

Appendix F: Epilogue 2

The following public comments and Pennsylvania Department of Labor & Industry, or L&I, responses are from the posting of proposed changes to PA CareerLink® System Operator policy for a public comment period effective December 9th, 2020 until January 11th, 2021. A major change in this policy permitted the LWDB to bid on the operator role and perform the role if selected as a result of the procurement, which 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 put into place an avenue for a LWDB to bid upon, and to serve as an operator. 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.

L&I appreciates the local workforce system stakeholders who contributed comments.

General Comment.

Comment 1: A commenter stated that “the phasing of the Workforce System Policy revised on December 9, 2020 with numerous policy changes is a concern considering it is at a time when several boards are in the process of procuring the One Stop Operator for compliance in PY 21, starting July 1, 2021.”

Response 1: L&I understands the commenter’s concern. As referenced above, a major change in this policy permitted the LWDB to bid on the operator role and perform the role if selected as a result of the procurement, which is a lawful activity under WIOA. *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. However, if this option is not used, content and other requirements from this policy is similar to the previously issued Workforce System Policy (WSP) No. 121-04, *Local Workforce Delivery System – PA CareerLink® System Operator* on February 27, 2017. No changes will be made.

Comment 2: A commenter explained “ The U.S. Department of Labor has released numerous guidance letters and notices addressing the *One Workforce Vision* that fosters greater collaboration, integrated service delivery, shared data, and leveraged resources that leads to positive employment and training outcomes for workforce system customers. Additionally, the federal government has released several regulations and guidance on staffing flexibilities for the Employment Service, Trade, and Unemployment Compensation staff – staffing that often experiences high vacancy and turnover levels amongst Commonwealth employees leaving strained capacity and support in local and regional PA CareerLink® operations.

The *One Workforce Vision* influences the roles and responsibilities assigned to the One-Stop Operator.” The commenter requests the incorporation of “*One Workforce Vision* priorities into this guidance document, including the new actions and steps it will take to align itself to the federal government values of collaboration, integration, shared data, and staffing flexibilities in relation to the One Stop Operator.”

Response 2: Each LWDB should discuss and collaborate staffing needs and any costs related to the operator with partners. L&I agrees that the *One Workforce Vision* influences the roles and responsibilities assigned to the one-

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stop operator: however, L&I notes the current draft's vision and policy as written is further strengthened by TEN 13-20. For example, the expanded list of roles the operator can be assigned is in alignment with TEN 13-20; therefore, no changes are warranted.

Comment 3: A commenter requested “the incorporation of clear and concise state responsibilities for policy guidance and timeline requirements related to the Operator. The timeliness of requirements being communicated to the Local Workforce Development Boards is critical to draft and develop quality relevant procurement solicitations in accordance with Department requirements.”

Response 3: Thank you for your comment. L&I agrees that communicating updated policies as soon as possible, especially when major or multiple policy changes occur, is directly related to LWDBs' success with implementing policy changes. While L&I understands that some LWDBs are in the process of procuring the One Stop Operator for compliance in PY 21, starting July 1, 2021, as noted earlier in this epilogue, the major change in this policy permits a LWDB to bid on the operator role and perform the role if selected as a result of the procurement.

If this option is not used, content and other requirements from this policy is similar to the previously issued Workforce System Policy (WSP) No. 121-04, Local Workforce Delivery System – PA CareerLink® System Operator on February 27, 2017.

Page 4. Who may be an operator in the PA CareerLink® Service Delivery System, section I

The operator must be either an entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of the one-stop partners, it must at a minimum, include three (3) or more of the required one-stop partners of demonstrated effectiveness as described in WIOA section 678.400. All entities must sign the contract between the LWDB and the selected operator.

Comment: A commenter stated, “if the LWDB seeks out Operators composed of One-Stop Partners, due to their knowledge and self-interest in meeting and achieving their respective performance goals, in what way are the interests of the CareerLink system in a LWDA served by unnecessarily increasing the shared costs of the Operator and therefore reducing funding available to cover operations and customer services.

Furthermore, based on the record of performance by CareerLink Operators since the inception of the WIOA in 2017, what need is there to place additional restrictions and costs on the procurement process for CareerLink Operators?”

Response: In accordance with WIOA section 679.430, local organizations often function simultaneously in a variety of roles, including one-stop operator and direct provider of services. Any organization that has been selected or otherwise designated to perform more than one of these functions must develop a written agreement with the LWDB and CEO to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy.

Operator shared service costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other

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applicable legal requirements, including Federal cost principles found in the Uniform Guidance or any corresponding similar regulation or ruling requiring that costs are reasonable, necessary and allocable.

In other words, each LWDB determines the composition of the required procured operator. The entity that drafts the procurement is assigned the cost; each cost is associated to that entity's choice. If costs are a concern, a LWDB does not need to select a consortium of entities to serve as an operator. No changes will be made in this section.

Page 5. Roles, Responsibilities and Limitations of the Operator, subsection I, last paragraph.

To help ensure the coordination of program services, the operator is charged with the functional supervision of one-stop service locations. This may take the form of a service location manager (i.e. Site Administrator) or other means as determined effective. See subsection titled: Additional Role – Managing PA CareerLink® Service Delivery Operations for more information.

Comment 1: A commenter recommended including a definition of “functional supervision” to clarify the level of authority permitted to the Operator.

Response: The minimum requirements of the operator are determined by the local workforce board's vision of the local area's one-stop center requirements for program service coordination and other defined roles. The lawful role of the one-stop operator is the coordination of services. Workforce development practice has led to the development of the conceptual role of “functional supervision” allowing the operator to oversee the day-to-day operations of PA CareerLink® staff including co-located program partners staff and operator staff (e.g., site administrator, front desk staff, security guards, etc.). The “functional supervision” role allows for greater one-stop center staffing efficiencies and service integration. L&I believes further defining the operator's “functional supervision” role may hinder a LWDB's flexibility to achieve a board's vision of how the local area's one-stop center(s) may operate. Therefore, no changes will be made.

Comment 2: A commenter requested “clarification and/or re-drafting of the Operator's authority to ensure that the Operator does not act beyond its authority as outlined in its locally procured contract.”

Response 2: L&I respectfully disagrees that further clarification is necessary. The section *Roles, Responsibilities and Limitations of the Operator*, on page five (5), outlines the operator's authority appropriately. L&I will provide further technical assistance upon request.

Page 8. Limitations, bullets 5, 6, and 8

The operator may not perform the following functions:

- *Negotiate local and/or regional performance accountability measures*
- *Convene system stakeholders to assist in the development of WIOA plans*
- *LWDBs that serve as the operator will have additional limitations imposed*

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Comment: A commenter noted that there is “language regarding this option which indicates a LWDB Operator could not participate in performance negotiations, the development of WIOA Regional and Local Plans, and other unspecified restrictions.”

Response: L&I respectfully disagrees. The referenced limitations are specific to a one-stop operator, not when a LWDB is selected as the operator. As referenced in TEGL 15-16, one-stop operators may not perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under WIOA sec. 107); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career service providers, and youth providers; negotiate local performance accountability measures; or develop and submit budgets for activities of the Local WDB in the Local Area.

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 as described in TEGL 15-16’s section 11.

Appendix C: Workforce Delivery System (WDS) Committee provides an avenue for a LWDB operator to use this committee to collaborate and participate in WIOA regional and local area planning; review partner or service provider program goals and outcomes, local area performance accountability reports and other information to help gauge workforce delivery system efficacy. No changes will be made to this section.

Page 8. Oversight and Monitoring, 1st paragraph

If a local board is selected as the one-stop operator, an outside entity or state agency must conduct the monitoring and report the monitoring results to the CEO in the local area.

Comment: A commenter wrote, “the requirement to procure a separate entity to conduct monitoring of the LWDB would entail extra costs outside of the normal monitoring responsibilities of the LWDB.”

Response: The LWDB must monitor the one-stop operator, but it cannot monitor itself. TEGL 15-16 explains that when a LWDB is the one-stop operator, there is an inherent conflict of interest in that the LWDB cannot effectively monitor itself. In such circumstances an outside agency, or a State agency, must conduct the monitoring and report the monitoring results to the CEO. All monitoring must be in accordance with the Uniform Guidance, 2 CFR part 200, and 2 CFR part 2900.

In cases where a LWDB desires to be the operator, WIOA requires the LWDB be held responsible and liable for all procurement-related costs that arise due to the LWDB participating in the procurement process. L&I agrees and acknowledges that there are additional costs associated with bidding for the operator role and continuing cost if the LWDB is selected as an operator. The LWDB is held solely responsible and liable for costs that arise due to the LWDB’s acceptance of performing the roles, responsibilities and duties of the operator and not being able to perform the duties normally accorded the LWDB.

However, LWDBs have flexibility determining the funding source(s) to support the operator (e.g., shared cost spread among all partners, local government general revenue and/or philanthropic sources). LWDB(s) have the responsibility of operator procurement and evaluation. LWDB(s) are responsible for the costs/expenses incurred

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which may derive from procurement and evaluation processes, LWDB staff salary and expenses, and third-party involvement in the procurement. LWDB's should reference L&I's Workforce System Policy (WSP) No. 03-2015, Financial Management Policy and its attached FMG's Chapter 10: Procurement for additional information or contact BWDA Fiscal Services unit for additional guidance. No changes will be made in this section.

Page 14. Appendix B, Operator Costs, bullet 4

- *The possibility of a purely "non-financial" operator does not exist; however, the LWDB may consider options to achieve the lowest operator cost possible given the goals and strategies the LWDB desires to implement. LWDBs control the cost of an entity serving in the capacity of an operator by determining the scope of the operator's roles and responsibilities. A cost reduction strategy that may be used, in part, is the proposed employment of one-stop partner "in-kind" contributions to help fund the operator.*

Comment 1: A comment stated, "since Non-Financial Agreements for Operators are not allowable, how the LWDB would charge itself for the costs associated with such an arrangement is difficult to envision."

Response 1: LWDB's should reference L&I's Workforce System Policy (WSP) No. 03-2015, Financial Management Policy and its attached FMG's Chapter 10: Procurement for additional information or contact BWDA Fiscal Services unit for additional guidance. No changes will be made in this section.

Comment 2: A commenter noted, "the revised policy states that RFP's with no funding or nominal funding are not allowed. No criteria are listed as to how a LWDB can determine if the funding the Board feels is sufficient to cover the costs of the Operator will be deemed nominal by any review conducted by the Department. This uncertainty interferes with the authority granted to the LWDB to determine the scope of the responsibilities they expect the Operator to perform. At the same time, the policy allows the LWDB to control Operator Costs by considering one-stop partner "in-kind" contributions to help fund the Operator. There is no need to interfere in the LWDB's determination of the costs they believe are sufficient relative to the responsibilities of the Operator. The reference to nominal costs should be removed from the policy."

Response 2: The referenced section is in alignment with language used in the previously issued Workforce System Policy (WSP) No. 121-04, *Local Workforce Delivery System – PA CareerLink® System Operator* on February 27, 2017, Section E, *Operator Costs*:

WIOA mandates the competitive procurement of the one-stop operator and offers flexibility for funding the one-stop operator. Because of the nature of the roles and responsibilities associated with an operator, WIOA presumes there are costs associated with such an entity. The possibility of a purely 'non-financial' operator does not exist; however, the local board may consider options to achieve the lowest operator cost possible given the goals and strategies the board desires to implement. Local boards control the cost of an entity serving in the capacity of an operator by determining the scope of the one-stop operator's roles and responsibilities. A cost reduction strategy that may be used, in part, is the proposed employment of one-stop partner 'in-kind' contributions to help fund the operator.

In addition, on May 3, 2017, the Employment and Training Administration (ETA) issued 'Competitive Procurement of a One-Stop Operator and Various Entity Roles - Additional [FAQs](https://doleta.gov/wioa/FAQs.cfm)' [<https://doleta.gov/wioa/FAQs.cfm>] relative to the procurement of the operator. In that document, the

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following question was asked and answered:

Can a Local Board issue a Request for Proposal (RFP) or Invitation for Bid (IFB) that does not include any funding?

No. A local workforce development board (WDB) (or State WDB, in the case of single-area states) cannot issue a request for proposal (RFP) or invitation for bid (IFB) that includes no funding, or only includes nominal funding. An RFP or IFB with no funding or nominal funding will restrict competition and will result in either no responses or a limited number of responses from entities already receiving Title I funds. Such an RFP or IFB would violate the prohibition on noncompetitive pricing practices under 2 CFR 200.319(a) and 29 CFR 97.36(c)(1)(iii).

The May 3, 2017 ETA FAQ is clear and strengthens the originally posted WSP No. 121-04, Section E, Operator Costs, and current drafted policy in that local boards are not allowed to issue an RFP or IFB that includes “no fund” or “zero fund” conditions. No changes will be made in this section.

Page 15. Bullet 6.

- *The entity that claims employer of record status for employees assigned to and/or associated with the roles and responsibilities of the operator(s) must assume the costs, expenses and salary of the employee. It is noted all costs, expenses and salary of such employees are a shared cost within the local workforce delivery system.*

Comment: A commenter requested “further guidance on how to best establish employer-of-records for common operating staff in PA CareerLink® when all partners benefit from the staff time and responsibilities”

Response: Recognizing that program partners are responsible for the shared costs associated with each one-stop center, the local area MOU provides the best means for local boards and partners to define and agree upon one-stop center operator staff who are required to fulfill the local board’s vision of the operator’s assigned roles and responsibilities. No further changes will be made in this section.

Page 21. Appendix D, General

LWDBs must still compete to be the one-stop operator in the local area and meet mandatory competition requirements in 20 CFR §§ 678.605(c) and 678.615(a), if appropriate fire walls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications of 20 CFR § 679.430 for demonstrating internal controls and preventing conflict of interest.

Comment: A commenter noted, “the firewalls required to be in place between LWDB [and it’s] staff and those responsible for Operator responsibilities would be an additional cost compared to other Operator Options.

The additional costs incurred for a LWDB to pursue this option would make it cost prohibitive compared to other entities and difficult to handle from an accounting standpoint. In effect these provisions would require the LWDB to duplicate some of its current responsibilities and costs to no practical end.”

Response: WIOA final rules explains that a LWDB may be selected as a one-stop operator through successful procurement, in accordance with part 678, subpart D (see Joint WIOA Final Rule). When a LWDB is selected as a

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one-stop operator through procurement, it must establish sufficient firewalls and conflict-of-interest policies and procedures that the Governor approves. These requirements will result in additional costs for the LWDB that are unavoidable per the dictates of WIOA regulations. No changes will be made in this section.

Page 21. Appendix D, Stipulations, 1st paragraph.

The LWDB must secure a qualified third-party entity to conduct the full competitive procurement process including selection and contract negotiation

Comment: A commenter stated, “the requirement for a third party to evaluate a proposal from the LWDB is impractical and with no guidance on what factors a third party would utilize in evaluating such a proposal.”

Response: L&I respectfully disagrees. TEGL 15-16 explains that one way to avoid perceived or actual conflict of interest is to establish effective conflict of interest policies and maintain appropriate firewalls that apply when the Local WDB competes to be the one-stop operator. This may include the requirement for an outside entity, or third-party as referenced in the operator policy, to conduct the competition; the LWDB should identify an impartial or experienced party that is not connected to the LWDB to implement the full procurement process. For example, the Local WDB could contract with a separate and independent outside entity to conduct the competition. Outsourcing the entire process (including development of requirements, drafting the RFP or IFB, evaluation of proposals/bids, and identification of best entity) to an alternate entity would be the best practice in this circumstance to avoid a conflict of interest. These costs and activities would be allowable under WIOA.

TEGL 15-16 also defines the examination of the competition processes by an outside party. State WDBs and Local WDBs may opt to retain an outside entity to conduct an objective review of the competition process, or parts of the competition process, such as: whether the RFP/IFB was unduly restrictive or whether the selection process was properly and fairly conducted. Likewise, State WDBs and Local WDBs may opt to retain an outside entity to conduct an objective review of other aspects of the competition process, including a review of the entities selected as a one-stop operator, such as: past performance; compliance with Federal requirements and policies; financial systems; internal control framework; and policies to perform and manage the one-stop operator services in accordance with WIOA. Such a review of the competition process by an outside entity could help monitor whether the process remains equitable and transparent. The outside entity conducting such a review could be an independent organization, or a separate State agency, such as the office of the State auditor, or office of the State inspector general. If the results of the review process find weaknesses or barriers to effectively managing the competition or contract, the State agency and Local WDB must work together to establish special conditions/criteria to monitor those barriers and to achieve timely or effective resolution. No changes will be made in this section.

Page 22. Appendix D, Governor’s Request Letter Requirements, bullet 10, sub-bullet 1.

- *The LWDB, as operator, may have paid staff to act as PA CareerLink® center site administrators only. The operator will solely be held responsible and liable for any other staff costs thereby absolving the state, its agencies and assignees, the PA Workforce Development Board, and all entities party to the local workforce delivery system Memorandum of Understanding, or MOU, from providing financial and other contributions to support additional operator staff.*

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Comment 1: A commenter requested “additional guidance on how or if other operations staff, such as Greeters, Help Desk Staff, Security Guards, etc. may still be considered a shared cost across partners in the case a local workforce board serves as the Operator.

Additional information on how best to establish employers-of-record for these individuals would be appreciated.”

Response 1: In the case presented, if a LWDB acts as an operator, only PA CareerLink® site administrator costs may be considered shared costs. No other operator staff can be considered a share cost in this circumstance.

If the LWDB operator requires additional operator staff (such as front desk staff), a partner’s in-kind contribution is permitted. No changes will be made in this section.

Comment 2: A commenter explained “the draft policy addresses Operator responsibility and staff costs for the PA CareerLink® site administrator only.” The commenter requested “clarification and additional guidance on how common operating staff in PA CareerLink® such as Greeters, Help Desk, Security Guards, etc. may be considered a shared cost across partners.”

Response 2: L&I clarifies that page 22 expectations only apply to when the LWDB is the operator. Otherwise, if the operator is not the LWDB, common operator staff are considered a shared cost. Additional shared cost clarification was added to page 6, part b, paragraph 2 which includes in-kind contributions.