

Appendix E: Epilogue

The following public comments and Pennsylvania Department of Labor & Industry, or L&I, responses are borne from the posting of proposed changes to Workforce System Policy (WSP) No. 121-04, PA CareerLink® System operator for a public comment period commencing on May 10, 2019. The WSP provided additional guidance on the requirements for the selection of one-stop system operator(s). The public comments warranted conversations with those that submitted the public comments to L&I. Many of the concerns were incorporated into the proposed policy while other comments led to re-evaluating the proposed policy's various undesired implications. In the interim, L&I explored possible avenues to create a balanced policy that serves as many stakeholders as possible. The revised proposed policy reflects collaboration amongst key stakeholders including LWDBs, program partners and L&I leadership. To respect and honor the stakeholders that submitted public comments that helped to inform the newly revised proposed policy, L&I is publishing the comments and responses below. It is noted that the submitted public comments are organized to reflect the new proposed policy.

L&I appreciates the local workforce system stakeholders who contributed comments, and later, their time to collaborate with L&I.

General Comment.

Comment: A commenter stated that it “would first like to express our support for revisions to the policy that provide additional flexibility for local boards to develop one-stop operator models tailored to the needs of their local areas. As an example, the revised WSP 121-04 removes Appendix D – Operator Categories and Models. [We] commend the Department for this change that will enable local boards to explore a wider range of potential operator models and be less confined to a prescribed list within this policy.”

Response: L&I appreciates the commenter's validation.

Page 4. Who May be an Operator in the Local PA CareerLink® Service Delivery System, Subsection I – *“The operator must be either an entity (public, private, or nonprofit) or a consortium of entities that, at a minimum, includes three or more of the required one-stop partners of demonstrated effectiveness as described in WIOA section 678.400. All entities that are party to the composition of the entity designated as the operator must sign the contract between the LWDB and the selected operator.”*

Comment: A commenter stated, “The revised WSP 121-04 says that the Operator may be a “single entity or a consortium of entities.” Further, the policy states that “if a consortium of entities is composed of PA CareerLink® partners, it must include a minimum of three (3) of the required partners in the local PA CareerLink® system.”

While [we] recognize the potential value of a consortium operator model of PA CareerLink® partners, the Department's exclusion of LWDBs on the list of eligible entities who can compete to be the Operator would likely prohibit the required Title I Adult/Dislocated Worker (DW) partner in a local area from participating in the consortium. In Pennsylvania, local boards, not the Title I Adult/DW service provider, are generally the required partner for Title I Adult/DW programs.

[We] recommend the Department reconsider policy that would permit a consortium of WIOA partners to serve as the one-stop operator while prohibiting the Title I Adult/DW partner from participating in this consortium.”

Response: L&I disagrees with the commenter's recommendation. 20 CFR 678.600(a) explains, “One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 678.400”. Additionally, the commonwealth acknowledges the LWDB as the WIOA Title I Adult and Dislocated

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Worker programs' required partner, as such, the LWDB Chair, LWDB member or a designated proxy may represent the programs. No change was made to this portion of the policy.

Page 4. Who May be an operator in the Local PA CareerLink® Service Delivery System, Subsection III – “The types of entities that may be an operator include....”

Comment: A commenter wrote, “The revised WSP 121-04 states “Local workforce development boards...are not eligible to be an Operator.” However, per WIOA Final Rule § 679.410, the local board may be selected as a one-stop operator through sole source procurement or through successful competition, noting that “the chief elected official in the local area and the Governor must agree to the selection”. Circumstances exist in which this type of operator model could be cost-effective and reduce administrative burden within one-stop centers. Such a model may also make the most sense for workforce areas with a limited number of entities competing to be the operator.

While [we] recognize such requirements are not imposed arbitrarily, setting broad restrictions on one-stop operator procurement hampers the ability of local boards to explore or pilot different program models that make the most sense for their unique workforce area. [We] also understand that decisions to implement such models should be made in cooperation and with the approval of the Governor and our local elected officials. Though potential conflict of interest risks may exist in situations where the local board serves as the Operator, federal guidance also affirms that these challenges can be resolved. TEGL 15-16 says, “When the entity serving as the one-stop operator is also serving in a different role within the one-stop delivery system (as, for example, when a Local WDB serves as the one-stop operator), the one-stop operator may perform some or all of these functions, but only if it has established sufficient firewalls and conflict of interest policies and procedures.”

[We] recommend that, rather than prohibiting local boards from competing to be the one-stop operator in all instances, the Department should engage local boards in a process to establish the criteria, firewalls, and conflict of interest procedures that must be in place prior to approving this model.”

Response: L&I concluded allowing the LWDB to bid on the operator role and perform the role if selected as a result of the procurement is a lawful activity under WIOA. The practice had not been permitted to date due to repeated conflict of interest and internal control concerns that have taken place. Additionally, some PA CareerLink® partners are of the belief that local workforce delivery systems as a whole, and the partners in particular, would not be served well if the LWDB were to be the operator. Despite these concerns, L&I has put into place an avenue for a LWDB to bid upon, and to serve, as an operator. L&I has revised multiple sections of the proposed operator policy accordingly. In addition, *Appendix C: Workforce Delivery System Committee* and *Appendix D: Local Board as One-Stop Operator* were added to provide additional guidance and technical assistance in the event a LWDB considers bidding for the operator role and if selected perform suitably as the operator.

Page 5. Who May be an Operator in the Local PA CareerLink® Service Delivery System, Subsection IV – “Workforce development system structure exception requirements apply to any eligible entity (i.e., LWDB, county entity, commission or corporation) that has been, or will be, selected to perform more than one (1) of the following administrative or programmatic functions: LWDB, local area or planning region fiscal agent, staff to the LWDB, operator, or direct provider of workforce-related services or activities. Refer to L&I’s Local Governance Policy WSP No. 02-2015 for additional guidance if a workforce development system structural issue occurs.”

Comment: A commenter wrote, upon “reviewing WSP No. 02-2015, December 18, 2015 page 5 F.2. “the chief elected official(s), in collaboration with the local workforce development board, must submit a written request for a structure exception to the Department. This must happen every two years in conjunction with the

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development of the Local Plan or Local Plan modification.” Does a separate request need to be submitted by the CEO & the WDB when the structure exemption is fully described in the local plan (submitted every four years) or as modified (every two years)?”

Response: Despite being described in the WIOA local plan, a local workforce development area, or LWDA, desiring a structural exception must provide the commonwealth a separate request if the exception is active. The commonwealth requires a separate written request for a workforce development system structure exemption for different reasons. Most importantly, specific terms and conditions are created and memorialized during the negotiation between L&I and the requesting LWDA. It is through the separate request that the commonwealth and LWDA can review for potential modification the aforementioned terms and conditions. Local Governance Policy WSP No. 02-2015 provides detailed guidance for the necessity of a structural exception as well as instruction for its attainment. As a condition of maintaining the structural exception, the LWDA CEO and LWDB agree to communicate to stakeholders the existence of a structural exception, what the exception permits and how the LWDA is composed by way of an organizational chart through the WIOA local plan; detailed terms and conditions are not communicated.

Page 6. Roles, Responsibilities and Limitations of the Operator, Subsection II. Additional Role(s), B) Additional Role- Managing PA CareerLink® Service Delivery Operations {formerly paragraph 4—but was removed} – “If the one-stop center is assigned an on-site center manager then the operator’s functional supervision role is assumed by the one-stop center manager; or if deemed required by the operator and local board, a temporary on-site center manager assumes the functional supervision role. The individual serving as an on-site center manager must have the respect of the program partners. If a majority of the partners that are party to the MOU deem the individual selected to be the on-site center manager unacceptable the local board and the operator must mutually select another individual.”

Comment: A commenter stated, “Not all partners contribute equally to the shared costs of the (PA) CareerLink® and therefore a simple “majority rule” does not reflect the level of commitment of the various partners. We strongly believe that this oversight responsibility should be a local board decision based on input from all partners. Such local oversight is a major function of Local Workforce Development Boards. This responsibility should be a local board decision based on input from all partners. Language to this effect should be included in all related agreements, including the MOU.”

Response: L&I agrees with the commenter’s statement that LWDBs are tasked the oversight function for the local area workforce delivery system, hence, the one-stop operator as well [see 20 CFR 679.370(i)]. L&I further agrees that the LWDB should make decisions based, in part, from input from the partners and language to this effect should be included in the MOU. L&I has removed policy language that would have granted partners the ability to require the LWDB and operator to replace an on-site center manager.

It should be noted that L&I disagrees with commenter’s argument that one-stop partners are not equal, or a partner’s funding contribution should equate to a partner’s scale of accommodation given. The one-stop partners [see 20 CFR 678.400 through 678.410] are signatories to the MOU [see 20 CFR 678.500]. Partners contribute to one-stop infrastructure funding and shared costs [see 20 CFR 678.755 and 760] in a manner consistent to each partner in proportion to its use of the one-stop center, relative to benefits received, and as delineated in the MOU. In other words, equality is based on a partner’s contribution relative to its proportionate use and relative benefit derived from the local area’s one-stop system; not the overall amount a partner contributes. It is recognized that some program partners are more active in the one-stop center and contribute greater funds; however, all one-stop program partners are considered equal as each partner provides appropriate contributions accordingly.

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Page 7. Roles, Responsibilities and Limitations of the Operator, Subsection III. Responsibilities of the Operator, Administration.

Comment: Regarding the third bullet, a commenter requested, “please define *annual one-stop center operation plan*.”

Response: L&I once maintained a one-stop certification policy that included many elements that are no longer articulated in the current one-stop certification policy. One of those eliminated elements was the creation and maintenance of a one-stop center operation plan. It is still considered a best practice for the operator, in concert with the partners, service providers and other stakeholders, to develop and maintain a one-stop center operational plan. The proposed operator policy has been revised to read: “*Develops procedures for one-stop service location operations in partnership with stakeholders*.”

Comment: The fifth bullet, “*Negotiates with Partners and service providers regarding expenses related to space, occupancy, shared costs and other costs associated with the Operator and one-stop delivery system*.” A commenter suggested, “Wouldn’t such negotiations be conducted by the WDB’s fiscal agent, not the Operator?”

Response: L&I appreciates the commenter’s clarifying question. The proposed operator policy lists many additional responsibilities the operator may be tasked with by the LWDB. The LWDB is responsible for the development, negotiation and maintenance of the MOU. It is recognized LWDBs rely upon the expertise of the local board staff, and if designated, the fiscal agent, to assist in the MOU process. Operators are uniquely situated to assist the LWDB during the MOU process due in large part to the fact that the operator coordinates the one-stop partners and service providers program services. The operator’s knowledge and expertise goes beyond the coordination of program services. Pertaining to one-stop center space, occupancy, shared and other costs the operator is a valuable resource for the LWDB when it is engaged in the MOU process. Many LWDBs have tasked the operator to be involved in the MOU process, including negotiating directly with partners. In light of this comment, L&I has edited the proposed policy for greater clarity: “*In concert with the LWDB and/or assigned local area staff, negotiates with partners and service providers regarding expenses related to space, occupancy, shared costs and other costs associated with the operator and one-stop delivery system*”.

Page 7. Roles, Responsibilities and Limitations of the Operator, Subsection III. Responsibilities of the Operator, Coordination.

Comment: The ninth bullet, “*Insures that an effective customer referral mechanism is in place and monitors usage*”. A commenter inquired, “How is the Operator to monitor referrals from OVR and Title II when they are not using the CWDS referral system?”

Response: L&I thanks the commenter for this question. The proposed operator policy lists many additional responsibilities the operator may be tasked with by the LWDB. The operator’s lawful mandatory role is the coordination of one-stop program services. The commenter identifies the commonwealth’s public workforce development system of record (i.e. CWDS) and its customer referral function; the commenter also specifies some partners do not employ the customer referral function. L&I acknowledges some partners are unable to use the referral function for various reasons such as a limitation in the program’s authorizing language or the requirement to employ a different system of record. Nonetheless, the operator is tasked with the responsibility for on-going and daily one-stop center operations; this responsibility includes ensuring that customers receive seamless program services to the best ability of all concerned. Seamless program services is best achieved

through effective referral mechanisms that supplement the CWDS referral function. Each local area must accept the challenge to devise appropriate referral methods to accomplish the goal of seamless program services.

Page 8. Roles, Responsibilities and Limitations of the Operator, Subsection III. Responsibilities of the Operator, Managerial.

Comment: The seventh bullet, *“Helps ensure L&I’s ‘Discrimination Plan’ is enacted and maintained, as well as ensuring that relevant equal opportunity and civil rights measures are enforced.”* A commenter suggested, *“Shouldn’t this be Non-Discrimination Plan? And, when will that plan be final and distributed to the local areas?”*

Response: L&I concurs with the commenter that the phrase *“Discrimination Plan”* was mistakenly listed. The proposed policy narrative was edited to reflect the proper terminology: *“Reviews and enacts the L&I’s Non-Discrimination Plan, or NDP”*. The commenter may contact L&I’s Office of Equal Opportunity, or OEO, and request a copy of the NDP.

Page 8. Roles, Responsibilities and Limitations of the Operator, Subsection IV. Limitations – *“The operator may not perform the following functions: convene system stakeholders to assist in the development of the WIOA local plan; prepare and submit WIOA local plans; be responsible for oversight of itself or other operators; manage or participate in the competitive selection process for the operator; select or terminate an operator, nor WIOA career services, and youth providers; negotiate local and/or regional performance accountability measures; or develop and submit an operator budget, but may provide requested financial records to the LWDB.”*

Comment: A commenter inquired if an operator budget was the RSAB.

Response: Yes, L&I concurs and is using the WIOA term *“operating budget”* in lieu of *“resource sharing agreement budget”*. *“Operating budget”* has also been incorporated into the updated memorandum of understanding policy as well as other related policies and supporting documents. Incidentally, the former proposed operator policy mistakenly used *“operator budget”* instead of the correct term *“operating budget”*. The current proposed operator policy has corrected the term.

Page 14. Appendix B: One-Stop Procurement, Operator Costs. 9th bullet point – *“LWDB(s) have the responsibility of operator procurement and evaluation. LWDB(s) are responsible for the costs/expenses incurred which may derive from procurement and evaluation processes, LWDB staff salary and expenses, and third-party involvement in the procurement. LWDB staff must provide L&I a detailed cost and price analysis to recoup any one-stop operator procurement costs.”*

Comment: A commenter requested clarification, *“How and from whom would a local area recoup procurement costs?”*

Response: Thank you for your question. For detailed guidance on recouping expenses associated with the procurement of the operator it is recommended LWDBs contact L&I’s Bureau of Workforce Development Administration Fiscal Services Unit.