



Missouri Division of Workforce Development
DWD Issuance 19-2016

Issued: June 7, 2017
Effective: June 7, 2017

Subject: Ethical Requirements for Chief Elected Officials and Local Workforce Development Boards

1. Purpose: This Issuance summarizes the federal and State laws, regulations, and contractual obligations governing transparency and integrity in decisions made, and actions taken, by Chief Elected Officials (CEO) and Local Workforce Development Boards (WDB) for their Local Workforce Development Areas (LWDA). It expands and updates previous guidance in this area and supersedes and rescinds that Issuance.¹ This Issuance identifies existing federal and State ethics requirements but creates no new policies.

2. Background: Responsible stewardship of federally funded workforce programs requires transparency, integrity, and accountability to preserve public trust and to comply with the law of the land. This is particularly true at the service-delivery level and in the local leadership roles of CEOs and Local WDBs.

Additionally, a single entity (private, non-profit, or public) might be providing multiple services for the Local WDB and/or the CEO. That arrangement could present apparent—or real—conflicts of interest. It is the responsibility of the CEOs and the Local WDBs to ensure that “firewalling,” a system of internal controls, is in place to preclude conflicts of interest.

This Issuance addresses *legal* ethical obligations. Rules on workplace behavior and customer interactions (more commonly found in a “code of conduct”) are left to the local discretion of CEOs and Local WDBs.

3. Substance: Local WDBs and elected officials face rigorous integrity obligations tied to public funding. These obligations prohibit certain activities— and require certain procedures—related to transparency, conflicts of interest, confidentiality, political activity, influence, accommodation, procurement, and reporting of abuses.

Attachment 1 to this Issuance describes required notices, policies, and procedures necessary to comply with these obligations. They are variously required by the Workforce Innovation and Opportunity Act (WIOA)²; the

¹ DWD Issuance 15-2011: “Transparency and Integrity in Local Workforce Investment Board Decisions,” May 30, 2012.

² Pub. L. 113-128 [29 U.S.C. 3101 et seq.].

Uniform Guidance for Federal Awards³ in Title 2 and the Uniform Administrative Requirements⁴ in Title 29 of the *Code of Federal Regulations*; the WIOA Final Rules⁵; Missouri State Statutes; and policies of the Missouri Workforce Development Board (MWDB) and the Division of Workforce Development (DWD). For reference, weblinks are given and full copies of several of these documents are provided as appendices to the Attachment.

Local WDBs and CEOs also may face additional *self-imposed* ethical requirements in their Local Plans, Local WDB by-laws, or CEO Consortium Agreements. There also may be administrative rules for local city or county government agencies involved in the local one-stop delivery system.

WIOA's expansion of partnerships in local one-stop centers may draw in additional conflict-of-interest restrictions or requirements of the programs and services among required one-stop partner agencies. Local WDBs should review with their partners whether any interagency transparency or accountability issues beyond the scope of this Issuance.

Additionally, State merit staff in local Missouri Job Centers (comprehensive one-stops) are beholden to additional State-required policies relating to confidentiality and accountability, as a condition of employment, agreement to which they must attest. These standards may exceed the Local WDB's requirements of its own staff or providers, and must be taken into account.

In summary, this Issuance describes:

- The *transparency* and *public availability* (in both hard copy and electronic formats) required for certain policies, procedures, and *vital information*, for which CEOs and Local WDBs are held accountable;
- Certain *conflicts of interest*, *political activities*, and *influences* which local workforce officials must avoid;
- Nondiscriminatory protections that must be ensured for jobseeker customers, employer clients, and workforce system staff;
- Fiscal responsibilities including appropriate procurement procedures;
- Confidentiality requirements relating to Personally Identifiable Information (PII), business plans and proprietary information, and cybersecurity for information systems;
- Reporting requirements (and whistleblower protections) regarding discoveries of fraud, waste, misappropriation, or theft of public funding; and
- Contractual ethical obligations between the LWDA and the State.

³ 2 CFR Parts 200, 2900, and 2998.

⁴ 29 CFR Parts 95 and 97.

⁵ *Workforce Innovation and Opportunity Act, Final Rule*, ETA Docket 2015-0001, August 19, 2016, and *Workforce Innovation and Opportunity Act, Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule*, ETA Docket 2015-0002, August 19, 2016.

4. Action: All Local WDB members and CEOs must be aware of the ethical obligations and assurances relating to their duties and fulfill the stipulated requirements in the laws and regulations cited.

A description of the Local WDB conflict-of-interest policy is a required attachment to the Local Plan.⁶ Local WDBs may use the exemplar of a policy statement included in the Appendix of Attachment 1 in their Local Plans. (NOTE: A blank attestation or affirmation signature form that is given to board members, staff, or employees to sign is an *information collection request*. It is not a substitute for a *statement of policy* in the Local Plan.)

5. Contact: Direct questions or comments regarding this Issuance to Clinton Flowers, Manager, Planning and Research, at clint.flowers@ded.mo.gov or (573) 526-8261.

6. References: Workforce Innovation and Opportunity Act, Pub. Law 113-128 [[29 U.S.C. 3101, et seq.](#)]
<http://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter32&edition=prelim>

Workforce Innovation and Opportunity Act; Final Rule, ETA Docket ETA 2015-0001, August 19, 2016.

<https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-15975.pdf>

Workforce Innovation and Opportunity Act, Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule, ETA Docket 2015-0002, August 19, 2016.

<https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-15977.pdf>

Missouri Conflict of Interest (Ethics) Law, RSMo. 105.452–105.973

<http://www.moga.mo.gov/mostatutes/ChaptersIndex/chaptIndex105.html>

Missouri Constitution, Article VII, Section 6.

<http://www.moga.mo.gov/MoStatutes/ConstHTML/A070061.html>

Missouri Sunshine Law, RSMo 610.10–610.027 and “Missouri Sunshine Law—Open Meetings and Records Law,” Office of the Attorney General of Missouri, January 2017.

<http://www.moga.mo.gov/mostatutes/ChaptersIndex/chaptIndex610.html>

[http://ago.mo.gov/docs/default-](http://ago.mo.gov/docs/default-source/publications/missourisunshinelaw.pdf?sfvrsn=20)

[source/publications/missourisunshinelaw.pdf?sfvrsn=20](http://ago.mo.gov/docs/default-source/publications/missourisunshinelaw.pdf?sfvrsn=20)

⁶ DWD Issuance 14-2015, “Planning Policy and Guidelines for Missouri Local Workforce Development Boards” (https://jobs.mo.gov/sites/jobs/files/dwdissuance14-2015_02162016.pdf).

Title 29, *Code of Federal Regulations*, “Uniform Administrative Requirements”:
29 CFR Part 95—Grants and Agreements with Institutions of
Higher Education, Hospitals, and Other Non-Profit Organizations,
and with Commercial Organizations, Foreign Governments,
Organizations under the Jurisdiction of Foreign Governments, and
International Organizations

<https://www.gpo.gov/fdsys/pkg/CFR-2015-title29-vol1/pdf/CFR-2015-title29-vol1-part95.pdf>

29 CFR Part 97—Uniform Administrative Requirements for Grants
and Cooperative Agreements to State And Local Governments

<https://www.gpo.gov/fdsys/pkg/CFR-2015-title29-vol1/pdf/CFR-2015-title29-vol1-part97.pdf>

Title 2, *United State Code*, “Grants and Agreements”:

2 U.S.C. 200, “Uniform administrative requirements, cost principles,
and audit requirements for Federal awards”

<https://www.gpo.gov/fdsys/pkg/CFR-2016-title2-vol1/pdf/CFR-2016-title2-vol1-subtitleA-chapII.pdf>

2 U.S.C. 2900, “Uniform administrative requirements, cost principles,
and audit requirements for Federal awards” [Chapter XXIX—
Department of Labor]

<https://www.gpo.gov/fdsys/pkg/CFR-2016-title2-vol1/pdf/CFR-2016-title2-vol1-subtitleB-chapXXIX.pdf>

2 U.S.C. 2998, “Nonprocurement debarment and suspension”
[Chapter XXIX—Department of Labor; 2016 addendum]

<https://www.gpo.gov/fdsys/pkg/CFR-2017-title2-vol1/pdf/CFR-2017-title2-vol1-part2998.pdf>

Title 5, *United States Code*, “The Hatch Act” (5 U.S.C. 1501–1508).

<http://uscode.house.gov/view.xhtml?path=/prelim@title5/part2/chapter15&edition=prelim>

Training and Employment Guidance Letter 35-10, June 16, 2011,
“Transparency and Integrity in Workforce Investment Board Decisions.”

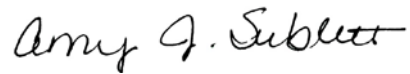
http://wdr.doleta.gov/directives/attach/TEGL/TEGL_35-10-Acc.pdf

7. Rescissions:

This Issuance rescinds and supersedes DWD Issuance 15-2011,
“Transparency and Integrity in Local Workforce Investment Board
Decisions,” dated May 30, 2012.

8. Attachments: Attachment : “Ethical Requirements for Chief Elected Officials and Local Workforce Development Boards.”

The Missouri Division of Workforce Development is an equal opportunity employer/program.
Auxiliary aids and services are available upon request to individuals with disabilities.
Missouri TTY Users can call (800) 735-2966 or dial 7-1-1.



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Missouri Division of Workforce Development



Ethical Requirements for Chief Elected Officials and Local Workforce Development Boards



**A summary of prohibited activities, required policies,
and necessary procedures under State and federal laws,
regulations, and agreements that govern the ethical delivery
of workforce development programs and services.**

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Introduction

The **Chief Elected Officials** (CEO) and the **Local Workforce Development Boards** (Local WDB) for Missouri’s 14 Local Workforce Development Areas (LWDA) face required policies, necessary procedures, and prohibited activities under State and federal laws, regulations, and agreements that govern the ethical delivery of workforce development programs and services.

This guide summarizes statutory requirements in the Workforce Innovation and Opportunity Act (WIOA),¹ the Final Rules² of the U.S. Departments of Labor (DOL) and Education (ED) for implementing WIOA, and the existing policies of the Division of Workforce Development (DWD) for ethical practices in local policies and procedures. It also cites additional obligations of CEOs and Local WDBs in other federal and State laws and regulations.

These ethical obligations generally include: maintaining transparency of policies and procedures; avoiding conflicts of interest, political activities, and undue influences; providing for the equitable treatment of businesses and individuals; monitoring procurement procedures; maintaining confidentiality; and the reporting of fraud and abuse. These obligations are reinforced in the Annual Agreement for the distribution of funds to Local Workforce Development Areas (LWDAs).

This guide is not comprehensive. CEOs and Local WDBs may encounter *other* ethical obligations to one-stop partners whose funding or regulations originate from an agency other than DOL.

This guide does *not* offer a “code of conduct” beyond these laws, regulations, and policies. DWD leaves rules for workplace behavior and customer interactions to the CEO’s and Local WDB’s discretion. Nevertheless, public trust is crucial to effective public service. That trust is strengthened or undermined as much by the *perception* of

¹ Pub. L. 113-128 [[29 U.S.C. 3101 et seq.](#)].

² *Workforce Innovation and Opportunity Act, Final Rule*, ETA Docket 2015-0001, August 19, 2016, and *Workforce Innovation and Opportunity Act, Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule*, ETA Docket 2015-0002, August 19, 2016.

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performance as by the *actual* performance. Public perception of one workforce area in the State system can affect regard for the entire system.

DWD employees working alongside Local WDB staff and providers must follow the Department of Economic Development (DED) statewide code of conduct policy.³ It addresses State statutes, regulations, and policies relating to “Communications, Civility, and Conduct”; “Organizational Change, Directives, and Supervision”; “Confidentiality and Information Security”; and the “Use of State Resources and Conduct on Work Sites.”

DWD supports efforts by Local WDBs and CEO consortia to address such topics in their by-laws and standing policies, including:

- Preferential treatment;
- Appropriate use of facilities, property, and resources;
- Transactions with superiors or with subordinates;
- Private financial transactions in the workplace;
- Gifts;
- Expenses; and
- Conflicts of commitment (irreconcilable extracurricular activities).

DWD is ready to assist with consultation or review of pending (or existing) policies and procedures. The agency’s goal of enabling CEOs and Local WDBs to achieve and maintain ethical compliance is paramount—and such support can proactively avoid deficiencies that might surface during audits or monitoring visits.

³ Missouri Department of Economic Development Policy Statement: [“Personal Accountability and Conduct,”](#) September 21, 2016.

CEO and Local WDB Responsibilities and Status

A CEO creates a Local WDB under the direction of the Governor, in accordance with [WIOA Section 107](#), to supervise WIOA activities in an LWDA.

A Local WDB is a “public governmental body” to the State of Missouri⁴ and the federal government.⁵ A Local WDB also meets the definition of “government” found in the Uniform Guidance.⁶ Therefore, any employee *directly* hired by, and reporting to, a Local WDB, or anyone hired by and supervised by such an employee of the board, can be considered a “government employee” for certain laws and regulations.

An LWDA, however, is not directly equivalent to a “political subdivision,” in the sense that some federal and State laws and regulations use that term. A Local WDB does not possess the legal authority to assess or tax within its LWDA. Local WDBs do not engage in emergency planning, etc., for their jurisdiction. This is why only CEOs, and not Local WDB chairs or members, are subject to Missouri financial disclosure laws.⁷ Distinctions such as these are also important to an understanding of the federal Hatch Act, covered later in this guide.

The Local WDB has quasi-governmental status because it derives its membership, funds, and operating authority from the Chief Elected Official in the LWDA, with the concurrence of the Governor, and it acquires its primary funding for WIOA activities from federal appropriations.

WIOA identifies⁸ a “Chief Elected Official” as the chief elected *executive* officer of a unit of general local government in an LWDA. Where multiple local governments are in the area, the CEO is the individual designated to be the Chief Elected Official under a local agreement.⁹ In addition to WIOA-related obligations, the CEO (usually a mayor, county administrator, or county presiding commissioner) has additional ethical requirements under Titles VI, VII, and XXIX of the [Missouri Revised Statutes](#) (RSMo), as well as any local codes or regulations in that official’s own jurisdiction.

⁴ [RSMo 610.010\(4\)](#); also “quasi-public governmental body” as defined in Missouri *Code of State Regulations* at [1 CSR 35-1.050\(1\)\(I\)](#).

⁵ The federal nondiscrimination rules for WIOA Section 188 found at [29 CFR 38.4\(vv\)\(2\)](#) specifically identify a “workforce development board” as a “public entity.”

⁶ [2 CFR 200.64](#), “Local government.” Also, at [2 CFR 25.340](#), “Local government.”

⁷ [RSMo 105.483–105.496](#). Besides CEOs, some city and county officials involved with administering the local one-stop delivery system also may be required to file annual personal financial disclosure (PFD) statements with the State because of their government position. This is also a requirement at the State level for members of the Missouri Workforce Development Board (MOWDB).

⁸ WIOA 3(9) [[29 U.S.C. 3102\(9\)](#)].

⁹ WIOA 107(c)(1)(B) [[29 U.S.C. 3122\(c\)\(1\)\(B\)](#)].

Transparency

Information Availability — Certain policies, procedures, and information relating to Local WDBs and CEOs must be readily accessible to agencies or entities charged with monitoring their activities and performance, as well as to the public. “The public” includes the media and local citizenry as well as jobseeker and employer customers of local workforce programs and services.

WIOA specifically directs that:

*“The Local Board shall make available to the public, on a regular basis through electronic means and open meetings, information regarding the activities of the Local Board, including information regarding the Local Plan prior to submission of the plan, and regarding membership, the designation and certification of one-stop operators, and the award of grants or contracts to eligible providers of Youth Workforce Investment Activities, and on request, minutes of formal meetings of the Local Board.”*¹⁰

The Final Rule at [20 CFR 679.390](#) to implement [WIOA sec. 107\(e\)](#) further stipulates:

“The Local WDB must conduct its business in an open manner as required by [WIOA sec. 107\(e\)](#), by making available to the public, on a regular basis through electronic means and open meetings, information about the activities of the Local WDB. This includes:

- (a) Information about the Local Plan, or modification to the Local Plan, before submission of the plan;*
- (b) List and affiliation of Local WDB members;*
- (c) Selection of one-stop operators;*
- (d) Award of grants or contracts to eligible providers of workforce investment activities including providers of Youth Workforce Investment Activities;*
- (e) Minutes of formal meetings of the Local WDB and*
- (f) Local WDB by-laws, consistent with [§ 679.310\(g\)](#).”*¹¹

Consequently, for public disclosure, or “sunshine,” purposes, certain information **must be available online** and at the public reception area of the Local WDB offices. This information includes:

- Name, elected office, and contact information for the LWDA’s CEO;
- Name and contact information for the CEO’s designated Local Fiscal Agent (LFA), if any;
- The full legal name and contact information for the Local WDB office;
- Names, locations, and business hours for Job Centers and affiliate centers run by the Local WDB (*Always* notify the [DWD Technical Support Unit](#) and the [DWD Communications Unit](#) as well, if and when these details change.);
- The name, affiliation, and contact information for the Local WDB Chair;

¹⁰ WIOA sec. 107(e) [[29 U.S.C. 3122\(c\)](#)].

¹¹ Final Rule [20 CFR 679.310\(g\)](#) charges the CEO with establishing Local WDB by-laws, consistent with State policy for Local WDB membership, that meet described criteria.

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- The roster and affiliations of Local WDB members, and which category of board membership they represent¹² (Although daytime contact information for Local WDB Chairs should be public, publishing personal contact information for all individual members, or committee chairs, can be a local decision. Nevertheless, send that information and any updates to the [DWD Communications Unit](#));
- The name and contact information for the Local WDB's Chief Executive Officer, Chief Operating Officer, or equivalent official (i.e., Board Director);
- A current copy of the Local WDB's by-laws;
- A copy of the current Local Plan (and any Regional Plan of which the Local WDB is a partner, if it exists as a document separate from the Local Plan);
- Proposed plan modifications for Local Plans or Regional Plans during public comment periods;¹³
- Any formal, standing policies of the Local WDB, exclusive of those already contained in the Local Plan;
- The name and contact information for the Local Area Equal Opportunity (EO) Officer;¹⁴
- Copies, in English and other appropriate languages as required,¹⁵ of the WIOA EO notice (which also must be displayed in the public access areas of all Job Centers);¹⁶ (The EO tagline that notes the availability of services for individuals with disabilities **must** be present on customer materials,¹⁷ but it is not a substitute for the complete EO notice.);
- Notices of upcoming public meetings—and agendas—of the Local WDB (posted at least 24 hours ahead of time, not counting weekends and holidays¹⁸);
- Copies of the *approved* minutes of public board meetings (including transcripts of meetings conducted through telecommunications);
- Public notices of all calls for sealed bids or requests for proposals, when issued, and announcements of awards when a vendor or contractor is selected;¹⁹
- The name of all entities serving as one-stop operators in the LWDA and the locations they manage; and
- The current holders of grants or contracts for Youth activities.

Information on the above list must be **regularly updated**, and *changes must be forwarded* to the [DWD Communications Unit](#).

Additionally, CEOs and Local WDB members must be made aware that the State Sunshine Law requires that messages relating to the business of the LWDA sent or

¹² WIOA sec. 107(b)(2) [[29 U.S.C. 3122\(b\)\(2\)](#)].

¹³ Although WIOA does not stipulate to public review of *Regional Plan* modifications, DOL's Final Rule at [20 CFR 679.510\(b\)](#), does establish that sunshine and modification procedures for Local Plan modifications apply to Regional Plan modifications as well. The State concurs in [DWD Issuance 19-2015](#), "Local and Regional Plan Modification Procedures," June 22, 2016.

¹⁴ [29 CFR 38.29\(c\)](#).

¹⁵ 29 CFR sections [38.9](#) and [38.36\(c\)](#).

¹⁶ [29 CFR 38.36\(a\)\(1\)](#).

¹⁷ [29 CFR 38.38\(a\)](#).

¹⁸ [RSMo 610.020.2](#).

¹⁹ [2 CFR 200.320](#).

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received through their personal or workplace email servers are **public business**. Messages must be copied (“CC-ed”) to the Local WDB’s custodian of records or mail server if the recipients include a majority of the Local WDB’s members (counting the sender).²⁰

If any compulsory public reporting (to federal grantors) of sub-awards or expenditures of other pass-through funds is required, the format should conform to the requirements for data elements as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA)²¹ as amended by the Digital Accountability and Transparency Act of 2014 (DATA Act).²²

Electronic Accessibility— In addition to the transparency issue of ***availability*** of information, a related issue is ***accessibility*** of information. The WIOA Section 188 rules for effective telecommunications for individuals with disabilities are reinforced by related assistive-technology rules of the U.S. Department of Justice (DOJ).²³ The Rehabilitation Act of 1973,²⁴ as amended, also applies accessibility requirements on recipients of federal financial assistance.

Local WDBs are encouraged to move their electronic communications resources²⁵ toward complete accessibility for individuals with vision and hearing disabilities and for individuals with Limited English Proficiency (LEP). Local WDB websites (as well as physical Job Centers) already must display policies and information on how to *request* accommodations for persons with disabilities or language barriers. “Recipients must provide adequate notice to LEP individuals of the existence of interpretation and translation services and that these language assistance services are available free of charge.”²⁶

At the time of this Issuance, DOJ is in the pre-rule stage for web accessibility of the information and services of State and local governments. As noted in the *Introduction*, Local WDBs *are* “public governmental bodies,” in addition to being federal subrecipients. Future DOJ Internet-accessibility rules for disabilities and language *will* apply to Local WDB websites. DOJ’s projected timetable is to propose a rulemaking in July 2017 and for the public-comment phase to conclude by September 2017.

Additionally, the 29 CFR Part 38 rules for implementation of WIOA Section 188 (nondiscrimination and equal opportunity provisions) have requirements on website *languages* and *disabilities* access. These include posting multilingual “Babel” notices; providing translation text for vital information²⁷ regarding programs and services; and assistive technologies for individuals with disabilities.

²⁰ [RSMo 610.025](#).

²¹ [Pub. L. 109-282](#).

²² [Pub. L. 113-101](#).

²³ [28 CFR 35.161](#).

²⁴ Pub. L. 93-112 [[29 U.S.C. 701 et seq.](#)].

²⁵ At present, federal requirements are focusing on “main” websites. On such websites, Local WDBs have control of site appearance and functionality. The extent to which accessibility involving disabilities and languages will apply to “third-party provider” social-media pages (Facebook, Twitter, YouTube, Flickr, Pinterest, etc.) will be addressed in future DOJ rulemakings.

²⁶ [29 CFR 38.9\(c\)](#). Note that the Part 38 rules became effective December 2, 2016.

²⁷ “Vital information” means “information, whether written, oral, or electronic, that is necessary for an individual to *understand* how to obtain any aid, benefit, service, and/or training. It also means

Public Notices and Soliciting Public Comments — WIOA requires CEOs to solicit nominations for new Local WDB members from local business and labor organizations.²⁸ The law does not require a public announcement or notice to accomplish this. CEOs may collect nominations by direct solicitation.

However, WIOA and the regulations do require Local WDBs and CEOs to post public notices and/or opportunities for public comment for the following purposes:

- Opportunity for public comments on Local Plans, and all Local Plan modifications,²⁹ must be provided no less than 30 days prior to submission to the State. A description of this procedure, including how provisions were made for comments from members of local business and labor organizations, along with any negative comments received, must be included in the plan when submitted to the State³⁰ (There are 16 situations requiring a Local Plan modification.³¹);
- Opportunity for public comments on Regional Plans, and all Regional Plan modifications,³² must be provided for a period of not less than 30 days prior to submission to the State;
- Procurement solicitations and announcements of final awards; and
- Public meetings (with agendas) of the Local WDB.

Public Statements — Congressional appropriations contain a provision³³ that subrecipients of federal awards shall not issue any statements, press releases, or other documents describing projects or programs funded in whole or in part with federal money unless the subrecipient clearly states the following:

- The percentage of the total costs to be financed with federal money;
- The dollar amount of federal funds for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

Also known as the “Stevens Amendment” (originated by U.S. Sen. Ted Stevens—AK), this provision has been part of federal appropriations bills since 1989. It discourages State and local officials from taking sole credit in public statements for projects funded wholly or in part by the federal government. It applies to use of grants or awards by subrecipients, but not to publicly solicited vendor contracts. This information-clearance provision is echoed contractually. It is an Assurance in DWD’s Annual Agreements for federal financial assistance with the CEOs or their designated

information necessary for an individual to *obtain* any aid, benefit, service, and/or training. Examples of documents containing vital information include: applications; consent and complaint forms; notices of rights and responsibilities; notices of LEP rights; rulebooks; written tests that assess competency for a particular license, job, or skill; and letters or notices that require a *response* from the beneficiary or applicant, participant, or employee.” [29 CFR 38.4(ttt)].

²⁸ WIOA sec. 107(b)(2)(A)(iii) and sec. 107(b)(2)(B)(i) [[29 U.S.C. 3122\(b\)\(2\)\(A\)\(iii\) and 3122\(b\)\(2\)\(B\)\(i\)](#)].

²⁹ Final Rule [20 CFR 679.550\(b\)](#).

³⁰ WIOA sections 108(b)(20) and 108(d)(2) [[29 U.S.C. 3123\(b\)\(20\) and 3123\(d\)\(2\)](#)].

³¹ [DWD Issuance 14-2015](#), “Planning Policy and Guidelines for Missouri Local Workforce Development Boards,” February 16, 2016.

³² [Final Rule 20 CFR 679.510\(b\)](#).

³³ Currently, “Consolidated Appropriations Act, 2017” ([Pub. L. 115-31](#)), Division H, Title V, Section 505, May 5, 2017. This stipulation is a general provision of Congressional Appropriations to DOL of funds for WIOA and other purposes. The most recent appropriation is cited, but this is a recurring obligation for subrecipients.

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LFAs. All Local Areas are contractually bound to acknowledge the award source in their marketing materials. DOL will be monitoring for this.

Publicizing Equal Opportunity Officer Contact Information — It is the responsibility of federal-award recipients to ensure that the identity and contact information for the Local EO Officer appears where necessary. This includes internal communications (seen by covered staff and employees) and external communications (that may be seen by covered customers and the public) about the recipient’s nondiscrimination and Equal Opportunity programs.³⁴

Sunshine Requirements — Beyond publicizing basic information about their organization and functions, Local WDBs are required by the WIOA “sunshine provision”³⁵ to conduct business “in an open manner.” Additional sunshine provisions are included in the WIOA Title I subtitle on Administration.³⁶ They require records and reports of Title I recipients relating to expenditures and performance to be *available to the public upon request* (excepting information that would invade personal privacy and information about employer trade secrets or finances that is privileged or confidential).

Besides the general “openness” principles in WIOA, the Missouri State Sunshine Law³⁷ explicitly details when a meeting, record, or vote must be open. However, in its 2016 summary³⁸ of audits of State and local governmental bodies subject to the State Sunshine Law, the Missouri State Auditor’s Office identified five common statewide violations by such bodies:

- *Reasons for closed meetings* — The reasons for closing a meeting were not adequately documented, or the documented reasons were not allowable.
- *Open meeting minutes* — Minutes were not prepared for open meetings.
- *Closed meeting minutes* — Minutes were not prepared for closed meetings.
- *Review of minutes* — Meeting minutes were not always timely reviewed or approved.
- *Meeting agendas* — The agenda was not prepared or posted, or did not include adequate information related to the upcoming meeting.

A discussion of RSMo Chapter 610 and rulings on its requirements is contained in the [Missouri Attorney Generals’ Office booklet on the Missouri Sunshine Law](#). **DWD strongly recommends that CEOs and Local WDB Chairs know its contents.** The booklet includes all State Attorney General’s Office legal opinions on the law’s application. Frequently asked questions (FAQ) sections provide procedural guidance. Templates are provided for public notices of meetings and other purposes.

Specific Sunshine Law requirements applicable to Local WDBs include appointing and publicly identifying the **custodian** of the Local WDB’s records,³⁹ and ensuring that **fees** charged for transmitting, copying, or otherwise reproducing requested public records do not exceed the statutory limits and are accounted for appropriately.⁴⁰

³⁴ 29 CFR sections [38.29](#) and [38.34](#).

³⁵ WIOA 107(e) [[29 U.S.C. 3122\(e\)](#)].

³⁶ WIOA sec. 185(a)(4) [[29 U.S.C. 3245\(a\)\(4\)](#)].

³⁷ [RSMo Chapter 610](#).

³⁸ “Summary of State and Local Audit Findings—Sunshine Law,” Office of Missouri State Auditor [Report No. 2016-108](#), October 2016.

³⁹ [RSMo 610.023](#).

⁴⁰ [RSMo 610.026](#).

Conflict of Interest

A conflict of interest represents the *potential* for an offense. The Missouri Ethics Commission has repeatedly observed that, in the eyes of the public, it is often hard to distinguish between the “appearance” of impropriety and a technical violation of conflict-of-interest statutes.⁴¹ The intent of law is to *avoid* conflicts of interest. DWD’s own State employee policy notes that, “A conflict of interest does not imply wrongdoing or misconduct; rather, it is a *situation in need of management*.”⁴²

The following sections cover the legal and regulatory obligations of CEOs and Local WDBs to avoid conflicts of interest in the local one-stop delivery system.

State Laws — [RSMo 105.452](#), “Prohibited acts by elected and appointed public officials and employees” applies to State, county, and local government employees, and to appointed or elected “officials,” including Local WDB members. This statute prohibits improper influence on, or committed by, officials and employees for private gain (economic or political favor). It prohibits use of, or disclosure, of confidential information for personal, family, or business financial gain. It also prohibits the offer or use of political appointments in exchange for anything of value.

Additionally, [RSMo 105.454](#) adds prohibitions on personal transactions with State agencies, sale or lease of property to State agencies, undue influence, “revolving door” lobbying, and post-employment conflicts.

Nepotism — Superseding the statutes, [Article VII, Section 6](#) of the *Missouri Constitution* addresses ethical behavior by prohibiting **nepotism** (the hiring or appointment of family members, by blood or affiliation). Any *public officer or employee* who, as a function of their duties, appoints a near relation⁴³ shall be removed from office. For example, this prohibits CEOs from appointing anyone closely related to them to Local WDBs.

DWD employees are additionally bound to the DED nepotism policy⁴⁴ that includes intimate personal relationships as well as blood ties. Local WDBs may wish to add these restrictions to their own staff policies. DED’s policy requires:

- An employee may not directly supervise a relative, or an employee with whom he or she has, or has had, an intimate⁴⁵ relationship.
- An employee may not participate in employment decisions affecting a relative or an employee with whom he or she has or has had an intimate relationship.

⁴¹ Missouri Ethics Commission Advisory [Opinion No. 1994.06.115](#), June 28, 1994.

⁴² Missouri Department of Economic Development Policy Statement: [“Ethics and Conflict of Interest,”](#) February 1, 2017.

⁴³ The legal language describing nepotistic relationships is to “the fourth degree of consanguinity.” The **first degree** would be a parent or child (including stepparents and stepchildren) of the official *or the official’s spouse/ domestic partner*. The **second degree** adds grandparents, siblings, and grandchildren for either partner. The third degree adds great grandparents, aunts/uncles, nieces/nephews, and great grandchildren for either partner. The **fourth degree** (to which extent the Missouri nepotism law applies) further adds great-great grandparents, great aunts/great uncles, first cousins, great nieces/nephews, and great-great grandchildren for either partner. [Source: Missouri Ethics Commission.](#)

⁴⁴ Missouri Department of Economic Development Policy Statement, [“Nepotism,”](#) March 6, 2017.

⁴⁵ The policy defines “intimate relationships” as those involving “dating, sexual activity, or romantic involvement.”

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- An employee may not occupy a position that potentially or actually entails influence over the employment, career progression, salary administration, or other related matters of a relative or someone with whom he or she has or has had an intimate relationship.
- This guidance becomes applicable to employees who marry or become members of the same household during their employment.
- Prior to accepting employment or a new assignment, such as a transfer or promotion, an applicant or employee must notify Human Resources of any known relatives within the organization or employees with whom he or she has an intimate relationship.
- An employee must notify Human Resources if he or she becomes a relative of, or enters into an intimate relationship with, someone whom he or she directly or indirectly supervises.
- A supervisor or manager must notify Human Resources of any known relationship (relative or intimate) with any employee for whom he or she is recommending any employment action, whether positive or disciplinary.

Additional DED policy⁴⁶ requires that an employee must inform his/her supervisor or manager if he/she receives *information to process on a relative or a friend*. The supervisor will reassign the task to other staff. More specifically, authorized users of the statewide electronic case-management system **may not enroll relatives or friends, nor process or amend their records or case notes**. The State requires this of **all authorized system users**, whether they are State staff or not.⁴⁷ There are additional federal restrictions on handling any Unemployment Insurance (UI) service for relatives or friends.⁴⁸

Sub-State Monitor— Each Local WDB, in partnership with the CEO, must identify the organization or staff that will perform sub-state monitoring for the Local Area.⁴⁹ Besides oversight of programmatic and fiscal compliance, the sub-state monitor is responsible for reviewing certain ethical practices. The method of selecting that organization or staff must demonstrate the monitors' independence (the absence of conflict of interest) from the duties or systems they monitor.⁵⁰ Included among the sub-state monitor's tasks are examining:

- Recipient and subrecipient non-discrimination policies;
- Recipient and subrecipient conflict-of-interest policies; and
- Mandatory disclosures of all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting the federal award.

⁴⁶ Missouri Department of Economic Development Policy Statement: [“Personal Accountability and Conduct,”](#) September 21, 2016.

⁴⁷ [DWD Issuance 13-2016](#). “Confidentiality and Information Security Plan for the Workforce Development Statewide Electronic Case Management System,” March 13, 2017.

⁴⁸ U.S. Department of Labor, Employment and Training Administration, [Unemployment Insurance Program Letter \(UIPL\) No. 14-17](#), “States’ Responsibilities for Internal Security in the Unemployment Insurance Program,” March 23, 2017.

⁴⁹ WIOA sec. 107(d)(8) [[29 U.S.C. 3122\(d\)\(8\)](#)].

⁵⁰ [DWD Issuance 16-2015](#): “Statewide Sub-State Monitoring Policy,” March 30, 2016.

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Local Plan — Local Plans must have an Attachment (No. 8) detailing the Local WDB’s conflict-of-interest policy.⁵¹ The Local WDB may model it on the Missouri Workforce Development Board’s (MOWDB’s) conflict-of-interest and confidentiality policy, which is found in **Article IX** of the [MOWDB By-Laws](#).

Federal Laws — Section 107(h) of WIOA⁵² prohibits any member of a Local WDB, or a member of a Local WDB *standing committee*, from voting on a matter under consideration before the Local WDB where that member has a conflict of interest. Such conflicts include:

- Provision of services by the voting member (or by any entity that the member represents); or
- Any direct financial benefit to the voting member or the immediate family of the voting member; or
- Any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.⁵³

WIOA requires⁵⁴ State and Local WDBs to ensure that *one-stop operators*:

- Disclose business or personal relationships with particular training providers or other service providers that might be potential conflicts-of-interest; and
- Comply with federal regulations and procurement policies relating to the calculation and use of profits (profits are not allowed under WIOA).

Uniform Administrative Requirements (UARs) — UARs are government-wide procurement standards that all *federal grantees* must follow. They include standards for conflict of interest. The receipt of WIOA funding confers federal grantee status. DOL’s UARs at [29 CFR Part 95](#) and [29 CFR Part 97](#) describe specific conflicts of interest, considerations affecting awards to contractors, and requirements for procurement protest procedures.

Uniform Guidance — All procurement transactions must provide full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals *must be excluded* from competing for such procurements.⁵⁵ The Uniform Guidance affecting DOL awards is found in 2 CFR Parts [200](#), [2900](#), and [2998](#).

Avoiding Local Equal Opportunity Officer Conflicts — It is the responsibility of federal award recipients not to assign the Local EO Officer additional duties or tasks that create a conflict, *or the appearance of a conflict*, with the responsibilities of an EO Officer.⁵⁶

⁵¹ [DWD Issuance 14-2015](#), “Planning Policy and Guidelines for Missouri Local Workforce Development Boards,” February 16, 2016.

⁵² WIOA sec. 107(h) [[29 U.S.C. 3122\(h\)](#)].

⁵³ [Workforce Innovation and Opportunity Act Missouri Combined State Plan, 2016](#). The State Plan references the contents of this Issuance, and previous versions of it, as an assurance of having a WIOA-related conflict-of-interest policy.

⁵⁴ WIOA sec. 121(d)(4)(A) [[29 U.S.C. 3151\(d\)\(4\)\(A\)](#)].

⁵⁵ [2 CFR 200.319](#) “Competition.”

⁵⁶ [29 CFR 38.30](#).

Political Activity

WIOA Section 188 [[29 U.S.C. 3248](#)] prohibits discrimination on the basis of political affiliation or belief, in the delivery of any WIOA financially assisted programs or activities. This law protects not only the jobseeker and employer customers of federal-funding recipients, but a recipient's *employees*, as well.

Although political *affiliation* or *belief* is protected, State and federal laws and regulations prohibit certain political *activities* in the workplace and on personal time.

Missouri State Restrictions — Political activities in or on the grounds of Missouri Job Centers (including solicitations for contributions, placing posters and related signage, distributing campaign literature, and electioneering) are banned by Missouri State laws and regulations.⁵⁷ In addition to buildings and grounds *owned* by the State,⁵⁸ this includes facilities *occupied* by State agencies.⁵⁹ (State regulations prohibit several other non-political activities at State-owned facilities and facilities occupied by State agencies.⁶⁰)

State law⁶¹ also prohibits *State employees*, whether working directly with the public in Missouri Job Centers or other locations, or during their personal time, from engaging, *or being forced to engage in*, certain political activities. Local WDBs may, at their discretion, adopt similar rules for board staff as part of their local policies. State prohibitions include:

- A State employee may not knowingly solicit, accept, or receive a political contribution, on or off the job, from a subordinate;
- A State employee may not knowingly solicit, or discourage, participation in any political activity by any person who has a pending application for any compensation, grant, contract, ruling, or certificate before that employee's agency;
- An employee may not engage in political activity:
 - While on duty;
 - In any room or building occupied in the discharge of official duties;
 - Using State resources or facilities;
 - While wearing insignia identifying the agency; or
 - When using any State-owned or leased vehicles; and
- It is unlawful to intimidate, threaten, command, or coerce any State employee to engage in, or not engage in, any political activity.⁶²

⁵⁷ DED employees are also bound by Missouri Department of Economic Development Policy Statement: "[Political Activities](#)," April 11, 2016.

⁵⁸ At the time of release of this guide, five State-owned Missouri Job Center facilities fall under the jurisdiction of the State of Missouri Office of Administration, Division of Facilities Management, Design, and Construction (Florissant, Hannibal, Joplin, Sikeston, and St. Joseph).

⁵⁹ Missouri *Code of State Regulations* at [1 CSR 35-1.050\(2\)](#).

⁶⁰ These include social events, commercial events and fundraisers, charity solicitations, signature collections for petitions, distribution of non-agency literature, activities that block free passage in or out of the building, music and entertainments that disrupt business, and use of alcohol [[1 CSR 35-1.050\(2\)\(B\)](#)].

⁶¹ RSMo [36.150](#), [36.155](#), [36.157](#), and [36.159](#).

⁶² This is a class three election offense, punishable by imprisonment and/or fine, as well as loss of State employment [[RSMo 36.159](#)].

Federal Restrictions: The Hatch Act (Political Activities) — The federal Hatch Act, as amended,⁶³ protects the public from partisan political influence and promotes the nonpartisan administration of public business. Besides regulating activities of federal officeholders and employees, it also restricts the political activities of employees of State or local agencies that work with federally financed activities.⁶⁴ Compliance with the Hatch Act is a provision of the signed Annual Agreement between DWD and each CEO or that official’s designated LFA governing the disbursement of funds for each Program Year.

In general, the Hatch Act does not apply to the employees of *private or non-profit* organizations responsible for federally funded activities. *However*, political activity is prohibited for any private or non-profit entity assuming responsibility for *planning, developing, or coordinating* Community Services Block Grant (CSBG) activities, and in regard to such activity the law considers the entity to be equivalent to a State or local government agency (hence, subject to the Hatch Act).⁶⁵ CSBG is a required partner in the one-stop delivery system⁶⁶ and a partner program in the WIOA Missouri Combined State Plan.

The Hatch Act applies to employees of any State, county, city, or local agency (including Local WDBs) working with programs or services that receive federal funds (e.g., from the U.S. Departments of Labor, Education, or Health and Human Services). State and local officers or employees supervising employees responsible for federally funded activities, as well as those in charge of grant applications or accountability, are included. The covered employee’s salary *source* is not relevant, nor is the nature of the employee’s specific duties related to the federal funds.

The Hatch Act applies directly to all CEOs who are the designated federal grant recipient(s) for the LWDA and their designated LFAs, and any employees responsible for federally funded activities.

Covered State and local officers or employees may not, among other things:⁶⁷

- Use official authority or influence to interfere with or affect the result of an election or a nomination for office [[5 U.S.C. 1502\(a\)\(1\)](#)];
- Directly—or indirectly—coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value [including personal volunteer services] to a party, committee, organization, agency, or person for political purposes [[5 U.S.C. 1502\(a\)\(2\)](#)]; or

⁶³ [5 U.S.C. Chapter 15](#), “Political Activity of Certain State and Local Employees,” and 5 U.S.C. Chapter 73, Subchapter III, Political Activities, [Sections 7324–7326](#).

⁶⁴ [5 U.S.C. 1501–1508](#).

⁶⁵ [42 U.S.C. 9918\(b\)](#).

⁶⁶ WIOA sec. 121(b)(1)(B)(ix) [[29 U.S.C. 3151\(b\)\(1\)\(B\)\(ix\)](#)].

⁶⁷ [5 U.S.C. 1502\(a\)](#).

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- Be a partisan⁶⁸ candidate for elective office, if their salary⁶⁹ is paid completely, *directly or indirectly*, by loans or grants made by the United States or a federal agency [[5 U.S.C. 1502\(a\)\(3\)](#)].⁷⁰

If the individual is an employee of a private or non-profit entity that is the *end-recipient* of funding, without any administrative or funding-allocation responsibilities, the above restriction on political candidacy would not apply.⁷¹

If any of the above-bulleted Hatch Act violations occur, it can result in a federally ordered dismissal of the local officer or employee committing the violation. If a federal awarding agency has reason to believe a Hatch Act violation has occurred, it reports the matter to the independent U.S. Office of Special Counsel (OSC) Hatch Act Unit.⁷² If the OSC determines that the suspected violation warrants an investigation, its findings are presented to the U.S. Merit Systems Protection Board (MSPB), an independent, quasi-judicial agency in the Executive branch, for hearing and action. The MSPB can then order that the violator be dismissed from their job. If an employer (award recipient) does not comply with an employee dismissal order from the MSPB, the federal awarding agency may be instructed to withhold a portion of local grant and/or loan funds. The law specifically prohibits transferring or rehiring the fired officer or employee in another capacity or agency in an attempt to circumvent the dismissal. Such an evasion can trigger a funding cut to the award recipient that received the dismissal order.⁷³

Notwithstanding these restrictions, a State or local officer or employee retains the right to vote freely and to express personal opinions on political subjects and candidates.⁷⁴ However, review boards and courts have judged supervisor-subordinate relationships to be “inherently coercive” to the point where virtually any message or conversation from a supervisor regarding politics can be viewed as “threatening.”⁷⁵

⁶⁸ [5 U.S.C. 1503](#). Nonpartisan elections—races where there is no party affiliation associated with the office or the ballot ([5 CFR 734.101](#))—are exempt (some city council or school board elections, for example). (Technically, “party” refers specifically to a party that received votes in the last preceding Presidential election. An affiliation with a local citizens’ progress, reform, or issue-driven party, for example, would not be subject to the Hatch Act. [Advisory Opinion, U.S. Office of Special Counsel, Hatch Act Unit; [July 31, 2008](#)].)

⁶⁹ “Salary” refers to “straight pay,” not additional compensations or benefits. Advisory Opinion, U.S. Office of Special Counsel, Hatch Act Unit; [June 25, 2013](#).

⁷⁰ Elected executive officials (Governor, Lt. Governor, mayor, county commissioner, or an elected executive of a county charter government) are exempt [[5 U.S.C. 1502\(c\)](#)].

⁷¹ Advisory Opinion, U.S. Office of Special Counsel, Hatch Act Unit; [August 14, 2014](#).

⁷² Complaints also may be filed directly with the [OSC](#). The identity of complainants reporting Hatch Act violations are protected by whistleblower and privacy regulations.

⁷³ [5 U.S.C. 1506](#).

⁷⁴ However, one may not use one’s title or position when making a political endorsement (i.e., “J. Jones endorses Green for Mayor” is acceptable; “Missouri Job Center Functional Leader J.J. Jones supports Mayor Green for re-election” is unacceptable. [Advisory Opinion, U.S. Office of Special Counsel, Hatch Act Unit; [September 17, 2013](#)].)

⁷⁵ Advisory Opinion, U.S. Office of Special Council, Hatch Act Unit; [October 29, 2015](#).

Improper Influence

Lobbying — Use of federal awards for lobbying at the federal, State, or local level is prohibited under federal law⁷⁶ as well as in the Uniform Guidance⁷⁷ and in the DOL rules Part 93 “New Restrictions on Lobbying.”⁷⁸ This specifically applies to elections, introduction (or passage) of legislation, and decision-making processes of government officials. Besides civil penalties, the regulations emphasize, for administrative purposes, that activities to influence grants, contracts, cooperative agreements, and loans are not allowable costs.

Allowable costs considered not to be “lobbying” include:

- Preparing for and participating in a formal request-for-comments process;
- Preparing for/responding to official requests for testimony/information; or
- Any activity specifically authorized by statute.

WIOA also directly prohibits use of funds for **lobbying or publicity** designed to influence legislation or regulation.⁷⁹ WIOA funds may not be used for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat:

- Legislation before Congress or any State or local legislature; or
- Proposed or pending regulations, administrative actions, or orders issued by the executive branch of any State or local government.

Contractual Assurances — As referenced on page 31, certain assurances are part of the Annual Agreement between DWD and the CEO (or the CEO’s designated LFA). These contractual obligations include prohibitions against lobbying activities:

- No federal appropriated funds have been, or will be, used to lobby a federal official in connection with any federal contract, federal grant, federal loan, or cooperative, or the extension, continuation, renewal, amendment, or modification of the same;
- If any funds *other than federally appropriated funds* have been paid, or will be paid, to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, the recipient must complete the federal Standard Form–LLL, “Disclosure of Lobbying Activities,”⁸⁰ as a record documenting each occurrence; and
- The signatory will repeat the lobbying prohibitions in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), and assures that all subrecipients will certify and disclose accordingly.

Criminal Activities— The felony crimes of bribery of a public servant and of a public servant acceding to corruption are addressed in the Missouri Revised Statutes.⁸¹

⁷⁶ [18 U.S.C. 1913](#) and [31 U.S.C. 1352](#). Civil penalties for violation range from \$10,000 to \$100,000.

⁷⁷ [2 CFR 200.450](#) “Lobbying.”

⁷⁸ [29 CFR 93.100 et seq.](#)

⁷⁹ WIOA sec. 195(a) [[29 U.S.C. 3255\(a\)](#)].

⁸⁰ <https://www.doleta.gov/regions/reg05/Documents/sf-lll.pdf>

⁸¹ RSMo [576.010](#) and [576.020](#).

Discrimination, Harassment, Retaliation, and Accommodation

Compliance with Federal Nondiscrimination Regulations — Nondiscrimination provisions of WIOA are found in [Section 188](#). They prohibit discrimination against applicants, beneficiaries, and employees on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief (and, for beneficiaries only, citizenship or participation in WIOA Title I financially assisted programs or activities).

The text of this section of the law has the same exact wording as the corresponding section in the predecessor Workforce Investment Act of 1998 (WIA),⁸² which WIOA repealed. Nevertheless, the **regulations implementing** Section 188 were recently **substantially revised**.

These rules, found in [Part 38](#) of Title 29 of the *Code of Federal Regulations*, became effective **January 3, 2017**. The DOL Civil Rights Center (CRC)—which operates under the DOL Office of the Assistant Secretary for Administration and Management (OASAM)—*not* the Employment and Training Administration (ETA)—enforces WIOA Section 188.

It should be understood that these rules are wider-ranging than the nondiscrimination or EO rules that CEOs or Local WDB members may be familiar with in the workplace. Noncompliance with these rules can result in the suspension of workforce development funding and/or federal civil action.

DWD **strongly encourages** CEOs, Local WDBs, and their appointed Local EO Officers to familiar themselves with the complete text of these new rules.⁸³ Note that all provisions of Part 38 apply to *all one-stop partners*, to the *extent of their activities* relating to the one-stop delivery system. (The provisions do not apply to partners' non-WIOA programs and activities.) All one-stop partners are considered WIOA Title I **recipients** to the extent of their involvement with the one-stop delivery system.

To summarize the most noteworthy changes:

The new Part 38 rules expand greatly on the management of discrimination issues affecting **four classes** of workforce-system customers: **persons with sexual-identity interests, persons with pregnancy-related interests, persons with limited English proficiency (LEP) concerns, and persons with disabilities.**

- Discrimination by recipients of WIOA Title I financial assistance related to **sex stereotyping, transgender status, and gender identity** are forms of **illegal discrimination based on sex**.⁸⁴ These specific protections are also to be added to all posters, notices, policies, assurances, contracts, etc., hard

⁸² Pub. L. 105-220 (repealed).

⁸³ The full text of [2 CFR Part 38](#) is attached to [DWD Issuance 09-2016](#), “Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act,” January 18, 2017.

⁸⁴ [29 CFR 38.7](#); see also [DWD Issuance 15-2014](#), “Training and Employment Guidance Letter No. 37-14 – Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression, and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System,” June 19, 2015.

copy and electronic, that address discrimination.⁸⁵ The rules also offer a new, detailed breakdown of **practices and behaviors that constitute sex discrimination**. A newly prohibited practice, affecting both the public Employment Service (Wagner-Peyser) Labor Exchange and local Missouri Job Center postings, *including social media*, is “posting job announcements for jobs that recruit or advertise for individuals for certain jobs on the basis of sex.”⁸⁶ Another unlawful practice that job centers must be made aware of is “denying individuals *access to the bathrooms* used by the gender with which they identify.”⁸⁷

- Likewise, the Part 38 rules establish that discrimination related to **pregnancy, childbirth** (including pre- and post-pregnancy family planning), and **related medical conditions** is an illegal form of **discrimination based on sex**.⁸⁸ These specific protections are to be added to all posters, notices, policies, assurances, contracts, etc., hard copy and electronic, that address discrimination.⁸⁹ Part 38 now reflects the requirements of the 1978 Pregnancy Discrimination Act,⁹⁰ which the old rules for WIA did not do.
- The Part 38 rules also now establish that that discrimination related to **Limited English Proficiency (LEP)** is an illegal form of **discrimination based on national origin**.⁹¹ This specific offense is also to be added to all notices, policies, assurances, contracts, etc., hard copy and electronic that address discrimination.⁹² Part 38 also increases the responsibilities of WIOA Title I recipients to provide multi-lingual notices, translation and interpretation services, as well as opportunities for English acquisition. Although not mandatory, Part 38 urges recipients to create a Language Assistance Plan (or LEP Plan) as means of providing “meaningful language access” to LEP individuals. It includes guidance to accomplish such a plan as an [appendix to Section 38.9](#).
- The Part 38 rules expand the assistive technologies and accommodations to be made available to persons with disabilities. They upgrade the requirements for physical facilities of recipients to new standards, particularly regarding Americans with Disability Act (ADA)⁹³ standards, as amended in 2008. The new rules also revise the definition of “disability” and associated definitions such as “reasonable accommodation” and “major life activity.”
- Section 188(a)(5) of WIOA specifies that lawfully admitted non-citizens (permanent resident aliens, refugees, asylees, parolees, and other immigrants

⁸⁵ [29 CFR 38.34–38.37](#).

⁸⁶ [29 CFR 38.7\(b\)\(5\)](#). That is, with gender-specific terms where gender is unrelated to the employment. In its commentary for Section 38.7, the CRC recommends as a best practice using gender-neutral terms where such alternatives exist (81 FR 87149).

⁸⁷ [29 CFR 38.7\(b\)\(9\)](#).

⁸⁸ [29 CFR 38.7\(b\)\(7\)](#) and [29 CFR 38.8](#).

⁸⁹ [29 CFR 38.34–38.37](#).

⁹⁰ [42 U.S.C. 2000e\(k\)](#).

⁹¹ [29 CFR 38.9](#).

⁹² [29 CFR 38.34–38.37](#).

⁹³ [42 U.S.C. 12101 et seq.](#)

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authorized by the U.S. Attorney General⁹⁴ to reside in the United States have a right to participate in WIOA Title I programs and activities and receive funds from the same. The Part 38 rules codify this law into federal regulation.⁹⁵ A WIOA Title I recipient may not discriminate on the basis of citizenship status directly or through contractual, licensing, or other arrangements. A worker lawfully in the United States is eligible to apply, participate, and receive benefits for all Title I products and services. To deny access is citizenship discrimination and against the law. This applies to WIOA Title I, not to all federal laws and programs.

Although it is not required to be mentioned in posters or notices, **harassment** has been specifically added as a violation of WIOA's nondiscrimination provisions.⁹⁶

Part 38 strengthens the authority and access of State and **Local EO officers** while also requiring that they have a higher level of competency and accountability, as well as the staffing and resources to support their mission. The new rules make EO training **mandatory** at the recipient's expense.⁹⁷ (Not allowing Local EO officers to travel in person to attend training because of "budget issues" is not an option.)

The rules explicitly emphasize in several places that nondiscrimination provisions apply as equally to **employees of workforce system recipients** as they do to the customers served.⁹⁸ Rules changes may require revisions of HR policies by Local WDBs and their subrecipients.

To prevent discrimination against LEP individuals, Part 38 requires so-called "Babel Notices" and other multi-lingual translations⁹⁹ where *vital information*¹⁰⁰ is presented to system customers, both in hardcopy and electronic formats.

Increased attention is not only being paid to assistive technologies and programmatic accommodations for people with disabilities, but to compliance at physical facilities with the Americans with Disabilities Act Amendments Act of 2008 (ADAAA)¹⁰¹—particularly informational **signage**. (Besides Job Centers, this would apply to any recipient site where Title I customers visit or **where Title I-funded employees work** (e.g., the LWDB office, as well as the Job Center). Accessibility and accommodation also applies to Employer sites where Title I-funded training occurs.

State Guidance — DWD's Issuance on "Harassment, Discrimination, and Retaliation Policy; Accommodation Policy,"¹⁰² requires all Local WDBs, partner agencies, and/or subrecipient entities to develop and implement policies:

⁹⁴ After WIOA became law, this duty was transferred to the Secretary for Homeland Security.

⁹⁵ [29 CFR 38.11](#).

⁹⁶ [29 CFR 38.10](#).

⁹⁷ [29 CFR 38.29\(f\)](#).

⁹⁸ [29 CFR 38.2\(a\)\(3\)](#), [29 CFR 38.4\(s\)](#), [29 CFR 38.8](#), and [29 CFR 38.18](#).

⁹⁹ [29 CFR 38.9\(g\)\(3\)](#).

¹⁰⁰ "Vital information" is any information, whether written, oral, or electronic, that is necessary for an individual to understand *how* to obtain, or *to obtain*, any aid, benefit, service, and/or training, or information that is required by law. This includes notices of rights and available services or accommodations [\[29 CFR 38.4\(ttt\)\]](#).

¹⁰¹ [Pub. L. 110-325](#).

¹⁰² DWD Issuance 17-2016, "Harassment, Discrimination, and Retaliation Policy; Accommodation Policy," June 2, 2016, and any subsequent revisions.

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- Prohibiting employees (and non-employee customers or vendors) from harassing or discriminating against staff, customers, and partner employees, as well as prohibiting intimidation or retaliation against discrimination or harassment complainants; and
- Providing reasonable employment-related accommodations to employees and job applicants with disabilities.

DWD Issuances¹⁰³ on accommodating individuals with employment barriers include:

- Equal Opportunity and Complaint & Grievance, Notice and Dissemination;
- Nondiscrimination and Equal Opportunity Corrective Actions/Sanction Policy and Guidelines;
- Access to Meaningful Services for Individuals with Limited English Proficiency Policy;
- Nondiscrimination in Jobseeker Screening and Referrals;
- Designation of Local Equal Opportunity Officers;
- Priority of Service to Veterans;
- Missouri Accessibility Policy for One-Stop Service Delivery Systems; and
- Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended, with regard to Pre-Employment Inquiries

DWD employees are bound by the DED [“Harassment, Discrimination, and Retaliation”](#) policy and the DED [“Accommodation”](#) policy.” Local WDBs and subrecipients may use them as templates for creating their own policies. WIOA also strongly recommends¹⁰⁴ (but does not require) that each Local WDB create a *Standing Committee* on WIOA Section 188 nondiscrimination issues. If one is formed, WIOA recommends its functions should include:

- Providing information;
- Assisting with operational and other issues relating to the provision of services to individuals with disabilities in compliance with Section 188 and applicable the Americans with Disabilities Act of 1990 (ADA)¹⁰⁵; and
- Arranging training for staff on supporting and accommodating individuals with disabilities and finding them employment opportunities.

WIOA charges Local WDBs with an *annual responsibility*¹⁰⁶ to assess the *physical and programmatic accessibility* of all one-stop centers in the LWDA, in accordance with Section 188 and with the applicable provisions of the ADA. Additionally, the *Local Plan* must describe how entities within the one-stop delivery system, including one-stop operators and the one-stop partners, will comply with Section 188 and the provisions of the ADA regarding the physical and programmatic accessibility of facilities, programs and services, technology, and materials. This description must

¹⁰³ Available at <https://www.jobs.mo.gov/dwdissuances>.

¹⁰⁴ WIOA sec. 107(b)(4)(A)(iii) [[29 U.S.C. 3122\(b\)\(4\)\(A\)\(iii\)](#)].

¹⁰⁵ [42 U.S.C. 12101 et seq.](#)

¹⁰⁶ WIOA sec. 107(d)(13) [[29 U.S.C. 3122\(d\)\(13\)](#)] and [20 CFR 679.370\(p\)](#).

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include staff training and support plans.¹⁰⁷ The issues of physical and programmatic access are also essential elements in the Job Center certification process.¹⁰⁸

Intimidation and Retaliation — The rules¹⁰⁹ on intimidation and retaliation invoke severe sanctions and penalties against improper reprisals against individuals who have filed complaints, opposed wrongful practices, or provided information or testimony in a investigation, review, or hearing. These penalties¹¹⁰ can include any or all of the following:

- Suspension or termination of WIOA Title I funding;
- Civil action by the U.S. Attorney General;
- Injunctive relief; and
- Suspension or debarment of eligibility for new grants

Disallowed Legal Costs — Legal defense for criminal, civil, or administrative proceedings concerning discrimination, harassment, or any other violations of federal, State, or local statutes, regulations, or award conditions may *not* be paid for with award funds if the outcome is any positive finding, fine, settlement, or sanction.¹¹¹

Accommodation: Use of Interpreters and Translators — Ethical complications involving *confidentiality* and *conflict of interest* can result from improper accommodations, such as deficient interpreter services for individuals with hearing or sight disabilities. Similar liabilities arise when providing translation services to individuals with Limited English Proficiency (LEP). Both accommodations require suitable specialists because the **accuracy of the information interpreted or translated** may involve a customer's *rights, benefits, or informed consent*.

The potential exists for civil torts and criminal offenses. Under Missouri law, interpreters for the deaf and hard of hearing must be certified and licensed. Posing as an interpreter,¹¹² interfering with the rights of a blind or deaf person,¹¹³ and disclosure¹¹⁴ of the contents of a relay or auxiliary aids conversation without permission are all misdemeanors.¹¹⁵

Improper procedures can lead to unlawful disclosure of customer confidential information. It also can lead to an EO or WIOA complaint holding that the Job Center *distorted* the interpretation or translation to serve its own purposes. DWD's

¹⁰⁷ WIOA sec. 108(b)(6)(C) [[29 U.S.C. 3123\(b\)\(6\)\(C\)](#)].

¹⁰⁸ [DWD Issuance 02-2016](#), “Missouri One-Stop Job Center Certification Evaluation and Criteria,” Nov. 7, 2016.

¹⁰⁹ [29 CFR 38.19](#), “Intimidation and retaliation prohibited.”

¹¹⁰ WIOA sec. 188(b) [[29 U.S.C. 3248\(b\)](#)] and [29 CFR 38.110](#).

¹¹¹ [2 CFR 200.435](#).

¹¹² [RSMo 209.321](#).

¹¹³ [RSMo 209.160](#).

¹¹⁴ [RSMo 209.265](#).

¹¹⁵ Interfering with the rights of a blind or deaf (or physically disabled) person is a Class B misdemeanor, subject to a fine of up to a \$1,000 and up to six months in jail. Posing as an interpreter or improper disclosure of a privileged assisted communication are both Class A misdemeanors, subject to fines of up to \$2,000 and up to one year in jail.

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existing LEP policy¹¹⁶ and DOL’s Part 38 rules emphasize that *failure to use properly qualified interpreters and translators can be an EO violation*. DOL and its Civil Rights Center do not support or recommend use of customers’ family members or friends, or Job Center staff (or bystanders) to interpret or translate for customers.

A Job Center must not require a customer to *bring* an interpreter or translator. The Job Center must not *rely* on any adult who arrives accompanying the customer to facilitate communication. Emergency exceptions¹¹⁷ would be:

- In cases of *imminent danger* (e.g., fire, armed intruder, or storm evacuation) if no qualified interpreter or translator is present; or
- It is the *unequivocal demand* of the individual with the disability or language barrier to relate on a personal choice of interpreter or translator, in which case the staff must create and retain a *record*¹¹⁸ (a case note is acceptable) to document the customer’s election or insistence to use only that personal choice.

Minor children are never acceptable translators, except in cases of imminent physical danger, as above.

Besides having a State license, a *qualified* interpreter must be able to sign or otherwise communicate effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.¹¹⁹ Local WDBs may simplify this accommodation by utilizing the State contract.¹²⁰

For LEP, a qualified translator means “demonstrates expertise and ability to communicate information effectively, accurately, and impartially, in both English and the other language, and identifies and employs the appropriate mode of interpreting (e.g., consecutive, simultaneous, or sight translation).”¹²¹ Even though an LEP individual might request a family member or friend as a translator for simple conversation, the Job Center should still involve a professional translator in *cases that affect rights or benefits*. Again, Local WDBs may simplify this accommodation by utilizing the State contract.¹²²

¹¹⁶ [DWD Issuance 06-2014](#): “Access to Meaningful Services for Individuals with Limited English Proficiency,” December 12, 2014.

¹¹⁷ [29 CFR 38.9\(f\)\(2\)\(i\)](#) and [29 CFR 38.15\(a\)\(3\)\(ii\)\(A\)](#).

¹¹⁸ [29 CFR 38.9\(f\)\(2\)\(ii\)](#).

¹¹⁹ [29 CFR 38.4\(xx\)\(1\)](#).

¹²⁰ https://jobs.mo.gov/sites/jobs/files/dast_sign-language-interpreter_desk_aid_rev11-2015.pdf.

¹²¹ [29 CFR 38.4\(xx\)\(2\)](#).

¹²² https://jobs.mo.gov/sites/jobs/files/language_interpretation_desk_aid_checklist_rev08-2016.pdf.

Procurement

Procurement rules for federal awards for Local Areas are generally found in the Uniform Guidance at [2 CFR 200.318–300.326](#).

Conflicts of Interest in Procurement— Local WDBs must maintain *written standards* of conduct regarding conflicts of interest and the actions of employees engaged in the selection, award, and administration of contracts.¹²³ No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if there is a real *or apparent* conflict of interest. This includes associations with personnel or entities that have financial or other interests in a potential bidder.

Officers, employees, and agents of the Local WDB may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. (The Local WDB *may* elect to create a written standard that permits non-substantial or unsolicited gifts of nominal value, such as informational materials, modest refreshments, promotional items, or samples.¹²⁴) The Local WDB's written standards also must describe the disciplinary responses to violations.

Competition— [WIOA Section 123](#) requires Local WDBs to identify eligible providers of Youth activities by awarding grants or contracts on a competitive basis. Procedures for competitions are described in the Uniform Guidance at [2 CFR 200.319](#). The rules specifically identify organizational conflicts of interest as restrictive of the competitive process.¹²⁵ DWD has additional policy on procurement of Youth workforce activities.¹²⁶ Similarly, WIOA requires Local WDBs to use a “competitive process” for the selection of the one-stop operator.¹²⁷ Final Rules governing this process are at [20 CFR 678.605](#). DWD has additional policy on procurement of one-stop operators.¹²⁸

For governmental bodies, including Local WDBs, the procurement, competition, and conflict-of-interest requirements specific to DOL are found in the UARs at [29 CFR 97.36](#). Additional DOL procurement, competition, and conflict-of interest requirements for non-government entities (potentially, some Local WDB subrecipients) are found in the UARs at [29 CFR 95.40–95.48](#).

An annual review of procurement is a required element in the Local WDB's annual on-site Financial Monitoring Review (FMR) of subrecipients to ensure fiscal integrity. The FMR ensures compliance with WIOA section 184(a)(4) [[29 U.S.C. 3244\(a\)\(4\)](#)], annual DWD agreements, and 2 CFR Parts [200](#), [2900](#), and [2998](#).¹²⁹

¹²³ [2 CFR 200.318\(c\)\(1\)](#).

¹²⁴ For the State of Missouri Employee Code of Conduct on such matters, see SP-13, January 3, 2007, <http://oa.mo.gov/sites/default/files/SP13.pdf>.

¹²⁵ [2 CFR 200.319\(a\)\(5\)](#).

¹²⁶ [DWD Issuance 01-2012](#): “Procurement of Workforce Investment Act Youth Program Activities,” January 1, 2013, and its successors.

¹²⁷ WIOA sec. 121(d)(2)(A) [[29 U.S.C. 3151\(d\)\(2\)\(A\)](#)].

¹²⁸ [DWD Issuance 04-2016, Change 1](#): “Selection or Designation of Service Providers, including Selection of one-stop operators, by the Local Workforce Development Board, Change 1,” March 20, 2017.

¹²⁹ [DWD Issuance 16-2015](#), “Statewide Sub-State Monitoring Policy,” March 30, 2016.

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Suspension and Debarment— Non-federal entities are also subject to non-procurement debarment and suspension regulations in [2 CFR Part 180](#). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.¹³⁰

The Annual Agreement between DWD and each Local Area subrecipient (CEO or LFA) reinforces these regulations. The subrecipient certifies that it and its principals:

- Are not debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any federal department or agency;
- Have not within the preceding three-year period been convicted or received a civil judgment for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, State or local) with any of the above offenses; and
- Have not within the preceding three-year period had any public transactions (federal, State, or local) terminated for cause or default.

Mandatory Disclosures— A non-federal entity or applicant for a federal award also must disclose, in a timely manner, in writing to the federal awarding agency or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.¹³¹ Non-federal entities that have received a federal award are subject to terms and condition outlined in [Appendix XII for 2 CFR Part 200](#), “Award Term and Condition for Recipient Integrity and Performance Matters.” Failure to make required disclosures can result in remedies for noncompliance, including suspension or debarment.¹³²

Prohibition of Agreements with Convicted Corporations— The Consolidated Appropriations Act of 2017 restricts¹³³ awards to firms convicted of federal crimes. Federal funds cannot be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any federal law within the preceding 24 months. This applies where the awarding agency is aware of the conviction, excepting if a federal agency has already considered suspending or debarring of the corporation related to that conviction and has elected not to do so. The law also similarly restricts such dealings with any corporation that has a federal tax liability.¹³⁴

¹³⁰ [2 CFR 200.213](#).

¹³¹ [2 CFR 200.113](#).

¹³² See also [2 CFR Part 180](#) and [41 U.S.C. 2313](#).

¹³³ [Pub. L. 115-31](#), (H.R. 244) Division E, Title VII, Section 746 (May 5, 2017).

¹³⁴ [Pub. L. 115-31](#), (H.R. 244) Division E, Title VII, Section 745 (May 5, 2017)..

Confidentiality

As previously discussed (*page 22*), inappropriate translation or interpretation arrangements have the potential to compromise confidentiality. However, information *handling* is a more-likely confidentiality risk. This most often occurs as improper disclosures (including data breaches).

Federal regulations on confidentiality and disclosure of Federal-State Unemployment Compensation (UC) information are in [20 CFR Part 603](#). The WIOA Final Rules amend subparts [603.2](#), [603.5](#), and [603.6](#) to clarify which public officials and agencies may, or must, receive disclosures.

It is a criminal offense under Missouri law to divulge confidential information, regarding participants *or* employers, from records of the Missouri Division of Employment Security (DES) without authorization.¹³⁵ DWD and DES also have a Memorandum of Agreement (MOA) that governs the sharing of customer data. This enables the agencies to meet statutory and regulatory requirements to carry out employment and training programs and to provide performance reports. Subrecipients are also bound by the conditions of this MOA.

“Confidential information” that may originate with DES includes information about employees, benefit amounts and history, unemployment insurance (UI) payments, unemployment claims, employer history, salaries, wage histories, addresses, telephone numbers, bank account information, federal employer identification numbers, North American Industry Classification System (NAICS) and industry codes, credit card numbers, work histories, and Social Security numbers (SSNs).¹³⁶ “Confidential” also applies to any personally identifiable information (PII) that DWD obtains from DES.

Additional confidential information may be contained in the statewide electronic case-management system. DWD’s Confidentiality and Information Security Plan¹³⁷ addresses secure handling of this information, as well as other procedures. Local WDBs should be aware of and follow the procedures in this State plan. If a Local WDB confidentiality plan exists, it must be in accord with this State plan. The Local WDB also must ensure that its subrecipients’ confidentiality policies concur with the State and local plans. Local WDBs should distribute the State plan, as well as any State policy on breach of electronic customer-records-management system procedures, to all potential users, subrecipients, partner agencies, and their supervisors.

¹³⁵[RSMo 288.250](#). (A first violation is a Class A misdemeanor, subject to a fine of up to \$10,000, and up to one year in jail. A second or subsequent violation is a Class E felony, subject to a fine of \$10,000 and up to four years’ imprisonment.) Additionally, [RSMo 576.050](#) established a separate Class A misdemeanor for misuse of official information by a public servant. Similar statutes provide criminal penalties for unauthorized release of confidential information held by other State agencies.

¹³⁶Terms of 2016 “Memorandum of Agreement between the Missouri Department of Labor and Industrial Relations, Division of Employment Security, and the Missouri Department of Economic Development, Division of Workforce Development.”

¹³⁷[DWD Issuance 13-2016](#): “Confidentiality and Information Security Plan for the Workforce Development Statewide Electronic Case Management System,” March 13, 2017.

Agencies Not Privy to Confidential Information — DOL has specified that non-public educational institutions (including non-profit or for-profit educational institutions, community-based organizations, and eligible training providers that are not subject to the authority of the executive branch of a state or other elected official) are not permitted to obtain confidential UC information, including wage information, under the “public official exception.”¹³⁸

Cooperating with Authorities — Local WDBs and Job Centers may comply with official requests from representatives of law enforcement¹³⁹ working *criminal* cases for PII (last known address, phone number, etc.) of workforce development customers *after* consultation with the DWD Director’s office. However, [20 CFR 603.7](#) requires **referral** of any *civil* subpoenas or compulsory processes¹⁴⁰ that request customer (jobseeker or employer) information (cases involving child support, divorce, lawsuit, etc.) *to the State level*. Such subpoenas cannot be handled locally. They must be referred to the appropriate General Counsel’s office at the either DED or the Missouri Department of Labor and Industrial Relations. (Official requests for PII about Job Center *employees* also should not be processed at the Job Center. They should be referred to the responsible human resources officer for the employer of record.)

[WIOA sec. 116\(i\)\(3\)](#) on performance accountability also incorporates, by reference, compliance with the privacy provisions of Section 444 of the General Education Provisions Act ([20 U.S.C. 1232g](#)) relating to the security of student records and PII.

Complainant Protection — There are complaint processes relating to EO, WIOA Title I procedures, and Employment Services. The complainant’s name and other particulars, records, or interviews associated with any complaint must be kept confidential. This includes *any* information that could lead to identification of a particular individual as having filed a complaint.”¹⁴¹

Safe at Home — The Missouri Office of the Secretary of State helps victims of domestic violence, sexual assault, or stalking who have relocated, or are about to relocate, in an effort to keep their assailants from finding them. Participants use a “designated” address when interacting with State and local agencies and the courts. When presented with a Safe at Home “authorization card,” State and local agencies must accept the Safe at Home designated address for any record. Employees of State and local agencies may request to see the participant’s authorization card and may photocopy the card for their files. Agencies cannot require an address-confidentiality program participant to disclose his or her confidential address.¹⁴²

Closed Local WDB Sessions — As can be seen from the preceding, information about jobseeker or employer customers that comes to Local WDB members or CEOs in the course of their duties must be treated in strictest confidence. Should discussion of confidential or PII about participants or employers be necessary at a

¹³⁸ DOL Final Rule preamble discussion for 20 CFR 603.2(d) [81 FR 56085].

¹³⁹ [20 CFR 603.5\(e\)](#).

¹⁴⁰ From attorneys, litigants, or clerks of the court who are *not* government officials with subpoena authority.

¹⁴¹ [20 CFR 658.411\(a\)\(3\)](#) and [29 CFR 38.41\(c\)](#).

¹⁴² [DWD Issuance 11-2007](#), “Safe at Home Program,” March 24, 2008; and [RSMo 589.660–589.683](#).

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public Local WDB meeting, the Local WDB must transfer into closed session.¹⁴³ The Local WDB's minutes must document the closure and provide the justification. In such an event, members of the public must leave the meeting room (or the members must retire to another room) during the Local WDB's deliberations on that specific topic.¹⁴⁴

DED policy¹⁴⁵ additionally places DWD employees under the following obligations for confidentiality and information security:

- An employee is prohibited from using information learned in the performance of job duties for personal benefit, including favoritism, professional advancement, or monetary gain.
- An employee is responsible for safeguarding confidential and sensitive information.
- An employee shall not disclose confidential information gained by reason of his/her position to individual(s) within DWD who do not have a need-to-know and who do not have authority to receive such information.
- An employee shall not seek information that the employee does not have a need-to-know or authority to receive.
- An employee shall not disclose confidential information to individual(s) outside of DWD personnel unless required by law to do otherwise in the discharge of the duties of his/her position; and
- An employee is to inform his/her supervisor or manager if he/she receives information to process on a relative or friend. The supervisor or manager will reassign the request to other staff.

Where not already addressed by statute regulation or policy, DWD encourages Local WDBs and CEO consortia to address such topics in their own by-laws and standing policies.

¹⁴³ [RSMo 610.021](#).

¹⁴⁴ Missouri Attorney General Opinion 18-81 in "[Missouri Sunshine Law Open Meetings and Records Law](#)," March 2017, p. 48.

¹⁴⁵ Missouri Department of Economic Development Policy Statement: "[Personal Accountability and Conduct](#)," September 21, 2016..

Reporting Abuses

Failure to report criminal or noncompliant uses of public funding can have serious consequences for a Local WDB, its programs, and its services. Recipients of federal awards under WIOA or the Wagner-Peyser Act, as a condition for receiving those funds,¹⁴⁶ are obligated to report¹⁴⁷ incidents of fraud, waste, misappropriation, or theft of those funds by the recipient, or a subrecipient.

Federal regulations¹⁴⁸ provide that the federal awarding agency (or the pass-through entity, i.e., DWD) has any or all of the following options to deal with fraud, abuse, noncompliant use, or the failure to report the same:

- Temporarily withhold cash payments;
- Disallow use of funds and/or matching credit for all or part of the cost of the activity or action not in compliance;
- Wholly, or partly, suspend or terminate the federal award;
- Initiate suspension or debarment proceedings;
- Withhold further federal awards for the project or program; and
- Employ other legally available remedies.

If these remedies are not effective, WIOA stipulates¹⁴⁹ that fraud, abuse, or the failure to report the same are grounds for the Governor to decertify a Local WDB. This can be a first step, or a last resort, entirely at the Governor's discretion. This consequence does not require the agreement of the CEO. In such a case, the Governor would instruct the CEO to solicit new nominations, appoint a new Local WDB, and submit the makeup of that new Local WDB for certification by the State. In this unlikely event, the State would directly manage programs and services for the LWDA until the installation of the new Local WDB.

DOL has issued guidance on grant recipient reporting responsibilities and procedures for reporting abuses.¹⁵⁰ There are also established procedures for Local WDBs to report abuses to DWD.¹⁵¹ However, details for the process of local internal reporting of abuses are best left to Local WDB discretion. Nevertheless, DWD strongly encourages Local WDBs and CEOs to have written policies and procedures for reporting fiscal or programmatic offenses within their organizations. They should require their subrecipients to have written policies and procedures as well. Effective communication (and training) will ensure that all employees are aware of the policies and know what procedures to follow if they encounter abuses.

¹⁴⁶ For a full discussion and references on this topic, see [DWD Issuance 23-2015](#), "Policy on Reports and Complaints about Criminal Fraud, Waste, Abuse, or other Criminal Activity Related to Federal Awards," June 14, 2016.

¹⁴⁷ To the federal awarding agency or to the pass-through entity (i.e., to DOL or DWD).

¹⁴⁸ [2 CFR 200.338](#), "Remedies for noncompliance."

¹⁴⁹ WIOA sec. 107(c)(3) [[29 U.S.C. 3122\(c\)\(3\)](#)].

¹⁵⁰ U.S. Department of Labor, Employment and Training Administration, Training and Employment Guidance Letter ([TEGL](#)) [No. 2-12](#), July 12, 2012.

¹⁵¹ [DWD Issuance 23-2015](#), "Policy on Reports and Complaints about Criminal Fraud, Waste, Abuse, or other Criminal Activity Related to Federal Awards," June 14, 2016.

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For detailed discussions of fiscal and programmatic oversight, see the current DWD Issuances¹⁵² on:

- Collection and Use of Social Security Numbers;
- Retention and Destruction of Records;
- Food Provided at Planned Events;
- Next Generation Career Center Business Card Policy;
- Next Generation Career Center Office Supplies Policy;
- Policy on Reports and Complaints about Criminal Fraud, Waste, Abuse, or Other Criminal Activity Related to Federal Awards;
- Procurement of Youth Program Activities;
- Procurement Policies and Disposal of Surplus Assets;
- Program Year/Fiscal Year WIOA Formula Allocations for Adult, Youth, and Dislocated Worker Programs to LWDAs;
- Reasonable Cost of Training Policy for Trade Adjustment Assistance Participants;
- State Sub-State Monitoring Policy;
- Statewide On-the-Job Training Policy and Guidelines;
- Training and Employment Guidance Letter WIOA NO. 23-14 – Operating Guidance for WIOA (the DWD Issuance publicizing this TEGL);
- Transfer Amount Allowable between WIOA Adult and Dislocated Worker Programs’ Funding Streams;
- Use of Title I Financial Assistance to Employ or Train Participants in Religious Activities When the Assistance is Provided Indirectly;
- WIOA Adult and Dislocated Worker Programs Eligibility and Documentation Technical Assistance Guidance Policy;
- WIOA Youth Program Eligibility and Documentation Technical Assistance Guidance Policy; and
- WIOA Youth Program Expenditures Guidance Policy.

¹⁵² <https://www.jobs.mo.gov/dwdissuances>.

Contractual Obligations to DWD

In addition to the statutory and regulatory conditions mentioned in this guide, there are formal agreements. The State (DWD) has a signed Annual Agreement with each CEO or that official's designated LFA governing the disbursement of funds for each Program Year.

As a contractually binding condition for the disbursement and receipt of workforce funds, this Annual Agreement assures compliance by the subrecipient with terms relating to conflicts of interest, disclosures, and observance of numerous other specific laws, statutes, and regulations.¹⁵³

The wording of these assurances generally mirrors the language of the Annual Agreement between DOL and the State, but the wording and contents of the text can vary slightly from year to year. New federal legislation or appropriations requirements may be added to the list of Assurances. CEOs, LFAs, and Local WDBs should carefully check the text of the current Annual Agreement for updates relating to their contractual obligations.

Note that the receipt of WIOA funding constitutes federal grantee status (whether recipient or subrecipient). According to the principles set forth in the Uniform Guidance, all one-stop operators, whether they are political subdivisions (cities/counties) or a private or non-profit entity, are characterized as grant *subrecipients*, not contractors.¹⁵⁴ Specific references in laws, regulations, and policies to “subrecipients” thereby apply to one-stop operators.



¹⁵³ The list is extensive. Agreement to obey certain nationwide laws (and Presidential Executive Orders), as well as their implementing regulations, is a standard condition for receiving monies from a federal award. Some additional assurances in the DWD Agreement are specific to WIOA and to Missouri statutes and Gubernatorial Executive Orders. **These assurances include, in part, compliance with:** WIOA, in general, and specific fiscal, monitoring, and procedural provisions within it; the Uniform Guidance at 2 CFR Part 200; the Americans with Disabilities Act of 1990; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Amendments Act of 2008; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Privacy Act of 1974; the Stevens Amendment, specifically, and other provisions of federal Appropriations Acts; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; Title VIII of the Civil Rights Act of 1968; Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; the Hatch Act; the Davis-Bacon Act, the Copeland Act; the Contract Work Hours and Safety Standards Act; the Flood Disaster Protection Act of 1973; the National Environmental Policy Act of 1969; the Coastal Zone Management Act of 1972; the Clean Air Act of 1955; the Safe Drinking Water Act of 1974, the Endangered Species Act of 1973; the Wild and Scenic Rivers Act of 1968; the National Historic Preservation Act of 1966; the Archaeological and Historic Preservation Act of 1974; The National Research Service Award Act of 1974; the Laboratory Animal Welfare Act of 1966; the Jobs for Veterans Act; the Drug Free Workplace Act of 1988; the Buy American Act; The Architectural Barriers Act of 1968; the Hotel and Motel Fire Safety Act; the Homeland Security Act of 2002; and various Missouri statutes relating to worker eligibility verification and contractor awards.

¹⁵⁴ 2 CFR 200.330 “Subrecipient and contractor determinations.”