

OREGON WORKFORCE INVESTMENT BOARD

Policy -- Avoiding Conflicts Of Interest By Separating Governance and Service Delivery Functions

Purpose

To establish policy to assist workforce areas and regions in separating governance and service delivery to avoid conflicts of interest.

References

The Workforce Investment Act of 1998 (WIA), Pub. L. 105-220; USC 9276(c); Oregon Workforce Investment Board policy regarding Workforce Area Designation.

Background

The Workforce Investment Act (WIA) requires a clear separation between the administrative function/staffing of the Local Workforce Investment Boards and the operational functions of Workforce Investment Act services/training through the One-Stop system. The Act is very clear that local boards or their staff may not provide training without a waiver from the Governor. All Workforce Investment Act services and/or training must be provided through the one-stop delivery system for adults and dislocated workers.

In Oregon, a workforce investment area may be made up of more than one state recognized workforce region. As part of the implementation of the WIA, the Governor recognized this fact, specifically in the Oregon's Local Area Designation Policy. This policy required certain things of a workforce area that contained more than one workforce region. An excerpt from the policy states:

Because workforce regions are the building blocks of workforce investment areas, the Governor has determined that the following decisions must be made, with concurrence from Local Elected Officials, at the local (workforce region) level:

**** (paragraphs omitted)

- Recognizing that the prohibition of service provision, within the requirements of the WIA, especially of training, applies to local boards.

Recognizing that there is no consensus about the proper role of these regions now that the WIA is being implemented, the AOC Stakeholders Group agreed to recognize the difference between these types of areas in the policy. If an area contains multiple regions (or sub-areas), the policy, in keeping with this agreement, indicates that the area should

be the entity to assure the Governor that there is separation between governance and service delivery functions in keeping with the policy. The Governor's Staff worked with the Oregon Workforce Alliance, the 23 county workforce area that contains 9 regions, to develop this language.

The attached chart is part of the policy. Footnotes on the chart indicate areas of interpretation about what the WIA actually restricts. The chart has been modified several times to reflect these discussions and ongoing DOL clarifications.

Policy

Consistent with state and federal law, it is a local board decision how to separate service delivery and governance functions in the workforce investment system.

To avoid actual or potential conflicts of interest or the appearance thereof, the attached chart depicts how to separate these functions to avoid conflicts of interest that may arise without this separation.

The local board shall follow the state policy unless it can document why there is a need to make an exception to the policy and it can assure the Governor it has put adequate safeguards in place to avoid actual conflicts.

In addition, local areas shall develop a policy to assure that adequate safeguards are in place to avoid conflicts of interest according to the attached chart. The policy shall address conflicts that could arise at the sub-area level if there is no separation between governance and service delivery functions.

Approved by:	Annette Talbott, Workforce Policy Coordinator
Date:	March 17, 2000
Effective Date:	March 17, 2000

This policy will remain in effect until amended or rescinded by the Oregon Workforce Investment Board.

AVOIDING CONFLICTS OF INTEREST BY SEPARATING GOVERNANCE AND SERVICE DELIVERY (revised 3/13/00)

The Workforce Investment Act requires a clear separation between administrative functions/staffing of the local board and provision of services and training. This is done to prevent possible conflicts of interest between these roles. This chart accompanies the state's policy on separating governance and service delivery functions. If a local board sought to allow an arrangement that is not permitted under the proposed policy (if the law does not prohibit it), the local plan should contain a description of the procedures that are in place to safeguard against any conflicts.

Function	Staff to the WIB (local board)	Fiscal Agent	Monitoring /Evaluation Staff	One Stop Operator	Core and Intensive Services	Training Service Provider	Youth Services Provider
Staff to the WIB (local board)	✓	✓	✓	As law allows**	As law allows**	With Gov.'s waiver*.	Summer *** ⌘
Fiscal Agent	✓	✓	✓	○	○	⌘	Summer *** ⌘
Monitoring /Evaluation Staff	✓	✓	✓	○	○	⌘	Summer *** ⌘
One Stop Operator	As law allows**	○	○	✓	✓	✓	✓
Core and Intensive Services	As law allows**	○	○	✓	✓	✓	✓
Training Service Provider	With Gov.'s waiver*.	⌘	⌘	✓	✓	✓	✓
Youth Services Provider	Summer*** ⌘	Summer *** ⌘	Summer *** ⌘	✓	✓	✓	✓

✓ -OKAY

⌘ - With adequate safeguards

*** Section 123 states that youth services shall be offered through competitive grants by the local board. However, 664.610 states that if summer youth activities are not provided by the grant recipient or fiscal agent, then they are subject to competition. DOL has said that year round youth services shall be delivered through competitive grants and not by the grant recipient but summer activities can be delivered by the grant recipient or fiscal agent.

**Section 117(f)(2) allows the local board to be a One Stop Operator, provider of core or intensive services with the agreement of the local elected official and approval of the Governor. The LEO concurrence can be expressed in the local plan.

*Section 117(f)(1) allows a local board to seek a written one year waiver from the Governor under certain limited circumstances. Section 117(f)(1)(A) states clearly: "Except as provided in subparagraph (B), no local board may provide training services as described in section 134(d)(4)." Subparagraph (B) refers to the circumstances under which a waiver may be granted, none of which involve the provision of core or intensive services. Section 134(d)(4) describes training services under the Act. The regulations, at Section 661.310 reinforce the Act in these provisions, and further clarify them by stating that "The restrictions on the provision of core, intensive, and training services by the local board, and designation or certification as One-Stop Operator, also apply to the staff of the local board." {emphasis added} [661.310(c)] The regulations note that "staff" to the board will be treated the same as if the board were delivering the service itself. The regulations do not differentiate between "staff" who are directly hired by an incorporated board or a person who staffs the board but who is actually employed by another entity.

○ - Caution: While the WIA does not prohibit one entity from providing both of these functions, having the fiscal agent distribute funds to itself and then provide services with those funds, or monitor its own activities, certainly has the appearance of a conflict and could lead to an actual conflict.