



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.: 02-17**

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

9 **Background:** All recipients and sub-recipients, including contractors and service providers, receiving
10 Workforce Innovation and Opportunity Act (WIOA) funds must operate under WIOA law and regulations that
11 prohibit certain activities. Activities in any of these prohibited areas will be cause for disciplinary measures and
12 the possible de-obligation of the funds. All service providers must obtain and post the certifications and
13 assurances for each of the activities within 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 will avoid organizational conflict of interest. Their personnel will avoid
19 personal conflict of interest when awarding financial assistance and while conducting procurement
20 activities involving funds under WIOA.
- 21 • Each recipient and sub-recipient will ensure that no individual in a decision-making capacity, including
22 Montana's State Workforce Innovation Board (SWIB) members (whether compensated or not), will
23 engage in any activity, including participation in the selection, award, or administration of a provider
24 agreement or contract supported by WIOA funds if a conflict of interest, real or perceived, would be
25 involved. Such conflict would arise when the individual, any member of the individual's immediate
26 family, the individual's partner, or any organization that employs or is about to employ, have a financial
27 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 Montana Labor & Industry's (MDLI) Workforce Services
33 Division (WSD). Sub-recipients must disclose in writing any potential conflict of interest.

34 **Lobbying Activities:**

- 35 • All WIOA Title I recipients and sub-recipients must comply with the restrictions on lobbying as specified
36 in WIOA Law Section 195 and codified in USDOL's regulations at 29 CFR Part 93 and MCA Title 5
37 Chapter 7.
- 38 • No funds provided under WIOA may be used as an attempt to influence:

- 39 ○ A member of Congress, an officer or employee of Congress, or an employee of a member of
40 Congress to favor or oppose any legislation or appropriation by Congress; or
41 ○ State or local legislators to favor or oppose any legislation or appropriation by such legislators.
42 Communications and consultation with state and local legislators for purposes of providing
43 information such as on matters necessary to provide compliance with WIOA will not be
44 considered lobbying.
- 45 ● If any funds have been paid or will be paid to any person for influencing or attempting to influence an
46 officer or employee of any agency, a member of Congress that may be connected to Federal contracts,
47 grants, loan or cooperative agreement relating to WIOA, a Standard form – LLL, “Disclosure Form to
48 Report Lobbying” will be completed and submitted in accordance with its instructions.
 - 49 ● Submission of certification regarding lobbying is a prerequisite for making or entering into this
50 transaction. Any person who fails to file the required certification will be subject to a civil penalty of not
51 less than \$10,000 and not more than \$100,000 for each such failure.
 - 52 ● Certification regarding lobbying language must be included in all award documents for all sub-awards at
53 all tiers (including subcontracts, provider agreements, and contracts under grants, loans, and
54 cooperative agreements); and all sub-awards will certify and disclose accordingly.

55 Drug-Free Workplace Requirements:

- 56 ● Recipients and sub-recipients must publish a statement, signed by the authorized authority, notifying
57 employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled
58 substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against
59 employees for violations.
 - 60 ○ Each employee engaged in WIOA activities will be given a copy of the drug-free workplace
61 statement.
 - 62 ○ The employee will be informed that, as a condition of employment, the employee will:
 - 63 ■ Abide by the terms of the drug-free workplace statement; and
 - 64 ■ Notify the business in writing of his or her conviction for violation of a criminal drug
65 statute occurring in the workplace no later than 10 calendar days after such conviction.
- 66 ● Recipients and sub-recipients must notify the WIOA Administrative Entity within 10 calendar days after
67 receiving notice from the employee or otherwise receiving actual notice of such conviction. Notice must
68 include:
 - 69 ○ Employee position and title; and
 - 70 ○ The identification of the grant and grant numbers on which the employee was working.
- 71 ● Recipients and sub-recipients must take one of the following actions, within 30 calendar days of
72 receiving notice of employee conviction:
 - 73 ○ Take appropriate personnel action against such an employee, up to and including termination;
74 and/ or
 - 75 ○ Requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation
76 program approved for such purposes.
- 77 ● Recipients and sub-recipients must ensure that all WIOA Title I-funded participants and service and
78 training providers are informed that the unlawful manufacture, distribution, dispensing, possession, or
79 use of a controlled substance is prohibited at service and training provider sites and specify the action
80 that will be taken for violations.

81 Debarment, Suspension, and Other Responsibility Matters:

- 82 ● Recipients and sub-recipients must certify to the best of their knowledge that they or their principals:
 - 83 ○ Are not presently debarred, suspended, proposed for debarment, declared ineligible, or
84 voluntarily excluded from covered transactions by any Federal department or agency;
 - 85 ○ Have not, within a three-year period preceding the proposal, been convicted or had a civil
86 judgment rendered against them for fraud; or a criminal offense in connection with obtaining or
87 attempting to obtain or performing a public transaction or contract under public transaction;

- 88 violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery,
89 bribery, falsification or destruction of records, making false statements, or receiving stolen
90 property;
91 ○ Are not presently indicted or otherwise criminally or civilly charged by a government entity with
92 commission of any of the offense listed above; and
93 ○ Have not within a three-year period preceding the proposal had one or more public transactions
94 terminated for cause or default.

95 **Political Activities or Patronage:**

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

98 **Kick Backs:**

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

101 **Charging of Fees:**

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

104 **Nepotism:**

- 105 • Nepotism is an unfair practice that occurs when hiring or delivering program services. It is based on
106 personal connections, rather than ability or merit. All recipients and sub-recipients will comply with
107 applicable federal, state, and local nepotism laws.
108 • No individual may be placed in a WIOA employment activity or receive WIOA services if that person's
109 immediate family is directly supervised by or directly supervises that individual.
110 • The State of Montana defines nepotism as the bestowal of political patronage by reason of relationship
111 rather than of merit.

112 **Child Labor Laws:**

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

114 **Sectarian Activities:**

- 115 • WIOA funds may be used to train participants in religious activities when the assistance is provided
116 indirectly through an Individual Training Account (ITA).
117 • WIOA funds may not be used for employment in the construction, operation, or maintenance of any part
118 of a facility that is used or will be used for sectarian instruction or as a place for religious worship; with
119 the exception of maintenance of facilities that are not primarily used for instruction or for worship and
120 are operated by organizations providing services to WIOA participants.

121 **Complaints of Fraud, Waste and Abuse:**

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

126 **Funding and Program Restrictions:**

- 127 • WIOA Title I funds may not be spent on:
128 ○ The wages of incumbent employees during their participation in economic development
129 activities provided through a statewide workforce development system.
130 ○ Public service employment, except as specifically authorized under Title I of WIOA.
131 ○ Expenses prohibited under any other Federal, State or Local law or regulation.

- 132 ○ Any activity under this title that is used for employment generating activities, investment in
133 revolving loan funds, capitalization of businesses, investment in contract bidding resource
134 centers, economic development activities, or similar activities, that are not directly related to
135 training for eligible individuals under WIOA.
- 136 ● Programs will not impair existing contracts for services or result in the substitution of federal funds for
137 other funds in connection with work that would otherwise be performed, including services normally
138 provided by temporary, part-time, and seasonal or contract workers.
- 139 ● WIOA Title I funds will not be used for foreign travel.

140 Labor Standards:

- 141 ● No participant will be hired into or remain working in any position when the same or substantially
142 equivalent position is vacant due to a hiring freeze or lack of funds.
- 143 ● Programs will not impair existing:
 - 144 ○ Contracts for services; or
 - 145 ○ Collective bargaining agreements, unless the business and labor organization concur in writing
146 to the elements of proposed activities within 30 days of receipt.
- 147 ● When termination of participants is due to a hiring freeze, the service provider will attempt to place such
148 participants into other non-affected positions or attempt placement into unsubsidized jobs or into
149 another program or activity.
- 150 ● Whenever a promotional freeze affects non-WIOA funded employees, it will apply to WIOA participants
151 similarly employed.
- 152 ● No former employees laid off or terminated in anticipation of WIOA funding of a position may be rehired
153 under WIOA into such a position.
- 154 ● Participants in on-the-job training or individuals employed in activities under Title I of WIOA must be
155 compensated at the same rates, including periodic increases, as trainees or employees who are
156 similarly situated in similar occupations by the same business and who have similar training experience
157 and skills.
- 158 ● No participant will be hired into a position resulting in the displacement of a currently employed worker
159 (including partial displacement such as reduction in hours of non-overtime work, wages or employment
160 benefits).
- 161 ● No WIOA-subsidized participant will receive a promotion that would infringe upon the promotional
162 opportunities of currently employed workers.

163 Unionization/Anti-Unionization Activities and Work Stoppages:

- 164 ● Funds provided to businesses for work-based training will not be used to assist, promote or deter union
165 organizing.

166 Business Relocation

- 167 ● Funds provided under WIOA will not be used to encourage or induce relocation of an establishment or
168 any part that results in loss of employment for any employee at the original site.
- 169 ● Funds provided under WIOA will not be used for customized or skill training, on-the-job training, or
170 company-specific assessments of job applicants or employees for any business or any part of any
171 business, that has relocated, until 120 days after the date on which the establishment commences
172 operations at the new location, if the relocation results in a loss of employment for any employee at the
173 original site and the original site is within the United States.

174 Nondiscrimination and Equal Opportunity:

- 175 ● All eligible service and training providers receiving WIOA Title I funds must comply fully with the
176 nondiscrimination and equal opportunity provisions of WIOA.

- 177 • All programs will establish procedures to ensure against discrimination, sexual harassment in any form,
178 and foster equal opportunity and will issue a statement of assurance to be signed by the chief operating
179 official.
- 180 • Services providers are not required to designate Equal Opportunity Officers. Service providers should
181 however designate an individual who will serve as liaison with the State Equal Opportunity Officer.
- 182 • Provider agreements will contain assurance language that it will comply with Equal Opportunity
183 requirements of Section 188 of the Act, 29 CFR Part 37, and 1604, the Civil Rights Act of 1964, as
184 amended and all other applicable equal opportunity laws and regulations. The assurance may be
185 incorporated by reference.
- 186 • Discriminatory discharge prohibited: No person, organization or agency may discharge, or in any other
187 manner discriminate or retaliate against any person, or deny to any personal benefit to which that
188 person is entitled under the provisions of WIOA because such person has filed any complaint, instituted
189 or caused to be instituted any proceeding under or related to WIOA, has testified or is about to testify in
190 any such proceeding or investigation, or has provided information or assisted in an investigation.
- 191 • Sexual harassment/sex-based harassment is a violation of Section 703 of Title VII of the Civil Rights Act
192 of 1964. Assurances regarding nondiscrimination and equal opportunity apply to sexual harassment as
193 well.

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

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

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

- 205 • Although the Federal Government does not prohibit a State from testing participants for the use of
206 controlled substances and imposing sanctions, Montana will not implement or support any form of
207 testing for controlled substances or sanctioning participants.

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

- 209 • Recipients and sub-recipients must certify that their authorized representative will:
- 210 ○ Have the legal authority and the institutional managerial and financial capability to ensure
211 proper planning, management, and completion of WIOA Title I programs.
 - 212 ○ Give the Comptroller General of the United States and the State of Montana, through any
213 authorized representative, access to and the right to examine all records, books, papers, or
214 documents related to WIOA Title I programs; and will establish a proper accounting system in
215 accordance with generally accepted accounting standards or agency directives.
 - 216 ○ Establish safeguards to prohibit employees from using their positions for a purpose that
217 constitutes or presents the appearance of personal or organizational conflict of interest or
218 personal gain.
 - 219 ○ Initiate and complete work relating to financial and management information system reporting
220 requirements within acceptable time frames.
 - 221 ○ Comply with 2 CFR 200.334 regarding the retention of records.
 - 222 ○ Participate in and perform the required financial and compliance audits in accordance with the
223 Single Audit Act Amendments of 1996 and OMB Circular A-133, Audits of States, Local
224 Governments, and Non-Profit Organizations.

225 **Monitoring and Evaluation:**

- 226 • Recipients and sub-recipients must demonstrate the existence of:
- 227 ○ Conflict of interest assurances;
- 228 ○ Certification regarding lobbying;
- 229 ○ Drug-free workplace requirement certification;
- 230 ○ Certification regarding debarment, suspension, and other responsibility matters;
- 231 ○ Standard assurances for non-construction programs; and
- 232 ○ Nondiscrimination and equal opportunity assurances.

233 **References:**

- 234 • [2 CFR 200.112 Conflict of Interest](#)
- 235 • [20 CFR 683.200 Fiscal and Administrative Rules](#)
- 236 • [WIOA Section 195 Restrictions on Lobbying Activities](#)
- 237 • [29 CFR 93 New Restrictions on Lobbying](#)
- 238 • [MCA Title 5 Chapter 7 Lobbying](#)
- 239 • [WIOA Section 194 \(6\) Political Practices](#)
- 240 • [41 U.S.C 53 Prohibited Conduct](#)
- 241 • [WIOA Section 194 \(5\) Charging Fees](#)
- 242 • [MCA 2017 Title 2 Chapter 2 Nepotism](#)
- 243 • [MCA 2017 Title 41 Chapter 2 Child Labor Standards Act](#)
- 244 • [18 U.S.C. 665 - 666 Theft or embezzlement from Employment and Training Funds](#)
- 245 • [20 CFR 683.260 Prohibitions of Business Relocation](#)
- 246 • [29 CFR Subtitle A, Part 2, Subpart D Equal Treatment for Religious Organizations](#)
- 247 • [2 CFR 200.334 Retention Requirements for Records](#)
- 248 • [FAR 52.209-5 Certification Regarding Responsibility Matters \(Debarment\)](#)