

Code of Federal Regulations and WIOA of 2014

683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?

(a) A WIOA Pay-for-Performance contract strategy is a specific type of performance-based contract strategy that has four distinct characteristics:

(1) It is a strategy to use WIOA Pay-for-Performance contracts as they are described in § 683.510;

(2) It must include the identification of the workforce development problem and target populations for which a local area will pursue a WIOA Pay-for-Performance contract strategy; the outcomes the local area would hope to achieve through a Pay-for-Performance contract relative to baseline performance; and the acceptable cost to government associated with achieving these outcomes;

(3) It must include a strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to payment occurring; and

(4) It must include a description of how the State or local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA Pay-for-Performance contract.

(b) Prior to the implementation of a WIOA Pay-for-Performance contract strategy, a local area must conduct a feasibility study to determine whether the intervention is suitable for a WIOA Pay-for-Performance contract strategy.

(c) The WIOA Pay-for-Performance contract strategy must be developed in accordance with guidance issued by the Secretary.

683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?

(a) *Pay-for-Performance contract.* A WIOA Pay-for-Performance contract is a type of Performance-Based contract.

(b) *Applicability.* WIOA Pay-for-Performance contracts may only be entered into when they are a part of a WIOA Pay-for-Performance contract strategy described in § 683.500.

(c) *Cost-plus a percentage of cost contracts.* Use of cost plus a percentage of cost contracts is prohibited. (2 CFR 200.323.)

(d) *Services provided.* WIOA Pay-for-Performance contracts must be used to provide adult training services described in sec. 134(c)(3) of WIOA or youth activities described in sec. 129(c)(2) of WIOA.

(e) *Structure of payment.* WIOA Pay-for-Performance contracts must specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of performance on the performance outcomes in sec. 116(b)(2)(A) of WIOA for target populations

within a defined timetable. Outcomes must be independently validated, as described in paragraph (j) of this section and § 683.500, prior to disbursement of funds.

(f) Eligible service providers. WIOA Pay-for-Performance contracts may be entered into with eligible service providers, which may include local or national community-based organizations or intermediaries, community colleges, or other training providers that are eligible under sec. 122 or 123 of WIOA (as appropriate).

(g) Target populations. WIOA Pay-for-Performance contracts must identify target populations as specified by the Local WDB, which may include individuals with barriers to employment.

(h) Bonus payments. WIOA Pay-for-Performance contracts may include bonus payments for the contractor based on achievement of specified levels of performance. Bonus payments for achieving outcomes above and beyond those specified in the contract must be used by the service provider to expand capacity to provide effective training.

(i) Performance reporting. Performance outcomes achieved under the WIOA Pay-for-Performance contract, measured against the levels of performance specified in the contract, must be tracked by the local area and reported to the State pursuant to WIOA sec. 116(d)(2)(K) and § 677.160 of this chapter.

(j) Validation. WIOA Pay-for-Performance contracts must include independent validation of the contractor's achievement of the performance benchmarks specified in the contract. This validation must be based on high-quality, reliable, and verified data.

(k) Guidance. The Secretary may issue additional guidance related to use of WIOA Pay-for-Performance contracts.

683.520 What funds can be used to support Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

(a) For WIOA Pay-for-Performance contract strategies providing adult and dislocated worker training services, funds allocated under secs. 133(b)(2)-(3) of WIOA can be used. For WIOA Pay-for-Performance contract strategies providing youth activities, funds allocated under WIOA sec. 128(b) can be used.

(b) No more than 10 percent of the total local adult and dislocated worker allocations can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allocation can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(2) of WIOA.

683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

Section 189(g)(2)(D) of WIOA authorizes funds used for WIOA Pay-for-Performance contract strategies to be available until expended. Under WIOA sec. 3(47)(C), funds that are obligated but not expended due to a contractor not achieving the levels of performance specified in a

WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. The Secretary will issue additional guidance related to the funds availability and reallocation.

683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

(a) Using funds from the Governor's Reserve the State may:

(1) Provide technical assistance to local areas including assistance with structuring WIOA Pay-for-Performance contracting strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance.

(2) Conduct evaluations of local WIOA Pay-for-Performance contracting strategies, if appropriate.

(3) Conduct other activities that comply with limitations on the use of the Governor's Reserve.

(b) Using non-Federal funds, Governors may establish incentives for Local WDBs to implement WIOA Pay-for-Performance contract strategies as described in this subpart.

(c) In the case of a State in which local areas are implementing WIOA Pay-for-Performance contract strategies, the State must:

(1) Collect and report to the Department data on the performance of service providers entering into WIOA Pay-for-Performance contracts, measured against the levels of performance benchmarks specified in the contracts, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 of this chapter and in accordance with any additional guidance issued by the Secretary.

(2) Collect and report to the Department State and/or local evaluations of the design and performance of the WIOA Pay-for-Performance contract strategies, and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the strategies, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 of this chapter, and in accordance with any guidance issued by the Secretary.

(3) Monitor local areas' use of WIOA Pay-for-Performance contract strategies to ensure compliance with § 683.500 and the contract specifications in § 683.510, and State procurement policies.

(4) Monitor local areas' expenditures to ensure that no more than 10 percent of a local area's adult and dislocated worker allotments and no more than 10 percent of a local area's youth allotment is reserved and used on WIOA Pay-for-Performance contract strategies.

(d) The Secretary will issue additional guidance on State roles in WIOA Pay-for-Performance contract strategies.

WIOA Sec. 121 (h)

(h) FUNDING OF ONE-STOP INFRASTRUCTURE.—

(1) IN GENERAL.—

(A) OPTIONS FOR INFRASTRUCTURE FUNDING.—

(i) LOCAL OPTIONS.—The local board, chief elected officials, and one-stop partners described in subsection (b)(1) in a local area may fund the costs of infrastructure of one-stop centers in the local area through—

(I) methods agreed on by the local board, chief elected officials, and one-stop partners (and described in the memorandum of understanding described in subsection (c)); or

(II) if no consensus agreement on methods is reached under subclause (I), the State infrastructure funding mechanism described in paragraph (2).

(ii) FAILURE TO REACH CONSENSUS AGREEMENT ON FUNDING METHODS.—Beginning July 1, 2016, if the local board, chief elected officials, and one-stop partners described in subsection (b)(1) in a local area fail to reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a program year, the State infrastructure funding mechanism described in paragraph (2) shall be applicable to such local area for that program year and for each subsequent program year for which those entities and individuals fail to reach such agreement.

(B) GUIDANCE FOR INFRASTRUCTURE FUNDING.—In addition to carrying out the requirements relating to the State infrastructure funding mechanism described in paragraph (2), the Governor, after consultation with chief elected officials, local boards, and the State board, and consistent with the guidance and policies provided by the State board under subparagraphs (B) and (C)(i) of section 101(d)(7), shall provide, for the use of local areas under subparagraph (A)(i)(I)—

(i) guidelines for State-administered one-stop partner programs, for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system consistent with chapter II of title 2, Code of Federal Regulations (or any corresponding similar regulation or ruling),

including determining funding for the costs of infrastructure, which contributions shall be negotiated pursuant to the memorandum of understanding under subsection (c); and

H. R. 803—65

(ii) guidance to assist local boards, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure of one-stop centers in such areas.

(2) STATE ONE-STOP INFRASTRUCTURE FUNDING.—

(A) DEFINITION.—In this paragraph, the term “covered portion”, used with respect to funding for a fiscal year for a program described in subsection (b)(1), means a portion determined under subparagraph (C) of the Federal funds provided to a State (including local areas within the State) under the Federal law authorizing that program described in subsection (b)(1) for the fiscal year (taking into account the availability of funding for purposes related to infrastructure from philanthropic organizations, private entities, or other alternative financing options).

(B) PARTNER CONTRIBUTIONS.—Subject to subparagraph (D), for local areas in a State that are not covered by paragraph (1)(A)(i)(I), the covered portions of funding for a fiscal year shall be provided to the Governor from the programs described in subsection (b)(1), to assist in paying the costs of infrastructure of one-stop centers in those local areas of the State not adequately funded under the option described in paragraph (1)(A)(i)(I).

(C) DETERMINATION OF GOVERNOR.—

(i) IN GENERAL.—Subject to clause (ii) and subparagraph (D), the Governor, after consultation with chief elected officials, local boards, and the State board, shall determine the portion of funds to be provided under subparagraph (B) by each one-stop partner from each program described in subparagraph (B). In making such determination for the purpose of determining funding contributions, for funding pursuant to clause (i)(II) or (ii) of paragraph (1)(A) by each partner, the Governor shall calculate amounts for the proportionate use of the one-stop centers in the State, consistent with chapter II of title 2, Code of Federal Regulations (or any corresponding similar regulation or ruling), taking into account the costs of administration

of the one-stop delivery system for purposes not related to one-stop centers, for each partner. The Governor shall exclude from such determination of funds the amounts for proportionate use of one-stop centers attributable to the programs of one-stop partners for those local areas of the State where the costs of infrastructure of one-stop centers are funded under the option described in paragraph (1)(A)(i)(I). The Governor shall also take into account the statutory requirements for each partner program and the partner program's ability to fulfill such requirements.

(ii) SPECIAL RULE.—In a State in which the State constitution or a State statute places policymaking authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities authorized under title II, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act H. R. 803—66

of 2006 (20 U.S.C. 2301 et seq.), or vocational rehabilitation services offered under a provision covered by section 3(13)(D), the determination described in clause (i) with respect to the programs authorized under that title, Act, or provision shall be made by the chief officer of the entity, or the official, with such authority in consultation with the Governor.

(D) LIMITATIONS.—

(i) PROVISION FROM ADMINISTRATIVE FUNDS.—

(I) IN GENERAL.—Subject to subclause (II), the funds provided under this paragraph by each onestop partner shall be provided only from funds available for the costs of administration under the program administered by such partner, and shall be subject to the program's limitations with respect to the portion of funds under such program that may be used for administration.

(II) EXCEPTIONS.—Nothing in this clause shall be construed to apply to the programs carried out under this title, or under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.).

(ii) CAP ON REQUIRED CONTRIBUTIONS.—For local areas in a State that are not covered by paragraph

(1)(A)(i)(I), the following rules shall apply:

(I) WIA FORMULA PROGRAMS AND EMPLOYMENT SERVICE.—The portion of funds required to be contributed under this paragraph from a program authorized under chapter 2 or 3, or the Wagner-Peyser Act (29 U.S.C. 49 et seq.) shall not exceed 3 percent of the amount of Federal funds provided to carry out that program in the State for a fiscal year.

(II) OTHER ONE-STOP PARTNERS.—The portion of funds required to be contributed under this paragraph from a program described in subsection (b)(1) other than the programs described in subclause (I) shall not exceed 1.5 percent of the amount of Federal funds provided to carry out that program in the State for a fiscal year.

(III) VOCATIONAL REHABILITATION.—Notwithstanding subclauses (I) and (II), an entity administering a program described in subsection (b)(1)(B)(iv) shall not be required to provide from that program, under this paragraph, a portion that exceeds—

(aa) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for the second full program year that begins after the date of enactment of this Act;

(bb) 1.0 percent of the amount provided to carry out such program in the State for the third full program year that begins after such date;

(cc) 1.25 percent of the amount provided to carry out such program in the State for H. R. 803—67

the fourth full program year that begins after such date; and

(dd) 1.5 percent of the amount provided to carry out such program in the State for the fifth and each succeeding full program year that begins after such date.

(iii) FEDERAL DIRECT SPENDING PROGRAMS.—For local areas in a State that are not covered by paragraph (1)(A)(i)(I), an entity administering a program funded

with direct spending as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)) shall not be required to provide, for purposes of this paragraph, an amount in excess of the amount determined under subparagraph (C)(i) to be equivalent to the cost of the proportionate use of the one-stop centers for the one-stop partner for such program in the State.

(iv) NATIVE AMERICAN PROGRAMS.—One-stop partners for Native American programs established under section 166 shall not be subject to the provisions of this subsection (other than this clause) or subsection (i). For purposes of subsection (c)(2)(A)(ii)(II), the method for determining the appropriate portion of funds to be provided by such partners to pay for the costs of infrastructure of a one-stop center shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum.

(E) APPEAL BY ONE-STOP PARTNERS.—The Governor shall establish a process, described under section 102(b)(2)(D)(i)(IV), for a one-stop partner administering a program described in subsection (b)(1) to appeal a determination regarding the portion of funds to be provided under this paragraph. Such a determination may be appealed under the process on the basis that such determination is inconsistent with the requirements of this paragraph. Such process shall ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of section 182(e).

(3) ALLOCATION BY GOVERNOR.—

(A) IN GENERAL.—From the funds provided under paragraph (1), the Governor shall allocate the funds to local areas described in subparagraph (B) in accordance with the formula established under subparagraph (B) for the purposes of assisting in paying the costs of infrastructure of one-stop centers.

(B) ALLOCATION FORMULA.—The State board shall develop a formula to be used by the Governor to allocate the funds provided under paragraph (1) to local areas not funding costs of infrastructure under the option described

in paragraph (1)(A)(i)(I). The formula shall be based on factors including the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to H. R. 803—68

the performance of such centers that the State board determines are appropriate.

(4) COSTS OF INFRASTRUCTURE.—In this subsection, the term “costs of infrastructure”, used with respect to a onestop center, means the nonpersonnel costs that are necessary for the general operation of the one-stop center, including the rental costs of the facilities, the costs of utilities and maintenance, equipment (including assessment-related products and assistive technology for individuals with disabilities), and technology to facilitate access to the one-stop center, including the center’s planning and outreach activities.

2 CFR part 200; part 2900; 200.94

(The following definition of Uniform Guidance is provided in place of the lengthy regulations. Uniform Guidance in its entirety can be found at www.ecfr.gov)

Uniform Guidance is a set of authoritative rules and regulations about federal grants from the Office of Management and Budget (OMB). The Uniform Guidance ([2 CFR § 200](#)) streamlines and consolidates government requirements for receiving and using federal awards so as to reduce administrative burden and improve outcomes. It was published in the Federal Register ([79 Fed. Reg. 75871](#)) on December 19, 2014, and became effective for new and continuation awards issued on or after December 26, 2014.