STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE SERVICES
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Workforce Services Memorandum – Prohibition of Local Workforce Development Boards as Direct Providers of One-Stop System Services

Date: August 24, 2017

To: Chief Local Elected Officials
Local Workforce Development Board Chairs
Local Workforce Development Board Staff

Subject:
Restrictions on LWDBs and their staff as direct providers of One-Stop Delivery system services.

Purpose:
The purpose of this communication is to address questions posed by Local Workforce Development Board (LWDB) staff concerning whether or not One-Stop Delivery system services *(specifically in relation to Senior Community Service Employment Program, RESEA, SNAP E&T, and Youth*) can be directly provided by LWDBs or their staff. LWDBs, including entities selected to serve as staff, are prohibited from serving as a direct service provider of One-Stop Delivery system services.

Scope:
Adult Education (AE), American Job Center (AJC), American Job Center Operator (AJC Operator), American Job Center Access Point (AJC Access Point), Chief Local Elected Official (CLEO), Division of Workforce Services (WFS), Local Workforce Development Areas (LWDAs), Local Workforce Development Boards (LWDBs), Office of the Governor, Office of Registered Apprenticeship (RA), Rehabilitation Services (RS), Regional Council (RC), State Workforce Development Board (SWDB), Tennessee Department of Economic and Community Development (TDECD), Tennessee Department of Education (TDOE), Tennessee Department of Human Services (TDHS), Tennessee Department of Labor and

Workforce Development (TDLWD), Tennessee Eligible Training Providers (TTPLs), Workforce Innovation and Opportunity Act (WIOA), Workforce System Subrecipients (Subrecipients), Workforce System Partners (Partners)

References:
Conflict of Interest Policy; One-Stop Delivery and Design System Policy; WIOA Section 107(d); WIOA Section 107(d)(8); WIOA Section 107(d)(10)(D); WIOA Section 107(d)(10)(E); WIOA Section 134; WIOA Section 134(c)(2)(C); WIOA Section 134(c)(3)(C); WIOA Section 134(c)(3)(D), WIOA Section 121, WIOA Section 128, WIOA Section 171

Background:
LWDBs, and entities selected to serve as staff to the board, are prohibited from serving as a direct service provider within the One-Stop Delivery system. The requirements for LWDBs to contract out career services, training services, work experience activities, and other related One-Stop Delivery system services are outlined in WIOA Sections 107 and 134. Additionally, guidelines to LWDB's on the requirements of contracting with service providers are found within the State Workforce Development Board (SWDB) "One-Stop Design and Delivery System" and "Conflict of Interest" policies.

According to WIOA Section 107(d), the roles of the LWDB and its staff are to:

- Submit the local plan to the Governor;
- Assist in the development and implementation of the local plan;
- Convene local workforce development system stakeholders to assist in the development of the local plan;
- Engage with a diverse range of employers;
- Lead efforts to develop and implement career pathways within the local area by aligning employment, training, education and supporting services;
- Identify and promote proven, promising strategies and initiatives for meeting the needs of employers, workers and jobseekers;
- Develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, workers and job seekers;
- Ensure the appropriate use, management, and investment of funds to maximize performance outcomes;
- Negotiate performance accountability measures with the Governor and Chief Local Elected Official;
- Designate, certify, or terminate the One-Stop Operators;
- Coordinate activities with education and training providers;
- Develop a budget subject to the approval of the Chief Local Elected Official; and
- Assess the physical and programmatic accessibility of all One-Stop Centers in the local area

Services related to Tennessee Department of Labor and Workforce Development (TDLWD) contracts, subreceipent funding, and WIOA must be contracted to service providers. The LWDB is responsible for competitively awarding contracts as they relate to One-Stop Delivery system services. LWDBs are the ultimate decision maker when awarding contracts at the LWDA level.

However, this rule does not prohibit an entity serving as staff to the LWDB from providing services outside of the One-Stop Delivery system. (Such as transportation programs, meals on wheels, youthbuild, etc.)

1) ***May a local workforce development board or their staff provide Senior Community Services Employment Program (SCSEP) services?***
   LWDBs, and entities selected to serve as staff to the board, are prohibited from serving as direct provider of SCSEP services. This regulation is pursuant to WIOA Section 134 and the "Conflict of Interest" and "One-Stop Design and Delivery System" policies approved by the SWDB.

   "[SCSEP] is a community service and work-based job training program for older Americans. Authorized by the Older Americans Act, the program provides training for low-income, unemployed seniors. Participants also have access to employment assistance through American Job Centers.

   "SCSEP participants gain work experience in a variety of community service activities at non-profit and public facilities, including schools, hospitals, day-care centers, and senior centers. The program provides over 40 million community service hours to public and non-profit agencies, allowing them to enhance and provide needed services. Participants work an average of 20 hours a week, and are paid the highest of federal, state or local minimum wage. This training serves as a bridge to unsubsidized employment opportunities for participants." (https://www.doleta.gov/seniors/)

   SCSEP is classified as a one-stop system program and activity under **WIOA Section 121(B)(v)**. Services under 121, including SCSEP services, must be provided through contractual service providers.

   WIOA Section 134(c)(3)(C):
   PROVIDER QUALIFICATION.—Training services shall be provided through providers identified in accordance with section 122.

   Excerpt from WIOA Section 134(c)(3)(D):
   TRAINING SERVICES.—Training services may include—
   (i) *occupational skills training, including training for nontraditional employment;*
   (ii) on-the-job training;
   (iv) programs that combine workplace training with related instruction, which

may include cooperative education programs;
(ix) job readiness training provided in combination with services described in any of clauses (i) through (viii)
(xi) *customized training conducted with a commitment by an employer or* group *of employers to employ an individual upon successful completion of the training*

WIOA Section 134(c)(2)(C):
DELIVERY OF SERVICES.—The career services described in subparagraph (A) shall be provided through the one-stop delivery system—
(i) directly through one-stop operators identified pursuant to section 121(d); or
(ii) through contracts with service providers, which may include contracts with public, private for-profit, and private nonprofit service providers, approved by the local board.

State Workforce Development Board Policies Prohibiting Local Workforce Development Boards as Direct One-Stop System Service Providers:
The SWDB Conflict of Interest policy requires that: "*Local Workforce Development Board and its members, or its administrative staff members do not directly control the daily activities of its workforce service providers, its workforce system partners, or its contractors.*"

The above reference can be located by clicking the following link: *https://www.tn.gov/assets/entities/labor/attachments/Completed_WFS_Policy_-_Conflict_of_Interest_-_WIOA.PDF*

Furthermore, the SWDB One-Stop Design and Delivery System policy states the LWDB must acknowledge: "*the prohibition against the LWDB directly delivering services to include a statement that the LWDB shall ensure that the LWDB, its members, and its employees do not directly control or supervise the daily activities of its workforce service providers.*"

The above reference can be located by clicking the following link: *https://www.tn.gov/assets/entities/labor/attachments/WFS_Policy_-_One-Stop_Delivery_and_Design_System_-_WIOA_2017.pdf*

SCSEP is classified as a work-based, job-training program and is applicable to the standards set forth in WIOA Section 134, as outlined above. Therefore, based on WIOA Section 134 and the SWDB policies, these services must be contracted out and delivered through eligible contracted providers.

2) ***May a local workforce development board or their staff provide youth services?***
LWDBs, and entities selected to serve as staff to the board, must not be direct providers of youth services consistent with WIOA sections 107 and 123. Entities serving as staff to the board must not receive a contract to deliver youth services. However, entities receiving *youthbuild grants under WIOA Section 171 may serve as a*

direct provider of youthbuild services as permitted under Section 171. The service delivery must be limited to the activities outlined in Section 171 of the youthbuild program.

WIOA Section 171:
(h) SUBGRANTS AND CONTRACTS.—Each recipient of a grant under subsection (c) to carry out a YouthBuild program shall provide the services and activities described in this section directly or through subgrants, contracts, or other arrangements with local educational agencies, institutions of higher education, State or local housing development agencies, other public agencies, including agencies of Indian tribes, or private organizations.

Youth funds allocated through TDLWD under WIOA section 128 (b), must be contracted out to eligible youth service providers. Entities serving as staff to the board may not serve as youth service providers as it relates to services in WIOA section 107, 123, and 128 due not firewall restrictions related to the LWDB (including staff) as serving as direct one-stop system service providers.

WIOA Section 123:
(a) IN GENERAL.—*"From the funds allocated under section 128(b) to a local area, the local board for such area shall award grants or contracts on a competitive basis to providers of youth workforce investment activities identified based on the criteria in the State plan..."*

WIOA Section 107(d)(10):
SELECTION OF OPERATORS AND PROVIDERS.—

(B) SELECTION OF YOUTH PROVIDERS.—Consistent with section 123, the local board—

(i) shall identify eligible providers of youth workforce investment activities in the local area by awarding grants or contracts on a competitive basis (except as provided in section 123(b)), based on the recommendations of the youth standing committee, if such a committee is established for the local area under subsection (b)(4);

The One-Stop Design and Delivery System and Conflict of Interest policies, and WIOA Section 107(10)(B), prohibit LWDBs (including entities selected to serve as staff to the board) from providing youth services or being awarded youth contracts. Youth contracts must be competitively awarded as outlined in WIOA Section 107(10)(B)(i). Entities receiving youthbuild grants under section 171 may serve as a direct provider of services for those services offered under the youthbuild in section 171.

3) ***May an LWDB and or their staff deliver RESEA and SNAP E&T Services?***

RESEA and SNAP E&T are classified as services under Title III, and therefore must be delivered by the One-Stop Operator or other contracted service providers. WIOA Sections 107(d)(10)(D) and 107(d)(10)(E) outline the requirements for contracting service providers. The Conflict of Interest and One-Stop Design and Delivery System policies prohibit the LWDB, including entities selected to serve as staff to the board, from directly providing these services. Furthermore, the LWDB (including entities selected to serve as staff to the board) are required under WIOA Section 107 to provide oversight of the activities and services of programs such as RESEA and SNAP E&T. The role of the LWDB, including entities selected to serve as staff to the board, is oversight and not direct delivery of services.

WIOA Section 107(d)(10)(D):

IDENTIFICATION OF ELIGIBLE PROVIDERS OF CAREER SERVICES.—*If the one-stop operator does not provide career services described in section 134(c)(2) in a local area, the local board shall identify eligible providers of those career services in the local area by awarding contracts.*

WIOA Section 107(d)(10)(E):

CONSUMER CHOICE REQUIREMENTS.—*Consistent with section 122 and paragraphs (2) and (3) of section 134(c), the local board shall work with the State to ensure there are sufficient numbers and types of providers of career services and training services (including eligible providers with expertise in assisting individual with disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities) serving the local area and providing the services involved in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities.*

Excerpt from WIOA Section 107(d)(8):

PROGRAM OVERSIGHT.—The local board, in partnership with the chief elected official for the local area, shall—

(i) conduct oversight for local youth workforce investment activities authorized under section 129(c), local employment and training activities authorized under subsections (c) and (d) of section 134, and the one-stop delivery system in the local area; and

(ii) ensure the appropriate use and management of the funds provided under subtitle B for the activities and system described in clause (i); and

(B) for workforce development activities, ensure the appropriate use management, and investment of funds to maximize performance outcomes under section 116

State Workforce Board Policies Addressing LWDBs as Direct Providers of One-Stop System Services:

The Conflict of Interest and One-Stop Design and Delivery System policies outline the restrictions on LWDBs, and entities selected to serve as staff to the board, from serving as a direct provider of One-Stop system services. SCSEP, RESEA, SNAP E&T, and Youth are included in the restriction as it relates to One-Stop Delivery system services.

In order to be compliant with WIOA regulations and SWDB policies, LWDBs must ensure that One-Stop Delivery system services are contracted out to providers outside of the entities serving as staff to the board or fiscal agent. LWBDs may work with their existing One-Stop Operators or service providers to provide SCSEP, RESEA, SNAP E&T, and Youth services, or LWDBs may refer to WIOA Section 107(E) consumer choice requirements and contract with other eligible providers.

Contact:

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