

WORKFORCE SERVICES

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CONDITIONS AND ASSURANCES

ADMINISTRATIVE STANDARDS

All recipients and subrecipients including contractors, and service providers receiving Workforce Innovation and Opportunity Act funds must operate under WIOA law and regulations that prohibit certain activities. Activities in any of these prohibited areas will be cause for disciplinary measures and the possible de-obligation of funds.

A. Conflict of Interest

1. Each recipient and subrecipient shall avoid organizational conflicts of interest, and their personnel shall avoid personal conflicts of interest and the appearance of any conflict of interest in awarding financial assistance, as well as in the conduct of procurement activities involving funds under the Act.
2. Neither the recipient nor subrecipient shall pay funds under the Act to any nongovernmental individual, institution or organization to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor.
3. Each recipient and subrecipient shall maintain a written code of standards of conduct governing the performance of persons engaged in the award and administration of WIOA contracts and provider agreements.
4. Each recipient and subrecipient shall ensure that no individual in a decision making capacity, including State Workforce Innovation Board members, (whether compensated or not) shall engage in any activity, including participation in the selection, award, or administration of a provider agreement or contract supported by WIOA funds if a conflict of interest, real or apparent, would be involved. Such conflict would arise when the individual, any member of the individual's immediate family, the individual's partner, or an organization that employs, or is about to employ, any of the above has a financial or other interest in the firm or organization selected for award.
5. The officers, employees, or agents of the agency making the award will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to provider agreements.
6. To the extent permitted by State or local law or regulation, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the awarding agency's officers, employees, or agents, or by contractors or their agents.
7. In accordance with the requirements at 2 CFR 200.112, recipients of Federal awards must disclose in writing any potential conflict of interest to the Department. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

WIOA Regs. 20 CFR Part 683.200

B. Lobbying Activities

1. All WIOA Title I recipients and subrecipients must comply with the restrictions on lobbying as specified in WIOA Law Sec. 195 and codified in USDOL's regulations at 29 CFR Part 93.
2. No funds provided under the Act may be used in any way to attempt to influence in any manner:
 - a. a member of Congress, an officer or employee of Congress, or an employee of a member of Congress to favor or oppose any legislation or appropriation by Congress; or
 - b. state or local legislators to favor or oppose any legislation or appropriation by such legislators. Communications and consultation with state and local legislators for purposes of providing information such as on matters necessary to provide compliance with the Act shall not be considered lobbying.
3. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress that may be connected to Federal contracts, grants, loan or cooperative agreement relating to the Act, a Standard Form – LLL, "Disclosure Form to Report Lobbying" shall be completed and submitted in accordance with its instructions.

Certification regarding lobbying language must be included in all award documents for all sub-awards at all tiers (including subcontracts, provider agreements, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Submission of certification regarding lobbying is a pre-requisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

29 CFR Part 93

C. Political Activities or Patronage

1. Political Activities

- a. No recipient, subrecipient or participant may engage in partisan or nonpartisan political activities during hours for which the individual is paid with WIOA funds.
- b. No recipient, subrecipient or participant may, at any time engage in partisan or nonpartisan political activities in which such individual represents himself/ herself as a spokesperson of the WIOA program.
- c. No participant may be employed or out-stationed in the office of a member, a State or local legislator or on any staff of a legislative committee.
- d. No participant may be employed or out-stationed in the immediate office of any chief-elected executive official (or officials, if the office of chief executive is shared by more than one person) of a State or unit of general local government, except that:
 - (1) Units of local government in rural areas may employ participants in such positions provided that documentation is presented to and approved by the State Administrative Entity prior to employment, which makes clear that such positions are nonpolitical; and
 - (2) Where positions are technically in such office, but are actually program activities not in any way involved in political functions, documentation attesting to the nonpolitical nature of the positions is to be provided to the State Administrative Entity for approval prior to enrollment of participants in such positions.
- e. No participant may be employed or out-stationed in positions involving political activities in the offices of other elected executive officials. However, since under the responsibility of such elected officials are non-political activities, placement of participants in such nonpolitical positions is permissible.
- f. Persons governed by Chapter 15 of Title 5, United States Code, the Hatch Act, shall comply with its provisions as interpreted by the United States Office of Personnel Management. These provisions apply:
 - (1) To persons (including participants) employed by state and local government in the administration of the WIOA program; and
 - (2) Generally to any participant whose principal employment is in connection with an activity financed by other federal grants or loans.

2. Political Patronage

- a. No recipient or subrecipient may select, retain, or promote staff or participants based on that individual's political affiliation or beliefs. The selection or advancement of employees as a reward for political services or as a form of political patronage whether or not the political service or patronage is partisan in nature, is prohibited.
- b. There shall be no selection of service providers or contractors based on political patronage or affiliation.

WIOA Sec. 194(6)

D. Kickbacks/Fees

No officer, employee or agent of any recipient or subrecipient shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential subrecipient or contractor.

41 U.S.C. 53

E. Charging of Fees

Nothing in this section shall be interpreted as prohibiting the recipient or subrecipient from entering into an agreement for the purpose of obtaining outreach, recruitment and/or intake services, and placement of participants into unsubsidized jobs as part of its approved plan, provided the individuals served are not charged a fee.

WIOA Sec. 194(5)

F. Nepotism

No individual may be placed in a WIOA employment activity or receive WIOA services directly if that person's immediate family is directly supervised by or directly supervises that individual.

20 CFR 683.200

G. Child Labor Laws

All recipients and subrecipients shall comply with applicable federal, state, and local child labor laws.

29 CFR Part 570

H. Sectarian Activities

- 1. WIOA funds may be used to train participants in religious activities when the assistance is provided indirectly through an Individual Training Account.

2. WIOA funds may not be used for employment in the construction, operation, or maintenance of any part of any facility that is used or will be used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or for worship and are operated by organizations providing services to WIOA participants. **WIOA Sec. 188(a)(3); 20 CFR Part 683.255; 29 CFR Part 2, subpart D, and 29 CFR Part 38.6(f)(1)**

I. Criminal Activities

Criminal activities, including theft or embezzlement of employment and training funds, bribery, improper inducement, and obstruction of investigations in federally funded employment and training programs are prohibited under criminal provisions at 18 U.S.C. 665 and 666. The process for reporting criminal activities is described in WIOA Regulations.

20 CFR Part 683.620

J. Funding and Program Restrictions

1. WIOA Title 1 funds must not be spent on:
 - a. The wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system.
 - b. Public service employment, except as specifically authorized under Title I of WIOA.
 - c. Expenses prohibited under any other Federal, State or local law or regulation.
 - d. Subawards or contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities.
 - e. Contracts with persons falsely labeling products made in America.
 - f. WIOA Title I funds shall not be used for foreign travel.
2. Any activity under this title that is used for employment generating activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, that are not directly related to training for eligible individuals under this title.
3. Programs will not impair existing contracts for services or result in the substitution of federal funds for other funds in connection with work that would otherwise be performed, including services normally provided by temporary, part-time or seasonal workers or through contracting such services out.

**WIOA Sections 181 and 194
20 CFR Part 683.250**

K. Labor Standards

1. No participant shall be hired into or remain working in any position when the same or substantially equivalent position is vacant due to a hiring freeze, unless the recipient can demonstrate that the freeze resulted from a lack of funds to sustain staff and was not established in anticipation of the availability of funds under the Act.
2. Programs will not impair existing:
 - a. Contracts for services; or
 - b. Collective bargaining agreements unless the employer and labor organization concur in writing with respect to the elements of proposed activities within 30 days of receipt.
3. When termination of participants is due to a hiring freeze the service provider shall make an attempt to place such participants into other non-affected positions or attempt placement into unsubsidized jobs or into another program or activity.
4. Whenever a promotional freeze affects non-WIOA funded employees it shall apply to WIOA participants similarly employed.
5. No former employees laid off or terminated in anticipation of WIOA funding of a position may be rehired under WIOA into such a position.
6. Participants in on-the-job training or individuals employed in activities under Title I of WIOA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training experience and skills.
7. No participant shall be hired into a position resulting in the displacement of a currently employed worker (including partial displacement such as reduction in hours of non-overtime work, wages or employment benefits).
8. No participant shall receive a promotion that would infringe in any way upon the promotional opportunities of currently employed workers.

**WIOA Sec. 181
20 CFR Part 683.275**

L. Unionization/Anti-unionization Activities and Work Stoppages

1. No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional training involves individuals employed under a collective bargaining agreement, which contains a union security provision.

2. No participant in work experience or vocational exploration may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. If such a work stoppage occurs during the grant period, participants in affected positions must:
 - a. Be relocated to positions not affected by the dispute;
 - b. Be suspended through administrative leave; or
 - c. Where participants belong to the labor union involved in work stoppage, be treated in the same manner as any other union member except such members must not remain working in the affected position. The service provider shall make every effort to relocate participants who wish to remain working into suitable positions unaffected by the work stoppage.
3. No person shall be referred to or placed in an on-the-job training position affected by a labor dispute involving a work stoppage and no payments may be made to employers for the training and employment of participants in on-the-job training during the periods of work stoppage.
4. No funds provided to employers for work-based training may be used to assist, promote or deter union organizing.

WIOA Sec. 181(b)
20 CFR Parts 680.850; 683.275

M. Business Relocation

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

WIOA Sec. 181
20 CFR Part 683.260

N. Employment Generating/Economic Development

Funds provided under the Act shall not be used for employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities that are not directly related to training for eligible individuals under this title.

WIOA Sec. 181

O. Nondiscrimination and Equal Opportunity

1. All eligible service and training providers receiving WIOA Title IB funds must comply fully with the nondiscrimination and equal opportunity provisions of WIOA Section 188 and Equal Opportunity and Nondiscrimination Regulations at 29 CFR Part 38.
2. All programs shall establish procedures to ensure against discrimination, sexual harassment in any form, and foster equal opportunity and shall issue a statement of assurance to be signed by the chief operating official.
3. Service providers are **not** required to designate Equal Opportunity Officers. Service providers should however designate an individual who will serve as liaison with the State Equal Opportunity Officer.
4. Provider agreements will contain assurance language that it will comply with Equal Opportunity requirements of Section 188 of the Act, 29 CFR Part 38, and 1604, the Civil Rights Act of 1964 and all other applicable equal opportunity laws and regulations. The assurance may be incorporated by reference.
5. Discriminatory discharge prohibited. No person, organization or agency may discharge, or in any other manner discriminate or retaliate against any person, or deny to any person a benefit to which that person is entitled under the provisions of the Act because such person has filed any complaint, instituted or caused to be instituted any proceeding under or related to the Act, has testified or is about to testify in any such proceeding or investigation, or has provided information or assisted in an investigation.

WIOA Sec. 181, 188; 29 CFR Part 38

6. Sexual Harassment/Sex-Based Harassment. Harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964. Assurances regarding nondiscrimination and equal opportunity apply to sexual harassment, as well.

29 CFR 1604.11; 29 CFR Part 34

P. Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

1. All eligible service and training providers receiving WIOA Title 1B funds must comply fully with the provisions of 29 CFR part 2, subpart D (29 CFR 2.30), and ensure that DOL-supported social service programs are open to all qualified organizations, regardless of the organizations' religious character, and to clearly establish the permissible uses to which DOL support for social service programs may be put, and the conditions for receipt of such support.
2. In addition, providers must ensure that the Department's social service programs are implemented in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

29 CFR Part 2, Subpart D (29 CFR 2.30)

Q. Testing and Sanctioning for Use of Controlled Substances

Notwithstanding any other provision of law, the Federal Government shall not prohibit a State from:

1. Testing participants in programs under Title IB for the use of controlled substances; and
2. Sanctioning such participants who test positive for the use of such controlled substances.
 - a. **Period of Sanction:** In sanctioning participants in a program under subtitle B who test positive for the use of controlled substances:
 - (1) with respect to the first occurrence for which a participant tests positive, a State may exclude the participant from the program for a period not to exceed 6 months; and
 - (2) with respect to the second occurrence and each subsequent occurrence for which a participant tests positive, a State may exclude the participant from the program for a period not to exceed 2 years.
 - b. **Appeal:** The testing of participants and the imposition of sanctions under this subsection shall be subject to expeditious appeal in accordance with due process procedures established by the State.

WIOA Law Sec. 181

ASSURANCES AND CERTIFICATIONS

As recipients of WIOA Title IB adult, youth, and dislocated worker funds, service providers must obtain and have posted the following certifications and assurances.

1. Certification Regarding Lobbying (29 CFR Part 93)
2. Drug-Free Workplace Requirements Certification (29 CFR Part 98)
3. Nondiscrimination And Equal Opportunity Assurance (29 CFR Part 38)
4. Certification Regarding Debarment, Suspension, And Other Responsibility Matters Primary Covered Transactions (29 CFR Part 98)
5. Standard Assurances For Non-Construction Programs

All recipients of WIOA Title IB funds including service providers, eligible training providers, on-the-job training and work experience worksites and participants are made aware of the certifications and assurances. Facsimile of certifications and assurances are included in this policy.

All grants, Memoranda of Understanding or Agreement, provider agreements or any other formal contract paid in full or in part with WIOA Title IB funds must contain the following assurances or, at a minimum must be referenced.

A. Certification Regarding Lobbying

As the duly authorized representative, the Grantee certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The Grantee shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, provider agreements, and contracts under grants, loans, and cooperative agreements) and that all s shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. Certification Regarding Drug-Free Workplace Requirements

As the duly authorized representative, the grantee certifies that it will provide a drug-free workplace by:

1. Publishing a statement, signed by the authorized authority, notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establishing an ongoing drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The grantee's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Making it a requirement that each employee engaged in or that plans to engage in the performance of WIOA federally funded grants be given a copy of the statement required by paragraph (1);
4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the Department in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Ensure that all recipients of WIOA Title IB funds including participants, service and training providers provide notification that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited at service and training provider sites and specify the actions that will be taken against employees for violations of such prohibition;
8. Making a good faith effort that the Grantee and provider worksites maintain a drug-free workplace through implementation of paragraphs (1)-(7).

C. Nondiscrimination and Equal Opportunity Assurance

As the duly authorized representative the Grantee assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- a. WIOA Equal Opportunity and Nondiscrimination Regulations 29 CFR Part 38 and Section 188 of the Workforce Innovation and Opportunity Act of 2014 which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title IB financially assisted program or activity;
- b. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;
- c. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- d. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age;
- e. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs; and
- f. The South Dakota Human Rights Act of 1972.

This assurance applies to the Grantee's operation of the WIOA Title IB financially assisted program or activity, and to all agreements the Grantee makes to carry out the WIOA Title IB financially assisted program or activity. The Grantee understands that the Grantor (Statewide Workforce Programs and Oversight Bureau) has the right to seek judicial enforcement of this assurance.

D. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

As the duly authorized representative the Grantee certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

E. Assurances – Non-Construction Programs

As the duly authorized representative the Grantee certifies that this agency:

1. Has the legal authority and the institutional managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of WIOA Title IB programs.
2. Will give the Comptroller General of the United States and the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to WIOA Title IB programs; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete work relating to financial and management information system reporting requirements within acceptable time frames.
5. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) all other laws incorporated into or referenced in the Workforce Innovation and Opportunity Act of 2014, including, Title VI of the Civil Rights Act as amended; (b) Title IX of the Education Amendments of 1972, as amended; (c) Section 504 of the Rehabilitation Act as amended; (d) the Age Discrimination Act of 1975, as amended; (e) the Drug Abuse Office and Treatment Act of 1972 (PL 91-616) as amended; (f) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 DD.3 AND 290 EE.3) as amended, relating to confidentiality of alcohol and drug abuse patient records; (g) Title VIII of the Civil Rights Act of 1968 as amended; (h) Military Selective Service Act; (i) Nontraditional Employment for Women Act; and (j) Department of Labor Federal Regulations at 29 CFR Parts 34 and 1604.
6. Will comply with **OMB Uniform Guidance 2 CFR Part 200.333** regarding the retention of records;
7. Will certify if requested, in accordance with 29 CFR Part 98, Section 98.510, that neither it nor its one-stop operators, service providers or training providers are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
8. Will comply as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a. to 276a. 7), the Copeland Act (40 U.S.C. 276c. and 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act (40.327-333), regarding labor standards for federally assisted construction sub-agreements.
9. Will comply with the provisions of the Hatch Act (U.S.C. 1501-1508 and 7324-7328), which limit political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
10. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.
11. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing WIOA Title IB programs.