Federal Extension Allowable for Finance Component of Local Memorandum of Understanding

The Board is asked to make a recommendation to Governor Inslee to allow up to an additional six months for negotiation of local finance agreements among all partners in a WorkSource Center. There are 13 mandatory WorkSource partners in addition to the four core WIOA programs. Most local workforce development councils' (LWDCs) local plans include additional non-mandatory partners they are working to integrate into their service delivery system.

Under WIOA, each LWDC must have a Memorandum of Understanding (MOU) in place by June 30, 2017, articulating how services will be provided and coordinated among all program partners, mandatory and non-mandatory. A completed MOU would ordinarily include an operating budget for each WorkSource Center or affiliate site, and all cost-sharing agreements negotiated to support that budget. This financial section is called the Infrastructure Funding Agreement (IFA).

WIOA's federal oversight agencies, US Departments of Labor, Education, and Health and Human Services, have determined that the complexities of WIOA have been an impediment to negotiating IFAs within the time period allotted by the law. While the programmatic or service delivery aspects of the MOU must still be finalized by June 30, 2017, federal agencies are allowing governors to grant up to an additional six months to negotiate the IFA component of MOUs. Later in this document, you will find the FAQs distributed by the US Department of Labor to describe this allowance.

Board staff conferred with LWDCs and state agencies that administer the majority of mandatory WorkSource program partners. The consensus among all parties is that additional time for financial negotiations would be beneficial, and would not impede progress in the negotiation process. Most LWDCs have not yet finalized the programmatic aspects of their local MOUs with all partners, and would like those discussions to go forward unhindered. They would like the agreed upon optimal service strategy to be the basis of the operating budget, for which cost sharing will then be negotiated among all partners.

One additional point for consideration is the date by which IFA negotiations are determined to be successful, but not necessarily completed. There is a requirement in WIOA that the Governor must intervene when IFA negotiations are unsuccessful. The Governor's intervention will include mediation or technical assistance and an appeals process before a directive is issued. The directive is based on formulas within WIOA, referred to as the State Funding Mechanism (SFM) in Question 4 of the FAQs. To allow time for the full process prior to implementing an SFM, it is recommended that the IFA extension recommendation to Gov. Inslee include a recommended requirement that LWDCs notify the Board of unsuccessful IFA negotiations by October 1, 2017, in order to complete IFAs by December 31, 2017.

FAQ's from US Department of Labor

1. What is the deadline for entering into a Memorandum of Understanding between the Local Workforce Development Board and one-stop partners?

In order to have a Memorandum of Understanding (MOU) in place for Program Year (PY) 2017, which begins on July 1, 2017, the Local Workforce Development Board (Local WDB) and one-stop partners must enter into a MOU that aligns with the requirements of WIOA— except for the final infrastructure funding agreement (IFA)— by June 30, 2017.

2. What is the deadline for finalizing infrastructure funding agreements for Program Year 2017?

The U.S. Department of Labor is using the transition authority of WIOA sec. 503(b) to provide an extension for the implementation date of the final IFAs for PY 2017. With this extension, final IFAs must be in place no later than January 1, 2018. However, Governors have the discretion to require local areas to enter into final IFAs at any time between July 1, 2017, and January 1, 2018. During the extension period, local areas may use the funding agreement they used for PY 2016, with any such modifications as the partners may agree to, to fund infrastructure costs in the local area. During the extension period, the regulations at 20 CFR 678.715(c) and 678.510(b) providing for a six month interim IFA shall not apply. This extension does not change the deadline of July 1, 2017, for the rest of the MOU.

While one required component of a MOU is the IFA, the Departments realize additional time is needed for local areas to negotiate and reach consensus on the one-stop partners' contributions for infrastructure costs for PY 2017. Also, States may need additional time to develop and implement the State Funding Mechanism (SFM) that is to be applied to those local areas that are unable to reach a consensus agreement on infrastructure costs in the IFA. In order to implement the SFM, the Governor must be notified of all the local areas in the State that are not able to reach consensus in order to calculate the caps on infrastructure spending applicable to each partner program (20 CFR 678.730(b)(3), 34 CFR 361.730(b)(3), and 34 CFR 463.730(b)(3)). The statewide caps used in the SFM are the aggregate amounts available for each partner program for all local areas in the state that could not reach consensus with respect to funding the one-stop system's infrastructure costs (20 CFR 678.731(b)(5)-(6) and 678.738, 34 CFR 361.731(b)(5)-(6) and 361.738, and 34 CFR 463.731(b)(5)-(6) and 463.738). They are not separate caps for the program in each local area. Therefore, the expectation is that the Governor will establish the notification deadline for local areas unable to reach consensus sufficiently in advance of when the IFA needs to be finalized so the SFM may be implemented, including calculating and applying the statewide caps, if necessary.

3. What are the required elements of an infrastructure funding agreement?

The jointly-administered regulations at 20 CFR 678.755, 34 CFR 361.755, and 34 CFR 463.755 require IFAs to include the following:

a. The period of time in which the IFA is effective (which may be a different time period than the duration of the MOU);

b. Identification of the infrastructure costs budget, which is a component of the overall one-stop operating budget;

c. Identification of all one-stop partners, chief elected officials (CEOs), and the Local WDB participating in the IFA;

d. A description of the periodic modification and review process to ensure equitable benefit among one-stop partners;

e. Information on the steps the Local WDB, CEOs, and one-stop partners used to reach consensus or the assurance that the local area followed the SFM process; and

f. A description of the process to be used among partners to resolve issues related to infrastructure funding during the MOU duration period when consensus cannot be reached.

The Departments also consider it essential that the IFA include the signatures of individuals with authority to bind the signatories to the IFA, including all one-stop partners, CEO, and Local WDB participating in the IFA.

4. How does the infrastructure funding agreement relate to the overall one-stop operating budget?

The IFA contains the infrastructure costs budget, which is one of several integral components of the one-stop operating budget. The other components of the one-stop operating budget are considered "additional costs," which must include applicable career services, and may include shared operating costs and shared services. While each of these components covers different cost categories, an operating budget would be incomplete if any of these were omitted because funding infrastructure costs, as well as additional costs, are necessary to maintain a fully-functioning and successful local one-stop delivery system. Therefore, the Departments strongly recommend that the Local WDBs, one-stop partners, and CEOs negotiate the IFA and additional cost funding together when developing the operating budget for the local one-stop system. The overall one-stop operating budget must be included in the MOU.

Although the local one-stop operating budget contains several different cost components, only failure to reach consensus among the required partners in a local area with respect to the infrastructure cost funding will trigger the implementation of the SFM. This means the SFM will not be triggered due to a failure by the required partners to reach consensus on additional cost funding, or by a failure of any additional partners to join the consensus regarding the terms of the IFA. When implementing the SFM to determine partner contributions to cover the one-stop center's infrastructure costs component, the Governor should consider the local area's infrastructure cost needs in light of the additional costs included in the local one-stop operating budget (e.g., applicable career services costs, shared operating costs, and the cost of shared services). This should be done while making the determinations necessary to complete the IFA according to 20 CFR 678.730 – 678.745, 34 CFR 361.730 – 361.745, and 34 CFR 463.730 – 463.745, and should ensure that the infrastructure costs are sufficient to support the services that the one-stop center will provide. However, it is important to note that the Governor's determinations under the SFM pertain only to the infrastructure costs, and not to any of the additional cost components. The Governor's consideration of these other components of the overall local one-stop operating budget is simply to provide a context for the Governor when determining infrastructure costs under the SFM.

Further information about this guidance from US Department of Labor can be found at https://www.doleta.gov/wioa/FAQs.cfm.