perform functions specifically prohibited for that role.

Examples of conflicts:

- a. The OSO is not permitted to develop the local plan or negotiate local performance measures per WIOA regulations.
 - b. The department responsible for providing adult, dislocated worker, or youth services cannot manage the LWDB member nomination process or conduct other management responsibilities delegated under WIOA to the Chief Elected Official.
3. Responsibilities for the multiple roles must be clearly communicated and documented in a written agreement or policy;
 4. Complete independence over supervision or control of staff;
 5. Physical and electronic access to information is restricted;
 6. Complete confidentiality over information regarding documentation involved in these duties especially when conducting competitive procurement processes; and
 7. Recusal from voting on any related matters applicable to these other duties, when the potential conflict involves the LWDB.
- C. WIOA assigns responsibility and decision-making authority to the LWDB for numerous duties that create an actual or perceived conflict of interest when the LWDB is part of an entity that serves multiple roles. Therefore, firewalls are needed especially when the same entity serves as a direct service provider for adults, dislocated workers, or youth, and/or the OSO, and provides staff to the LWDB. Specifically, the LWDB must:
1. Set policy for the LWDA (in partnership with the CEO), which may include how and where services are provided, as well as monitors performance of the service provider(s);
 2. Develop a budget for the activities of the LWDB, which includes how much to allocate for services;
 3. Negotiate and reach agreement on local performance indicators with the CEO and the Governor;
 4. Determine the roles and responsibilities of the OSO. The OSO's role must include system coordination, and may or may not include provision of career services. Career services provided directly by the OSO must be procured through a fair and open competitive process;

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5. Determine the process for selecting and awarding contracts to service providers for career services not provided by the OSO including whether these services must be competitively procured;
 6. Assess needed changes in services and budget allocation to comply with youth program changes mandated by WIOA;
 7. Identify/select youth service providers best positioned to provide youth program elements resulting in strong outcomes. The LWDB may determine that the grant recipient for the LWDA or designated fiscal agent may provide directly some or all of the youth workforce investment activities. This is a LWDB decision, not a grant recipient decision. If a LWDB chooses to award grants or contracts to youth service providers to carry out some or all of the youth workforce investment activities, the LWDB must award such grants or contracts on a competitive basis (20 CFR 681.400 b);
 8. Provide program oversight, in partnership with the CEO, of youth workforce investment activities authorized under WIOA section 129(c), adult and dislocated worker employment and training activities under WIOA sections 134 (c) and (d); and the entire local ARIZONA@WORK system;
 9. Ensure the appropriate use and management of the funds provided under WIOA IB for the youth, adult, and dislocated worker activities and local ARIZONA@WORK system; and
 10. Ensure the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA section 116.
- D. When procuring services through a competitive process, no entity or individual that has any role in the issuance of a solicitation may compete or submit a proposal under that procurement action including development of requirements, drafting the Request for Proposal (RFP) or Invitation for Bid (IFB), evaluation of proposals/bids, and identification of best entity. If necessary, the entity may have to enlist an outside entity to conduct the procurement process to mitigate risk and conflict of interest.
- E. The same person or department cannot both provide services and oversee/monitor the provision of those services (**Joint WIOA Final Rule, page 55898; Federal Register, Vol 81, no. 161, August 19, 2016**). There must be appropriate firewalls between staff providing services and staff responsible for oversight and monitoring of services to ensure that the same person or department is not overseeing, monitoring, and evaluating its own performance in providing services. This provision applies when the same entity is a direct service provider and provides staff to the LWDB, or when the one stop operator serves also as a direct service provider (20 CFR 678.625).

CONTACT ENTITY: Inquiries regarding this policy must be directed to the Workforce Arizona Council Manager at Ashley.Wilhelm@oeo.az.gov or 602-771-0482.

Workforce Innovation and Opportunity Act Local Governance Policy

**STATE WORKFORCE
POLICY #1**

**Workforce Innovation and Opportunity Act (WIOA) Local
Governance**

ISSUING AGENCY:

State Workforce Development Board

SCOPE:

State Workforce Development Board, Arizona Department of Economic Security, Arizona Commerce Authority/Office of Economic Opportunity, Local Workforce Development Boards, Local Workforce Administrative Entities and Fiscal Agents, One-Stop Operators, and Workforce System Stakeholders

REFERENCES:

Title I of the Workforce Innovation and Opportunity Act (WIOA) of 2014, (Pub. L. 113-128); WIOA Final Labor Rule, 20 CFR Subpart B WIOA Local Governance and Subpart C Local Boards Part 601, 651, 652 et al; 2 CFR 200, Uniform Guidance for Federal Financial Assistance, as applicable.

EFFECTIVE DATE:

~~February 16, 2017~~

OBJECTIVE:

This policy articulates the State's vision and purpose for the Local Workforce Development Boards (LWDBs), provides guidance on the appointment and certification of LWDBs, outlines the roles, responsibilities and authority of the chief elected officials (CEOs) and the LWDBs in regards to the local workforce system, and describes the process for local area designation.

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- III. Chief Elected Official Agreement for Consortia
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- V. Vision & Purpose of Local Workforce Development Board
- VI. Local Board Roles and Responsibilities
- VII. Local Board Recruitment Process
- VIII. Local Board Certification
- IX. Local Workforce Development Board Membership
- ~~IX. Local Board Conduct Business Openly~~
- X. Other Local Board Requirements
 - Polycymaking Authority of Board Members
 - Prohibited Board Members

Authority to Hire Board Staff

Diverse Geographic Areas Represented

Represent Multiple Entities

Board Chair

Voting Privilege

Standing Committees

Bylaws

XI. Local Workforce Area Designation Request

XII. Local Workforce Area Designation

XIII. Local Plan Modifications

I. DEFINITIONS:

Chief elected official -- The term "chief elected official" means--

(A) the chief elected executive officer of a unit of general local government in a local area; and

(B) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement described in section 107(c)(1)(B).

II. Local Workforce Development Boards Established: There shall be established, and certified by the Governor of the State, a local workforce development board (LWDB) in each local area of a State to carry out the functions described in WIOA 107 (d) (and any functions specified for the local board under WIOA or the provisions establishing a core program) for such area.

III. CHIEF ELECTED OFFICIAL AGREEMENT FOR CONSORTIA: If a local area includes more than one unit of general local government, the chief elected officials (CEOs) of such units must execute a written **consortia** agreement that specifies the respective roles **of the individual CEOs in the appointment of the members of the local workforce development board (LWDB) from the individuals nominated or recommended to be such members in accordance with eligible criteria, and in carrying out any other responsibilities assigned to CEOs under WIOA (WIOA 107 (c)(1)(B)(i and ii).**

~~Chief elected officials are liable in their official capacity and are not personally liable for misuse of WIOA funds.~~

If the CEOs are unable to reach agreement after a reasonable effort, the Governor may appoint the members of the LWDB from individuals nominated or recommended as specified in WIOA 107(c)(1)(B).

Workforce Innovation and Opportunity Act Local Governance Policy

The State Workforce Development Board, as the designated representative of the governor, provides the following ~~guidance on~~ requirements for this agreement:

A. Required inclusions. CEOs must enter into an agreement with each other that, at a minimum, includes the following sections:

- 1. Grant recipient and signatory.** ~~The written consortia agreement must identify that the CEOs are the grant recipient for the grant funds allocated to the local area under youth workforce investment activities (WIOA section 128) and adult and dislocated worker employment and training activities (WIOA section 133) or may designate an entity to serve as a local grant subrecipient for such funds or as a local fiscal agent (WIOA 107(d)(12)(B)(i)(III)). grant recipient authority to the LWDB. Such designation shall not relieve the CEOs of the liability for any misuse of grant funds. If the CEOs will serve as the grant recipient, they must outline the process they will use to sign contracts and enter into agreements related to the WIOA. This may be accomplished by designating signatory authority to a lead CEO. If a lead chief elected official is used in this capacity, chief elected officials must include the information outlined in the recommended inclusions Subsection B of this policy.~~
- 2. Liability of funds.** ~~The CEO in a local area shall be liable for any misuse of all local WIOA funds as outlined in WIOA 107(d)(12)(B)(i)(I). The written agreement must acknowledge financial liability and outline the process for determining each CEOs' share of responsibility. as required in 20 CFR Part 667.705. This determination could be based on allocation, population, expenditures, or other criteria determined by the CEOs. Chief elected officials are liable in their official capacity and are not personally liable for misuse of WIOA funds. I haven't been able to verify this any where.~~
- 3. Fiscal agent designation.** To assist in the administration of the grant funds, the CEOs may designate an entity to serve as a local fiscal agent as outlined in WIOA 107(d)(12)(B)(i)(II) and 20 CFR 679.420. ~~If the CEO designates a fiscal agent, the CEO must ensure this agent has clearly defined roles and responsibilities (20 CFR 679.420).~~ If a fiscal agent is designated, the written agreement must describe the process for designation within the guidelines required by state and local procurement laws and policies.
- 4. Local Board budget approval.** ~~The LWDB shall develop a budget for the activities of the LWDB in the local area, consistent with the local plan and the duties of the LWDB under WIOA sec 107(d), subject to the approval of the CEO (WIOA 107(d)(12)(A)). The written consortia agreement must describe the process for reviewing and recommending the approval of the LWDB annual budget as required in WIOA 107(d)(12)(A) and 20 CFR 679.370(o) for the purpose of carrying out the duties of the LWDB. Every local area must have a LWDB budget that meets the requirements of includes only the costs of the LWDB staffing and related costs associated with carrying out the functions of the LWDB as stated in WIOA sec. 107(d) and 20 CFR 679.370.~~

5. Participating Chief Elected Officials. The agreement must contain the name, representation, contact information, and signature of the participating CEO in the local area as defined in the local area. The tribal nations representing local workforce development areas will identify appropriate signatures for their agreements.

~~A. Recommended inclusions. In order to improve the coordination and functionality of the local workforce system, the State Workforce Development Board recommends that the consortia agreements also address the following items:~~

6. Designation of a chief elected official. CEOs are liable for all WIOA Title IB funds in the local area, and are required by the WIOA to approve or provide guidance on a number of LWDB activities. The State Workforce Development Board encourages CEOs to select **one CEO** who will act **as a lead** on behalf of the other CEOs. If a lead is appointed, the following information **must be included in the written consortia agreement sent to the local administrative entity and kept on file for review by the state administrative entity:**

- a. appointment process and term of the lead CEO;
- b. language designating the lead to serve as the signatory for the CEOs;
- c. outline the decisions that may be made by the lead on behalf of the CEOs;
- d. name, title, and contact information of the appointed lead.

7. Amendment or change to the chief elected official agreement. The written agreement must outline the process that will be used for amendments or changes to the CEO consortia agreement including a description of how an election may or may not impact an existing agreement. All amendments or changes must be maintained at the local administrative entity office and available for monitoring by the state administrative entity.

8. Local Board member representation. **The written consortia agreement must** outline how CEOs will ensure LWDB representation is fair and equitable across the local area.

9. Communication. **The written consortia agreement** must describe how the CEOs will communicate with each other regarding LWDB activities and determine how many times a year the CEOs will meet. The State Workforce Development Board encourages CEOs to meet at least once a year just as CEOs.

Determine how often a joint meeting ~~with the LWDB~~ between the CEOs and the LWDB will occur. LWDBs and CEOs may satisfy this joint meeting requirement through alternative methods of communicating acceptable to the State Workforce Development Board. The State Workforce Development Board encourages LWDBs and CEOs to meet at least annually.

IV. SHARED GOVERNANCE AGREEMENT: As stated in WIOA 107(d) and 20 CFR 679.370, the CEO(s) and the LWDB share governance responsibility for LWDB functions such as local planning, program oversight, negotiating local performance accountability measures, selection of operators and providers, and approving a budget for LWDB activities. The LWDB and the CEO(s) must enter into a written partnership agreement that describes how the parties will carry out their shared governance functions and meet other LWDB requirements such as membership criteria, setting local policy, and communicating with elected officials and the public. The State Workforce Development Board, as the designated representative of the Governor, provides the following **requirements for guidance** on this agreement:

A. Required inclusions. The LWDB and the CEO must enter into a written partnership agreement that, at a minimum, addresses the following subjects:

1. Local board membership. WIOA Section 107(c)(1) authorizes CEOs to appoint the members of the LWDB in accordance with the criteria established by the Governor in partnership with the State Board (WIOA 107(b)(1).

a. Terms. Outline the terms of LWDB member appointments and ensure that the terms are staggered so that only a portion of membership expires in a given year.

b. Nomination and Appointment Process. CEOs must establish a formal nomination and appointment process that is open and transparent, and ensures compliance with the membership criteria identified in this policy for composition of the LWDB. The nomination and appointment process must be documented in the written partnership agreement between the LWDB and the CEO(s).

c. Nomination. For each LWDB member position that requires a nomination, the nominating organization must submit to the appointing CEO of the local area a document or letter signed by the chief executive officer or designee identifying the individual being nominated. The document or letter must also acknowledge the nominee's optimum policy-making authority and include documentation of curriculum vitae, resume or work history supporting the qualifications of the nomination.

d. Appointment. LWDB member appointments must be made by the appointing CEO and submitted to the local administrative entity either in a form of a letter, evidenced within minutes of meetings, or other official communication.

e. Change in status. Acknowledgement that LWDB members who no longer hold the position or status that made them eligible board members must resign or be removed by the CEO immediately upon notification to the LWDB chair of the change of status as a representative of that entity.

f. Mid-term appointment. LWDB members replacing out-going members mid-term will serve the remainder of the out-going member term unless the LWDB by-laws establishes a different procedure.

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- g. Vacancies.** LWDB vacancies must be filled within 120 days of the vacancy. The CEOs in a local area are authorized to make all reappointments of members. Reappointments must be made within 120 days of the term expiration. In the event a vacancy cannot be filled within 120 days, the local administrative entity must request a waiver in writing to the Director of the State Workforce Development Board with an explanation of why a vacancy was not filled in the 120-day timeframe and a description of the process underway to fill the vacancy. The local administrative entity must maintain written approval of the waiver request by the Director of the State Workforce Development Board and will be monitored according to the process outlined in their approved waiver request.
- h. Removal.** LWDB members must be removed by the CEO if any of the following occurs: documented violation of conflict of interest, failure to meet LWDB member representation requirements defined in WIOA and this policy, or documented proof of malfeasance, fraud or abuse. LWDB members may be removed for other reasons outlined in the LWDB bylaws such as lack of attendance; **however**, LWDBs must define the specific criteria that will be used to establish just cause and the process for such removal. The state administrative entity reserves the right to conduct an investigation regarding allegations of wrong doing that result in the removal of a board member. CEOs and LWDB chairs will be formally notified in advance of any such investigation and of the results.
- 2. Relationship between CEO and LWDB.** The governance partnership agreement shall establish the roles and responsibilities of the CEO and the LWDB along with a description of the partnership and specific responsibilities. **The agreement must document a clear separation of duties and required firewalls between staff that perform governance functions and operation functions in organizations that serve multiple roles in the one stop delivery system (20 CFR 679.430).**
- a. Local plan requirements.** Describe how the local plan will be developed in partnership between the CEO and the LWDB.
- b. Budget and approval.** As referenced in WIOA 107(d)(12)(A), describe how the LWDB will develop its budget for the purpose of carrying out the duties of the LWDB and the process for obtaining the CEO's approval. ~~This does not include the local operation or administrative budgets.~~
- c. Selection of operators and providers.** Establish the guidelines and processes that will be followed by the LWDB for selection of each of the operators and providers for the local area in accordance with WIOA 107(d)(10)(A) through (E) and State Workforce Development Board policy, including the process for getting CEO agreement on the selections.
- d. Youth activities.** Describe if the LWDB will establish a standing youth committee (20 CFR 681.100), the composition of and appointment procedures for the standing youth committee (20 CFR 681.110) and the duties assigned to the standing youth committee (20 CFR 681.120). If the LWDB does not establish a standing youth

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- committee, describe how the LWDB will carry out its responsibilities for youth activities under youth formula programs.
- e. **Program oversight.** Establish the guidelines and process that will be followed to carry out the program oversight responsibilities outlined in WIOA 107(d)(8)(A) and (B) including how the CEO(s) will be involved.
 - f. **Performance accountability measures.** Describe the process the LWDB will use to reach agreement with the CEO(s) and the Governor on local performance accountability measures in accordance with WIOA 107(d)(9).
 - g. **Local Board policy.** Describe the process for approving local workforce policy.
 - h. **Memorandum of Understanding.** Describe the process for demonstrating CEO agreement on memorandum of understanding between workforce system partners and the LWDB.
3. **Authorized signatures.** The partnership agreement must be signed by the CEOs that have been identified as participating in the CEO agreement at the time of the signing and by the LWDB chair at the time of the signing.
 4. **Amendments, change, or election.** Any amendment or change to the partnership agreement, including notice of an election of a new CEO, notice of an election of a new LWDB chair, or amendment of any applicable partnership agreement(s), must be maintained at the local administrative entity office and available for monitoring by the state administrative entity.
 5. **Communication with Elected Officials.** Establish requirements for informing the CEO(s) on a regular basis regarding activities, performance outcomes, and budgets with at least one joint meeting held annually between the CEO(s) and the LWDB. LWDBs and CEOs may satisfy this joint meeting requirement through alternative methods of communicating acceptable to the State Workforce Development Board.
 6. **Local Board Conducts Business Openly with Public.** Establish requirements that the LWDB must make available to the public, on a regular basis through electronic means and open meetings, information regarding the activities of the LWDB as required by WIOA 107(e) and 20 CFR 679.390, including:
 - a. Information about the Local Plan, or modification to the Local Plan, before submission of the plan;
 - b. List and affiliation of LWDB members;
 - c. Selection of one-stop operators;
 - d. Award of grants or contracts to eligible providers of workforce development activities including providers of youth workforce development activities;
 - e. Minutes of formal meetings of the LWDB; and
 - f. LWDB bylaws, consistent with § 679.310(g).

V. VISION AND PURPOSE OF LOCAL WORKFORCE DEVELOPMENT BOARD: The vision for the LWDB is to serve as a strategic leader and convener of local workforce development system stakeholders. The LWDB partners with employers and the workforce development system to develop policies and investments to support workforce system strategies and support regional approaches including local and regional sector partnerships, career pathways, and high quality, customer-centered service delivery and service delivery approaches.

The purpose of the LWDB is to (20 CFR 679.300 b):

1. Provide strategic and operational oversight in collaboration with the required and additional partners and workforce stakeholders to help develop a comprehensive and high-quality workforce development system in the local area and larger planning region;
2. Assist in the achievement of the State’s strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan; and
3. Maximize and continue to improve the quality of services, customer satisfaction, and effectiveness of the services provided.

VI. LOCAL BOARD ROLES AND RESPONSIBILITIES: As stated in WIOA sec. 107(d), 20 CFR 679.370, and 20 CFR 679.310(b), the LWDB must:

1. Sets Local Policy: In partnership with the chief elected official(s), the LWDB sets policy for the portion of the statewide workforce development system within the local area and consistent with State policies (20 CFR 679.310 (b)).

2. Local Plan: Develop and submit a 4-year local plan for the local area, in partnership with the chief elected official and consistent with WIOA section 108 (20 CFR 679.370(a));

If the local area is part of a planning region that includes other local areas as designated by the Governor under 20 CFR 679.200 and 679.210, the LWDB in partnership with the chief elected official must develop and submit a regional plan in collaboration with the LWDBs and CEOs from other areas. (WIOA 106 (c)(2) and 20 CFR 679.510). The regional plan must incorporate the local plans from each local area in the planning region per 20 CFR 679.540 (a).

3. Labor Market Analysis: In order to assist in the development and implementation of the local plan, conduct workforce research and regional labor market analysis to include:

- a. Analyses and regular updates of economic conditions, needed knowledge and skills, workforce, and workforce development (including education and training) activities to include an analysis of the strengths and weaknesses (including the capacity to provide) of such services to address the identified education and skill needs of the workforce and the employment needs of employers;

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- b. Assistance to the Governor in developing the statewide workforce and labor market information system under the Wagner-Peyser Act for the region;
 - c. Other research, data collection, and analysis related to the workforce needs of the regional economy as the LWDB, after receiving input from a wide array of stakeholders, determines to be necessary to carry out its functions.
- 4. Convening, Brokering, Leveraging:** Convene local workforce development system stakeholders to assist in the development of the local plan under WIOA section 108 and 20 CFR 679.550 and in identifying non-Federal expertise and resources to leverage support for workforce development activities. Such stakeholders may assist the LWDB and standing committees in carrying out, convening, brokering, and leveraging functions at the direction of the LWDB.
- 5. Employer Engagement:** Lead efforts to engage with a diverse range of employers and other entities in the region in order to:
- a. Promote business representation (particularly representatives with optimum policy-making or hiring authority from employers whose employment opportunities reflect existing and emerging employment opportunities in the region) on the LWDB;
 - b. 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. 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. 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.
- 6. Career Pathways Development:** With representatives of secondary and post-secondary education programs, lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment.
- 7. Proven and Promising Practices:** Lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers and jobseekers (including individuals with barriers to employment) in the local workforce system, as well as in providing physical and programmatic accessibility, in

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accordance with section 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), to the one-stop delivery system.

Identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs.

- 8. Technology:** Develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, and workers and jobseekers, by:
- a. Facilitating connections among the intake and case management information systems of the one-stop partner programs to support a comprehensive workforce development system in the local area;
 - b. Facilitating access to services provided through the one-stop delivery system involved, including access in remote areas;
 - c. Identifying strategies for better meeting the needs of individuals with barriers to employment, including strategies that augment traditional service delivery, and increase access to services and programs of the one-stop delivery system, such as improving digital literacy skills; and
 - d. Leveraging resources and capacity within the local workforce development system, including resources and capacity for services for individuals with barriers to employment.
- 9. Program Oversight:** Provide program oversight, in partnership with the chief elected official for the local area:
- a. Conduct oversight of youth workforce investment activities authorized under WIOA section 129(c), adult and dislocated worker employment and training activities under WIOA sections 134 (c) and (d); and the entire one-stop delivery system in the local area; and
 - b. Ensure the appropriate use and management of the funds provided under WIOA subtitle B for the youth, adult, and dislocated worker activities and one-stop delivery system in the local area; and
 - c. Ensure the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA section 116.
- 10. Local Performance Accountability Measures:** Negotiate and reach agreement on local performance measures with the chief elected official and the Governor (WIOA section 116 (c)).
- 11. Infrastructure Costs:** Negotiate with CEO and required partners on the methods for funding the infrastructure costs of one-stop centers in the local area in accordance with § 678.715

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12. Selection of Operators and Providers: With the agreement of the chief elected official for the local area, the LWDB selects the following providers in the local area, and where appropriate terminates such providers in accordance with 2 CFR part 200:

- a. Providers of youth work investment activities through competitive grants or contracts based on the recommendations of the youth standing committee (if such a committee is established). However, if the LWDB determines there is an insufficient number of eligible providers of youth workforce investment activities in a local area, the LWDB may award grants or contracts on a sole-source basis **in compliance with State Workforce Policy (see State Workforce Policy #4)**. The LWDB may terminate for cause the eligibility of such providers.
- b. Eligible providers of training services consistent with the criteria and information requirements established by the Governor and WIOA sec. 122;
- c. Providers of career services through the award of contracts **in compliance with State Workforce Policy #4**, if the one-stop operator does not provide such services (**see State Workforce Policy #4**) ~~(WIOA section 134(c)(2))~~;
- d. Designate or certify one-stop operators **through a competitive process as described** in WIOA section 121(d)(2)(A), 20 CFR 678.600 – 678.635, and State Workforce Policy #4. Also, may terminate for cause the eligibility of such operators.
- e. Work with the State to ensure there are sufficient numbers and types of providers of career services and training services serving the local area, services are provided in a manner that maximizes consumer choice and provides opportunities that lead to competitive integrated employment for individuals with disabilities. This includes 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. (WIOA section 122 and paragraphs (2) and (3) of section 134(c))

13. Coordination with Education Providers: Coordinate activities with education and training providers in the local area, including:

- a. Reviewing applications to provide adult education and literacy activities under title II for the local area to determine whether such applications are consistent with the local plan;
- b. Making recommendations to the eligible agency to promote alignment with such plan; and
- c. Replicating and implementing cooperative agreements to enhance the provision of services to individuals with disabilities and other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination. *Cooperative agreement* means an agreement entered into by a State designated

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agency or State designated unit under subparagraph (A) of section 101(a)(11) of the Rehabilitation Act of 1973.

14. Budget and Administration: Develop a budget for the activities of the LWDB, with approval of the chief elected official and consistent with the local plan and the duties of the LWDB. ~~This does not include the local area operations or administrative budgets.~~ The LWDB budget is for all of the activities of the LWDB including the budget amounts to be allocated for youth and career services. The LWDB determines how much of the budget to allocate for these services and how to procure these services.

Budget Disbursal: The local grant recipient or an entity designated as the grant recipient shall disburse the grant funds for workforce investment activities at the direction of the LWDB, pursuant to the requirements of WIOA. The local grant recipient or entity designated as grant recipient shall disburse the funds immediately on receiving such direction from the LWDB (WIOA sec 107 (d)(12)(B)(i)(III)).

15. Accessibility for Individuals with Disabilities: Assess, on an annual basis, the physical and programmatic accessibility of all one-stop centers in the local area, in accordance with WIOA section 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

16. One Stop Center Certification: Certification of one-stop centers in accordance with 20 CFR § 678.800.

VII. LOCAL BOARD RECRUITMENT PROCESS: The LWDB is appointed by the CEO(s) in each local area in accordance with State criteria established under WIOA 107(b)(2) and stated in this policy, and is certified by the Governor every two years, in accordance with WIOA 107(c)(2). The nomination and appointment process must be documented in the written partnership agreement between the LWDB and the CEO(s).

~~CEOs must establish a formal nomination and appointment process that is open and transparent, and ensures compliance with the membership criteria identified in this policy for composition of the LWDB.~~

If local conditions (i.e. for example, but not limited to, a rural area with fewer options available) make it impossible for a local area to fully comply with all of the membership criteria for the LWDB, the CEO may request a waiver in writing to the Director of the State Workforce Development Board for a specific membership type with an explanation of why this membership type cannot be filled in the local area and a suggested alternative to comply.

VIII. LOCAL BOARD CERTIFICATION:

A. Local Board initial certification. For newly created LWDBs, the State Workforce Development Board will evaluate the composition of the LWDB to determine compliance with the membership criteria identified in this policy, which is consistent with WIOA membership requirements, and recommend certification to the Governor. LWDBs that

existed prior to the implementation of WIOA must meet the WIOA membership criteria identified in this policy to be considered for certification.

B. Local Board Recertification.

1. Recertification will be conducted by the State once every two years. To be recertified, the LWDB composition must meet all membership requirements, the local workforce system activities comply with required LWDB responsibilities and enable the local area to meet local performance accountability measures and any prescribed outcomes as outlined in the local grant agreement, **and sustain fiscal integrity.**

If a LWDB meets all membership requirements, but fails to meet all performance measures and outcomes, certification will be granted for only a one-year review period, instead of a two-year period. At the end of the one-year review period, the recertification process will be repeated with an updated review of performance and membership composition. If this review shows the LWDB is meeting all performance measures and outcomes, a two-year certification will be granted.

2. During the two-year certification period, if more than 10% of the LWDB membership is removed for cause, a recertification must occur to ensure membership compliance and assess board stability.

C. Decertification.

1. A LWDB is subject to decertification under the following conditions:
 - a. fails to meet all LWDB certification requirements; or
 - b. fails to carry out required functions of the LWDB in WIOA 107(d); or
 - c. fraud or abuse; or
 - d. fails to meet the local performance accountability measures for two consecutive program years.
2. If a LWDB has been placed on a one-year review period due to a lack of meeting all performance measures and outcomes, and fails to meet performance measures and outcomes for a second-year, the LWDB may be decertified.
3. A written notice and opportunity for comment will be provided prior to decertification.
4. In accordance with WIOA section 107(c)(2)(c), if a LWDB is decertified, the Governor reserves the right to:
 - a. Require a new LWDB be appointed for the local area pursuant to a reorganization plan developed by the Governor, in consultation with the CEOs.
 - b. In consultation with the CEOs, redesignate a local workforce development area.

IX. LOCAL WORKFORCE DEVELOPMENT BOARD (LWDB) MEMBERSHIP: The State Workforce

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Development Board, in accordance with WIOA 107(b)(2), requires the following composition for each local workforce development board:

- A. The majority of the members of the LWDB must be representatives of business in the local area (WIOA 107(b)(2)(A)). At a minimum, two members must represent small business as defined by the U.S. Small Business Administration. Business representatives serving on local workforce development boards may also serve on the State Board. Each business representative must meet the following criteria:
 - 1. Be owners of businesses, chief executives or operating officers of businesses, or other business executives or employers with optimum policymaking or hiring authority (WIOA 107(b)(2)(A)(i);
 - 2. Provide employment opportunities in in-demand industry sectors or occupations, and provide high-quality, work-relevant training and development opportunities to its workforce or the workforce of others (in the case of organizations representing business as per WIOA section 107(b)(2)(A)(ii); and
 - 3. Be appointed from among individuals nominated by local business organizations and business trade associations (WIOA 107(b)(2)(A)(iii);

A representative with *optimum policy-making authority* is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

As defined in WIOA section 3(23), *in-demand industry sector or occupation* means:

- a. an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or
- b. an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

The determination of whether an industry sector or occupation is in-demand shall be made by the State or LWDB, as appropriate, using State and regional business and labor market projections, including the use of labor market information.

- B. Not less than 20 percent of the members of each LWDB must be workforce representatives. These representatives:
 - 1. Must include two or more representatives of labor organizations who have been nominated by local labor federations, or other representatives of employees (for areas where labor organizations do not exist);

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2. Must include one or more representatives (must be a training director or a member of a labor organization) of a joint labor-management, or union affiliated, registered apprenticeship program within the area. If no union affiliated registered apprenticeship programs exist in the area, a representative of a registered apprenticeship program with no union affiliation must be appointed, if one exists;
 3. May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, including organizations that serve veterans or that provide or support competitive integrated employment for individuals with disabilities; and
 4. May include representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.
- C. The balance of membership for each LWDB must include:
1. At least one eligible provider administering adult education and literacy activities under WIOA title II. When there is more than one local area provider of adult education and literacy activities under title II, nominations are solicited from those particular entities (WIOA 107(b)(2)(C)(i));
 2. At least one representative from an institution of higher education providing workforce investment activities, including community colleges. When there are multiple institutions of higher education providing workforce investment activities nominations are solicited from those particular entities (WIOA 107(b)(2)(C)(ii)); and
 3. At least one representative from each of the following governmental and economic and community development entities:
 - a. Economic and community development entities;
 - b. The state Employment Service Office under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) serving the local area; and
 - c. The programs carried out under title I of the Rehabilitation Act of 1973, other than section 112 or Part C of that title.
- D. In addition to the representatives enumerated above, the CEO may appoint other appropriate entities in the local area, including:
1. Entities administering education and training activities who represent local educational agencies or community-based organizations with demonstrated expertise in addressing the education or training needs for individuals with barriers to employment;
 2. Governmental and economic and community development entities who represent transportation, housing, and public assistance programs;

3. Philanthropic organizations serving the local area; and
4. Other appropriate individuals as determined by the CEO, **provided the individuals meet all other board member eligibility requirements established in this policy.**

~~**IX. Local Board Conducts Business Openly:** The Local WDB must conduct its business in an open manner as required by WIOA sec. 107(e), by making available to the public, on a regular basis through electronic means and open meetings, information about the activities of the Local WDB. (20 CFR 679.390) This includes:~~

- ~~a. Information about the Local Plan, or modification to the Local Plan, before submission of the plan;~~
- ~~b. List and affiliation of Local WDB members;~~
- ~~c. Selection of one-stop operators;~~
- ~~d. Award of grants or contracts to eligible training providers of workforce investment activities including providers of youth workforce investment activities;~~
- ~~e. Minutes of formal meetings of the Local WDB; and~~
- ~~f. Local WDB by laws, consistent with § 679.310(g).~~

X. OTHER LOCAL BOARD REQUIREMENTS

- A. Policymaking Authority of Board Members:** Members of the LWDB that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. (WIOA 107 (b)(5))
- B. Prohibited Board Members:** The LWDB may not include members who are staff to the LWDB, **staff or board members of the one stop operator, workforce service providers for WIOA Title IB adult, dislocated worker, and youth programs, or staff of the administrative entity or fiscal agent.**
- C. Authority to Hire Board Staff:** WIOA sec. 107(f) grants the LWDB authority to hire a director and other staff to assist in carrying out the functions of the LWDB.
 - 1. LWDBs must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in carrying out the functions of the LWDB.**
 - 2. The LWDB director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).**
 - 3. In general, LWDB staff only may assist the LWDB to fulfill its functions (20 CFR 679.400 (d)).**
- D. Diverse Geographic Areas Represented:** The members of the LWDB shall represent diverse geographic areas within the local area. (WIOA 107(b)(5))

- E. Represent Multiple Entities:** An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation for each entity.
- F. Board Chair:** The members of the LWDB must elect a chairperson from among the business representatives on the board. (WIOA 107(b)(3))
- G. Voting Privilege:** All required board members must have voting privilege. The CEO may convey voting privileges to non-required members.
- H. Standing Committees:** The LWDB may establish and **direct the activities of** standing committees to provide information and assist the Board in carrying out its responsibilities (20 CFR 679.360). **Such standing committees must be chaired by a member of the LWDB, may include other members of the LWDB, and shall include other individuals appointed by the LWDB who are not LWDB members and who the LWDB determines have appropriate experience and expertise.**

Standing committees may include each of the following:

1. A standing committee to provide information and assist with operational and other issues relating to the one-stop delivery system, which may include representatives of the one-stop partners. (WIOA 107(b)(4)(A)(i))
 2. A standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth, which must include community-based organizations with a demonstrated record of success in serving eligible youth (WIOA 107(b)(4)(A)(ii)). **WIOA further permits a Local Board to designate an existing Youth Council as a youth standing committee if the Youth Council fulfills the requirements of a standing committee (TEGL 23-14).**
 3. A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities. This includes issues relating to compliance with WIOA section 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) programmatic and physical access to the services, programs, and activities of the one-stop delivery system, as well as appropriate training for staff on providing supports for or accommodations to, and finding employment opportunities for, individuals with disabilities. (WIOA 107(b)(4)(A)(iii))
 4. The LWDB may designate other standing committees in addition to those specified in items 1-3 of this section. (WIOA 107(b)(4)(B))
 5. LWDBs may designate an entity in existence as of the date of the enactment of WIOA, such as an effective youth council, to serve as a standing committee as long as the entity meets the requirements of WIOA 107(b)(4).
- I. Bylaws:** The LWDB must establish bylaws in accordance with applicable local procedures, and applicable state and federal laws. At a minimum, the bylaws must address the following (20 CFR 679.310(g)):

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1. **Establishment.** A statement that the LWDB is established in accordance with WIOA Section 107.
2. **Name.** The name of the LWDB.
3. **Purpose.** The vision and purpose for the establishment of the LWDB consistent with 20 CFR 679.300 (a) and (b).
4. **Duties and responsibilities.** Acknowledge the duties and responsibilities as outlined in WIOA 107 (d), 20 CFR 679.370, and in the partnership agreement between the CEOs and the LWDB.
5. **Membership.** A description of membership as outlined in WIOA 107(b) and in the partnership agreement between the CEOs and the LWDB.
6. **Local Board chair election.** A description of the process used to elect a LWDB chair, including term details.
7. **Election of officers.** A description of the process used to elect officers, officer positions, terms, removal of officers, and specific officer roles and responsibilities.
8. **Meetings.**
 - a. information on how often LWDB and committee meetings will be held;
 - b. acknowledgement of open meeting requirements and compliance;
 - c. a description of the process of announcing regular and special meetings;
 - d. acknowledgement that a quorum must consist of at least a simple majority of the currently appointed membership; and
 - e. clarification as to whether phone and web-based meetings will be permitted.
9. **Delegation of Local Board duties.** Acknowledge that LWDB members will not be permitted to delegate any LWDB duties to proxies or alternates.
10. **Committees.** A list of standing committees including the descriptions for each and composition, and description of the process for creating ad hoc committees.
11. **Conflict of interest.** Acknowledgement that LWDB members must adhere to the following rules regarding conflict of interest:
 - a. A LWDB member may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, or on matters of the provision of services by the member or the entity the member represents.
 - b. A LWDB member must avoid even the appearance of a conflict of interest. Prior to taking office, LWDB members must provide to the LWDB chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations that have received, currently receive, or are likely to receive contracts or funding from the LWDB. Such declarations must be updated annually or within 30 days to reflect any changes in

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- such business interests or relationships. The LWDB must appoint an individual to review the disclosure information in a timely manner and advise the LWDB chair and appropriate members of potential conflicts.
- c. Prior to a discussion, vote, or decision on any matter before a LWDB, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization, or property that would be affected by any official LWDB action, the member must disclose the nature and extent of the interest or relationship and must abstain from discussion and voting on or in any other way participating in the decision on the matter. All abstentions must be recorded in the minutes of the LWDB meeting and be maintained as part of the official record.
 - d. It is the responsibility of the LWDB members to monitor potential conflict of interest and bring it to the LWDB’s attention in the event a member does not make a self-declaration.
 - e. In order to avoid a conflict of interest, a LWDB must ensure that the LWDB’s workforce service providers for WIOA Title IB adult, dislocated worker, and youth programs must not employ or otherwise compensate a current LWDB member or LWDB employee who is employed or compensated by the LWDB or its administrative entity, fiscal agent, or grant recipient to support the LWDB in carrying out its duties.
 - f. A LWDB must ensure that the LWDB, its members, or its administrative staff do not directly control the daily activities of its workforce service providers, workforce system partners or contractors.
 - g. LWDB members or their organizations may receive services as a customer of a local workforce service provider or workforce system partner.
- 12. Conflict resolution.** A detailed procedure for the LWDB to follow in regards to conflict that may arise among, but not limited to;
- a. board members;
 - b. service delivery partners;
 - c. consortium partners.
- 13. Compensation and reimbursement of expenses.** A description of the policy on compensating LWDB members and reimbursing expenses.
- 14. Amendment.** A description of the process for amending the bylaws.
- 15. Compliance with law.** Acknowledgement stating, in execution of its business, the LWDB must comply with the WIOA and regulations as well as policies and directives from the state administrative entity and the State Workforce Development Board.

XI. LOCAL WORKFORCE AREA DESIGNATION REQUEST

- A. A new or existing (areas previously designated under WIA) local workforce development area must request designation as a local workforce development area in writing to the

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Governor's Office. *Workforce Development Area Designation Petitions* submitted to the Arizona Department of Economic Security also will be accepted during the period of transition from WIA to WIOA. The written request or petition must include:

1. A Chief Elected Official Agreement for Consortia as described in this policy, (if applicable);
 2. For newly configured workforce areas, a narrative regarding how the area meets the considerations outlined in Section 106(b)(1)(B);
 3. For existing workforce areas, certification that the area performed successfully and sustained fiscal integrity for the 2-year period preceding enactment of WIOA (July 1, 2012-June 30, 2014);
 4. A list of LWDB members, to include composition categories and contact information;
 5. Identification of grant recipient/fiscal agent and signature of lead official;
 6. Documentation that public input was solicited and any comments received; and
 7. Signatures of CEOs from the petitioning counties.
- B. Written requests from local workforce development areas will be received and reviewed according to the following process:
1. All formal written requests (including *Workforce Development Area Designation Petitions*) must be submitted to the Governor with a carbon copy to the Executive Director of the Workforce Arizona Council and the DES Employment Administration.
 2. Petitions will be reviewed by the executive committee for the State Workforce Development Board and by the full State Board.
 3. A public comment period will be advertised and commence with opportunity for comment by representatives of LWDBs, CEOs, businesses, institutions of higher education, labor organizations, other primary stakeholders, and the general public regarding the designation of the local area (20 CFR 679.240).
 4. After the required public comment period, the State Workforce Development Board will make a recommendation to the Governor.
 5. Final designation of workforce development areas will be made by the Governor.

XII. LOCAL WORKFORCE AREA DESIGNATION

- A. WIOA 106(b) requires that the Governor designate local workforce development areas based on consideration of the extent to which the areas:
1. Are consistent with the labor market;
 2. Are consistent with regional economic development within the State; and
 3. Have available Federal and non-Federal resources necessary to effectively administer activities and provisions required by WIOA, including whether the areas have the appropriate education and training providers, such as institutions of higher education and area career and technical education schools.

- B. Newly Configured Workforce Areas:** Per WIOA 106(b)(4), the Governor may approve a request from any unit of general local government (including a combination of such units) for designation as a local workforce development area if the State Workforce Development Board determines, based on the considerations described above, and recommends to the Governor, that such area should be designated.
- C. Existing Workforce Areas:** Per WIOA 106(b)(2), the Governor will approve a request for re-designation as a local workforce development area from any area that was designated as a local area for the two-year period preceding enactment of WIOA, performed successfully, and sustained fiscal integrity. Re-designation will be for a period of two years.

Per Section 106(e)(1), the term *performed successfully* means the local area met or exceeded the established levels of performance for each of the last two consecutive years for which data are available.

Per Section 106(e)(2), the term *sustained fiscal integrity* means that the Secretary has not made a formal determination, during either of the last two consecutive years, that either the grant recipient or the administrative entity of the area mis-expended funds provided under WIA due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration.

- D. Appeals:** In accordance with WIOA 106(b)(5), if an existing workforce area requests but is not granted designation as a local workforce development area, the unit of general local government (including a combination of such units) or grant recipient may submit a written appeal to the State Workforce Development Board within 20 days of receiving written denial notification. Appeals submitted after this time will not be considered.

The appealing entity must explain why it believes the denial is contrary to the provisions of WIOA 106(b)(2). No other cause for appeal will be considered. The State Workforce Development Board must consider and respond in writing to such an appeal within 20 days of its receipt.

If the petitioning entity is again denied such designation, further appeal to the Secretary of Labor may occur if the entity alleges that the area meets the requirements of WIOA 106(b)(2) or that the entity was not accorded procedural rights under the State appeal process described herein. All such appeals to the Secretary must be submitted within 15 days of receipt of the notification of denial by the State Workforce Development Board on behalf of the Governor. The appealing entity must simultaneously notify the Governor and the State Workforce Development Board of such an appeal to the Secretary. The Secretary will make a final decision within 30 days after the appeal is received. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision.

XIII. LOCAL PLAN MODIFICATIONS

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WIOA requires that each LWDB within a planning region, in partnership with the appropriate CEO, must review, prepare, and submit the local plan modification at the end of the first 2-year period of the 4-year local plan. The plan must identify and describe the policies, procedures, and local activities that carried out in the local area, consistent with the state plan.

A. Modification Requirements for Local Plans:

1. The LWDB in partnership with the CEO must review, prepare, and submit local plan modifications that reflect changes to:
 - a. Labor market and economic conditions; and
 - b. Other factors affecting the implementation of the local plan including:
 - i. Significant changes in local economic conditions;
 - ii. Changes in available financing to support WIOA Title I and partner-provided WIOA services; and
 - iii. Changes to LWDB structure; and
 - iv. The need to revise strategies to meet local performance goals.
2. LWDBs must ensure the following information is also included in the local plan modifications:
 - a. Procurement requirements for youth service providers, as described in the WIOA Title I-B Youth Program policy section 202;
 - b. Definition of the “Requires additional assistance to complete an educational program or to secure and hold employment” criterion, as defined by the LWDB, that is used as part of the definition of “in-school” youth and “out-of-school” youth, as described in the WIOA Title I-B Youth Program Policy section 205.05;
 - c. The self-sufficiency income level, as a percentage of the Lower Living Standard Income Level, for the LWDA;
 - d. The definition of “underemployed” which may be used to determine whether employed adults and dislocated worker are in need of individualized career and training services through the WIOA Title I-B Adult and Dislocated Worker Programs:
 - i. Options defining “underemployed” are described in United States Department of Labor Training and Employment Guidance Letter TEGE 19-16, section 11).
 - ii. When the LWDA decides to use the self-sufficiency income for the LWDA in the local plan to define “underemployed”, the LWDA must ensure that the self-sufficiency income level has been reviewed and is set at the appropriate level.
 - e. Limitations to Individual Training Accounts, as described in the WIOA Title I-B Training Services policy section 504.02.D.

B. Public Comment Period

1. To provide an adequate opportunity for public comment:

- a. Make copies of the proposed local plan available to the public through electronic and other means, such as public hearings and local news media;
- b. Include an opportunity for comments by members of the public, including representatives of business, labor organizations, and education;
- c. Provide no more than a 30-day period of comment of the plan before its submission to the State, beginning on the date which the proposed plan is made available, prior to its submission to the State;
- d. The LWDB must submit any comments that express disagreement with the local plan to the State along with the plan; and
- e. The LWDB must make information about the plan available to the public on a regular basis through electronic means and open meetings.

C. Submission of Local Plans:

1. The modification of the local plan that is submitted to DES must include *track changes or changes must be highlighted* so that updates to the local plan may be identified.
2. LWDBs must submit local plan modifications by due dates established periodically.
3. Modifications must be submitted to the DES via email towioa@azdes.gov.

CONTACT ENTITY: Inquiries regarding this policy should be directed to the Workforce Arizona Council Manager at Ashley.Wilhelm@oeo.az.gov or 602-771-0482.

ARIZONA@WORK Operator and Service Provider Selection Policy

STATE WORKFORCE POLICY #4 **ARIZONA@WORK Operator and Service Provider Selection Policy**

ISSUING AGENCY: State Workforce Development Board

SCOPE: State Workforce Development Board, Arizona Department of Economic Security, Arizona Department of Education, Arizona Commerce Authority/Office of Economic Opportunity, Local Workforce Development Boards, Local Workforce Administrative Entities and Fiscal Agents, One-Stop Center Operators, and Workforce System Stakeholders

REFERENCES: Title I of the Workforce Innovation and Opportunity Act (WIOA) of 2014, (Pub. L. 113-128); WIOA Final Regulations, 20 CFR Part 678 Description of the One-Stop System Under Title I of the WIOA; 20 CFR Part 679, 680, and 681; 2 CFR 200, Uniform Guidance for Federal Financial Assistance, as applicable.

EFFECTIVE DATE: ~~February 16, 2017~~

OBJECTIVE: This policy provides local workforce development boards (LWDB) and other workforce system partners with instruction and guidance regarding the roles and responsibilities of the One Stop Operator, **adult, and dislocated worker, and youth service providers** and the ~~competitive~~ selection processes required under WIOA. Note: The term one-stop delivery system is used interchangeably with ARIZONA@WORK Job Center service delivery system.

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- I. Definitions
- II. Roles Within the One Stop Delivery System
- III. Roles and Responsibilities of the Local Fiscal Agent
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- V. Who May Be One Stop Center Operator
- VI. One Stop Center Operator Roles and Responsibilities
- VII. Roles and Responsibilities of Adult and Dislocated Worker/Youth Service Providers
- VIII. **Selection Processes for One Stop Center Operator, and Adult and Dislocated Worker, and Youth Service Providers**
- IX. **Legally Binding Contracts Required with LWDB**
- X. Competitive Procurement Process

XI. Sole Source Procurement

XII. Process Required for LWDBs to Serve as One Stop Center Operator and/or Service Provider

XIII. Accountability

I. DEFINITIONS:

The **One-Stop Delivery System** brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to job seeker and employer customers. (20 CFR 678.300)

In Arizona, American Job Centers, also referred to as the one-stop delivery system, are known as **ARIZONA@WORK Job Centers**.

In Arizona, **the State Workforce Development Board** is called the **Workforce Arizona Council (WAC)**.

In Arizona, the **State Administrative Entity** is the Arizona Department of Economic Security for WIOA Title I, III, and IV funds and the Arizona Department of Education for WIOA Title II funds.

The term **service provider** includes adult and dislocated worker career services and youth services as defined under WIOA.

II. Roles Within the One Stop Delivery System

WIOA provides for five roles in the One Stop Delivery System: Fiscal Agent, Local Workforce Development Board (LWDB) staff, One Stop Center Operator, direct services provider (career and/or youth services), and training services provider. The One Stop Center Operator and direct services provider roles may be combined based on the direction of the LWDB; however, adherence to firewalls apply. (20 CFR 679.420, 20 CFR 679.400, 20 CFR 678.600, 20 CFR 680.160, 20 CFR 681.400, 20 CFR 680.300)

Currently, this policy does not include the local area designated as Nineteen Tribal Nations (NTN) because of their complicated structure, which is unique to Arizona.

III. Roles and Responsibilities of the Local Fiscal Agent

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- A. In order to assist in administration of the grant funds, the chief elected official may designate an entity to serve as a local fiscal agent. Designation of a fiscal agent does not relieve the chief elected official of liability for the misuse of grant funds. (20 CFR 679.420)
- B. If the CEO designates a fiscal agent, the CEO must ensure this agent has clearly defined roles and responsibilities. In general, the fiscal agent is responsible for the following functions: (20 CFR 679.420)
 - 1. Receive funds
 - 2. Ensure sustained fiscal integrity and accountability for expenditures of funds in accordance with Office of Management and Budget circulars, WIOA and the corresponding Federal Regulations and State policies
 - 3. Respond to audit financial findings
 - 4. Maintain proper accounting records and adequate documentation
 - 5. Prepare financial reports
 - 6. Provide technical assistance to sub-recipients regarding fiscal issues
- C. At the direction of the Local WDB, the fiscal agent may have the following additional functions (20 CFR 679.420):
 - 1. Procure contracts or obtain written agreements.
 - 2. Conduct financial monitoring of service providers.
 - 3. Ensure independent audit of all employment and training programs.

IV. Roles and Responsibilities of LWDB Staff

~~WIOA sec. 107(f) grants Local WDBs authority to hire a director and other staff to assist in carrying out the functions of the Local WDB. (20 CFR 679.400)~~

~~A. Local WDBs must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in carrying out the functions of the Local WDB. (20 CFR 679.400)~~

~~B. The Local WDB director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15). WIOA sec 194 (15)(A) states "None of the funds available under this title shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, 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 Code.” (20 CFR 679.400)~~

~~C. In general, Local WDB staff only may assist the Local WDB fulfill the required functions at WIOA sec. 107(d). (20 CFR 679.400)~~

- A. The LWDB staff roles and responsibilities include, but are not limited to:
1. Convene system stakeholders to assist in the development of the local plan;
 2. Prepare and submit local plans (as required under sec. 107 of WIOA);
 3. Negotiate local performance accountability measures;
 4. Assist the LWDB in developing and submitting a budget for activities of the Local Board in the local area.
 5. Monitoring and evaluating the management and operations of all programs funded by the LWDB;
 6. Conduct the competitive selection process for one stop center operators and direct services providers;
 7. Monitoring operators/service providers at comprehensive or affiliate sites for performance, quality of service, cost effectiveness, and reporting on performance to the Board; (Note: Items 1-7 are taken from 20 CFR 678.620 b1)
 8. Any other functions specifically assigned to the LWDB in WIOA section 107(d).

V. Who May Be One Stop Center Operators:

- A. One-stop center operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of the one-stop partners, it must include a minimum of three of the required one-stop partners. In a consortium, all contractual responsibility must rest solely with one legal entity serving as the fiscal agent. A consortium must also be selected through a competitive procurement process.
1. The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.
 2. One-stop operators may include the following entities:
 - a. An institution of higher education;
 - b. An Employment Service State agency established under the Wagner-Peyser Act;

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- c. A community-based organization, nonprofit organization, or workforce intermediary;
 - d. A private for-profit entity;
 - e. A government agency;
 - f. A Local Board, with approval of the chief elected official and the Governor; or
 - g. Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.
3. Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.
- B. To eliminate any potential conflicts of interest or the appearance of conflicts of interest, and conduct fair and open competitive processes, the LWDB must develop a written plan of how it will operate with firewalls that are compliant with WIOA and Uniform Guidance at 2 CFR Part 200, subpart D. **See State Workforce Policy #8 for guidance.**

~~Examples of compliance may include, but are not limited to: 1) the LWDB and its staff exist in an organization separate and distinct from the organization that acts as the One Stop Center Operator and/or service provider; or 2) staff to the LWDB operates in one department of the organization and the One Stop Center Operator and/or service provider operates in another separate and distinct department within the same organization. Departments must demonstrate different reporting structures.~~

~~Per WIOA, there must be appropriate firewalls between staff providing services and staff responsible for oversight and monitoring of services. The same person or department cannot both provide services and oversee the provision of those services. (Joint WIOA Final Rule, page 55898; Federal Register, Vol 81, no. 161, August 19, 2016)~~

~~C. LWDB staff only may assist the LWDB to fulfill its functions (20 CFR 679.400 (d)).~~

VI. One-Stop Center Operators Roles and Responsibilities:

- A. The LWDB must determine the roles and responsibilities of the One Stop Center Operator(s) prior to conducting the procurement process. The competition for a one-stop operator must clearly articulate the role of the one-stop operator (20 CFR 678.620 a).
- B. At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers (20 CFR 678.620 a).
- C. Local WDBs may establish additional roles of one-stop operator, including, but not limited to (20 CFR 678.620 a):

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1. Coordinating service providers across the one-stop delivery system;
 2. Being the primary provider of services within the center;
 3. Providing some of the services within the center;
 4. Coordinating service delivery in a multi-center area, which may include affiliated sites.
- D. A one-stop operator may not perform the following functions (20 CFR 678.620 b1):
1. Serve as staff to the LWDB (20 CFR 679.400 (d));
 2. Convene system stakeholders to assist in the development of the local plan;
 3. Prepare and submit local plans (as required under sec. 107 of WIOA);
 4. Be responsible for oversight of itself;
 5. Manage or significantly participate in the competitive selection process for one-stop operators;
 6. Select or terminate one-stop operators, career services, and youth providers;
 7. Negotiate local performance accountability measures; and
 8. Develop and submit a budget for activities of the Local Board in the local area.
 9. Any other functions specifically assigned to the LWDB by WIOA 107(d).
- E. The State and Local Workforce Development Boards must ensure that, in carrying out WIOA programs and activities, one-stop center operators:
1. Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers;
 2. Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer term career and training services; and
 3. Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at 20 CFR 683.295, the Uniform Guidance at 2 CFR chapter II, and other applicable regulations and policies.

VII. Roles and Responsibilities of Career/Youth Services Providers

Career Services

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- A. The applicable career services to be delivered by required one-stop partners are those services listed in § 678.430 that are authorized to be provided under each partner's program (20 CFR 678.425). Career services must be provided through the one-stop delivery system.
- B. Working with the State, the LWDB satisfies the consumer choice requirement for career services by (20 CFR 679.380 b):
 1. Determining the career services that are best performed by the one-stop operator consistent with 20 CFR §§ 678.620 and 678.625 and career services that require contracting with a career service provider;
 2. Identifying a wide-array of potential career service providers and awarding contracts where appropriate including to providers to ensure:
 - a. Sufficient access to services for individuals with disabilities, including opportunities that lead to integrated, competitive employment for individuals with disabilities;
 - b. Sufficient access for adult education and literacy activities.

Youth Services

- A. WIOA section 129(c)(2) includes 14 youth services program elements:
 1. Tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized post-secondary credential;
 2. Alternative secondary school services, or dropout recovery services, as appropriate;
 3. Paid and unpaid work experiences that have academic and occupational education as a component of the work experience, which may include:
 - a. summer employment opportunities and other employment opportunities available throughout the school year;
 - b. pre-apprenticeship programs;
 - c. internships and job shadowing; and
 - d. on-the-job training opportunities;
 4. Occupational skill training, which includes priority consideration for training programs that lead to recognized post-secondary credentials that align with in-

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demand industry sectors or occupations in the local area involved, if the Local Board determines that the programs meet the quality criteria described in WIOA sec. 123;

5. Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;
 6. Leadership development opportunities, including community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors;
 7. Supportive services;
 8. Adult mentoring for a duration of at least 12 months that may occur both during and after program participation;
 9. Follow-up services for not less than 12 months after the completion of participation;
 10. Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling, and referrals to counseling, as needed by individual youth;
 11. Financial literacy education;
 12. Entrepreneurial skills training;
 13. Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and
 14. Activities that help youth prepare for and transition to post-secondary education and training.
- B. LWDB are responsible for the oversight of youth programs.

VIII. Selection Processes for One Stop Center Operator, and Adult and Youth Service Providers

The LWDB must determine the method of selection for the One Stop Center Operator, Adult career services and youth services providers, in compliance with WIOA requirements.

- A. One Stop Operator: The LWDB must select the one-stop operator through a fair and open competitive process at least once every 4 years (WIOA sec. 121(d)(2)(A), 20 CFR 678.605). The State may require, or a LWDB may choose to implement, a competitive selection process more than once every four years. (20 CFR 678.605a)

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- B. Adult Career Services:** Career services may be provided directly by the one-stop center operator or through contracts with service providers that are approved by the LWDB. (20 CFR 680.160).
1. Career services provided directly by the One Stop Center Operator must be competitively procured through the One Stop Center Operator procurement process. **If providing career services is not included in the One Stop Center Operator procurement, the LWDB cannot award a contract to be a career services provider to the One Stop Center Operator after the fact.**
 2. The LWDB must determine the process for selecting and awarding contracts to service providers for career services not provided by the One Stop Center Operator. The process for awarding these contracts must be in compliance with Arizona Conflict of Interest regulations (ARS 38-501 through 38-511). If LWDB decides to competitively procure these services, the process must be conducted in accordance with the Uniform Guidance at 2 CFR parts 200 and 2900, applicable State and local procurement laws, **and procedures articulated in this policy.**
 3. **If the LWDB does not select and award contracts to career service providers through a competitive procurement process, the LWDB must document in writing the process and selection criteria used to award these contracts.**
- C. ~~The grant recipient/fiscal agent has the option to provide directly some or all of the youth workforce investment activities. (20 CFR 681.400 a)~~**

Youth Services: The LWDB may determine that the grant recipient or designated fiscal agent may “provide directly some or all of the youth workforce investment activities.” The LWDB must determine whether to directly provide the WIOA youth program elements that they can most efficiently and cost-effectively provide, such as labor market and employment information and services that are part of program design including assessment, supportive services and follow-up services (TEGL 21-16) (20 CFR 681.400 a).

If a LWDB chooses to award ~~grants or~~ contracts to youth service providers to carry out some or all of the youth workforce investment activities, the LWDB must award such ~~grants or~~ contracts on a competitive basis, in accordance with the Uniform Guidance at 2 CFR parts 200 and 2900, applicable State and local procurement laws, and the **procedures articulated in this policy** (WIOA sec. 123).

~~subject to the exception explained below at paragraph (b)(4) of this section: (20 CFR 681.400 b)~~

The LWDB must identify youth service providers based on criteria established in the State Plan (including such quality criteria established by the Governor for a training program that leads to a recognized postsecondary credential) and take into consideration the ability of the provider to meet performance accountability measures based on the primary indicators of performance for youth programs.

~~3. If the LWDB establishes a standing youth committee under § 681.100 it may assign the committee the function of selecting of grants or contracts.~~

~~b. Where the LWDB determines that there are an insufficient number of eligible youth providers in the local area, such as a rural area, the LWDB may award grants or contracts on a sole source basis in accordance with the Uniform Guidance at 2 CFR parts 200 and 2900, applicable State and local procurement laws.~~

IX. Legally Binding Contracts Required with LWDB

- A. The LWDB must execute a legally binding agreement, which may take the form of a written contract or another type of agreement, such as an MOU with each One Stop Center Operator, adult career and youth service providers.
- B. The written agreement is required for all providers regardless of whether the provider was selected through a competitive procurement or some other method determined by the LWDB.
- C. Essential Contract Elements: All contracts, agreements, or MOUs between the LWDB and the One Stop Center Operator or other providers must include the essential elements of a legally executed and binding written agreement, and contain at a minimum the following:
 1. Statement of Work (SOW). The SOW specifies the period of performance or the start and end date of the contract. It also specifies the services to be performed including measurable performance goals to be delivered under the contract, agreement, or MOU.
 2. Authorized Officials and Purpose. Authorized officials are persons authorized to enter into and sign legally binding agreements and must be on record as the signatory official. Signatures of the offeror/bidder and offeree (LWDB) must be contained as part of the written contract.
 3. Additional contractual terms and conditions. Contracts, agreements, and MOUs must include such standard terms and conditions that are either required by the State, Local Area, or the Federal agency as national, State, or local policy requirements. The contract, agreement, or MOU must identify that one-stop operators or providers are subrecipients of Federal funds and must follow the Uniform Guidance at 2 CFR part 200, including the contractual provisions in 2 CFR 200.326 and 2 CFR part 2900.

X. Competitive Procurement Process

- A. LWDBs must use a competitive process based on the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318 through 200.326, State and local procurement law, and the Arizona Conflict of Interest

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law (ARS 38-501 thru ARS 38-511). No later than July 1, 2017, one-stop operators selected under the competitive process described in 20 CFR 678.605 (section VIII above) must be in place and operating the one-stop center. (20 CFR 678.635 a)

The competitive procurement must include the following:

1. Requests for proposals must be publicly advertised in a paper of general circulation, through qualified vendor/interested parties lists, and must be available electronically through the LWDB website and the WAC website. The request for proposals must include a reasonable period of time for potential vendors to respond. Any response to publicized requests for proposals must be considered to the maximum extent practical (2 CFR 200.320 d1);
 2. The request for proposals must identify all evaluation factors and their relative importance (2 CFR 200.320 d1);
 3. The request for proposals must not include restrictive or unreasonable terms that would limit competition (2 CFR 200.319 c1). For example, specifying that there are no funds attached to the requested procurement would be an unreasonable term. (*Joint WIOA Final Rule, page 55901; Federal Register, Vol 81, no. 161, August 19, 2016*)
 4. Proposals must be solicited from an adequate number of qualified sources (2 CFR 200.320 d2);
 5. The LWDB must have a written method for conducting technical evaluations of the proposals received and for selecting recipients (2 CFR 200.320 d3);
 6. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered (2 CFR 200.320 d4);
- B. The LWDB must document their procurement procedures in writing to reflect the standards outlined in the Uniform Guidance (2 CFR 200.318 thru 200.326). The procedures must ensure that all solicitations:
1. Incorporate a clear and accurate description of the technical requirements for the services to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. (2 CFR 200.319 c1)
 2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. (2 CFR 200.319 c2)

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3. The LWDB must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The LWDB must not preclude potential bidders from qualifying during the solicitation period. (2 CFR 200.319 d)
- C. The LWDB also must maintain written standards of conduct regarding individual and organizational conflict of interest (“firewalls”) (2 CFR 200.318).
- D. Supporting documentation must be retained to sufficiently record the procurement process and be made available for monitoring. The LWDB must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. (2 CFR 200.318 i)
- E. The LWDB must ensure that the procurement process is conducted in a manner that ensures full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, any organization that develops or drafts specifications, requirements, statements of work, or invitations for bids or requests for proposals, or manages or conducts the competition for a one stop operator or service provider must be excluded from competing for such procurements (2 CFR 200.319 a).
- F. The LWDB must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts. (2 CFR 200.318 b)
- ~~G. A LWDB may enter into a contract with the successful bidder selected through the competitive procurement process. In addition to the Local Board's specific operating expectations of the One-Stop Center Operator, the contract must include the applicable Federal contract provisions contained in Appendix II to Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (2 CFR 200.326).~~

XI. Sole Source Procurement Process

A sole source procurement is a contract entered into without a competitive process, based on a justification that only one known source exists or that only one single supplier can fulfill the requirements. Procurement by sole source will be permitted only if:

- A. Documented research and analysis of market conditions and other factors lead to a determination that:
 1. There is only one entity that could serve as a one stop center operator as defined by the LWDB; or
 2. Unusual and compelling urgency will not permit a delay resulting from competitive solicitation; or

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3. Results of the competition conducted by sealed bids or competitive proposals were determined to be inadequate.
- B. To gain approval for a sole source procurement, the LWDB must complete the following process:
1. Submit to the WAC written justification for requesting approval of a sole source procurement which includes information such as:
 - a. a description of the unique features that prohibit competition;
 - b. documented research conducted to verify the vendor as the only known source;
 - c. a description of the marketplace to include distributors, dealers, resellers, etc.;
 - d. written documentation describing the entire process used in making such a selection.
 2. Publicly advertise in a paper of general circulation, through the LWDB website, and through the WAC website, a public notice of the intent to sole source the one stop operator procurement or other service provider procurements to allow potential vendors to indicate interest in bidding on the sole source procurement. The notice of intent to procure through sole source must include a contact source for potential vendors to indicate their interest in bidding and must include a reasonable period of time for potential vendors to respond. Submit a copy of the published notice with the request for a sole source procurement.
 3. Submit the written agreement between the LWDB and chief local elected official to clarify how the organization will carry out its responsibilities while demonstrating compliance with the WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy (20 CFR 679.430). Sole source procurement must include appropriate conflict of interest policies and procedures, which conform to the specifications in 20 CFR 679.430 and State policy for demonstrating internal controls and preventing conflict of interest.
 4. Within 30 days of receiving a complete request for approval of the results of a sole source procurement, the WAC or its Executive Committee will review the request and recommend approval to the Governor, disapprove, or request more information. If approved, a sole source procurement contract would be for a term of one year after which a determination is made as to whether a sole source contract is warranted or if competition is available to conduct a competitive selection process.
 5. Nothing in this policy prevents the Governor from exercising his/her authority according to WIOA requirements.

XII. Approval of LWDBs for Role of One Stop Operator and/or Service Provider

- A. Under WIOA, a LWDB may only serve as the One Stop Center Operator and/or career services provider with the approval of the Chief Elected Official in the local area and the Governor. Specifically, without approval from the Governor, LWDBs cannot serve as service providers or One Stop Center Operators. The LWDB is prohibited from serving as a training provider without obtaining a waiver from the Governor. (20 CFR 679.410)

The LWDB is considered to be serving as the One Stop Center Operator or adult, dislocated worker, or youth service provider, if any staff serving the LWDB also have any supervisory responsibility for staff providing services within the organization. There must be complete separation between governance functions and operating functions within an organization including different reporting structures.

- B. Process Required for LWDB To Serve as One Stop Center Operator/Service Provider

A LWDB must complete the following process if it wishes to serve in the role of One Stop Center Operator, which must be competitively procured, or a service provider awarded through competitive procurement:

1. The LWDB must win the procurement through the competitive procurement or sole source procurement procedures required in this policy;
 2. Create a written agreement between the LWDB and the CEO that identifies how the LWDB will ensure fair and clear performance monitoring and clear separation of LWDB staff and operations staff. The LWDB must establish sufficient conflict of interest policies and procedures (“firewalls”) and these must be approved by the Governor (20 CFR 678.610 d).
 - a. Conflict of interest policies and procedures must include procedures to ensure fair and clear performance monitoring and clear separation of LWDB staff and operations staff must be documented and implemented.
 - b. Monitoring responsibilities include, but are not limited to:
 - i. Gathering performance data and providing regular updates to the LWDB and the Workforce Arizona Council;
 - ii. Evaluating and reporting compliance to the provisions of WIOA and state policies; and
 - iii. Ensuring the local staff receive, understand and use LMI data to guide service delivery and decision-making.
- C. Provide evidence that the chief elected official in the local area agrees to the selection of the LWDB as the One Stop Operator/service provider.
- D. The LWDB must submit the following to the WAC for review:
1. For competitive procurement:

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- a. Copy of the request for proposals. ~~as specified in section VII a and b.~~
 - b. Copy of the published public notice.
 - c. Copy of written agreement between LWDB and CEO ensuring clear separation of staff and performance monitoring.
 - d. Letter documenting that the CEO agrees to the choice of the LWDB as the One Stop Operator.
2. For sole source procurement:
- a. Written research and market analysis that led to determination of sole source.
 - b. Copy of published notice of intent to sole source and any responses.
 - c. Copy of written agreement between LWDB and CEO ensuring clear separation of staff and performance monitoring.
 - d. Letter documenting that the CEO agrees to the choice of the LWDB as the One Stop Operator.
3. For the LWDB as a service provider not procured competitively:
- a. Copy of the written documentation of the process and selection criteria the LWDB used to award the service contract.
 - b. Copy of written agreement between LWDB and CEO ensuring clear separation of staff and performance monitoring.
 - c. Letter documenting that the CEO agrees to the choice of the LWDB as the One Stop Operator.
- E. Within 30 days of a complete request, if the WAC or its Executive Committee determines that the firewalls and monitoring plan are sufficient, the request for the LWDB to serve as the One Stop Center Operator will be forwarded to the Governor with the WAC's recommendation for approval. If the WAC determines that the firewalls and monitoring plan are not sufficient, the request will be returned to the LWDB for revision.
- F. Where a LWDB acts as a one-stop operator, the WAC must ensure certification of one-stop centers in accordance with 20 § 678.800. (20 CFR 679.410 a 3)

~~For LWDB's serving as the service provider only (i.e. services are not defined and procured as part of the One Stop Operator role), the entity that includes both the staffing to the LWDB and the staffing to provide services does not have to complete items 1-5, and E.1-E.4.~~

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1. Conduct research and market analysis to identify possible vendors and document the results in writing.

2. If the market research and analysis identify potential vendors, the operator/service provider procurement must occur through the competitive procurement process outlined in section X. Consistent with Uniform Guidance, the LWDB must use a neutral third party organization to conduct the procurement process with no involvement from the LWDB or its staff. If the LWDB exists in the same organization, but in a separate department from the One Stop Center Operator/service provider, the LWDB and its staff may be involved in the procurement process only if there is no involvement from the department providing services in the procurement process.

3. If the research and market analysis conclude that the LWDB is the only potential source for this service, complete the written justification for requesting approval of a sole source procurement as specified in section XI b.1.

4. Publicly advertise in a paper of general circulation, through the LWDB website, and through the WAC website, a public notice of the intent to sole source the one stop operator procurement to allow potential vendors to indicate interest in bidding on the sole source procurement. The notice of intent to procure through sole source must include a contact source for potential vendors to indicate their interest in bidding and must include a reasonable period of time for potential vendors to respond.

If the notice of intent to procure through sole source results in potential vendors interested in bidding on the procurement, the operator/service provider procurement must occur through the competitive procurement process outlined in section X. Consistent with Uniform Guidance, the LWDB must use a neutral third party organization to conduct the procurement process with no involvement from the LWDB or its staff.

5. If the notice of intent to sole source results in the LWDB as the only potential source for this service, the LWDB may request selection as the One Stop Center Operator as a sole source.

Per WIOA, there must be appropriate firewalls between staff providing services and staff responsible for oversight and monitoring of services. The same person or department cannot both provide services and oversee the provision of those services. (Joint WIOA Final Rule, page 55898; Federal Register, Vol 81, no. 161, August 19, 2016)

For a Sole Source Procurement, submit items 1, 2, 5, and 6 below. For a competitive procurement, submit items 3, 4, 5, and 6 below. All requests must include items 5 and 6.

ARIZONA@WORK Operator and Service Provider Selection Policy**XIII. Accountability**

The WAC will review all procurement and firewall documentation to ensure compliance with federal law and state policy. This will include any justifications for sole source procurement, staff structures, and conflict of interest policies for operators, service providers and board staff.

If the WAC determines that a procurement process has been carried out in good faith and that appropriate firewalls exist within the local area, the WAC will refer the request for approval of the procurement to the Governor. If it is determined that there are deficiencies in the processes used or firewalls established, the WAC will return the request to the LWDB. A detailed explanation of the recommendation will be provided in writing to the proposing LWDB. The LWDB may make improvements and resubmit the request to the WAC.

CONTACT ENTITY: Inquiries regarding this policy should be directed to the Workforce Arizona Council Manager at Ashley.Wilhelm@oeo.az.gov or 602-771-0482.

MEMORANDUM

Date: February 1, 2019

To: Ashley Wihelm, Director, Workforce Arizona Council

From: Karen Kurtz, Consultant

RE: Background on Final Draft of Conflict of Interest Policy #8 and Revisions to #1 and #4

The Workforce Innovation and Opportunity Act (WIOA) includes requirements to address conflicts of interest and address potential conflicts through the use of internal controls, firewalls, and written agreements. This is a revision of the original memo, which adds the feedback received from the local areas on the policy draft.

Conflict of Interest Policy #8

1. State Plan Requires Assurances

Title I, Chapter 1, section 102 related to provisions for the Unified State Plan requires that the State plan include assurances that the State has a conflict of interest policy:

- E) Assurances.--The unified State plan shall include assurances--
(i) that the State has established a policy identifying circumstances that may present a conflict of interest for a State board or local board member, or the entity or class of officials that the member represents, and procedures to resolve such conflicts;

Feedback Comments Received:

- A. The WAC Conflict of Interest Policy seems duplicative of other State or WAC policies. **Response: Without a specific policy example, it is difficult to determine duplication. As this draft was circulating, we did go back and review policy #1 and #4. Some sections of these policies were moved to consolidate topics when it made sense (i.e. governance sections were moved to policy #1 on governance, conflict of interest issues were moved to policy #8 etc.). As noted above, the State must provide assurances in the State plan that we have a conflict of interest policy.**
- B. Isn't the justification for this policy negated by the 11/18/18 Memo to the WAC Manager stating "WIOA Section 107 (h.2) includes the following in the definition of conflict of interest: *A member of a local board, or a member of a standing committee, may not engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.* (Note: Arizona's State plan references State policy that identifies conflict of interest for board members (section V.1, page 115). Council policy 01-2016 Local Governance policy fulfills this requirement.). Do we need a State policy? **Response: The State plan references**

the best policy available at the time, but certainly not one that is as comprehensive as the policy under review. Specifically, State policy #1 does not address the circumstance where an entity serves in multiple roles in the delivery system. We are required to address this circumstance under 679.430. Frankly, this seems to be where the greatest possibility for conflict of interest arises.

- C. Will this policy supersede current policies and requirements related to firewalls and Conflict of Interest? ***Response: Yes, as with all policies adopted by Workforce Arizona Council, the local areas will be expected to comply.***

2. WIOA Legislation Allows State to Define

Title I, Chapter 2, section 107 (h) defines conflict of interest and explicitly allows for States to expand on the definition:

- (h) Conflict of Interest.--A member of a local board, or a member of a standing committee, may not--
- (1) vote on a matter under consideration by the local board--
 - (A) regarding the provision of services by such member (or by an entity that such member represents); or
 - (B) that would provide direct financial benefit to such member or the immediate family of such member; or
 - (2) engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.**

The same definition applies to State Workforce Development Board members as specified in section 101 (f).

Feedback Comments Received:

- A. AWA recommends local policies be governed at the local level. ***Response: This policy is consistent with “local policies being governed at the local level”; however, local control must occur within a framework that establishes consistency across the State to support implementation of and compliance with WIOA. This policy will support the LWDB and local elected officials in carrying out the roles established for each party under WIOA unimpeded by other designated roles in the system.***
- B. An outline of procedural guidance is recommended, along with Technical Assistance sessions for implementation. ***Response: Technical assistance will be available for each LWDB as needed after policy adoption by Workforce Arizona Council.***
- C. All language throughout the document should pertain to all Core Partners - Titles I, II, III and IV. ***Response: This policy applies to all entities connected to the LWDB and any entities serving in more than one role in the Arizona@Work system as specified in the policy. Regulations applicable to conflicts of interest in other areas such as adult education or vocational rehabilitation are***

indicated in their respective regulations and are not under the control of the LWDB. (For example, see 397.40 (e) or 370.41). The work of the LWDB and the Chief Elected Official has the greatest impact on Title I programs. The LWDB, for example, does not establish the budget for Titles II, III, or IV, determine how to select service providers. Where there is overlap such as in 463.21, the conflict of interest provisions in this policy would apply to an adult education serving as a mandated provider on the LWDB when the LWDB reviews applications for adult education providers.

- D. Since this is statewide system that includes state level and local level staff and boards and related staff. This policy as written only covers the local requirements. The policy should cover the ENTIRE system as noted in Section III below – from the WAC to state level administrative entities and local areas. Per the footnote below “*Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or sub recipient (2 CFR 200.36).” Whatever requirements are being placed on the local areas – pertain to the entire system as well and this policy should reflect that. **Response: See response for item C.**
- E. How are you defining “service provider” here? Title II, III and IV are required to be on the local boards. They are “service providers”. **Response: See response for item C.**
- F. Thanks for the look see. Can you point out to me where I would find the State or DOL definition of Service Provider? Seems like our Core partners would be considered service providers, yet they also have mandated seats on the Board. Please advise where we can research. Thanks. **Response: See response for item C.**

3. Information Sources Consulted

The first draft of the conflict of interest policy includes information primarily from five sources:

- the WIOA Title I final regulation chapters listed in the policy document;
- selected TEGL’s;
- Uniform Guidance sections related to internal controls and conflicts of interest;
- the existing State policy on local governance conflict of interest section;
- training material presented at DOL’s 2017 WIOA National Conference called *Transparency in the Workforce System – Establishing Firewalls and Internal Controls*.

Feedback Comments Received:

- A. Should Title II ADE be noted here as well? **Response: See answer for item C**

above.

- B. I thought we were told not to rely on “training material” as policy. **Response:** *Workforce Arizona Council is free to use whatever sources of material deemed applicable to the topic at hand. In this case, the final regulations specifically note that the Department of Labor (DOL) will provide future clarification of firewalls. The training material is the only source found where DOL addresses the issue in detail. In addition, it seems particularly shortsighted to disregard training material offered by DOL especially when it is specific to WIOA, if the Council intends to carry out its policy making responsibility with due diligence. It seems logical and obvious to conclude that DOL is providing the training to give guidance as to what they will deem compliant with specific WIOA regulations.*

4. Conflict of Interest Defined – Real, Apparent, and Organizational

The conflict of interest definition is from page 32 of the training materials. However, the definition is consistent with definitions from other areas. The attributed interest definition comes from page 22. The real conflict definition is on page 23. The apparent conflict definition is from page 25.

Feedback Comments Received:

- A. Perhaps it would go beyond even the individuals own interests. What about the individual acting for two competing organizations i.e., One Stop Operator and an Agency of the Board? This may be addressed in section C3 below. **Response:** *This appears to be covered in the definition of organizational conflicts of interest.*
- B. Please consider citing State statutes that govern these policies. **Response:** *The Arizona Conflict of Interest statute adds nothing additional to these definitions. These definitions are consistent with Arizona’s statute.*

5. Written Agreement Required

This section is taken verbatim or nearly verbatim from 20 CFR 679.430.

Feedback Comments Received:

- A. Do you want this to be all inclusive? Could there be other entities that this may apply to either now or in the future? **Response:** *Any entity that meets the requirements in the objective statement (i.e. either the LWDB and those serving in more than one role) are the intended targets for this policy.*

- B. All Local Areas have complied with all rules/requirements. Will new written agreements be required? **Response: Any agreements that are not in compliance with the adopted policy will require amendments to comply.**
- C. Note Titles II, III and IV are still on WDB and are service providers in their respective titles. **Response: These entities have required seats on the LWDB; however, the LWDB is not creating their budget or determining their selection as a service provider. The Department of Education and the Department of Economic Security have their own processes and policies applicable to these entities. This policy does apply to those representatives that are members of the LWDB must comply with the conflict of interest definitions. If one of these entities serve in more than one workforce role, then this policy will apply to them as well.**
- D. We see policy becomes effective January 2019. Please allow a minimum of six {6} months to develop local agreements. **Response: We recommend an effective date consistent with the date adopted by Workforce Arizona Council. OEO and DES staff will work with the local areas to establish a reasonable timeframe for full compliance.**
- E. COI is built into contracts. It is also inherent in the Shared Governance Agreement per Local Governance policy requirement. **Response: Not all contracts have entities serving in multiple roles. Shared governance agreements must be in compliance with the specifics of this policy.**

6. Requirements for Internal Controls

Sections A and B come from 20 CFR 683.220a and are consistent with requirements under Uniform Guidance. Section C is summarized from pages 11 through 16 of the training material.

Feedback Comments Received:

- A. This section clearly defines that all WIOA Core Partners must comply with requirements for internal controls. Are IGAs for Title I consistent with Titles III and IV, and how will Title II compliance be accomplished? Please identify how WDBs play a role in this process. **Response: Internal controls requirements are standard for anyone receiving Federal funds and are included in Uniform Guidance. Compliance in IGAs would be monitored by the entities issuing the IGAs.**
- B. Who is the Committee of Sponsoring Organizations? **Response: This standard is referenced in Federal Uniform Guidance. COSO has established a common internal control model against which companies and**

organizations may assess their control systems. COSO is supported by five supporting organizations, including the Institute of Management Accountants, the American Accounting Association, the American Institute of Certified Public Accountants, the Institute of Internal Auditors, and Financial Executives International.

- C. "Effective Internal Controls will be managed by sponsoring groups". Will the WDB have a role? If so, please note WDB role in policy. **Response: The language in quotes is not in the policy. See COSO description above.**

7. Requirements for Conflict of Interest Policies

Paragraph A of this section comes directly from Uniform Guidance. Paragraph B comes from the existing State Local Governance policy.

Feedback Comments Received:

- A. Shouldn't this section reference system partners to be consistent and applicable to the COI Rule? **Response: All partners are included to the extent that they meet the conditions outlined in the policy.**
- B. Please consider noting the LWDB and its members and affiliates must comply. NOTE - All WDBs have current policy and safeguards in place. **Response: The policy and objective and conflict of interest definitions seem to already do this. All current policies and safeguards will have to be compliant with the specifics of this policy once adopted. Adopting a state policy will hopefully establish a framework for consistency across the state system.**

8. Requirements for Firewalls

The requirement for firewalls is a requirement of 670.430; however, DOL chose not to define the terms in the regulations in order to maintain maximum flexibility for the State.

Comments: One commenter asked the Department to define the term "firewall" as it relates to this section. A group of Federal elected officials urged the Departments to establish strong organizational conflict of interest provisions in the Final Rule to ensure fair competition.

Department's Response: The Department has determined that the Uniform Guidance, used in concert with State procurement procedures, establishes adequate standards for conflict of interest policies. Also, § 678.615(b) and (c) require robust conflict of interest policies, as well as internal firewalls within the State agency, to address the real and apparent conflicts of interest that could arise for a State or local agency applying to a competition run by a Local WDB. In order to ensure flexibility for State and local entities in designing one-stop delivery systems, the Department declines to define these terms further in the final regulations.

Therefore, the policy draft uses firewall information from the DOL training material.

Note: Draft #3 of this policy added new language identified in red.

- a. In section A, the burden of proof that a firewall meets the requirements of this policy rests with the LWDB. This point was suggested in conversation with our DOL representative.**
- b. The statement about firewall pertaining to elected leadership as well as Boards comes from page 55898 of the Joint Final rule.**
- c. The example stated in section B is existing language that was moved from State Policy #4. No change was made to the language or policy impact.**
- d. The example of a conflict listed in IV.B.2.b came out of our discussions about conflict of interest as they currently occur in Arizona's system.**

Feedback Comments Received:

- A. "All system partners- Titles I, II, III, IV, WDB and One Stop Operator Fiscal operators must..." Comment: All Local Boards must ensure that all partners comply with and maintain firewalls. **Response: It is not the role of the LWDB or the CEO to manage Title II, III, and IV providers.**
- B. This has been demonstrated at the local level in various documents. Will this new policy supersede current rules? **Response: Yes, once adopted local levels will be expected to comply with the policy requirements.**
- C. Please identify an instance where the LWDB is part of an entity. **Response: In every local area in Arizona, the LWDB is part of an entity that serves multiple roles.**
- D. Comment: Will this policy supersede current policies and document requirements in Arizona? Many of these documents are currently in place. **Response: Yes, this policy will supersede. Current documents that do not meet the requirements of this policy would have to be amended.**
- E. NOTE - Bullets seem to be misplaced and irrelevant to a Conflict of Interest Policy. **Response: The bullets are provided to give specific examples of the multiple LWDB roles and decisions that would be a conflict of interest if an adult, dislocated worker, or youth service provider were to serve on the Board.**
- F. An appropriate firewall must include the following:
 - Complete independence over supervision or control of staff; Please provide clarification on this requirement. **Response: An example was taken from State Policy #4 and added to this policy.**
 - Physical and electronic access to information is restricted; Please clarification on this requirement. **Response: Think about the access your agency would give if you**

contracted with an outside entity for these services. Technical assistance will be available.

- Recusal from voting on any related matters applicable to these other duties, when the potential conflict involves the LWDB. Please provide clarification on this requirement. ***Response: See the LWDB duties in listed IV.C.1-10.***

G. Specifically, the LWDB must:

- Determine the process for selecting and awarding contracts to service providers for career services not provided by the OSO including whether these services must be competitively procured; Does this statement mean that a contract for career services must exist when services are provided directly? ***Response: Yes***
- Assess needed changes in services and budget allocation to comply with youth program changes mandated by WIOA; What youth program changes is this referring to? ***Response: These are added as new language in State Policy #4 and are outlined in TEGL 21-16.***

H. The only comment we have the policy should be more flexible and allow for other firewalls as adopted by the LWDBs in regards to mitigating potential “Organization Conflicts.” For instance on p. 6 item E, I could see the LWDB establishing a different firewall, when they select an organization provide career services. This could include the LWDB adopting performance measures that would apply to any contractor or organization selected by the LWDB and establishing a Performance Review Committee of the Board to oversee progress and report to the LWDB. The goal is to have transparency and LWDB actively involved in review of the performance. Of course the Operator, unlike career services, has to be competitively procured as required by the law. ***Response: A statement was added in section IV.A indicating that the LWDB has responsibility to demonstrate that their established firewalls meet the requirements of this policy.***

I. So, the Uniform Guidance and state procurement procedures are adequate standards...? ***Response: Not when you read the totality of DOL’s comments. DOL is attempting to avoid being overly restrictive and allow States to address the structure of the systems in their State, which is exactly what this recommended policy is attempting to accomplish.***

9. Other Issues

The most controversial issue in this policy is likely to be the prohibition on service providers serving on the local board.

The legal authority for Workforce Arizona Council to establish these requirements in the governance policy comes from the following sources:

- WIOA Section 107 (h.2) includes the following in the definition of conflict of interest: *A member of a local board, or a member of a standing committee, may not engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.* (Note: Arizona's State plan references State policy that identifies conflict of interest for board members (section V.1, page 115). Council policy 01-2016 Local Governance policy fulfills this requirement.)
- WIOA section 107 (b.1) grants *the Governor, in partnership with the State Board,* the authority *to establish criteria for use by the chief elected officials in the local area for appointment of members of the local boards ...* 20 CFR 679.320 (a) states: *For each local area in the State, the members of Local WDB must be selected by the chief elected official consistent with criteria established under WIOA sec. 107(b)(1) and criteria established by the Governor, and must meet the requirements of WIOA sec. 107(b)(2).*

Section C of the draft policy lists multiple LWDB duties where a conflict could occur for a service provider serving on the LWDB. In addition, there are other ways that the LWDB can obtain the knowledge from service providers (i.e. standing committee) without incurring the potential conflict.