



Montana Department of LABOR & INDUSTRY

1
2 Division: Workforce Services Division
3 Category: WIOA
4 Effective Date: 7/31/2017
5 Last Revised: 11/20/2017
6 Policy No.: 06-17

7 Workforce Innovation and Opportunity Act 8 (WIOA) Administrative Standards Policy

9 **Background:** All recipients and sub-recipients including contractors, and service providers receiving
10 WIOA funds must operate under WIOA law and regulations that prohibit certain activities. Activities in any of
11 these prohibited areas will be cause for disciplinary measures and the possible de-obligation of the funds. All
12 service providers must obtain and have posted the certifications and assurances for each of the activities within
13 this policy.

14 **Scope:** This policy applies to all service providers operating WIOA Title I, WIOA Title I program manager(s),
15 WIOA fiscal officers and the WIOA monitoring team. This policy is effective July 31, 2017.

16 Policy:

17 Conflict of Interest:

- 18 • Each recipient and sub-recipient shall avoid organizational conflict of interest, and their personnel shall
19 avoid personal conflict of interest in awarding financial assistance, and in the conduct of procurement
20 activities involving funds under WIOA.
- 21 • Each recipient and sub-recipient shall ensure that no individual in a decision making capacity including
22 State Workforce Innovation Board (SWIB) members (whether compensated or not) shall engage in any
23 activity, including participation in the selection, award, or administration of a provider agreement or
24 contract supported by WIOA funds if a conflict of interest, real or perceived, would be involved. Such
25 conflict would arise when the individual, any member of the individual's immediate family, the
26 individual's partner, or any organization that employs, or is about to employ, any of the above has a
27 financial or other interest in the firm or organization selected for award.
- 28 • The officers, employees, or agents of the state agency (including SWIB members) making the award will
29 neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential
30 contractors, or parties to provider agreements.
- 31 • In accordance with the requirements at 2 CFR 200.112, recipients of federal awards must disclose in
32 writing any potential conflict of interest to Workforce Services Division. Sub-recipients must disclose in
33 writing any potential conflict of interest.

1 **Lobbying Activities:**

- 2
- 3 • All WIOA Title I recipients and sub-recipients must comply with the restrictions on lobbying as specified
 - 4 in WIOA Law Section 195 and codified in USDOL’s regulations at 29 CFR Part 93 and MCA Title 5
 - 5 Chapter 7.
 - 6 • No funds provided under WIOA may be used in any way to attempt to influence in any manner:
 - 7 o A member of Congress, an officer or employee of Congress, or an employee of a member of
 - 8 Congress to favor or oppose any legislation or appropriation by Congress; or
 - 9 o State or local legislators to favor or oppose any legislation or appropriation by such legislators.
 - 10 Communications and consultation with state and local legislators for purposes of providing
 - 11 information such as on matters necessary to provide compliance with WIOA shall not be
 - 12 considered lobbying.
 - 13 • If any funds have been paid or will be paid to any person for influencing or attempting to influence an
 - 14 officer or employee of any agency, a member of Congress that may be connected to Federal contracts,
 - 15 grants, loan or cooperative agreement relating to WIOA, a Standard form – LLL, “Disclosure Form to
 - 16 Report Lobbying” shall be completed and submitted in accordance with its instructions.
 - 17 • Submission of certification regarding lobbying is a prerequisite for making or entering into this
 - 18 transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not
 - 19 less than \$10,000 and not more than \$100,000 for each such failure.
 - 20 • Certification regarding lobbying language must be included in all award documents for all sub-awards at
 - 21 all tiers (including subcontracts, provider agreements, and contracts under grants, loans, and
 - cooperative agreements) and that all sub-awards shall certify and disclose accordingly.

22 **Drug-Free Workplace Requirements:**

- 23
- 24 • Recipients and sub-recipients must publish a statement, signed by the authorized authority, notifying
 - 25 employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled
 - 26 substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against
 - 27 employees for violations of such prohibition.
 - 28 o Each employee engaged in WIOA activities will be given a copy of the drug-free workplace
 - 29 statement.
 - 30 o The employee will be informed that, as a condition of employment, the employee will:
 - 31 o Abide by the terms of the drug-free workplace statement; and
 - 32 o Notify the business in writing of his or her conviction for violation of a criminal drug
 - statute occurring in the workplace no later than 10 calendar days after such conviction.
 - 33 • Recipients and sub-recipients must notify the WIOA Administrative Entity within 10 calendar days after
 - 34 receiving notice from the employee or otherwise receiving actual notice of such conviction. Notice must
 - 35 include:
 - 36 o Employee position and title; and
 - 37 o The identification of the grant and grant numbers the employee was working.
 - 38 • Recipients and sub-recipients must take one of the following actions, within 30 calendar days of
 - 39 receiving notice of employee conviction:
 - 40 o Take appropriate personnel action against such an employee, up to and including termination;
 - 41 and/ or
 - 42 o Requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation
 - 43 program approved for such purposes.
 - 44 • Recipients and sub-recipients must ensure that all WIOA Title I funds including clients, service and
 - 45 training provider are informed that the unlawful manufacture, distribution, dispensing, possession, or
 - 46 use of a controlled substance is prohibited at service and training provider sites and specify the action
 - 47 that will be taken against employees for violation of such prohibition.

48 **Debarment, Suspension, and Other Responsibility Matters:**

- 49
- Recipients and sub-recipients must certify to the best of their knowledge that it and its principals:

- 1 ○ Are not presently debarred, suspended, proposed for debarment, declared ineligible, or
- 2 voluntarily excluded from covered transactions by any Federal department or agency;
- 3 ○ Have not within a three-year period preceding the proposal been convicted or had a civil
- 4 judgement rendered against them for commission of fraud or a criminal offense in connection
- 5 with obtaining, attempting to obtain, or performing a public transaction or contract under public
- 6 transaction, violation of Federal or State antitrust statutes or commission of embezzlement,
- 7 theft, forgery, bribery, falsification or destruction of records, making false statements, or
- 8 receiving stolen property;
- 9 ○ Are not presently indicted or otherwise criminally or civilly charged by a government entity with
- 10 commission of any of the offense listed above; and
- 11 ○ Have not within a three-year period preceding the proposal had one or more public transactions
- 12 terminated for cause or default.

13 Political Activities or Patronage:

- 14 • No recipient, sub-recipient or client may engage in partisan or nonpartisan political activities during
- 15 hours for which the individual is paid with WIOA funds.

16 Kick Backs:

- 17 • No officer, employee or agent of any recipient or sub-recipient shall offer, solicit or accept gratuities,
- 18 favors or anything of monetary value from any actual or potential sub-recipient or contractor.

19 Charging of Fees:

- 20 • No person or organization may charge an individual a fee for the placement or referral for the individual
- 21 in or to a workforce investment activity.

22 Nepotism:

- 23 • Nepotism is an unfair practice that occurs when hiring or delivery of program services and is based on
- 24 personal connections, rather than ability or merit. All recipients and sub-recipients shall comply with
- 25 applicable federal, state, and local nepotism laws.
- 26 • No individual may be placed in a WIOA employment activity or receive WIOA services directly if that
- 27 person's immediate family is directly supervised by or directly supervises that individual.
- 28 • The State of Montana defines nepotism as the bestowal of political patronage by reason of relationship
- 29 rather than of merit.

30 Child Labor Laws:

- 31 • All recipients and sub-recipients shall comply with applicable federal, state, and local child labor laws.

32 Sectarian Activities:

- 33 • WIOA funds may be used to train clients in religious activities when the assistance is provided indirectly
- 34 through an Individual Training Account (ITA).
- 35 • WIOA funds may not be used for employment in the construction, operation, or maintenance of any part
- 36 of any facility that is used or will be used for sectarian instruction or as a place for religious worship with
- 37 the exception of maintenance of facilities that are not primarily used for instruction or for worship and
- 38 are operated by organizations providing services to WIOA clients.

39 Complaints of Fraud, Waste and Abuse:

- 40 • Criminal activities, including theft or embezzlement of employment and training funds, bribery,
- 41 improper inducement, and obstruction of investigations in federally funded employment and training
- 42 programs are prohibited under criminal provisions at 18 U.S.C. 665 and 666. The process for reporting
- 43 criminal activities is described in at 20 CFR Part 683.620.

1 **Funding and Program Restrictions:**

- 2 • WIOA Title I funds may not be spent on:
 - 3 ○ The wages of incumbent employees during their participation in economic development
 - 4 activities provided through a statewide workforce development system.
 - 5 ○ Public service employment, except as specifically authorized under Title I of WIOA.
 - 6 ○ Expenses prohibited under any other Federal, State or Local law or regulation.
 - 7 ○ Any activity under this title that is used for employment generating activities, investment in
 - 8 revolving loan funds, capitalization of businesses, investment in contract bidding resource
 - 9 centers, economic development activities, or similar activities, that are not directly related to
 - 10 training for eligible individuals under WIOA.
- 11 • Programs will not impair existing contracts for services or result in the substitution of federal funds for
- 12 other funds in connection with work that would otherwise be performed, including services normally
- 13 provided by temporary, part-time or seasonal workers or through contracting such services out.
- 14 • WIOA Title I funds shall not be used for foreign travel.

15 **Labor Standards:**

- 16 • No client shall be hired into or remain working in any position when the same or substantially equivalent
- 17 position is vacant due to a hiring freeze or lack of funds to sustain staff.
- 18 • Programs will not impair existing:
 - 19 ○ Contracts for services; or
 - 20 ○ Collective bargaining agreements unless the business and labor organization concur in writing
 - 21 with respect to the elements of proposed activities within 30 days of receipt.
- 22 • When termination of clients is due to a hiring freeze the service provider shall attempt to place such
- 23 clients into other non-affected positions or attempt placement into unsubsidized jobs or into another
- 24 program or activity.
- 25 • Whenever a promotional freeze affects non-WIOA funded employees it shall apply to WIOA clients
- 26 similarly employed.
- 27 • No former employees laid off or terminated in anticipation of WIOA funding of a position may be rehired
- 28 under WIOA into such a position.
- 29 • Clients in on-the-job training or individuals employed in activities under Title I of WIOA must be
- 30 compensated at the same rates, including periodic increases, as trainees or employees who are
- 31 similarly situated in similar occupations by the same business and who have similar training experience
- 32 and skills.
- 33 • No client shall be hired into a position resulting in the displacement of a currently employed worker
- 34 (including partial displacement such as reduction in hours of non-overtime work, wages or employment
- 35 benefits).
- 36 • No WIOA subsidized client shall receive a promotion that would infringe in any way upon the
- 37 promotional opportunities of currently employed workers.

38 **Unionization/Anti-Unionization Activities and Work Stoppages:**

- 39 • No funds provided to businesses for work-based training may be used to assist, promote or deter union
- 40 organizing.

41 **Business Relocation**

- 42 • Funds provided under WIOA shall not be used to encourage or induce relocation of an establishment or
- 43 any part that results in loss of employment for any employee at the original site.
- 44 • Funds provided under WIOA shall not be used for customized or skill training, on-the-job training, or
- 45 company-specific assessments of job applicants or employees for any business or any part of any
- 46 business, that has relocated, until 120 days after the date on which the establishment commences
- 47 operations at the new location, if the relocation results in a loss of employment for any employee at the
- 48 original site and the original site is within the United States.

1 **Nondiscrimination and Equal Opportunity:**

- 2 • All eligible service and training providers receiving WIOA Title I funds must comply fully with the
3 nondiscrimination and equal opportunity provisions of WIOA.
- 4 • All programs shall establish procedures to ensure against discrimination, sexual harassment in any
5 form, and foster equal opportunity and shall issue a statement of assurance to be signed by the chief
6 operating official.
- 7 • Services providers are not required to designate Equal Opportunity Officers. Service providers should
8 however designate an individual who will serve as liaison with the State Equal Opportunity Officer.
- 9 • Provider agreements will contain assurance language that it will comply with Equal Opportunity
10 requirements of Section 188 of the Act, 29 CFR Part 37, and 1604, the Civil Rights Act of 1964 and all
11 other applicable equal opportunity laws and regulations. The assurance may be incorporated by
12 reference.
- 13 • Discriminatory discharge prohibited. No person, organization or agency may discharge, or in any other
14 manner discriminate or retaliate against any person, or deny to any personal benefit to which that
15 person is entitled under the provisions of WIOA because such person has filed any complaint, instituted
16 or caused to be instituted any proceeding under or related to WIOA, has testified or is about to testify in
17 any such proceeding or investigation, or has provided information or assisted in an investigation.
- 18 • Sexual harassment/sex-based harassment is a violation of Section 703 of Title VII of the Civil Rights Act
19 of 1964. Assurances regarding nondiscrimination and equal opportunity apply to sexual harassment as
20 well.

21 **Equal Treatment in Department of Labor Programs for Religious Organization; Protection of**
22 **Religious Liberty of Department of Labor Social Service Providers and Beneficiaries:**

- 23 • All eligible service and training providers receiving WIOA Title I funds must comply fully with the
24 provisions of 29 CFR part 2, subpart D and ensure that DOL-supported social service programs are open
25 to all qualified organizations, regardless of the organizations' religious character, and to clearly
26 establish the permissible uses to which DOL support for social service programs may be put, and the
27 conditions for receipt of such support.
- 28 • Providers must ensure that the Department's social service programs are implemented in a manner
29 consistent with the requirements of the Constitution, including the Religion Clauses of the First
30 Amendment.

31 **Testing and Sanctioning for Use of Controlled Substances:**

- 32 • Although the Federal Government does not prohibit a State from testing clients for the use of controlled
33 substances and imposing sanctions, Montana will not implement or support any form of testing for
34 controlled substances or sanctioning clients.

35 **Additional Assurances for Non-Construction Programs:**

- 36 • Recipients and sub-recipients must certify their authorized representative will:
 - 37 ○ Have the legal authority and the institutional managerial and financial capability to ensure
38 proper planning, management and completion of WIOA Title I programs.
 - 39 ○ Give the Comptroller General of the United States and the State of Montana, through any
40 authorized representative, access to and the right to examine all records, books, papers, or
41 documents related to WIOA Title I programs; and will establish a proper accounting system in
42 accordance with generally accepted accounting standards or agency directives.
 - 43 ○ Establish safeguards to prohibit employees from using their positions for a purpose that
44 constitutes or presents the appearance of personal or organizational conflict of interest, or
45 personal gain.
 - 46 ○ Initiate and complete work relating to financial and management information system reporting
47 requirements within acceptable time frames.

- 1 o Comply with 2 CFR 200.333 regarding the retention of records.
- 2 o Participate in and perform the required financial and compliance audits in accordance with the
- 3 Single Audit Act Amendments of 1996 and OMB Circular A-133, Audits of States, Local
- 4 Governments, and Non-Profit Organizations.

5 Monitoring and Evaluation:

- 6 • Recipients and sub-recipients must demonstrate the existence of:
 - 7 o Conflict of interest assurances;
 - 8 o Certification regarding lobbying;
 - 9 o Drug-free workplace requirement certification;
 - 10 o Certification regarding debarment, suspension, and other responsibility matters;
 - 11 o Standard assurances for non-construction programs; and
 - 12 o Nondiscrimination and equal opportunity assurances.

13 References:

- 14 • [2 CFR 200.112 Conflict of Interest](#)
- 15 • [20 CFR 683.200 Fiscal and Administrative Rules](#)
- 16 • [WIOA Section 195 Restrictions on Lobbying Activities](#)
- 17 • [29 CFR 93 New Restrictions on Lobbying](#)
- 18 • [MCA Title 5 Chapter 8 Lobbying](#)
- 19 • [WIOA Section 194 \(6\) Political Practices](#)
- 20 • [41 U.S.C 53 Prohibited Conduct](#)
- 21 • [WIOA Section 194 \(5\) Charging Fees](#)
- 22 • [MCA Title 2 Chapter 2 Nepotism](#)
- 23 • [MCA Title 41 Chapter 2 Child Labor Standards Act](#)
- 24 • [TEGL 1-05 Financial Assistance for Religious Training and Employment](#)
- 25 • [18 U.S.C. 665 - 666 Theft or embezzlement from Employment and Training Funds](#)
- 26 • [20 CFR 683.260 Prohibitions of Business Relocation](#)
- 27 • [29 CFR part 2 Subpart D Equal Treatment for Religious Organizations](#)
- 28 • [2 CFR 200.333 Retention Requirements for Records](#)
- 29 • [FAR 52.209-5 Certification Regarding Responsibility Matters \(Debarment\)](#)