

**Workforce Innovation and Opportunity Act Waiver Request
Technical Provisions Related to the One-Stop Operator Requirement**

Date: November XX, 2019

State: Illinois

Agency: Illinois Department of Commerce and Economic Opportunity on behalf of Illinois' WIOA Core and Required Partners.

Under the Secretary of the U.S. Department of Labor's (U.S. DOL) waiver authority outlined in Section 189(i)(3)(A) of the Workforce Innovation and Opportunity Act (WIOA) and 20 CFR § 679.600, the Secretary may waive certain provisions of WIOA Title I, Subtitles A, B, and E and provisions found in Sections 8-10 of the Wagner-Peyser Act. WIOA Section 189(i)(3)(B) and 20 CFR 679.620 identify elements that must be included in a waiver request.

As set forth in detail, below, the State of Illinois is seeking a waiver of this provision in 20 CFR § 618.890 in accordance with the requirements of 20 CFR § 679.620(d).

1. The statutory and/or regulatory requirements the state would like to waive

The state must clearly cite the statute and/or regulation(s) in its request and ensure that the citations refer to the specific elements the state wishes to waive.

The State of Illinois is seeking a waiver of the specific payment provisions outlined in Section 9.D *Implementation Phase* of Training and Employment Guidance Letter 15-16, Competitive Selection of One-Stop Operators (TEGL 15-16).

The Local Workforce Areas follow the State's established guidelines that allow the cost of the one-stop operator to be included as a shared cost that is included in the annual Memorandum of Understanding (MOU) Budget. This waiver would also allow the MOU budget to serve as evidence of the exchange of funds between the Local Workforce Development Board and the One-Stop Operator (OSO) in Local Workforce Areas where a consortium of partners was selected as the OSO

BACKGROUND

The State of Illinois has issued guidelines to fulfill the WIOA requirement that the Governor issue guidance to State and local partners for negotiating cost sharing, service access, service delivery and other matters essential to the establishment of effective local workforce development systems under WIOA (20 CFR § 678.705). To comply with this requirement, the State of Illinois has issued *Governor's Guidelines to State and Local Program Partners Negotiating Costs and Services Under the Workforce Innovation and Opportunity Act of 2014, Revision 3* (Governor's Guidelines), see Attachment I.

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The State of Illinois has invested considerable resources in the development of the Governor’s Guidelines. The State of Illinois also went through significant effort to get the State of Illinois Comptroller to recognize the MOU as a valid contract that documents and supports state payments of one-stop infrastructure and shared costs. The State of Illinois recognizes that the MOU cost negotiations is an administrative burden at the State and local levels; therefore, efforts have been made to make cost sharing procedures as efficient as possible. The State of Illinois has recognized the One-Stop Operator Cost as a “shared cost” that is included in the annual MOU budget negotiations.

The US Department of Labor Employment and Training Administration Region V issued monitoring reports in 2019 indicating that specific Local Workforce Areas did not meet the One-Stop Operator procurement requirements as outlined below:

[LWIAs] did not award funds to the competitively selected One-Stop Operators despite both Requests for Proposals (RFPs) identifying an up-to funding level for the chosen bidder. The report indicates that a consortium of partners was selected as the winning bidder of the OSO procurement. Each partner in the consortium that won the bid is charging its respective Federal grant for the time spent on OSO functions rather than the Local WDBs awarding the funds to the entities that were selected.

ETA’s guidance indicates that funds must be awarded to the winning bidder as part of the overall contractual arrangement. The ETA’s Training and Employment Guidance Letter 15-16, Competitive Selection of One-Stop Operators, provides evidence of the intended exchange of funds between the Local WDB and the OSO. Section 6, page 3, indicates that OSOs are considered subrecipients of Federal funds and must follow the Uniform Guidance at 2 CFR 200, including the contractual provisions at 2 CFR 200.326. In Section 9.C., page 13, the TEGGL indicates that, during the contract negotiation phase, payment details and frequency must be determined. And, in this same section at part D., it indicates, “Payments and authorized budget modifications to the one-stop operator must be timely and consistent with payment requirements under 2 CFR part 200 and 2 CFR part 290[0]. Likewise, invoices from the one-stop operator must be submitted timely and contain the documentation outlined in its contract or agreement....”

The Local Workforce Areas use the Annual MOU as a valid contract to support the payment of all of the one-stop infrastructure and shared costs – including the cost of the OSO. Requiring the OSO cost to be removed from the MOU takes away one of the fundamental reasons why the State and local areas go through the annual MOU budget negotiation process. Section 678.760(e) of the WIOA Final Rule also requires that *any shared costs agreed upon by the one-stop partners must be included in the MOU*. Furthermore, Training Employment Guidance Letter 17-16 establishes that

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*“the infrastructure agreement (IFA) contains the infrastructure costs budget, which is an integral component of the overall one-stop operating budget. The other component on the one-stop operating budget consists of additional costs, which include applicable career services, and may include shared operating costs and shared services. While each of these components covers different cost categories, an operating budget would be incomplete if any of these cost categories were omitted, as all components are necessary to maintain a fully functioning and successful local one-stop delivery system. **Therefore, the Departments strongly recommend that the Local WDBs, one-stop partners, and CEOs negotiate the IFA, along with additional costs, when developing the operating budget for the local one-stop delivery system. The overall one-stop operating budget must be included in the MOU.**” [emphasis added]*

In several Illinois LWIAs, the Local Workforce Innovation Board (LWIB) oversees the budget for the WIOA activities; however, it is the fiscal agent that issues the WIOA payments. This finding is, in effect, prescribing the accounting treatment of the OSO costs. To require a cash payment from the LWIB to the OSO and to then permit this cash payment to be refunded to the LWIB as a “reimbursement” would result in unnecessary financial transactions. This could also lead to a situation where the LWIA would have to issue a check to itself. This finding also appears to limit the LWIA’s ability to use the allowable leveraged resources to support the OSO partners.

- WIOA Section 121 states, “The local grant recipient or an entity designated under subclause (II) shall disburse the grant funds for workforce investment activities at the direction of the local board, pursuant to requirements of this title.”
- The Joint Final Rule at 20 CFR § 678.715, affirms that WIOA sec. 121(d)(1) delegates the majority of the authority to set these policies regarding the payment of one-stop operators, to the LWIB.

Finally, the finding references the contract provisions at 2 CFR 200.326 (Appendix 2 to the Uniform Guidance), but the contract provisions do not require that the payment details and frequency be included in a subaward.

- 2 CFR 200.331 in the Uniform Guidance does not require pass-through entities to include payment details and frequency in a subaward.
- The Uniform Guidance does not define leveraged resources, which has been defined by ETA as all resources used by the grantee to support grant activity and outcomes, whether those resources meet the standards applied to match or not.

2. Actions the state has undertaken to remove state or local statutory or regulatory barriers

The state must provide a discussion of the steps it has taken to remove any potential obstacles in the waiver request as appropriate. Quite often, state or local policies do not present a

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conflict for the request, and a simple statement indicating that there are no state or local barriers is sufficient.

The State of Illinois requested a meeting with the appropriate U.S. Department of Labor staff to review the finding outlined above and the State of Illinois response. The U.S. Department of Labor's follow up letter did not respond to this request; therefore, the State is requesting this waiver. If a waiver is not required, the State requests reconsideration of the U.S. Department of Labor's interpretation and application of the regulation as outlined in the findings.

There are currently no state or local statutory or regulatory barriers to implementing the requested waiver. State of Illinois regulations and policies align with the State's interpretation of the federal law and regulations.

3. State strategic goals sought through a waiver

The state must precisely articulate the goals it seeks to achieve by requesting a waiver. The state must also discuss how these goals relate to its Unified or Combined State Plan.

The goal of this waiver is to insure compliance with the technical requirements of the Workforce Innovation and Opportunity Act and TEG 15-16 by specifically allowing the State of Illinois to use the procedures outlined in the Governor's Guidelines as evidence of the exchange of funds between the Local Workforce Development Board and the One-Stop Operator.

The Governor's Guidelines are part of the regulatory framework that supports the delivery of workforce, education and business services. The Governor's Guidelines require all Federally-funded programs authorized under WIOA in Illinois to collaborate to optimize the quality of services provided in all local workforce areas throughout the State.

To effectively collaborate, required partners in Illinois must commit to:

- *Negotiate in good faith the commitments of each required partner to provide access to services and programs, as well as to share in the costs of the local one-stop delivery system;*
- *Share necessary data and customer information;*
- *Train frontline staff to make them more knowledgeable about other programs under WIOA and to improve the efficiency of referrals;*
- *Plan and act strategically based on a common understanding of regional economies, key sectors, workforce demographics and employer needs; and*
- *Leverage program resources where possible to the mutual benefit of*

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customers and programs.

This waiver will also support the principles outlined within Illinois' Unified Plan, which strives to promote employer-driven talent solutions that integrate education, workforce and economic development resources across systems to provide businesses, individuals and communities with the opportunity to prosper and contribute to growing the state's economy. These principles include:

- *Cross-agency Collaboration and Alignment* - Developing career pathways and stackable credentials will demand collaboration and alignment across agencies that contribute to Illinois' overall talent pipeline. There should be a focus on improving the strategic connections across all components and levels of the education and workforce systems to ensure no "dead ends" exist.
- *Integrated Service Delivery* - Enhanced collaboration and alignment across state agencies at a strategic level should lead to better service delivery integration. Multiple state agencies and partners are positioned to support the success of individuals and businesses. Technology and integrated data systems can help illustrate those interrelationships and position the system to collaborate across agencies to deliver the right services at the right time.
- *Access and Opportunity for All Populations* - Coordinated and comprehensive services can help targeted populations prepare for and advance along a career pathway. Connecting individuals with relevant supports, such as transportation, child care and transition services can enable the system to be responsive to the needs of individuals' workforce readiness.
- *Focus on Continuous Improvement and Innovation* - The system should establish mechanisms for continual assessment of system performance and opportunities for improvement, as well as for encouraging innovation and disseminating best practices. This includes the continued enhancement of non-traditional methods for delivering education and training. Additionally, the growing role of entrepreneurship and its contributions to employment and economic growth will be an outcome of continuous improvement and innovation.

4. Projected programmatic outcomes resulting from implementation of the waiver

The state must provide an estimate of how the waiver will improve outcomes or provide other tangible benefits for jobseekers or employers. States have the discretion to determine how to measure a waiver's success and the specific data sources it intends to use to evaluate its impact.

The waiver would bring Illinois into compliance with the technical payment provision of TEGL 15-16. The State of Illinois has identified that the cost of the One-Stop Operator (OSO) is an allowable shared cost that is documented in the annual local Memorandum

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of Understanding (MOU) budget. The waiver would allow the MOU budget to be a mechanism for exchanging funds that could include the cost of the OSO as outlined in Illinois' Governor's Guidelines.

5. Individuals, groups, or populations affected by the waiver

States must describe the potential impact of a waiver on various system stakeholders, including how the waiver will impact services for disadvantaged populations, persons with barriers to employment, or businesses.

The waiver will positively impact the state and local partners that are responsible for administering the required WIOA programs in a one-stop. This waiver will provide the flexibility that is needed to be in compliance with the OSO regulations. A denial of the waiver will require additional time and money to develop additional payment procedures and protocols. The denial of the waiver combined with a narrow interpretation of WIOA's technical governance requirements will have a significant cumulative impact on the State and local workforce areas' ability to effectively administer the programs for the benefit of job seekers and businesses.

6. Plans for monitoring waiver implementation, including collection of waiver outcome information

States must describe how they intend to oversee effective waiver implementation and any unique protocols that may be used in their waiver requests.

The State of Illinois will monitor this waiver as part of the annual review of the Governor's Guidelines. Technical adjustments will be made as appropriate to ensure compliance with the regulations and the implementation of Illinois service integration strategies.

7. Assurance of state posting of the request for public comment and notification to affected local workforce development boards

WIOA does not prescribe a specific amount of time for states to post a potential waiver for comment, but it does require the state to demonstrate a reasonable opportunity for public review and comment by all stakeholders, including businesses and organized labor. Submit any comments or concerns collected in this manner and the outcome of the state's review of the public comments received. The state must also provide affected local boards with notice and opportunity to comment on the proposed waiver.

Illinois' waiver request was posted on the website for comment and review by the required parties and the public. This included Local Workforce Boards via Board members and/or Board staff as well as WIOA partners and other interested stakeholders.