

POLICY ISSUANCE 2016-09



WIOA Memoranda of Understanding & Resource Sharing Agreements | September 27, 2016

- TO:** DLLR Division of Workforce Development and Adult Learning (DWDAL) staff;
DLLR Division of Unemployment Insurance staff;
Local Workforce Development Area directors;
Local Administrators of WIOA Title II Adult Education provider programs;
DORS Regional Directors and Supervisors staff;
Department of Human Resources staff;
Local Departments of Social Services staff
- FROM:** Maryland Department of Labor, Licensing and Regulation (DLLR);
Maryland State Department of Education, Division of Rehabilitation Services (DORS);
Maryland Department of Human Resources (DHR);
Governor's Workforce Development Board (GWDB)
- SUBJECT:** WIOA Memoranda of Understanding & Resource Sharing Agreements
- PURPOSE:** To provide comprehensive policy guidance on the Workforce Innovation and Opportunity Act (WIOA) Memoranda of Understanding (MOUs) and Resource Sharing Agreements (RSAs)
- ACTION:** The following entities will ensure all employees are aware of and receive copies of this policy: Local Workforce Development Area directors; American Job Center labor exchange administrators; DWDAL central office managers; Local administrators of WIOA Title II Adult Education provider programs; Unemployment Insurance Assistant Secretary's Office; DORS Director of Administration and Finance, Director of Field Services, and Regional Directors; Local Departments of Social Services Directors; Child Support Enforcement Administration; Family Investment Administration; Social Services Administration. WIOA policies are available [on the DLLR website](#).

EXPIRATION: Until cancelled and replaced

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CANCELLATIONS

The following are hereby **cancelled and replaced** by this policy issuance:

- Workforce Investment Field Instructions (WIFI) 06-10, “Local Planning Guidelines,” dated March 28, 2011;
- WIFI 10-06—Change 2, “Local Workforce Investment Five-Year Plan (PY2007/PY2008),” dated April 18, 2008;
- WIFI 10-06—Change 1, “Local Workforce Investment Five-Year Plan (PY2007/PY2008),” dated April 20, 2007;
- WIFI 10-06, “Local Workforce Investment Five-Year Plan (PY2007/PY2008),” dated February 14, 2007;
- WIFI 10-05, “Extension of Local Workforce Investment Act Five-Year Plans,” dated April 28, 2006;
- WIFI 03-04—Change 3, “Development of Memorandum of Understanding (MOU) and Resource Sharing Agreement (RSA),” dated August 1, 2005;
- WIFI 03-04—Change 2, “Extension of Local Workforce Investment Act Five-Year Plans,” dated May 2, 2005;
- WIFI 03-04—Change 1, “Extension of Local Workforce Investment Act Five-Year Plans,” dated May 2, 2005;
- WIFI 03-04, “Extension of Local Workforce Investment Act Five-Year Plans,” dated February 23, 2005;
- WIFI 07-03—Change 1, “Local WIA Planning Guidelines for Program Year 2004,” dated April 29, 2004;
- WIFI 05-02, “Local WIA Planning Guidelines for Program Year 2003,” dated April 15, 2003;
- WIFI 04-01, “Local WIA Planning Guidelines for Program Year 2002,” dated March 26, 2002;
- WIFI 06-00, “Local WIA Planning Guidelines for Program Year 2001,” dated May 10, 2001;
- WIFI 10-99—Change 1, “Provision of Training to Special Participant Populations Facing Multiple Barriers to Employment,” dated June 14, 2000;
- WIFI 10-99, “Local Comprehensive Workforce Investment Act Five Year Plan,” dated January 4, 2000; and,
- WIFI 05-99, “Development of the Memorandum of Understanding (MOU),” dated December 6, 1999;

Archived policies are available at: <http://www.dllr.state.md.us/employment/>.

GENERAL INFORMATION

WORKFORCE INNOVATION & OPPORTUNITY ACT (WIOA)

The Workforce Innovation and Opportunity Act (WIOA) was signed into law on July 22, 2014, and went into effect July 1, 2015. WIOA supersedes the Workforce Investment Act of 1998 (WIA) and amends the Adult Education and Family Literacy Act, the Wagner Peyser Act, and the Rehabilitation Act of 1973. To help both businesses and job seekers meet their needs, the workforce system established under WIOA is integrated by design. WIOA envisions connecting businesses with job seekers, through meaningful partnerships among workforce, education, human services, and economic development entities which ensure optimum results and leveraging of resources. The law addresses the needs of job seekers through establishing a workforce system that helps them access employment, education, training and support services to succeed in the labor market. Through American Job Centers¹ (AJCs), WIOA works to address employer needs by matching them to the skilled workers they need to compete in the global economy.

The following chart identifies each of Maryland's WIOA programs that must play a role in the State's WIOA Memoranda of Understanding (MOUs) and Resource Sharing Agreements (RSAs). As described in Maryland's WIOA Combined State Plan, Governor Hogan has directed the Department of Labor, Licensing and Regulation (DLLR), the Department of Human Resources (DHR), and the Maryland State Department of Education (MSDE), in coordination with the Governor's Workforce Development Board (GWDB), to play key leadership roles in the implementation of the Workforce Innovation and Opportunity Act. The inclusion of the programs identified below, in combination, is meant to ensure that Maryland effectively leverages its existing resources to deliver outstanding customer service to workers and businesses that are vital to Maryland's economic growth and prosperity.

In relation to WIOA MOUs, the law outlines that these entities are required to:

- Provide access through the State's workforce system to programs or activities carried out by the entity;
- Use a portion of the funds available for the program and activities to maintain the State's workforce system, including payment of infrastructure costs of American Job Centers in accordance with WIOA Section 121(h);
- Enter into a WIOA MOU with the Local Board, relating to the operation of the State's workforce system; and,
- Participate in the operation of the State's workforce system consistent with the terms of the WIOA MOU, the requirements of WIOA, and the requirements of the Federal laws authorizing the program or activities.

¹ WIOA Final Rules 678.900 designates the name "American Job Center" as the common identifier for the one-stop delivery system.

MARYLAND'S WIOA SYSTEM

Maryland WIOA Required Program	Core WIOA Program as determined by law	Additional WIOA Program as determined by Governor	Required Partner as defined in Section 121²	MD State Agency Responsible for Oversight
Adult Program <i>WIOA Title I</i>	•		•	DLLR
Dislocated Worker Program <i>WIOA Title I</i>	•		•	DLLR
Youth Program <i>WIOA Title I</i>	•		•	DLLR
Adult Education & Family Literacy Act Program <i>WIOA Title II</i>	•		•	DLLR
Wagner-Peyser Act Program <i>WIOA Title III</i>	•		•	DLLR
Vocational Rehabilitation Program <i>WIOA Title IV</i>	•		•	MSDE DORS
Temporary Assistance for Needy Families Program ³⁴		•	•	DHR
Trade Adjustment Assistance for Workers Program		•	•	DLLR
Jobs for Veterans State Grant Program		•		DLLR
Reintegration of Ex-Offenders Program ⁵		•		N/A
Title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.) activities ⁶			•	DLLR
Career and Technical Education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.)			•	MSDE
Community Services Block Grant Act (42 U.S.C. 9901 et seq.) employment and training activities			•	DHCD ⁷
Department of Housing and Urban Development's employment and training activities			•	N/A
Programs authorized under State unemployment compensation laws			•	DLLR

² See WIOA Section 121(B)

³ Temporary Assistance for Needy Families (TANF) is called Temporary Cash Assistance (TCA) in Maryland.

⁴ DHR, in partnership with the 24 Local Departments of Social Services and Maryland's WIOA required Partners, will implement this partnership using a phased-in approach over the next three years in all of Maryland's 12 local workforce development areas. See joint memo on Temporary Cash Assistance (TCA)/Workforce Innovation and Opportunity Act (WIOA) Partnership Update, dated July 7, 2016 as provided in the references to this policy for details.

⁵ No entity currently carries out the Reintegration of Ex-Offenders Program functions of Section 212 of the Second Chance Act of 2007 in Maryland. However, Maryland recognizes that the ex-offender population is a priority population and, as such, plans to incorporate any non-profit entity, who receives Section 212 grant funds from the USDOL into the Maryland WIOA system.

⁶ The Senior Community Service Employment Program was transferred to DLLR through legislation passed by the Maryland General Assembly and approved by Governor Hogan in 2016. See references for additional information. DLLR is responsible for oversight of SCEP in the following workforce areas: Baltimore City, Southern Maryland (Calvert, Charles, St. Marys), Western Maryland (Allegany, Garrett, Washington), and Upper Shore (Caroline, Kent, Queen Anne's, Talbot). In workforce areas where DLLR does not administer SCSEP, the U.S. Department of Labor is responsible for oversight.

⁷ Department of Housing and Community Development

WIOA MEMORANDA OF UNDERSTANDING

Under WIOA, the MOU serves as a critical mechanism towards ensuring that the roles and responsibilities of the entities involved with Maryland's workforce system are well-defined and mutually agreed upon for the successful operation of the integrated service delivery system in each local workforce area. Contingent on this successful operation is the efficient use of information technology, to include where possible the use of machine readable forms and shared management systems.

WIOA requires that a MOU be developed between the Local Workforce Development Board, the Chief Local Elected Official(s), and the American Job Center System Partners. In Maryland, at a minimum, the American Job Center System Partners providing services in the Local Area, referenced in the chart on page 6, must be members to the WIOA MOUs. An American Job Center System Partner is an entity that carries out programs or activities enumerated in Section 121(b)(1)(B), or those additional partners identified by the local board and chief elected official in accordance with Section 121 (b)(2).⁸

Local Areas may have additional entities that are integral to the Area's service delivery. With the approval of the Local Board and the Chief Elected Official, additional entities that carry out workforce development programs may participate in a Local Area's American Job Center delivery system.

Per WIOA Section 121(b)(2)(A), all entities that participate in an Area's workforce delivery system as Partners, whether required or additional, must be parties to the WIOA MOU and must abide by the terms prescribed and by applicable federal, State, and local rules, plans, and policies as applicable and authorized under each Partner's program and in keeping with federal guidelines. WIOA Section 121(b)(1)(A)(iv) further notes that the requirements of each Partner's authorizing legislation must continue to apply under the workforce system and that participation in the system is in addition to other requirements applicable to each Partner's program under each authorizing law.

WIOA RESOURCE SHARING AGREEMENTS

A Resource Sharing Agreement (RSA) is a key component of a WIOA MOU because it establishes the terms and conditions of how the shared costs of operations and key services of the American Job Center system will be funded. It includes funding of infrastructure and operating costs of the Centers, funding of shared services, and the leveraging of in-kind contributions, as appropriate. All of Maryland's mandatory WIOA Partners, as provided in the chart on page 6, shall negotiate in good faith and seek to establish RSAs that are equitable.

⁸ Note that there are some Parties to the MOU that are not "American Job Center Partners." For example, a chief elected official from a local area is a party to the MOU; however, he or she is not an American Job Center Partner as he or she is not an entity carrying out the programs or activities listed in Section 121.

REQUIRED COMPONENTS

This policy, approved by the Governor’s Workforce Development Board (GWDB), is a product of a joint agreement between the State’s workforce agencies (here after referred to as “the State” or “Maryland”). This joint effort is a systems approach to the formulation of MOUs and RSAs. Therefore, the following provisions must be contained with the WIOA MOU.

- Duration of MOU;
- Convening of Parties;
- System overview;
- Performance requirements and data sharing;
- Services offered through the American Job Center System;
- Referral arrangements;
- Resource Sharing Agreement;
- Dispute resolution process;
- Applicable law;
- Confidentiality;
- Modification;
- Termination;
- Non-assignment;
- Severability;
- Fair Practices certification;
- Assurances of non-discrimination and Equal Opportunity;
- Drug and alcohol free workplace;
- Certification regarding lobbying;
- Debarment and suspension;
- Priority of Service;
- Buy American Provision;
- Human trafficking;
- Salary compensation and bonus limitations; and,
- Signatures.

To ensure that all required components are contained in the WIOA MOUs, Maryland requires the use of *Attachment A - Memorandum of Understanding Sample Template*.

DURATION OF MOU

Pursuant to WIOA Section 121(c)(2)(A), WIOA MOUs must specify the duration of agreement to ensure proper delivery of services and funding. DLLR requires WIOA MOUs to be reviewed at least every two years.

CONVENING OF PARTIES

The Local Workforce Development Board is responsible for convening and working with American Job Center Partners to achieve consensus and informally mediate disagreements. The Local Board Chair (or designee) is responsible for providing technical assistance to new American Job Center Partners and local grant recipients to ensure they are aware of elements in the MOU and American Job Center infrastructure cost arrangement.

A Local Board may delegate its WIOA MOU convening authority to the Director of a Local Workforce Development Area or another designated signatory of the Local Workforce Development Area. This responsibility must be identified in the WIOA MOU.

The WIOA MOU convener is responsible for ensuring that all Parties have an opportunity to fully participate in the development of the WIOA MOU from start to finish. In addition, the WIOA MOU must identify all Partners with relevant addresses and contact information.

SYSTEM OVERVIEW

The WIOA MOU serves the key purpose of defining Partner roles and focuses, in part, on the shaping of the workforce system. This includes the sharing of resources, referral agreements, etc. In the end, the overall goal is to ensure efficiency within the Local Area's workforce system. As such, to ensure that all partners clearly understand the roles and responsibilities of each Partner under the workforce system, Maryland requires the use of a single umbrella MOU that applies to all Partners in the local area.

Each WIOA MOU must contain the following system overview statement:

WIOA was signed into law on July 22, 2014, and went into effect July 1, 2015. WIOA supersedes the Workforce Investment Act of 1998, and amends the Adult Education and Family Literacy Act, the Wagner-Peyser Act, and the Rehabilitation Act of 1973.

Providing businesses with the skilled workforce they need to compete in the global, regional, and local economies is central to Maryland's vision in implementing the federal Act. Maryland's workforce system provides a talent pipeline through the establishment of partnerships between State and local entities, businesses, economic development, education, and community stakeholders. To ensure that the workforce system efficiently meets the needs of both the businesses and the jobseekers that it serves, Maryland's workforce agencies have jointly developed the State's workforce plan with the intent that this vision is carried out in each of the local workforce development areas through their American Job Centers.

Additionally, each WIOA MOU must contain an acknowledgement that the statement above is the central focus of the work to be done under the WIOA MOU. All Parties must agree to comply with the policies, procedures, and assurances established under WIOA, including this policy, Policy Issuance 2016-09, "WIOA Memoranda of Understanding and Resource Sharing Agreements." The Partners must acknowledge that they will abide by the philosophy of "People before Performance," as explained in [Maryland's WIOA Combined State Plan](#), in order to serve the comprehensive needs of all Marylanders. The Parties must all acknowledge that they will cooperate and collaborate with the entities administering the Maryland Combined State Plan under WIOA.

For Maryland, placing people before performance means that the State's workforce system is committed to putting customers at the center of policy decisions regarding service delivery and is further dedicated to focusing its efforts on those who need our assistance the most. While recognizing that resources and funding sources are often scarce, Maryland's WIOA Partners are dedicated to finding new opportunities to focus on the customer's needs and tailoring solutions to address those needs. Maryland is dedicated to serving those with barriers to employment and to place jobseekers who desire to work on a path toward sustainability. This may require a longer term commitment to our customers.

This strategy does not mean that Maryland is going to forsake all performance measures. Rather, it requires a focus on people who walk through the doors of all WIOA core, required, and other Partners. It means that Maryland's workforce system is dedicated to improving the lives of Marylanders. As Maryland's workforce system focuses its attentions and efforts on the system's customers, we change the lives of the people we serve, support the workforce needs of the business community, and grow our State and local economies.

PERFORMANCE REQUIREMENTS & DATA SHARING

To ensure the American Job Center system operates effectively, Parties to the WIOA MOU must provide performance information that supports the achievement of performance goals, consistent with the requirement of law and as outlined in the Maryland Combined State Plan. All Parties agree to work cooperatively to share data to the extent necessary and as permitted or required by applicable statute or regulation, and enter into data sharing agreements as required thereto.

SERVICES OFFERED THROUGH THE AMERICAN JOB CENTER SYSTEM

WIOA requires that each WIOA MOU contain provisions describing the services to be provided through the American Job Center delivery system. These provisions must be consistent with the requirements of the law and must contain provisions that address services to be provided, the coordination of services, and the delivery of services.

Additionally, WIOA requires that each WIOA MOU must contain provisions describing the methods that will be used to ensure the needs of workers and youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in the provision of necessary and appropriate access to services, including access to technology and materials, made available through the American Job Center system.

Applicable federal and State laws⁹ further require that each WIOA MOU contain provisions to ensure that no individual shall be excluded from participation in, denied benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any program or activity based on race, color, religion, sex¹⁰, ancestry or national origin, age, disability, political affiliation or belief, sexual orientation, marital status, gender identity, or genetic information.

WIOA Title I Partners must ensure that participation in programs and activities or receiving funds under WIOA Title I are available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the U.S. Attorney General to work in the United States. Participation in programs and activities under WIOA Title II adult education program providers and WIOA Title IV, as administered by DORS in Maryland, are not subject to this same requirement.

TANF is available to citizens and nationals of the United States; and qualified immigrants including refugees, asylees, parolees, Amerasians¹¹, those subject to withholding of deportation, certified victims of trafficking, and special immigrant visa holders. Those holding legal permanent resident status are also eligible for federal TANF provided they have held the status for five (5) consecutive years or possess 40 qualifying quarters. It is important

⁹ See references on page 33-34.

¹⁰ Except as otherwise permitted under Title IX of the Education Amendments of 1972

¹¹ Immigrant visas are issued to Amerasians under Public Law 100-202 (Act of 12/22/87), which provides for the admission of aliens born in Vietnam after January 1, 1962, and before January 1, 1976, if the alien was fathered by a U.S. citizen. Spouses, children, and parents or guardians may accompany the alien. Source: US Department of Homeland Security

to note that the 5 year bar does not apply to legal permanent residents who previously held the status of one of the other qualifying immigrant populations. Per COMAR 07.03.03.07, qualified immigrants who are ineligible for federal TANF benefits solely due to their immigrant status are eligible for State-funded TANF if they meet all other technical and financial TANF eligibility requirements. This exception does apply to legal permanent residents who have not met the 5 year or 40 qualifying quarters bar. The technical and continued eligibility requirements are the same for both federally-funded and State-funded TANF. Undocumented immigrants, as well as those here on visitor and/or student visas, diplomats, and individuals with work authorization only do not meet eligibility requirements for TANF. In all instances, immigration status must be verified with appropriate federal documentation and/or Systematic Alien Verification for Entitlements (S.A.V.E.) documentation.

As federal law differs between programs, it is incumbent upon the Local Area to ensure that all services are provided in a nondiscriminatory fashion.

REFERRAL ARRANGEMENTS

WIOA requires that each WIOA MOU contain provisions to describe the methods of referral of individuals amongst the American Job Center Partners for appropriate services and activities. Both business and job seeker customers, who are otherwise qualified, should be given the opportunity to access American Job Center system services that provide them with the optimum utilization of available partner and community resources that lead to successful outcomes. In line with WIOA's intent, DLLR requires that staff work to connect customers to Partners through effective integration or referral processes that are impartial and designed to rapidly and efficiently meet the customer's individual needs. These methods of referral must strive towards including a coordinated and integrated approach to common intake procedures, career services, business services, and data sharing among system Partners. Parties must provide specifics in the WIOA MOU detailing how Partners will refer individuals to appropriate services and activities.

RESOURCE SHARING AGREEMENT

Pages 17-25 of this Policy Issuance provide guidance on Resource Sharing Agreements, a critical and required component of the WIOA MOUs.

DISPUTE RESOLUTION PROCESS

In the event that a disagreement should arise between the Parties regarding terms and conditions, performance, or administration of this MOU, DLLR requires Parties to adhere to the WIOA MOU/RSA dispute resolution process prescribed on page 30. If the dispute resolution process proves unsuccessful, DLLR requires Parties to adhere to the WIOA MOU/RSA impasse process prescribed on pages 30-31.

APPLICABLE LAW

WIOA MOUs must be construed, interpreted, and enforced according to the laws of the State of Maryland. Parties must comply with all applicable Federal and State laws and regulations and applicable local laws to the extent such local laws are not in conflict with State or federal requirements.

CONFIDENTIALITY

All Parties to the WIOA MOUs expressly agree to abide by all applicable Federal, State, and local laws and regulations regarding confidential information, including but not limited to 20 CFR Part 603; 45 CFR Section

205.50; Md. Code Ann., Gen'l Provisions §§ 4-307, 4-401 and 4-402; Md. Code, Lab. & Empl. § 8-625; COMAR 09.01.01, 09.33.01; 42 U.S.C. § 503, 20 U.S.C. § 1232 (g); 34 CFR § 361.38; and 13A 11.06.01, as amended if amended. In addition, in carrying out their respective responsibilities, each Party shall respect and abide by the confidentiality policies and legal requirements of all of the other Parties and enter into data sharing agreements, as appropriate or required, to protect the confidentiality and security of shared data and to comply with governing law.

Each party to the WIOA MOU must ensure that the collection and use of any information, systems, or records that contain personally identifiable information will be limited to purposes that support the programs and activities described within the WIOA MOU. Each party must ensure that access to software systems and files under its control that contain personally identifiable information will be limited to authorized staff members who are assigned responsibilities in support of the services and activities described within the WIOA MOU. Each party must expressly agree to take measures to ensure that no personally identifiable information is accessible by unauthorized individuals. To the extent confidential, private, or otherwise protected information needs to be shared amongst the Parties for the Parties' performance of their obligations under WIOA and the WIOA MOU, and to the extent such sharing is permitted by applicable law, the Parties agree to create and enter into data sharing agreements as appropriate and to have confidentiality and ethical certifications signed by the Parties' authorized individuals. With respect to confidential unemployment insurance information, any such data sharing must comply with all of the requirements in 20 CFR Part 603, including but not limited to requirements for payments of costs and permissible disclosures.¹²

MODIFICATION

The WIOA MOU must provide an assurance that the Parties agree to abide by the process for modification as specified on pages 28-29. DLLR requires that any modifications to the WIOA MOUs must be in writing.

TERMINATION

It is required that the MOU remains in effect until the end date specified within the WIOA MOU unless:

- All Parties mutually agree to terminate the WIOA MOU;
- Federal oversight agencies charged with the administration of WIOA fail to appropriate funds or if funds are not otherwise made available for continued performance, for any fiscal period of this MOU succeeding the first fiscal period;
- WIOA is repealed or superseded by subsequent federal law;
- Local area designation is changed under WIOA; or,
- A Party breaches any provision of the MOU and does not cure within thirty (30) days after receiving written notice from the Local Board Chair specifying such breach in reasonable detail.

In the event of termination of the WIOA MOU, the Parties to the WIOA MOU must convene within thirty (30) days after the breach of the WIOA MOU to discuss formation of a successor WIOA MOU. At that time, allocated costs must be addressed.

Any Party unable to perform pursuant to the WIOA MOU agreement due to lack of funding must notify the other Parties as soon as the Party has knowledge that funds may be unavailable for the continuation of the agreement.

¹² See 20 CFR Part 603.5, 603.8-603.10; Notice of Proposed Rulemaking, Federal Register, vol. 80, no. 73, 4/16/2015, at page 20695; and Unemployment Insurance Program Letter No. 20-15, USDOL ETA, pp. 12-13.

Any Party may request to terminate its inclusion in the WIOA MOU by following the modification process identified on pages 28-29.

NON-ASSIGNMENT

No party may, during the term of this MOU or any renewals or extensions of this MOU, assign or subcontract all or any part of the MOU without prior written consent of the other Parties.

This standard contract provision is a required provision in the MOUs executed by the Local Board and the Parties to the MOU. The provision prohibits a party to the WIOA MOU from assigning or subcontracting its responsibilities under the MOU to another without the prior written consent of the other Parties to the MOU. As the Parties to the MOU agreed to, among other things, service delivery and accessibility for the American Job Center delivery system for the Local Area, allowing a party to freely assign or subcontract its duties under the MOU without prior consent would be contrary to collaboration memorialized in the MOU. However, a party may still assign or subcontract as long as the Parties to the MOU provide prior written consent.

SEVERABILITY

If any part of this MOU is found to be null and void or is otherwise stricken, the rest of this MOU shall remain in force.

This standard contract provision is a required provision in the MOUs executed by the Local Board and the Parties to the MOU. The provision states that if parts of the contract are held unenforceable, the remainder of the contract should still apply. The provision recognizes the potentially difficult work that was undertaken to formulate the MOU and notes that an offending clause can be removed without affecting the remaining provisions of the MOU.

FAIR PRACTICES CERTIFICATION

The Parties must certify that they prohibit, and covenant that they will continue to prohibit discrimination and certify that no person, otherwise qualified, is denied employment, services, or other benefits on the basis of: (i) political or religious opinion or affiliation, marital status, sexual orientation, gender identification, race, color, creed, or national origin; (ii) sex or age, except when age or sex constitutes a bona fide occupational qualification; or (iii) the physical or mental disability of a qualified individual with a disability.

ASSURANCES OF NON-DISCRIMINATION & EQUAL OPPORTUNITY

The Parties must specifically agree that they will comply fully with the non-discrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act; the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq); the Nontraditional Employment for Women Act of 1991; title VI of the Civil Rights of 1964 as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1967, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37 and 38.

WIOA Final Rules specify that the decision as to which entity will be responsible for ensuring accessibility at an American Job Center is ultimately the Local Workforce Board's to make, appropriately specified in the WIOA MOU.

DRUG & ALCOHOL FREE WORKPLACE

The Parties must certify they will comply with the State’s policy concerning drug and alcohol free workplaces, as set forth in COMAR 01.01.1989.18 and 21.11.08, and with the Drug-Free Workplace Act of 1988, 41 U.S.C. 702 et seq., and 2 CFR 182 which require that all organizations receiving grants from any Federal agency maintain a drug-free workplace. The recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for suspension or debarment under 29 CFR 98, Subpart F.I.

CERTIFICATION REGARDING LOBBYING

All Parties must comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and 29 CFR Part 93. The Parties must not lobby federal entities using federal funds and must disclose lobbying activities as required by law.

DEBARMENT & SUSPENSION

All Parties must comply with the debarment and suspension requirements (E.O.12549 and 12689) and 20 CFR Part 98.

PRIORITY OF SERVICE

In general, Maryland’s WIOA Partners are committed to serving the following target populations:

Target Populations: Individuals with Barriers to Employment
Displaced Homemakers
Eligible migrant and seasonal farmworkers
Ex-offenders
Homeless individuals
Individuals facing substantial cultural barriers
Individuals with disabilities, including youth with disabilities
Individuals within two years of exhausting lifetime eligibility under Part A of the Social Security Act ¹³
Individuals who are English language learners
Individuals who are unemployed, including the long-term unemployed
Individuals who have low levels of literacy
Individuals without a High School Diploma
Low income individuals (including TANF and SNAP recipients)
Native Americans, Alaskan Natives, and Native Hawaiians
Older individuals
Single parents (including single pregnant women and non-custodial parents)
Veterans
Youth who are in or have aged out of the foster care system

Maryland's workforce system can be a pathway to the middle class and a means to maintain and build the skills necessary to remain in the middle class. Maryland is committed to ensuring its target populations are able to access the WIOA components of the workforce system on a priority basis.

¹³ This refers to the TANF program. Each State defines lifetime eligibility for TANF. In Maryland, individuals can receive TANF benefits for up to five years. If individuals reach year four and five of receipt of TANF benefits, these individuals become a targeted population according to WIOA, irrespective of the fact that after year five, individuals may continue to receive TANF benefits due to hardship.

For the WIOA Title I Adult Program, this means that local workforce areas must provide priority for training activities to individuals in the target populations. Priority must be provided in the following order:

Priority of Service for the WIOA Title I Adult Program	
First Priority	Veterans and eligible spouses who are also low-income, recipients of public assistance and/or basic skills deficient
Second Priority	Individuals who are not veterans or eligible spouses, but meet criteria to be considered a target population
Third Priority	Veterans and eligible spouses who did not meet "first priority" conditions
Fourth Priority	Individuals who are not veterans and do not meet criteria to be considered a target population

Local Areas must adhere to these priority provisions and, within their local plans, provide details on how priority shall be given in the Local Area within these parameters.

All Parties must certify within the WIOA MOU that they will adhere to all statutes, regulations, policies, and plans regarding priority of service, including, but not limited to, priority of service for the WIOA Title I Adult Program and for veterans and their eligible spouses.

Questions regarding priority of service for veterans and/or WIOA target populations, as identified in this section, may be directed to the DLLR Office of Workforce Development.

BUY AMERICAN PROVISION

Each Party that receives funds made available under Title I or II of WIOA or under the Wagner-Peyser Act (29 U.S.C. 49, et. seq.) certifies that it will comply with Sections 8301 through 8303 of Title 41 of the United States Code (commonly known as the "Buy American Act.") and as referenced in WIOA Section 502.

This required provision of the MOU expressly references WIOA Section 502, which requires that any entity that receives funds under Title I or Title II of WIOA or under the Wagner-Peyser Act must comply with the applicable provisions of federal "Buy American Act." As a required assurance under WIOA, the provision must be included in the MOUs executed between the Local Board and other Parties to the agreement.

HUMAN TRAFFICKING

Each Party certifies that it complies with Executive Order 13333 that requires termination without penalty of the Agreement if a sub-grantee, contractor or subcontractor engages in human trafficking.

This required provision of the MOU expressly terminates the agreement if a sub-grantee, contractor or subcontractor engages in human trafficking. This requirement from the USDOL, pursuant to executive order, must be included in the MOUs executed between the Local Board and other Parties to the agreement.

SALARY COMPENSATION & BONUS LIMITATIONS

Each Party certifies that it complies with Training and Employment Guidance Letter (TEGL) 05-06,19-14, and 17-15 and Public Law 114-113, Division H, Title I, Section 105 restricting the use of federal grant funds for

*compensation and bonuses of an individual, whether charged to either direct or indirect, at a rate in excess of Executive Level II.*¹⁴

This required assurance from the USDOL must be included in the MOUs executed between the Local Board and other Parties to the agreement.

SIGNATURES

All Partners to the WIOA MOU must sign the WIOA MOU, with witness, on or before the date set forth within the agreement. According to WIOA Sec. 121(b)(1)(A), required partners are limited to those entities that carry out programs or activities within the Local Area. Likewise, those programs that have been approved as a partner by the Local Workforce Development Board or CEO must also sign. By signing the WIOA MOU, each individual signing on behalf of a given Partner thereby certifies that he/she has the legal authority to bind the Partner to the terms of the WIOA MOU. The WIOA MOU may be executed in counterparts, each being considered as an original.

The Chief Elected Official(s) of a local workforce area must be a signatory to the WIOA MOU.

The Assistant State Superintendent of the MSDE DORS shall be the signatory for Vocational Rehabilitation.

The Secretary of DLLR shall be the signatory for DLLR programs, which includes the WIOA Title II Adult Education and Family Literacy Act Program, the WIOA Title III Wagner-Peyser Act Program, the Trade Adjustment Assistance for Workers Program, the Jobs for Veterans State Grant Program, Senior Community Service Employment Program in certain workforce areas,¹⁵ and Unemployment Insurance.

For TANF, WIOA MOUs will be reviewed by DHR Office of the Attorney General for legal sufficiency as well as DHR Bureau of Workforce Development for program integrity and compliance with the basic partnership requirements. Upon these reviews, The Local Departments of Social Services Directors shall be the signatory for DHR's TANF Program.

¹⁴ The current salary for Executive Level II stands at \$185,100. The State has not established a lower salary cap than the amount provided for under the Public Law.

¹⁵ See page 6.

RESOURCE SHARING AGREEMENT

The purpose of the Resource Sharing Agreement (RSA) is to establish the terms and conditions of how services and operating costs of the local workforce system will be funded. The RSA should capture cost sharing information on infrastructure funding of the American Job Centers, funding of shared services, operating costs of the System, and the leveraging of in-kind contributions, as appropriate. All required American Job Center Partners, as described on page 6, must work together to integrate shared services and leverage each other's resources to effectively and efficiently serve common customers of the local workforce system.

WIOA requires that American Job Center Partners describe how the costs of services and the operating system will be funded, including:

- Cash and in-kind contributions that are fairly evaluated, which may include contributions from philanthropic organizations or private entities, or through alternative financing options, to provide a stable and equitable funding stream for ongoing American Job Center delivery system operations;
- Infrastructure costs of the American Job Centers.

The required American Job Center Partners must use a portion of the program and activity funds to maintain service delivery in the local workforce system. Effective with this Policy Issuance, the RSA is to be considered part of the WIOA MOU. *Attachment A – WIOA Memoranda of Understanding Template* provides the template and instructions that must be used as part of the WIOA MOU. Each local area is expected to use a separate RSA template for each American Job Center (both comprehensive and affiliate American Job Centers in a local area) within the local workforce system. In addition, a separate RSA template should be completed to capture information on costs that are important to the local workforce system, but are not tied to a physical American Job Center location. The total of these separate completed RSA templates should then be bundled into one “master” summary document to show total shared costs related to the local workforce system. The WIOA MOU must include all of the aforementioned completed RSA templates to be considered fully executed.

As detailed in WIOA, the goal of the RSA is to develop a funding mechanism that:

- Maintains the local workforce delivery system to meet the needs of the local area;
- Reduces duplication by improving program effectiveness through the sharing of services, resources, and technologies among Partners;
- Reduces overhead by streamlining and sharing financial, procurement, and facility costs; and
- Ensures that costs are appropriately shared by American Job Center Partners by determining contributions based on proportionate share of use, and requiring that all funds are spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including the Federal cost principles.

The State's workforce delivery system is intended to function as a system where all customers can access valuable services and connect to resources necessary for their career success. The costs of operating this system, therefore, include non-personnel costs, such as facilities and technologies, in addition to personnel costs for those who deliver services directly to business and job seeker customers. Shared services' costs may include the costs of shared services that are authorized for, and may be commonly provided through, any of the American Job Center partner programs to any individual, such as:

- Initial intake;
- Assessment of needs;

- Evaluation of basic skills;
- Identification of appropriate services to meet needs;
- Referrals to other American Job Center Partners; and,
- Business Services.

Shared costs must be allocated according to American Job Center Partner’s proportionate use and relative benefits received. Any shared costs agreed upon by the Partners must be included in the WIOA MOU.

The RSA component of the WIOA MOU must identify infrastructure and shared services of the local workforce system that will be reconciled on a monthly or quarterly basis against actual costs incurred and adjusted accordingly. The WIOA MOU/RSA should further identify how the partners will operate when overages or savings occur after reconciliation. This is required in order to ensure costs are fairly evaluated and that each Partner is not required to contribute more than its proportionate share in accordance with the Uniform Guidance at 2 CFR Part 200. NOTE: In order for the fiscal agent and other appropriate fiscal staff to reconcile the actual costs incurred, there must be a “RSA Working Copy” of the RSA that is related to, but apart from, the official RSA that is signed and fully executed as part of the WIOA MOU.

The purpose of the “RSA Working Copy” is to reconcile actual cost against the budgeted cost and for documenting the invoiced and received amounts. It is a tool for the Fiscal Agent and Fiscal Managers; the Fiscal Agent and Fiscal Managers can add additional data fields and information as needed. The RSA Working Copy file is saved as a separate electronic file and is updated monthly or quarterly with:

- Actual expenditures,
- Amount of invoice, and
- Amount of payment.

The Governor expects RSAs to be transparent and negotiated among Partners on an equitable basis to ensure costs are shared appropriately. All Partners must negotiate in good faith and seek to establish a WIOA MOU/RSA that is reasonable and fair.

ALLOCATION METHOD

For the purposes of the WIOA MOU/RSA, the process of allocating costs— assigning a cost, or a group of costs, to one or more cost objectives—should occur in reasonable proportion to the benefit received. The process may entail assigning a cost directly to a final cost objective or through one or more intermediate cost objectives.

When selecting the base to be used in allocating the expenses to benefitting functions, such as resources, staff services and other shared expenses, in accordance with 2 CFR Part 200, the essential consideration is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, if neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation should be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to all entities involved, including the Federal government.

In general, an allocation base is acceptable if it represents a fair measure of cost generation or cost benefit, and if it results in an equitable distribution of the costs of services rendered or goods provided. The most appropriate base will vary with the circumstances prevailing in each instance. An organization is likely to use several different bases

for allocating different types of costs. Acceptable methods for distributing pooled costs may vary by type of organization, functional units or levels within an organization, types of costs to be allocated, and cost category. The basis used to allocate a particular type of cost should be used consistently over time.

General criteria that should be used in selecting an allocation base include the following:

- **Minimal Distortion** – the base should distribute costs in a fair and equitable manner without distorting the results. This requires that the base be as causally related as possible to the types of costs being allocated so that benefit can be measured as accurately as possible;
- **General Acceptability** – the base should be generally accepted and in conformance with Generally Accepted Accounting Principles (GAAP);
- **Represents Actual Cost of Effort Expended** – the base should be a measure of actual cost of actual effort expended. It should not be based solely on a plan, budget, job description, or other estimates of planned activity;
- **Timely Management Control** – the base should be within the affected entity’s ability to control on a timely basis. The base should produce reliable and fairly predictable results. If the base is erratic and unpredictable, beyond the affected entity’s ability to control, or not timely, it is likely to produce unacceptable results;
- **Consistency with Variations in Funding** – the base must be able to accommodate and withstand changes in funding during the year and from year to year. If the base includes factors that are affected by variations in funding, it will produce distorted results;
- **Materiality of Costs Involved** – The time and expense spent on developing the base should not be greater than justified by the materiality of the costs to be allocated. In other words, the grantee should not spend more on obtaining the information needed to allocate pooled costs than the dollars in the pool warrant. The base should be sufficiently detailed to provide the most equitable and accurate allocation possible. At the same time, the base should be simple enough to be efficient while still attaining a fair distribution of costs;
- **Practicality and Cost of Using the Base** – the base should be as efficient as possible in terms of the cost or effort in developing it. Thus, whenever possible, a data base that already exists in the financial or participant record keeping and reporting systems should be used rather than create a separate data base to be used only for allocating costs;

In general, unacceptable allocation bases are those that do not meet the general guidelines discussed above. Unacceptable bases are those that:

- Distort the final results;
- Do not represent actual effort or actual expenditures;
- Are not used consistently over time and with variations in funding; and,
- Do not have an integral relationship to the types of costs being allocated.

For the extent of the RSA agreement, the required Parties must pay their portion of locally negotiated costs for the local workforce system. The shared costs, the base used when determining the allocation method, and each Party’s share must be identified in the RSA.

The Local Workforce Development Board Chair (or designee) is responsible for working with Partners of the local workforce system to achieve consensus and informally mediate disagreements.

Infrastructure Costs

WIOA Section 121(h) requires the following entities providing services within a Local Area to use a portion of their funds to maintain the workforce delivery system, including payment of a portion of the American Job Center infrastructure costs:

- Programs authorized under WIOA Title I Adult, Dislocated Worker, and Youth;
- Programs authorized under the WIOA Title III Wagner-Peyser Act;
- Adult education and literacy activities authorized under WIOA Title II;
- Programs authorized under Title I of the Rehabilitation Act of 1973;
- Activities authorized under Title V of the Older Americans Act of 1965;
- Career and technical education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006;
- Activities authorized under chapter 2 of Title II of the Trade Act of 1974;
- Activities authorized under chapter 41 of Title 38, United States Code;
- Employment and training activities carried out under the Community Services Block Grant Act;
- Employment and training activities carried out by the Department of Housing and Urban Development;
- Programs authorized under State unemployment compensation laws;
- Programs authorized under section 212 of the Second Chance Act of 2007; and,
- Programs authorized under Part A of Title IV of the Social Security Act.

The requirement of WIOA 121(h) is based on the premise that joint funding of American Job Center infrastructure is a necessary foundation for an integrated service delivery system. American Job Center infrastructure costs are defined as non-personnel costs that are necessary for the general operation of the American Job Center, including, but not limited to:

- Rental of the facilities;
- Utilities and maintenance;
- Equipment, including assessment-related products and assistive technology for individuals with disabilities; and,
- Technology to facilitate access to the American Job Center, including technology used for the center's planning and outreach activities.

WIOA Final Rules specify that infrastructure costs are applicable to all required partners, whether they are physically located in the American Job Center or not. Each partner's contributions to these costs, however, may vary, as these contributions are based on the proportionate use and relative benefit received, consistent with the partner programs' authorizing laws and regulations and the Uniform Guidance at 2 CFR part 200.

Specifically, the Joint Regulations issued on June 30, 2016 provide the following regarding infrastructure costs:

Section 678.700(c) explains that a partner's contributions to the costs of operating and providing services within the one-stop delivery system must adhere to the partner program's Federal authorizing statute, and to all other applicable legal requirements, including the Federal cost principles that require that costs must be allowable, reasonable, necessary and allocable. These requirements and principles will help one-stop partners identify an appropriate cost allocation methodology for determining partner contributions. There are a variety of methods to allocate costs, for instance: based on the proportion of a partner program's occupancy percentage of the one-stop center (square footage); the proportion of a partner program's customers compared to

all customers served by the one-stop; the proportion of partner program's staff compared to all staff at the one-stop; or based on a partner program's use of equipment or other items that support the local one-stop delivery system.

The U.S. Department of Labor has stated that local agreements for funding the American Job Center infrastructure costs, as prescribed by Section 121(h), need not be satisfied in the funding agreements for Program Year (PY) 2016. However, the local funding agreements must satisfy the requirements of WIOA Section 121(h) for purposes of funding the American Job Center system in PY 2017.

Therefore, Maryland encourages the PY 2016 WIOA MOUs to comply with WIOA Section 121(h), but does not require compliance until Program Year 2017. If a WIOA MOU does not provide for infrastructure cost sharing, as provided for in statute, the local area is required to use the WIOA MOU Modification process described on pages 28-29 to ensure fully executed and compliant WIOA MOUs are in place no later than July 1, 2017.

Local and State Infrastructure Cost Formulas

Section 121 of WIOA provides two separate formulas for the provision of infrastructure costs: the locally negotiated formula and the State-based formula. All Local Areas are encouraged to come to a mutually beneficial infrastructure formula.

Section 121(h) notes that should consensus on a locally negotiated formula not be achieved, the State funding mechanism will be used.

When a locally negotiated formula is not achieved, and in accordance with Section 121, the Governor, after consultation with chief elected officials, local boards, and the State board, shall determine the portion of funds to be provided by each Partner. According to the Joint Regulations issued by the federal agencies on June 30, 2016, the Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

- (1) Determining the percentage of the corresponding AJC Partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;
- (2) Selecting a factor (or factors) that reasonably indicates the use of AJCs in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;
- (3) Determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the AJC Partner program; and
- (4) Determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the Partner program's cap.

In accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor’s calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under § 678.736 to contribute to one-stop infrastructure funding:¹⁶

(1) WIOA formula programs and Wagner-Peyser Act Employment Service. The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) must not exceed three percent of the amount of the program in the State for a program year.

(2) Other one-stop partners. For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, the portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that program in the State for a fiscal year. For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) Vocational rehabilitation. (i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and § 678.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years. (ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(4) TANF programs. For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State’s contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

¹⁶ The following is excerpted from Pages 818-821 of the Joint Regulations issued by the federal agencies on June 30, 2016 and can be found at the following link: <https://www.doleta.gov/wioa/Docs/wioa-regs-joint-final-rule.pdf>.

(5) Community Services Block Grant (CSBG) programs. For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

Again, local consensus is preferred, and is a necessary part of moving a local workforce system toward collaboration.

Allocation Base for Infrastructure Costs

Infrastructure costs must be allocated according to the proportion of benefit received by each of the required American Job Center Partners. Each partner must work collaboratively with the State and the Local Workforce Board to establish and maintain the American Job Center delivery system's infrastructure.

For the duration of the RSA agreement, the required Parties must pay their portion of shared costs of each Center. The shared costs, the allocation method, and each Party's share must be jointly agreed to and identified in the RSA.

Cash, Non-Cash and Third Party In-Kind

Infrastructure costs may be provided for on a cash, non-cash, or third party in-kind basis.

- ***Cash contributions*** are those cash contributions made by required Partners to cover infrastructure expenses or cash payments made by required Partners to another entity (usually the One-Stop Operator) to cover infrastructure costs of the comprehensive American Job Center(s).
- ***Non-cash contributions*** may include donations of goods or services, or the documented value of supporting costs of items owned by a Partner program and used by the American Job Center.

For example, a Partner's proportionate share of the American Job Center operating costs is \$15,000. The Partner does not have sufficient cash or other resources to fully fund its share, and wishes to donate (not for its own individual use) gently used surplus computer equipment. In accordance with the requirements of 2 CFR 200.306, the computers are valued at \$10,000.

- ***Third-party in-kind contributions*** are made by individuals or entities that are not Partners to the WIOA MOU. Third-party in-kind contributions are contributions of space, equipment, technology, non-personnel services, or other like items to support the costs associated with American Job Center operations. There are two types of third-party in-kind contributions that may count towards infrastructure costs: (1) general contributions to American Job Center operations (i.e., those not connected to any individual American Job Center Partner); and (2) those made specifically to an American Job Center Partner program (third-party donor contributions).

For example of general contributions consider the following: A general in-kind contribution could be a city government allowing the American Job Center to use city space rent free. These in-kind contributions would not be associated with one specific Partner, but rather would go to support the American Job Center

generally and would be factored into the underlying budget and cost pools used to determine proportionate share. The result would be a decrease in the amount of funds each Partner contributes, as the overall budget will have been reduced. For example of a third party-donor contribution to an American Job Center Partner program consider the following: a business partner provides assistive technology to a vocational rehabilitation program, which then gives it to an American Job Center. So long as the assistive technology was in the American Job Center's operating budget's infrastructure costs, the Partner could then value the assistive technology in accordance with the Uniform Guidance and use the value to count towards its proportionate share contribution. One caveat, however, is that prior to accepting in-kind contributions from a Partner (via a 3rd party donor), there would need to be agreement among the Partners on cost allocation methodology to ensure that other infrastructure operating costs are sufficiently covered through cash and non-cash contributions.

Disputes Related to Infrastructure Contributions

As noted above, should a locally negotiated agreement not be reached, the State formula would be triggered.

In-Kind Arrangements

Parties to the RSA may contribute to the costs of the Partnership on an in-kind basis. Such a contribution must be agreed upon by all of the Parties as a part of the locally negotiated formula and may be used to offset the costs of a Party's responsibility identified in the cost allocation plan, when appropriate. In-kind contributions must be identified in the RSA. For additional details on in-kind arrangements, see Infrastructure Costs on pages 20-24.

FISCAL AGENT FOR THE RESOURCE SHARING AGREEMENT

The RSA Fiscal Agent must be designated by all Parties to the RSA, and must be identified in the RSA. For practical reasons, it is recommended that the Lease Holder of the specific American Job Center location serves as the RSA Fiscal Agent. Rent and other building costs are usually the largest shared costs, and the Lease Holder is responsible for billing the other Parties for their share of the cost. If the Lease Holder is also a direct provider of service, he/she must adhere to WIOA title I, subtitle E (Administration) and § 679.430 to ensure appropriate firewalls within a single entity performing multiple functions.

The RSA Fiscal Agent is charged with accounting and funds management as defined under Paragraph (b) of § 679.420. Per WIOA Final Rules, the appropriate role of fiscal agent is limited to accounting and funds management functions rather than policy or service delivery. Specifically, the RSA Fiscal Agent must:

- Receive funds;
- Ensure sustained fiscal integrity and accountability for expenditures of funds in accordance with the Office of Management and Budget circulars, WIOA, and the corresponding Federal Regulations and State policies;
- Respond to audit financial findings;
- Maintain proper accounting records and adequate documentation;
- Prepare financial reports; and,
- Provide technical assistance to subrecipients regarding fiscal issues.

Additional allowable functions, at the direction of the Local Board, are to:

- Procure contracts or obtain written agreements;

- Conduct financial monitoring of service providers; and/or,
- Ensure independent audit of all employment and training programs.

GUIDELINES FOR NEGOTIATING & EXECUTING THE WIOA MOU

Maryland strongly encourages its Local Workforce Development Areas to employ the following seven step process to ensure that WIOA MOUs are negotiated and executed in an efficient manner. It is incumbent on the Local Area that does not use the following steps to ensure that *all* American Job Center Partners are engaged in the MOU process in a collaborative fashion.

While the timelines stated here are provided as guidance, WIOA MOUs must include *at least six (6) weeks'* time for legal review and to allow sufficient time to circulate the document for signatures.

The State may impose appropriate sanctions should a Local Area fail to fully execute the MOU, and the Local Area may need to start the dispute resolution and/or impasse procedure outlined in pages 30-32.

STEP 1. NOTIFICATION FROM DLLR

The DLLR Office of Workforce Development must notify the Local Board Chair (or designee) in writing that it is necessary to renew and execute the WIOA MOU and provide the Chair with the WIOA MOU template given in *Attachment A –Memorandum of Understanding Sample Template*. The DLLR Office of Workforce Development should also notify appropriate State counterparts within the DLLR Division of Unemployment Insurance, the DLLR Office of Adult Education and Literacy Services, the Maryland Department of Human Resources' Family Investment Administration, and the Maryland State Department of Education's Division of Rehabilitation Services, to ensure they are also aware that the WIOA MOU will soon be revisited.

STEP 2. KICKOFF MEETING & NEGOTIATIONS

The Local Board Chair (or designee) is responsible for convening all required and optional American Job Center Partners to kick-off negotiations, and to ensure, at a minimum, all American Job Center Partners from all counties within the Local Area are appropriately represented.

The Local Board Chair (or designee) must host a kickoff WIOA MOU meeting with all required and optional American Job Center Partners in a timely manner. This meeting shall serve as the formal kickoff to WIOA MOU negotiations. At the kickoff meeting, the Local Board Chair (or designee) should review and provide all Parties with a copy of this Policy Issuance to ensure all Parties are fully aware of expectations and the overall process.

STEP 3. – NEGOTIATION & DRAFT WIOA MOU SUBMISSION

Within six (6) weeks of the kickoff meeting, the Local Board Chair (or designee) must email a complete draft to the DLLR Office of Workforce Development for review. Subsequently, DLLR Office of Workforce Development must email a complete draft of the WIOA MOU to appropriate State counterparts within the DLLR Division of Unemployment Insurance, the DLLR Office of Adult Education and Literacy Services, the Maryland Department of Human Resources' Family Investment Administration, and the Maryland State Department of Education's Division of Rehabilitation Services. The Local Board Chair (or designee) must provide all of the American Job Center Partner representatives identified within Exhibit A of the WIOA MOU with this same notification. The DLLR Office of Workforce Development may grant an extension for the negotiation process for good cause if the Local Board Chair (or designee) determines that it is unable to provide a timely draft to DLLR. The Local Board Chair (or designee) should request an extension with advance notice.

STEP 4. – DLLR REVIEW & COMMENT

Within two (2) weeks, DLLR, DHR, and DORS must review the draft and return feedback to the Local Board Chair (or designee). It is the responsibility of the Local Board Chair (or designee) to ensure all American Job Center Partners to the WIOA MOU are aware of the comments and revisions that are needed.

STEP 5. REVISED DRAFT PROVIDED TO DLLR

The Local Board Chair (or designee) must return a revised draft to the DLLR Office of Workforce Development within two (2) weeks of receipt of feedback. DLLR Office of Workforce Development may grant an extension for the revision process for good cause if the Local Board Chair (or designee) determines that it is unable to provide a timely draft to DLLR. The Local Board Chair (or designee) should request an extension in writing with advance notice.

STEP 6. DLLR, DHR, & DORS REVIEW FOR LEGAL SUFFICIENCY

Once the DLLR Office of Workforce Development, DHR, and DORS are satisfied with the revisions, then it is the responsibility of the Assistant Attorney General for DLLR's Division of Workforce Development and Adult Learning to review the WIOA MOU for legal sufficiency and approval within two (2) weeks of receipt.

STEP 7. CIRCULATE FOR SIGNATURES

The Local Board Chair (or designee) must circulate the WIOA MOU and secure Partner signatures within four (4) weeks of receiving DLLR approval. The WIOA MOU will be considered fully executed once all signatories have reviewed and signed, and the document has been returned to the DLLR Office of Workforce Development. The DLLR Office of Workforce Development may grant an extension for the negotiation process for good cause if the Local Board Chair (or designee) determines that it is unable to provide a timely draft to DLLR. The Local Board Chair (or designee) should request an extension with advance notice.

If determined that a Partner is unwilling to sign the WIOA MOU, then the Local Board Chair (or designee) must ensure that the dispute resolution process is followed. If the dispute remains unsettled after this process, then an impasse shall be declared and that process shall be followed. Details on the dispute resolution and impasse processes can be found on pages 30-32 of this policy.

Once the WIOA MOU is fully executed, the DLLR Office of Workforce Development is responsible for retaining all original WIOA MOUs.

MODIFICATION PROCESS

The State requires all WIOA MOUs to be reviewed every two (2) years, but the State also recognizes that WIOA MOUs will, at times, require modification. For example, WIOA MOUs may require modification because of changes to: cost sharing amounts due to unforeseen circumstances; Parties to the MOU; service arrangements; vendors; or the State or Local Plan. When a modification is deemed necessary, the following process must be used.

STEP 1. NOTIFICATION

When a Partner wishes to modify the WIOA MOU, the Partner must first provide written notification to all signatories of the existing WIOA MOU and provide the proposed modification(s).

STEP 2. DISCUSSION/NEGOTIATION

Upon notification, the Local Board Chair (or designee) must ensure that discussions and negotiations related to the proposed modification take place with Partners in a timely manner and as appropriate.

Depending upon the type of modification, this can be accomplished through email communications of all the Parties. If the proposed modification is extensive and is met with opposition, the Local Board Chair (or designee) may need to call a meeting of the Parties to resolve the issue. Upon Agreement of all the Parties, a Modification will be processed.

If the Modification involves substitution of a Party that will not impact any of the terms of the Agreement, it can be accomplished by the original party and the new party entering into an MOU that includes the Local Board, wherein the new party assumes all of the rights and obligations of the original party. Upon execution, the Local Board Chair (or designee) presents the agreement as a proposed Modification to the WIOA MOU, and the remaining steps are followed.

If determined that a Partner is unwilling to agree to the WIOA MOU Modification, then the Local Board Chair (or designee) must ensure that the dispute resolution process is followed. If the dispute remains unsettled after this process, then an impasse shall be declared and that process shall be followed. Details on the dispute resolution and impasse processes can be found on pages 30-32 of this policy.

STEP 3. DLLR REVIEW FOR LEGAL SUFFICIENCY

Immediately following the agreement of all the Parties to enter into the Modification, the Local Board Chair (or designee) must email a complete draft WIOA MOU Modification to the DLLR Office of Workforce Development for review. The DLLR Office of Workforce Development must send the draft WIOA MOU to the DLLR Assistant Attorney General for DLLR's Division of Workforce Development and Adult Learning. Then, it is the responsibility of the Assistant Attorney General for DLLR's Division of Workforce Development and Adult Learning to review the WIOA MOU for legal sufficiency and approval within one (1) weeks of receipt.

STEP 4. CIRCULATE FOR SIGNATURES

The Local Board Chair (or designee) must immediately circulate the WIOA MOU Modification and secure Partner signatures within four (4) weeks of receiving DLLR approval. The modified WIOA MOU will be considered fully

executed once all signatories have reviewed and signed, and the document has been returned to the DLLR Office of Workforce Development.

The Modification may be signed in counterparts, meaning each signatory can sign a separate document as long as the Local Board Chair (or designee) acquires signatures of each party and provides a complete copy of the Modification with each Party's signature to all the other Parties.

The Local Board Chair (or designee) must circulate the WIOA MOU Modification and secure Partner signatures within four (4) weeks of receiving DLLR approval.

DISPUTE RESOLUTION & IMPASSE

In the event that negotiations break down at the local level, the State is compelled to offer assistance to the Local Board and the Partners to help them reach a WIOA MOU agreement. Local American Job Center delivery systems are the cornerstone of Maryland's workforce system and it is imperative that all required Partners be a part of the local service delivery structure. The following section details the dispute resolution and impasse processes for Maryland, which are designed for use by the Partners when unable to successfully reach an agreement necessary to execute the WIOA MOU. The State will also use this process for any dispute that arises after execution regarding interpretation and implementation of the WIOA MOU.

In the interest of prompt resolution of the dispute, the State requires that the action at each step of this procedure be done as soon as possible, but generally not later than the prescribed time limits. The time limit may be extended at the discretion of DLLR, in the event of unforeseen circumstances. Conflicts may be resolved at any step in the process. A decision becomes binding on all Parties when a decision is agreed upon by the Parties to the dispute. The right of appeal no longer exists when a decision is agreed to by the appropriate Parties. Final decisions reached through these processes will not be precedent-setting or binding on future conflict resolutions unless they are officially stated in this procedure.

DISPUTE RESOLUTION (STEP 1)

Before a disagreement reaches the level of impasse, the State requires the Local Board Chair (or designee) to first use Maryland's WIOA MOU Dispute Resolution process. DLLR considers a disagreement to reach the level of dispute resolution when an issue arises out of the development and negotiation of a WIOA MOU agreement that is not easily coming to a point of resolution. It is the responsibility of the Local Board Chair (or designee) to coordinate the WIOA MOU Dispute Resolution and/or Impasse to ensure that issues are being resolved in accordance with this policy. Any party to the WIOA MOU may seek resolution under this policy.

To formally start the dispute resolution process, the petitioner, who is the party seeking resolution, must promptly complete the form provided in **Attachment B - Dispute Resolution Form** and submit it electronically to the Local Board Chair (or designee). It is the responsibility of the petitioner to notify all Parties to the WIOA MOU of the conflict. The Local Board Chair (or designee) must notify the DLLR Office of Workforce Development of the conflict by electronically sending the completed Dispute Resolution Form.

In turn, the DLLR Office of Workforce Development will alert the Governor's Workforce Development Board (GWDB) Executive Director and the DLLR-DWDAL Assistant Secretary of the dispute. Within fourteen (14) business days of receipt of the Dispute Resolution Form, the DLLR-DWDAL Assistant Secretary's Office will notify the Local Board Chair (or designee) of a date where the GWDB Executive Director, the Assistant Secretary, and appropriate DLLR staff will meet to discuss the conflict with appropriate Partners and the Local Board Chair. Prior to the meeting, the GWDB Executive Director and the DLLR-DWDAL Assistant Secretary will investigate the conflict to obtain additional information or to clarify the facts presented.

After the meeting, and within seven (7) business days, the GWDB Executive Director and the DLLR-DWDAL Assistant Secretary must provide a joint written response and dated summary of the proposed resolution to all Partners to the WIOA MOU in the local workforce area. The Local Board Chair (or designee) will contact the petitioner, the appropriate State and local Partners (when a local Partner is not the petitioner) and the Local Board (when the Board is not the petitioner) to verify that all appropriate Parties are in agreement with the proposed

resolution. The State will consider the dispute to be settled when all Partners are in agreement. If the dispute is not resolved within ten (10) business days of receipt of the written response, then an impasse shall be declared.

IMPASSE (STEP 2)

If Partners in a local area have employed the dispute resolution process and have failed to reach consensus on an issue, then an impasse is declared.¹⁷

Impasse Step 1: Governor's Workforce Development Board Proposes Resolution

The GWDB Executive Director is responsible for notifying the GWDB Chair that an impasse has been declared. At this point, the GWDB Executive Director and the DLLR-DWDAL Assistant Secretary must provide the GWDB Chair with relevant materials for review, including but not limited to:

1. The completed Dispute Resolution Form; and,
2. DLLR-DWDAL Assistant Secretary's proposed resolution.

In turn, the GWDB Chair is responsible for selecting three (3) GWDB members to serve as members of an Impasse Review Team. The Impasse Review Team must investigate the dispute to obtain additional information or to clarify the facts presented.

Within fourteen (14) business days of the declaration of impasse, the Impasse Review Team must meet to discuss the dispute with all appropriate State and local Partners.

After meeting, within seven (7) business days, the Impasse Review Team must provide a written response and dated summary of the proposed resolution to all appropriate Parties. The Local Board Chair (or designee) then must contact the petitioner, the appropriate State and local Partners (when a local Partner is not the petitioner) and the Local Board (when the Board is not the petitioner) to verify that all appropriate Parties are in agreement with the proposed resolution. The State will consider the dispute to be settled when all Partners are in agreement.

If the dispute is not resolved within ten (10) business days of receipt of the GWDB Impasse Review Team's written response, then Step 2 of the impasse procedure must be followed.

Impasse Step 2: Governor Resolves Dispute

After an impasse has gone through Step 1 and remains unresolved, then it is the responsibility of the GWDB Chair to inform the Governor of the impasse. The Chair must provide the Governor with relevant materials for review, including but not limited to:

1. The completed Dispute Resolution Form;
2. DLLR-DWDAL Assistant Secretary's proposed resolution; and,
3. The GWDB Impasse Review Team's proposed resolution.

Upon review, the Governor will determine how the impasse shall be resolved. The Local Board Chair will ensure that all Partners are aware of the Governor's decision. In accordance with WIOA, the impasse decision made by

¹⁷ See page 21 for infrastructure disputes.

the Governor shall be applicable to the Local Area for that program year and for each subsequent program year for which Partners fail to reach such agreement.

Partners should be aware that there are consequences for noncompliance, and that these consequences may include the withholding of federal and/or State funds, as appropriate and allowable under applicable laws and regulations including 2 CFR Part 200.38.

WIOA Final Rules specify that if the State cannot assist the Local Workforce Board in resolving the impasse, the Governor or the Governor's Workforce Development Board must report the failure to the U.S. Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

MONITORING

DLLR acknowledges that the federal oversight agencies, including the U.S. Department of Labor, the U.S. Department of Education, and the U.S. Department of Health and Human Services, have the authority to conduct fiscal and programmatic monitoring to ensure that Federal awards are used for authorized purposes in compliance with law, regulations, and State policies, and that those laws, regulations, and policies are enforced properly. To ensure that policies are being followed and expectations are being met, Partners to the WIOA MOU should also expect the State, including DLLR, MSDE, and DHR, to conduct fiscal and programmatic monitoring as appropriate.

REFERENCES

LAW

- [Workforce Innovation and Opportunity Act \(Pub. L 113-128\) Title I, Section 121](#), dated July 22, 2014;
- [Rehabilitation Act of 1973](#) (29 U.S.C. 794) Section 504;
- [Buy American Act](#) (Pub. L 111-350) Title 1, Sections 8301- 8303, dated January 4, 2011;
- [Further Continuing Appropriations Act, 2013](#) (Pub. L 113-6) Division F, Title I, Sections 1101 (a)(4) and 1102, dated March 26, 2013;
- [Consolidated Appropriations Act, 2012](#) (Pub. L 112-74) Division F, Title I, Section 105, dated December 23, 2011;
- [Age Discrimination Act of 1975](#) (42 U.S.C. 6101);
- [Nontraditional Employment for Women Act of 1991](#) (Pub. L102-235)
- [Wagner-Peyser Act](#) (29 U.S.C. 49)
- [Title IX of the Education Amendments of 1972](#);
- [Title VI of the Civil Rights Act of 1964](#) (42 U.S.C. 2000d et seq.)
- [41 U.S.C. Section 702](#)
- [42 U.S.C. Section 503](#);
- [42 U.S.C. Section 601-619](#);
- [The Nontraditional Employment for Women Act of 1991](#) (Pub.L. 102-235),dated December 12, 1991;
- [Drug-Free Workplace Act of 1988 \(Pub. L. 114-38\)](#);
- [Byrd Anti-Lobbying Amendment](#) (31 U.S.C. 1352);
- [Maryland Code Ann. General Provisions, Section 4-307, 4-401 and 4-402](#);
- [Maryland Code Ann., Human Services, Sections 5-301 - 5-321](#);
- [Maryland Code Ann., Labor & Employment Article, Section 8-625](#);
- [Maryland Code Ann., Labor and Employment Article, Section 11-103](#), “Division of Workforce Development and Adult Learning -- Transfer of Senior Community Service Employment Program;
- Maryland Executive Order 01.01.2015.19, “[Governor’s Workforce Investment Board](#),” dated June 26, 2015.

REGULATION

- [Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule](#) pages 10-11, 317, 329, 336-337, 370-378, 423, 474-475, 776-787, 794-798, 824-825, 875-879, 894-896, 923-927, 974-978, 994-995, 1021-1022, dated June 30, 2016.
- [Workforce Innovation and Opportunity Act; Department of Labor Only; Final Rule](#) pages 124, 129, 169-170, 561-562, 573-575, 731, 900-902, 1419, 1421-1422, dated June 30, 2016.
- [Programs and Activities Authorized by the Adult Education and Family Literacy Act \(Title II of the Workforce Innovation and Opportunity Act\); Final Rule](#) pages 41-42, 47-49, 109-112, 175-177, dated June 30, 2016.
- [State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage; Final Rule](#) pages 174-182, 189-191, 549-560, 941-943, dated June 30, 2016.
- 29 Code of Federal Regulations (CFR), Part 98, Subpart F, “[General Principles Relating to Suspension and Debarment Actions](#);”
- 2 CFR, Chapter 2, “[Office of Management and Budget Guidance for Grants and Agreements](#);”
- 2 CFR 182, “[Government Wide Requirements for Drug-Free Workplace \(Financial Assistance\)](#)”
- 20 CFR Part 603, “[Federal-State Unemployment Compensation \(UC\) Program; Confidentiality and Disclosure of State UC Information](#);”
- 29 CFR Part 37, “[Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 \(WIA\)](#);”
- 29 CFR Part 38, “[Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act](#);”
- 29 CFR Part 93, “[New Restrictions on Lobbying](#);”

- 29 CFR 98, “[Government wide Debarment and Suspension \(Nonprocurement\)](#);”
- 3 CFR 1986, “[Debarment and Suspension](#);”
- 58 CFR 51751, “[Continuance of Certain Federal Advisory Committees](#);”
- 34 CFR 361, “[State Vocational Rehabilitation Services Program](#);”
- 34 CFR 363, “[The State Supported Employment Services Program](#);”
- 45 CFR 260, “[General Temporary Assistance for Needy Families \(TANF\)](#);”
- 45 CFR 205.50, “[Public Assistance Programs, Safeguarding Information for the Financial Assistance Programs](#);”
- Code of Maryland Regulations (COMAR), Title 9 - Department of Labor, Licensing and Regulation, Subtitle 01 – [Office of the Assistant Secretary](#);
- COMAR, Title I – Executive Order 01.01.1989.18, “[Drug and Alcohol Free Workplace \(Non-State Entities\)](#);”
- COMAR, Title 21- State Procurement Regulations, Subtitle 11 – Socioeconomic Policies, Chapter 8 - “[Drug and Alcohol Free Workplace](#);”
- COMAR Title 9 – Department of Labor, Licensing and Regulation, Subtitle 33 – Job Service, Chapter 1 – “[Job Service](#)”
- COMAR Title 13a – State Board of Education, Subtitle 11 – Programs for Adults with Disabilities, Chapter 1 – “[Vocational Rehabilitation Services](#)”
- COMAR Title 13a – State Board of Education, Subtitle 11 – Programs for Adults with Disabilities, Chapter 6 – “[Records of Services](#);”
- COMAR Title 13a – State Board of Education, Subtitle 11 – Programs for Adults with Disabilities, Chapter 7 – “[Appeal Hearings](#);”
- Executive Order 13333, “[Amending Executive Order 13257 to implement the Trafficking Victims Protection Reauthorization Act of 2003](#),” dated March 23, 2004.

FEDERAL GUIDANCE

- USDOL FAQ On WIOA Infrastructure Costs, dated April 1, 2016;
- U.S. Department of Education Rehabilitation Services Administration Policy Directive 16-03, “[Workforce Innovation and Opportunity Act \(WIOA\) Requirements for Unified and Combined State Plans](#),” dated March 9, 2016;
- USDOL FAQ on Local Agreement Costs/Potential Penalties for PY 2016, dated January 28, 2016;
- Unemployment Insurance Program Letter (UIPL) 20-15, “[Unemployment Insurance and the Workforce Innovation and Opportunity Act of 2014](#),” dated August 13, 2015;
- Training and Employment Guidance Letter (TEGL) 05-06, “Implementing the Salary and Bonus Limitations in Public Law 109-234,” dated August 15, 2006.
- [Quick Reference Guide to WIOA Join Final Rule](#), dated June 27, 2016.

OTHER REFERENCES

- [Maryland WIOA State Plan](#), dated April 1, 2016 (currently pending Federal approval);
- WIOA Technical Document 2016-01, “[Definitions for WIOA Implementation](#);”
- Temporary Cash Assistance (TANF)/Workforce Innovation Opportunity Act (WIOA) Partnership Update Memo, dated July 7, 2016.
- [Temporary Cash Assistance State and Workforce Development Area Profiles](#).

ATTACHMENTS

Attachment A –Memorandum of Understanding Sample Template

Attachment B – Dispute Resolution Form

(Insert Local Workforce Development Area name)

Memorandum of Understanding (identify the Parties in the header)

201[] - 20[]

This Memorandum of Understanding (MOU) is executed between the Local Board, the American Job Center System Partners, and the undersigned Chief Local Elected Official(s) of the Local Area. They are collectively referred to as the “Parties.”

This MOU is developed to memorialize the understanding of the Parties regarding the operation and management of the American Job Centers in [] (the “Local Area”). The [] (the “Local Board”) provides local oversight of workforce programming for the Local Area.

In accordance with Section 121 of Workforce Innovation and Opportunity Act (WIOA), the [] as the Local Board, with the agreement of the Chief Local Elected Official(s) (CLEO), has selected **(LIST ORGANIZATIONS THAT ARE LISTED IN ONE STOP OPERATORS AGREEMENT)** as the One-Stop Operator for the [] Local Workforce Development Area.

In accordance with Section 121(b) of WIOA, the following programs in the Local Area are overseen by the undersigned entities:

- The Maryland Department of Labor, Licensing and Regulation (WIOA Title I Adult, Dislocated Worker and Youth, WIOA Title II Adult Education and Family Literacy Act Program, WIOA Title III Wagner-Peyser, Trade Adjustment Assistance Act, Jobs for Veterans State Grant, and Unemployment Insurance);
- The Maryland State Department of Education’s Division of Rehabilitation Services (WIOA Title IV; Title I of the Rehabilitation Act of 1973);
- The Maryland Department of Human Resources (42 USC 601, et seq, also known as Temporary Assistance for Needy Families) / Local Departments of Social Services;
- **(INSERT “OTHER APPROPRIATE FEDERAL, STATE, OR LOCAL PARTNERS” OPERATING WITHIN THE LOCAL AREA)**

These entities are collectively referred to as “the American Job Center System Partners.”

Terms and Conditions

I. Duration of MOU

This MOU shall take effect January 1, 2017 and will terminate no later than December 31, 2018, unless terminated earlier by any of the Parties to this MOU, in accordance with

Section XII. The Parties shall review this MOU at least every two years to ensure proper delivery of services and funding pursuant to Section 121(c)(2)(A) of WIOA.

Contact Information of the Partners is labeled as **Exhibit 1 and made a part of this MOU.**

II. Convening of Parties

The Local Board Chair will take the lead role (or designate) as convener of the Partners. The Convener is responsible for ensuring that all Parties to the MOU have an opportunity to fully participate in the crafting of this MOU.

III. System Overview

WIOA was signed into law on July 22, 2014, and went into effect July 1, 2015. WIOA supersedes the Workforce Investment Act of 1998, and amends the Adult Education and Family Literacy Act, the Wagner-Peyser Act, and the Rehabilitation Act of 1973.

Providing businesses with the skilled workforce they need to compete in the global, regional, and local economies is central to Maryland's vision in implementing the federal Act. Maryland's workforce system provides a talent pipeline through the establishment of partnerships between State and local entities, businesses, economic development, education, and community stakeholders. To ensure that the workforce system efficiently meets the needs of both the businesses and the jobseekers that it serves, Maryland's workforce agencies have jointly developed the State's workforce plan with the intent that this vision will be carried out by each of the local workforce development areas through their American Job Centers. The Parties acknowledge that these goals are the central focus of the work to be done under this MOU. The Parties agree to comply with the policies, procedures and assurances, established under WIOA, including but not limited to the Policy Issuance 2016-09, WIOA Memoranda of Understanding and Resource Sharing Agreements" ("the Policy").

IV. Performance Requirements & Data Sharing

The Parties agree to participate in efforts to assess the effectiveness of the American Job Center system through WIOA performance measures. All Parties must provide performance information that supports the achievement of performance goals, consistent with the requirement of law and as outlined in the Maryland Combined State Plan. All Parties agree to work cooperatively to share relevant data and enter into data sharing agreements to the extent necessary and as permitted or required by applicable statute or regulation.

V. Services Offered through the American Job Center System

The Parties agree to build an efficient workforce system through sharing of information, increased collaboration, staff training and streamlining service delivery to maximize partner strengths and improve customer flow and access. Consistent with Section 121(b)(1) of WIOA, the Partners will provide access to programs or activities carried out by the entity through the American Job Center delivery system in the Local Area.

The Partners will:

(DESCRIBE SERVICES TO BE PROVIDED, THE COORDINATION OF SERVICES, AND THE DELIVERY OF SERVICES.)

- A. The American Job Center Partners in the Local Area offer customers a wide variety of career development. The Partners commit to:
- (1) Ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the American Job Center system.
 - (2) Provide access through the American Job Center delivery system to such programs or activities, including making career services provided under the Partner's program, available.
 - (3) Ensure that costs are appropriately shared by Partners by basing contributions on proportionate share of use and/or access, and requiring that all funds are spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including the Federal cost principles.
 - (4) Participate in the operation of the American Job Center delivery system consistent with the terms of this MOU, the requirements of WIOA, and the requirements of the federal, State, and local laws, regulations, rules, policies and plans applicable to the Parties in their respective roles under this MOU and as consistent with the laws, rules and regulations that govern each Partner's respective program.

(PARTNERS MAY INCLUDE ADDITIONAL RESPONSIBILITIES AS AGREED TO BY THE PARTNERS).

B. Accessibility

- (1) The Parties acknowledge, for the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under Section 174 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq), on the basis of sex under Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et. seq.), or on the basis of race, color, or national origin under Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, et. seq.), programs and activities funded or otherwise

financially assisted in whole or in part under WIOA are considered to be programs and activities receiving Federal financial assistance.

- (2) The Parties will ensure that no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity based of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.
- (3) The Parties will ensure that participants shall not be employed to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).
- (4) The Parties will ensure that no person may discriminate against an individual who is a participant in a program or activity that receives funds under this title, with respect to the terms and conditions affecting, or rights provided to, the individual, the status of the individual as a participant.
- (5) The Parties will ensure participation in programs and activities or receiving funds under WIOA Title I shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States. Participation in programs and activities or receiving funds under WIOA Title II are not subject to the same requirement.

VI. Referral Arrangements

(PARTIES MUST PROVIDE SPECIFICS AS TO HOW AMERICAN JOB CENTER PARTNERS AND THE ONE-STOP OPERATOR WILL REFER INDIVIDUALS TO APPROPRIATE SERVICES & ACTIVITIES)

VII. Resource Sharing Agreement

The purpose of the Resource Sharing Agreement (RSA) is to establish the terms and conditions of how the costs of the services and the operating costs of the American Job Center system will be funded, including funding of infrastructure costs of the Centers,

funding of shared services, operating costs of the System, and the leveraging of in-kind contributions, as appropriate and pursuant to Section 121(h)(4) of WIOA.

The RSA is labeled as Exhibit 2 and made a part of this MOU.

A. Cost Allocation Methodology

The Parties agree to the extent feasible to align individual agency resources to support workforce development systems integration, when and where appropriate. The shared costs, the allocation method, and each Party's share are identified in the attached RSA.

B. In-Kind Arrangements

The Parties may contribute to the costs of the partnership on an in-kind basis. Such a contribution must be agreed to by all of the Parties and may be used to offset the costs of a Party's responsibility identified in the cost allocation plan, when appropriate. The details of In-Kind contributions are documented in the attached RSA.

C. RSA Fiscal Agent

The RSA Fiscal Agent is designated by all Parties to the RSA, and is identified in the attached RSA Template(s).

D. American Job Center Shared Space

The current leases or agreements for American Job Centers space(s) are attached here to demonstrate the negotiation of shared infrastructure costs, and are included in Exhibit 3, which is made a part of this MOU.

VIII. Dispute Resolution Process

In the event that an impasse should arise between the Parties regarding terms and conditions, performance, or administration of this MOU, Parties agree to first attempt to resolve any conflicts among themselves. Should there be no resolution, the Parties agree to abide by the process identified within the Policy.

IX. Applicable Law

This MOU will be construed, interpreted, and enforced according to the laws of the State of Maryland. Parties shall comply with all applicable Federal and State laws and regulations, and local laws to the extent that they are not in conflict with State or Federal requirements.

X. Confidentiality

A. All Parties expressly agree to abide by all applicable federal, State, and local laws and regulations regarding confidential information, including but not limited to 20 CFR Part 603; 45 CFR Section 205.50; Md. Code Ann., Gen'l Provisions §§ 4-307, 4-401 and 4-402; Md. Code, Lab. & Empl. § 8-625; COMAR 09.01.01, 09.33.01; 42 U.S.C. § 503, 20 U.S.C. § 1232 (g); 34 CFR § 361.38; and 13A 11.06.01, as amended if amended. In addition, in carrying out their respective responsibilities, each Party shall respect and abide by the confidentiality policies and legal requirements of all of the other Parties.

- B. Each Party will ensure that the collection and use of any information, systems, or records that contain personally identifiable information will be limited to purposes that support the programs and activities described in this MOU.
- C. Each Party will ensure that access to software systems and files under its control that contain personally identifiable information will be limited to authorized staff members who are assigned responsibilities in support of the services and activities described herein. Each Party expressly agrees to take measures to ensure that no personally identifiable information is accessible by unauthorized individuals.
- D. To the extent confidential, private, or otherwise protected information needs to be shared amongst the Parties for the Parties' performance of their obligations under this MOU, and to the extent such sharing is permitted by applicable law, the appropriate data sharing agreements will be created and required confidentiality and ethical certifications will be signed by authorized individuals. With respect to confidential unemployment insurance information, any such data sharing must comply with all of the requirements in 20 C.F.R. Part 603, including but not limited to requirements for payments of costs and permissible disclosures.

XI. Modification

The Parties agree to abide by the process for modification, as specified in the Policy. Modifications to this MOU must be in writing and signed by each Party.

XII. Termination

This MOU will remain in effect until the end date specified in Section I, unless:

- (1) All Parties mutually agree to terminate this MOU prior to the end date.
- (2) Federal oversight agencies charged with the administration of WIOA fails to appropriate funds or if funds are not otherwise made available for continued performance, for any fiscal period of this MOU succeeding the first fiscal period. Any Party unable to perform pursuant to MOU due to lack of funding shall notify the other Parties as soon as the Party has knowledge that funds may be unavailable for the continuation of this MOU.
- (3) WIOA is repealed or superseded by subsequent federal law.
- (4) Local area designation is changed under WIOA.
- (5) A Party breaches any provision of this MOU and such breach is not cured within thirty (30) days after receiving written notice from the Chair of the Local Board specifying such breach in reasonable detail. In such event, the non-breaching Party(s) shall have the right to terminate this MOU by giving written

notice thereof to the Party in breach, upon which termination will go into effect immediately.

In the event of termination, the Parties to the MOU must convene within thirty (30) days after the breach of the MOU to discuss the formation of the successor MOU. At that time, allocated costs must be addressed.

Any Party may request to terminate its inclusion in this MOU by following the modification process identified in Section XI and as outlined in the Policy.

XIII. Non-Assignment

Except as otherwise indicated herein, no Party may, during the term of this MOU or any renewals or extensions of this MOU, assign or subcontract all or any part of the MOU without prior written consent of the other Parties.

XIV. Severability

If any part of this MOU is found to be null and void or is otherwise stricken, the rest of this MOU shall remain in force.

XV. Fair Practices Certification

The Parties certify that they prohibit, and covenant that they will continue to prohibit discrimination and certify that no person, otherwise qualified, is denied employment, services, or other benefits on the basis of: (i) political or religious opinion or affiliation, marital status, sexual orientation, gender identification, race, color, creed, or national origin; (ii) sex or age, except when age or sex constitutes a bona fide occupational qualification; or (iii) the physical or mental disability of a qualified individual with a disability.

XVI. Assurances of Non-Discrimination and Equal Opportunity in Agreements Funded by the U.S. Department of Labor

The Parties specifically agree that they will comply fully with the non-discrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act; the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq); the Nontraditional Employment for Women Act of 1991; title VI of the Civil Rights of 1964 as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1967, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37 and 38.

XVII. Drug and Alcohol Free Workplace

The Parties certify they will comply with the State's policy concerning drug and alcohol free workplaces, as set forth in COMAR 01.01.1989.18 and 21.11.08, and with the Drug-Free Workplace Act of 1988, 41 U.S.C. 702 et seq., and 2 CFR 182 which require that all organizations receiving grants from any Federal agency maintain a drug-free workplace.

The recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for suspension or debarment under 29 CFR 98, Subpart F.I.

XVIII. Certification Regarding Lobbying

All Parties shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. Section 1352) and 29 C.F.R. Part 93. The Parties shall not lobby federal entities using federal funds and will disclose lobbying activities as required by law.

XIX. Debarment and Suspension

All Parties shall comply with the debarment and suspension requirements (E.O.12549 and 12689) and 29 C.F.R. Part 98.

XX. Priority of Service

All Parties certify that they will adhere to all statutes, regulations, polices and plans regarding priority of service, including, but not limited to, priority of service for veterans and their eligible spouses, and priority of service for the WIOA Title I adult program.

XXI. Buy American Provision

Each Party that receives funds made available under Title I or II of WIOA or under the Wagner-Peyser Act (29 U.S.C. Section 49, et. seq.) certifies that it will comply with Sections 8301 through 8303 of Title 41 of the United States Code (commonly known as the “Buy American Act.”) and as referenced in WIOA Section 502.

XXII. Human Trafficking

Each Party certifies that it complies with Executive Order 13333 that requires termination without penalty of the MOU if a sub-grantee, contractor or subcontractor engages in human trafficking.

XXIII. Salary Compensation and Bonus Limitations

Each Party certifies that it complies with Training and Employment Guidance Letter (TEGL) 05-06,19-14, and 17-15 and Public Law 114-113, Division H, Title I, Section 105 restricting the use of federal grant funds for compensation and bonuses of an individual, whether charged to either direct or indirect, at a rate in excess of Executive Level II.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

XXIV. Signatures

IN WITNESS THEREOF, and in accordance with the Policy, the undersigned have executed this Memorandum of Understanding on or before the date set forth herein. By signing this document, each individual signing this MOU on behalf of a given Partner thereby certifies that he/she has the legal authority to bind said Partner to the terms of this MOU. This MOU may be executed in counterparts, each being considered an original.

Witness:

(LOCAL WORKFORCE DEVELOPMENT BOARD)

Signature

(NAME OF CHIEF LOCAL ELECTED OFFICIAL)

Chair

Date

(INSERT ALL OTHER SIGNATORIES AND WITNESSES AS APPROPRIATE)

Exhibit 1

Exhibit 1 should identify partners, including relevant addresses and contact information.

Exhibit 2

Exhibit 2 is the Resource Sharing Agreement.

Exhibit 3

Exhibit 3 corresponds with the Resource Sharing Agreement and should include leases, agreements, and floor plans considered to be a shared expense. Any lease entered into by any Party which impacts the expenses of an American Job Center should be included.

RSA Template Instructions

Please note:

- Local partners have the option to adjust the template for specific local needs. If the template is adjusted, the instructions below may or may not apply
- The local partners complete a separate template for each location.
- Cells with labels, titles and automatic calculations should be locked. They are not locked on the template to allow for local flexibility
- The costs posted on the template are estimated annual costs
- The costs posted on the template are shared costs only (partners may have other costs that are not shared costs, that do not impact the RSA)
- The costs are reconciled against actual costs in columns E and F, at least quarterly
- The instructions refer to annual cost. However, if the start and end dates do not coincide with a 12 months period, the amount may need to be pro-rated on a case by case basis.

ROW or COLUMN	TITLE or ITEM	INSTRUCTIONS
Row 5	Fiscal Agent	Cell C5: type in the name of the Fiscal Agent Organization and Contact Person
Row 9	CFDA # (if applicable)	Add CFDA # (for federal funding only)
Row 10	Allocation Method: TBD	No data entry in this row. Enter the agreed upon allocation Method in Cell C10.
Row 11	Add quantifier for chosen allocation method	Enter quantifier for each partner. Cells 11C and 11P calculate the total quantifier.
Row 12	Percentage of quantifier based on chosen allocation method	No data entry in this row. This row automatically calculates each partner's percentage of the quantifier for the chosen allocation method.
Row 13	Shares Expenses: Infrastructure	No data entry in this row.
Row 14	Rent	The lease holder posts the annual rent paid
Row 15	Utilities	The lease holder posts the annual cost of utilities
Row 16	Telephone	Post annual cost (not necessarily the lease holder, depending on who is paying for the phone lines)
Row 17	Janitorial	The lease holder posts the annual cost
Row 18	Grounds Keeping	The lease holder posts the annual cost
Row 19	Maintenance	The lease holder posts the annual cost
Row 20	Security Services	Post annual cost (not necessarily the lease holder, depending on who is paying for the service)
Row 21	In-Kind Contribution	Partners describe the In-Kind Contribution(s), if any, in Column C, and post the monetary value of the contribution(s)

Row 22	Blank	Partners describe the In-Kind Contribution(s), if any, in Column C, and post the monetary value of the contribution(s)
Row 23	Other	Partners describe other shared costs (if any) in Column C, and post the annual cost
Row 24	Shared Expenses: Resources	No data entry in this row.
Row 25	Copiers	Post annual cost (not necessarily the lease holder, depending on who is paying for the service)
Row 26	Supplies	Post annual cost (not necessarily the lease holder, depending on who is paying for the service)
Row 27	Fax Machines	Post annual cost (not necessarily the lease holder, depending on who is paying for the service)
Row 28	Computers	Post annual cost (not necessarily the lease holder, depending on who is paying for the service)
Row 29	Software	Post annual cost (not necessarily the lease holder, depending on who is paying for the service)
Row 30	In-Kind Contribution	Partners describe the In-Kind Contribution(s), if any, in Column C, and post the monetary value of the contribution(s)
Row 31	Blank	Partners describe the In-Kind Contribution(s), if any, in Column C, and post the monetary value of the contribution(s)
Row 32	Other	Partners describe other shared costs (if any) in Column C, and post the annual cost
Row 33	Shared Expenses: Staff Services	No data entry in this row.
Row 34	Customer Service Specialist (add FTE)	No data entry in this row. Add cell note in cell C32 with the Staff name(s), position(s), FTE(s)
Row 35	Salaries	Partners post shared annual cost as applicable.
Row 36	Fringe	Partners post shared annual cost as applicable.
Row 37	One-Stop Manager (add FTE)	No data entry in this row. Add cell note in cell C35 with the staff name, position, FTE
Row 38	Salaries	Partners post shared annual cost as applicable
Row 39	Fringe	Partners post shared annual cost as applicable
Row 40	In-Kind Contribution	Partners describe the In-Kind Contribution(s), if any, in Column C, and post the monetary value of the contribution(s)
Row 41	Blank	Partners describe the In-Kind Contribution(s), if any, in Column C, and post the monetary value of the contribution(s)
Row 42	Other (add FTE)	Partners describe other shared personnel costs (if any) in Column C, and post the annual cost
Row 43	Salaries	Partners post shared annual cost as applicable
Row 44	Fringe	Partners post shared annual cost as applicable
Row 45	Shared Expenses: Other	No data entry in this row.

Row 46	Other: Subscriptions	Partners post shared annual cost as applicable
Row 47	In-Kind Contribution	Partners describe the In-Kind Contribution(s), if any, in Column C, and post the monetary value of the contribution(s)
Row 48	Blank	Partners describe the In-Kind Contribution(s), if any, in Column C, and post the monetary value of the contribution(s)
Row 49	Other	Partners describe other shared cost in Column C, and post shared annual cost as applicable
Row 50	Total Paid by Partner	No data entry in this row. This row calculates each partner's contribution.
Row 51	Partner's share of total costs	No data entry in this row. This row calculates each partner's annual cost or reimbursement, based on the total shares cost in cell P46, and based on the partner's percentage share in row 12
Rows 52	Blank	No data entry.
Row 53	Total Due to/from Partner	No data entry in this row. This row calculates each partner's annual payable or receivable, which is the net of the partner's annual shared cost paid (in row 46) and the partner's annual share of the total shared cost (in row 47). The amounts in this row are the basis for the quarterly invoices prepared by the Fiscal Agent.
Column D	Total Budget for each line item	No data entry in this Column. Column D calculates the total budget for each line item, usually annual cost.
Column E	Reimbursed to Date	Updated on the "RSA Working Copy" only: The Fiscal Agent post the reimbursed amounts for each line item, quarterly or annually
Column F	Expense this Quarter	Updated on the "RSA Working Copy" only: The Fiscal Agent posts the actual cost for each line item, either quarterly or annually, to reconcile budgeted cost against actual cost. Any adjustments will be made on the last quarter or first quarter invoice.
Column P	Totals	No data entry in this Column. This column calculates the total occupied space in row 11, and the total cost for each budget line item.
Column Q	Shared Space	Use this Column if the Square Foot allocation method was selected. The Lease Holder or Fiscal Agent posts the total shared space, which is the difference between the occupied space and the total space. The template calculates the cost of shared space based on the percentages of occupied space.

Column R

Total Space

Use this Column if the Square Foot allocation method was selected. The Lease Holder or Fiscal Agent posts the total space (occupied and shared), which equals the total space in the lease.

WIOA MOU Dispute Resolution Form

Dispute Submission Date _____

Local Workforce Development Area _____

Local Board Chair or Designee _____

Petitioner _____

(Name Person Submitting Form)

Representing

(Local Partner Organization)

Local Partners Involved in Dispute

Nature of Dispute (Additional space can be used to describe the nature of the dispute)

Contact for Local Partners Involved

I, the undersigned, as representative of the above local partner, certify that the above information provided is to the best of my recollection.

Signature of Petitioner

Date