

**Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
Workforce Programs**

**Workforce Innovation and Opportunity Act (WIOA)
State Compliance Policy (SCP)**

Policy Number: 2.4

Originating Office: Department of Employment, Training and Rehabilitation (DETR); Workforce Programs

Subject: Youth Expenditure Requirements

Issued: NEW; replacing WIA State Compliance Policy 2.4

Purpose: To provide guidance on compliance with the youth program expenditure requirements of WIOA.

State Imposed Requirements: This directive contains some state-imposed requirements. These requirements are printed in ***bold, italicized*** type.

Authorities/References: Workforce Innovation and Opportunity Act (WIOA) P.L. secs.113- 128; 20 CFR § 681; TEGl 23-14.

ACTION REQUIRED: Upon issuance bring this guidance to the attention of all WIOA service providers, local workforce development board (LWDB) members and any other concerned parties. LWDB's policies, procedures, and/or contracts affected by this guidance are required to be updated accordingly.

Background: WIOA outlines a broader youth vision that supports an integrated service delivery system and provides a framework through which states and local areas can leverage other Federal, state, local, and philanthropic resources to support in-school youth (ISY)-(WIOA Sec. 129(a)(1)(C), and Out of School Youth (OSY)-(WIOA Sec. 129(a)(1)(B). WIOA affirms the U.S. Department of Labor's commitment to providing high-quality services for all youth and young adults, beginning with career exploration and guidance, continued support for educational attainment, opportunities for skills training in in-demand industries and occupations, such as pre-apprenticeships or internships, and culminating with a good job along a career pathway, enrollment in post-secondary education, or a registered apprenticeship.

Notably, WIOA shifts the primary program focus of Title I Youth formula programs to support the educational and career success of OSY. A minimum of 75 percent of WIOA

Youth funds are required to be spent on OSY, which is an increase from the minimum of 30 percent under WIA.

Additionally, local programs are required to expend at least 20 percent of available funds to provide work experiences to eligible youth. Under WIOA, paid and unpaid work experiences that have as a component academic and occupational education may include the following four categories: summer employment opportunities and other employment opportunities available throughout the school year; pre-apprenticeship programs; internships and job shadowing; and on-the-job training opportunities.

Final regulations also allow grant recipients/fiscal agents to provide directly, some or all the youth workforce investment activities.

Policy and Procedure:

Out-of-School Youth Expenditure Requirement (TEGL 23-14)

A minimum 75 percent OSY expenditure applies to local workforce development area funds and funds reserved by the Governor. However, only statewide funds spent on direct services to youth are subject to the OSY expenditure requirement.

State and local area administrative expenditures are not a part of the 75 percent OSY minimum expenditure calculation. Further, the 75 percent expenditure rate is a minimum requirement; therefore, states and local areas may spend up to 100 percent of their local area youth funds on OSY if they choose.

(20 CFR § 681.410)

The 75 percent requirement applies to both statewide youth activities funds and local youth funds with two exceptions:

(a) Only statewide funds spent on direct services to youth are subject to the OSY expenditure requirement. Funds spent on statewide youth activities that do not provide direct services to youth, such as most of the required statewide youth activities listed in WIOA Sec. 129(b)(1), are not subject to the OSY expenditure requirement. For example, administrative costs, monitoring, and technical assistance are not subject to OSY expenditure requirement; while funds spent on direct services to youth such as statewide demonstration projects, are subject to the OSY expenditure requirement.

(b) For a State that receives a small State minimum allotment under WIOA Sec. 127(b)(1)(C)(iv)(II) or WIOA Sec. 132(b)(1)(B)(iv)(II), the State may submit a request to the Secretary to decrease the percentage to a percentage not less than 50 percent for a local area in the State, and the Secretary may approve such a request for that program year, if the State meets the following requirements:

(1) After an analysis of the in-school youth and out-of-school youth populations in the local area, the State determines that the local area will be unable to use at least 75 percent of the local area WIOA youth funds to serve out-of-school youth due to a low number of out-of-school youth; and

(2) The State submits to the Secretary, for the local area, a request including a proposed percentage decreased to not less than 50 percent to provide workforce investment activities for out-of-school youth.

(c) In the exercise of the discretion afforded by WIOA Sec. 129(a)(4) the Secretary has determined that requests to decrease the percentage of funds used to provide activities to OSY will not be granted to States based on their having received 90 percent of the allotment percentage for the preceding year. Therefore, when the Secretary receives such a request from a State based on having received 90 percent of the allotment percentage for the preceding year, the request will be denied without the Secretary exercising further discretion.

(d) For local area funds, the administrative costs of carrying out local workforce investment activities described in WIOA Sec. 128(b)(4) are not subject to the OSY expenditure requirement. All other local area youth funds beyond the administrative costs are subject to the OSY expenditure requirement.

Determining the 75 Percent Requirement Amount (TEGL 23-14)

The OSY expenditure rate for statewide funds is calculated after subtracting funds that are not spent on direct services to youth. The OSY expenditure rate for local area funds is calculated after subtracting funds spent on administrative costs. For example, if a local area receives \$1 million and spends \$100,000 (10 percent) on administrative costs, the remaining \$900,000 is subject to the minimum OSY expenditure rate of 75 percent. In this example, the local area would be required to spend at least \$675,000 (75 percent) of the \$900,000 on OSY.

Reporting and Tracking Expenditures (TEGL 23-14)

States and local areas must work towards spending 75 percent of PY 2015 funds on OSY. If they cannot meet the 75 percent requirement for their 2015 funds, they must demonstrate progress towards meeting the 75 percent OSY minimum expenditure rate through increased expenditures on OSY compared to the previous year. The increased expenditures must be a minimum increase of 10 percentage points compared to the previous year and no lower than a 50 percent OSY expenditure rate. If states and local areas cannot meet the OSY expenditure rate with their PY 2015 funds, they must be prepared to describe how they will achieve the 75 percent OSY expenditure rate with PY 2016 funds and describe concrete steps taken to comply with 75 percent OSY expenditure requirement and strategies the state and local areas are taking to secure contractors, solidify partnerships, and transition from a focus on ISY to OSY programs. The Department of Labor will provide additional guidance and technical assistance to states and local areas on implementation of the OSY expenditure requirement.

All states and local areas must spend a minimum of 75 percent of PY 2016 youth funds on OSY, subject to the exception in section 129(a)(4)(B).

The OSY expenditure rate is tracked for a specific program year allotment. ETA determines whether a state or local area meets the 75 percent OSY expenditure requirement upon completion of expenditures of all funds in the specific program year's allotment. For example, the first WIOA youth allotment is the PY 2015 allotment. The expenditure of

PY 2015 funds, including the breakout of ISY and OSY expenditures, is reported on the ETA-9130 report. Because states have three years to expend funds and local areas have at least two years to expend funds, it may not be until the end of PY 2016, or in some cases PY 2017, before ETA can determine whether a state or local area has met the OSY expenditure requirement for PY15.

NOTE:

1. *The Local Boards will be responsible for ensuring the local area is meeting the 75 percent expenditure rate for out-of-school youth activities.*
2. *An analysis of the required quarterly reports will be conducted by WISS based on expenditures as of June 30th of the first year of the two (2) year period. The second and third analyses will be conducted the following December 31st and March 31st, respectively. As a result of the analysis, WISS staff will notify the local board if they appear to be in jeopardy of not meeting the 75 percent requirement by the close of the two (2) year funding period.*
3. *Any local board in jeopardy of not meeting the 75 percent requirement will be required to provide a written corrective action plan to WISS.*

Work Experience Priority (20 CFR § 681.590, TEGL 23-14)

Local youth programs must expend not less than 20 percent of the funds allocated to them to provide in-school youth and out-of-school youth with paid and unpaid work experiences (WEX) that fall under the categories listed in 20 CFR § 681.460(a)(3) and further defined in 20 CFR § 681.600. (WIOA Sec. 129(c)(4)). Under WIOA, paid and unpaid work experiences that have as a component academic and occupational education may include the following four categories: summer employment opportunities and other employment opportunities available throughout the school year; pre-apprenticeship programs; internships and job shadowing; and on-the-job training opportunities. Future SCP will address WEX requirements.

(WIOA Sec. 129(c)(2)(C), 20 CFR § 681.600)

(a) Work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. Work experience may take place in the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act or applicable State law, exists. Work experience provides the youth participant with opportunities for career exploration and skill development.

(b) Work experiences must include academic and occupational education.

(c) The types of work experiences include the following categories:

- (1) Summer employment opportunities and other employment opportunities available throughout the school year;
- (2) Pre-apprenticeship programs;
- (3) Internships and job shadowing; and
- (4) On-the-job training opportunities as defined in WIOA Sec. 3(44) and in 20 CFR § 680.700.

Pay-for Performance Strategy/Contracts (WIOA Sec. 3(47))

The term “pay-for-performance contract strategy” means a procurement strategy that uses pay- for-performance contracts in the provision of training services described in WIOA Sec. 134(c)(3) or activities described in WIOA Sec. 129(c)(2), and includes—

(A) contracts, each of which shall specify a fixed amount that will be paid to an eligible service provider (which may include a local or national community-based organization or intermediary, community college, or other training provider, that is eligible under WIOA Sec. 122 or 123, as appropriate) based on the achievement of specified levels of performance on the primary indicators of performance described in WIOA Sec. 116(b)(2)(A) for target populations as identified by the local board (including individuals with barriers to employment), within a defined timetable, and which may provide for bonus payments to such service provider to expand capacity to provide effective training;

(B) a strategy for independently validating the achievement of the performance described in subparagraph (A); and

(C) a description of how the State or local area will reallocate funds not paid to a provider because the achievement of the performance described in subparagraph (A) did not occur, for further activities related to such a procurement strategy, subject to WIOA Sec. 189(g)(2)(D).

CFR 683.520

No more than 10 percent of the local youth allotment can be expended on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in WIOA Secs. 129(c)(1)–(2). Future SCP will address Pay-for-Performance strategy and contracts in detail.

Local Boards Providing Youth Services (20 CFR § 681.400)

The Final Rule clarifies that the grant recipient/fiscal agent has the option to provide some or all the youth workforce investment activities directly themselves rather than entering into a grant or contract to provide the activities. The competitive procurement provision discussed in WIOA Sec. 123 is only applicable if the local [board] chooses to award grants or contracts to youth service providers.

While this revision represents a significant change in that it provides local [boards] with flexibility in determining which WIOA youth services to procure, the United States Department of Labor expects local [boards] to continue to contract with youth service providers to provide the program elements that youth service providers are best positioned to offer participants based on prior success in serving youth.

Entities serving multiple roles must adhere to WIOA Title I, subtitle E (Administration) and 20 CFR § 679.430 to ensure appropriate firewalls within a single entity performing multiple functions, including when a fiscal agent also functions as a direct provider of services.

The intent of this flexibility is to allow local [boards] to directly provide the WIOA youth program elements that they can most efficiently and cost-effectively provide, such as

labor market and employment information and framework services including assessment, intake, supportive services and follow-up services.

Note: As indicated below, the state has determined the following applies should the local board provide youth services.

- 1. At least 90 percent of the local allocation must be awarded through the competitive procurement process or sole source if applicable.***
- 2. If the local board chooses to administer a youth program with remaining funds, the 10 percent administration cap still applies.***
- 3. Services cannot duplicate existing funded projects.***
- 4. Serve OSY, as defined in WIOA Sec. 129(a)(1)(B), only.***

Sole Source Contracts

Where the local board determines there is an insufficient number of an eligible provider of youth workforce investment activities in the local area, such as a rural area, the local board may award grants or contracts on a sole source basis (WIOA sec. 123(b)). The Final Rule in 20 CFR § 681.400(b)(4) does not address how to determine an insufficient number of eligible youth providers. Rather, the local [board] ***must*** have a policy that defines what would constitute an insufficient number of eligible youth providers. Sole source contract requirements are documented in SCP 3.9.