Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual

Policy Number: 05-20-00

Originating Office: Workforce Services

Subject: Memoranda of Understanding

Issued: May 3, 2017

Revised: April 24, 2023

Program: Workforce Innovation and Opportunity Act (WIOA)

Purpose: To transmit State policy and guidance regarding Memoranda of Understanding (MOUs).

Reference: 20 CFR Part 678 Subparts A, B, C & E; WIOA Sec. 121; **KANSAS**WORKS Policy 5-24-00

Background: This policy replaces *3-13-00 Memoranda of Understanding*. Memoranda of Understanding are the primary means for coordinating the services of the one-stop partners and include issues such as:

1. Which services each partner will provide through the one-stop system.
2. How the one-stop operator will refer customers to the appropriate partner; and
3. How the costs of the system will be allocated among the partners.

Action: Make this policy available to all interested parties.

Contact: Questions should be directed to WIOA Administrator, (785) 296-0607, TDD 1-800-766-3777, email WorkforceSvcs@ks.gov. The WIOA Administrator will direct questions regarding Titles II (Adult Education) and IV (Vocational Rehabilitation) to the appropriate state agency.

Attachment: Attestation of Review of Memoranda of Understanding

Memoranda of Understanding

I. Policy

The local workforce development board (LWDB) is required to negotiate in good faith and enter into memoranda of understanding (MOUs) with core, required, and other one-stop partners.

For core and required partners the good faith MOU negotiation will include development of an infrastructure funding agreement. State core and required partners have the option to enter into an interagency agreement with the designated state workforce agency for statewide infrastructure funding distribution.

II. Overview

This policy establishes the requirements for development of a one-stop partner MOU including required elements, service delivery, negotiation of cost sharing, including both infrastructure and other costs and impasse resolution.

III. Definitions

Core Partner: Adult, dislocated worker, and youth services (WIOA Title I) overseen by the Kansas Department of Commerce and operated through local workforce development areas and centers; Wagner-Peyser labor exchange services (WIOA Title III) operated by the Department of Commerce; Adult Education and Family Literacy services overseen by the Kansas Board of Regents and operated through two-year colleges, school districts and community-based organizations statewide (WIOA Title II); Vocational Rehabilitation overseen and provided by Rehabilitation Services/Kansas Department for Children and Families (WIOA Title IV).

Cost Eligible Participant: Individuals whose eligibility has been determined by a core partner program and has received a service through the **KANSAS**WORKS system.

Designated State Workforce Agency - The designated state workforce agency is selected by the Governor to be responsible for the administration of WIOA. The Department of Commerce is the Governor's designated state workforce agency.

Infrastructure Costs – Infrastructure costs of one stop centers are non-personnel costs that are necessary for the general operation of the one-stop center, including rental of facilities; utilities and maintenance; equipment (including assessment-related products and assistive technology for individuals with disabilities) and technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities. Local workforce development boards may consider common identifier costs as costs of one-stop infrastructure.

Relevant State Agency - The Relevant State Agency is an agency responsible for administering a statewide core or required program.

Statewide Cap on Infrastructure Funding - The maximum dollar amount a core or required partner is mandated to contribute under the state infrastructure funding mechanism. Each partner's maximum cap is defined in section 121(h)(2)(D)(ii) of WIOA as a specific percentage of the partner's annual federal funding for workforce programs (i.e., education, employment, and training activities delivered using that funding.)

IV. Provisions of Memoranda of Understanding

The MOU is an agreement developed and executed between the LWDB, with the agreement of the Chief Elected Officials (CEOs) and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU if they are in a region that has submitted a regional plan under Sec. 106 of WIOA.

The MOU shall include Part I Service Coordination and Part II Shared Resources and Costs. Each Part of the MOU shall include the provisions outlined below. Items presented in the left column are the provisions required under WIOA Section 121(c) and the items presented in the right column list the minimum information needed to be included within the MOU to adequately address the required provisions.

PART I: SERVICE COORDINATION

WIOA Provisions	Minimum Information Necessary for MOU
Services provided through the One-Stop System WIOA Section 121(c)(2)(A)(i) Describe the services to be provided through the one-Stop delivery system consistent with the requirements of this section, including the manner in which services will be coordinated and delivered through such system.	• Identify the **KANSAS**WORKS partner(s) included in the MOU • Identify the **KANSAS**WORKS centers covered by the MOU, indicating comprehensive one-stop centers and any affiliated sites. • Describe the **KANSAS**WORKS system design in the local area. • Describe the **KANSAS**WORKS system services that are applicable to each partner, including career services. • Identify the **KANSAS**WORKS system customers and describe shared customers. • Describe the responsibilities of the **KANSAS**WORKS Partner(s), including joint planning, and staff development/professional development.

WIOA Provisions	Minimum Information Necessary for MOU
Methods for Referring Customers WIOA Section 121(c)(2)(A)(iii) Describe methods of referral of individuals between the one-stop operator and the one-stop partners for appropriate services and activities.	• Describe the **KANSAS**WORKS system referral process for the local area between core, required and other partner programs. • Describe how the referral process ensures a high-quality customer service and customer-centered focus.
Access to Services WIOA Section 121(c)(2)(A)(iv) Describe methods to ensure the needs of workers and youth, and individuals with barriers to employment, including individuals with disabilities are addressed in the provision of necessary and appropriate access to services, including access to technology and materials, made available through the one-stop delivery system. At comprehensive workforce centers, required partners must provide access to program services in 1 of 3 possible ways: 1. Having a program staff physically present at the comprehensive center. 2. Having a staff member from a different partner program physically present at the comprehensive center who is appropriately trained to provide information to customers about the programs, services, and activities available through the partner program. 3. Making available a direct linkage through technology to program staff who can provide meaningful information or services.	<u>Partners Physically Present</u> • Describe the location of service delivery • Provide a schedule of service delivery including location, hours of operation and availability of services for each location, <u>Partners Having other Staff Training</u> • Identify the Partner Program who is physically present at the comprehensive center. • Identify how the Partner Program staff will be trained to provide information. • Describe the services that will be offered to customers through the physically present Partner Program. <u>Partners with Direct Linkage</u> • Describe the direct linkage that will be used, ex: telephone, TEAMS, Skype, other. • Describe how the staff member will provide meaningful information and services. • Describe the hours and availability of the services provided through direct linkage.

Duration of Agreement and Amendment WIOA Section 121(c)(2)(A)(v) Include the duration of the memorandum of understanding and the procedures for amending the memorandum during the duration of the memorandum and assurances that such memorandum shall be reviewed not less that once in every 3-year period to ensure appropriate funding and delivery of services.	• Identify the effective date of the MOU. • Describe the procedures established to revise and modify the MOU. • Describe the procedures established to terminate the MOU. • Include an assurance to review the MOU at least every two years (this is a requirement within the state of Kansas to align with the local area plan review to be conducted every two years)

WIOA Provisions	Minimum Information Necessary for MOU
Other Provisions WIOA Section 121(c)(2)(A)(vi) The MOU may include such other provisions consistent with the requirements of this title, as the parties to the agreement determine to be appropriate	• If the parties determine that additional provisions are necessary they may be included if they are consistent with WIOA and the accompanying regulations, the state plan, regional plan, and local plan and are beneficial to the effective provision of services provided through the **KANSAS**WORKS system.

PART II: SHARED RESOURCES AND COSTS

The designated state workforce agency has agreed to act as administrator of state core and required partner infrastructure funds. Any state core or required partner may enter into an interagency agreement with the designated state workforce agency for the purpose of infrastructure funding distribution and will not be required to participate in the negotiation of infrastructure funding using the local funding mechanism. The designated state workforce agency will negotiate with local workforce development boards on behalf of the core or required partner and will allocate the core or required partner's infrastructure funds and collect and maintain documentation of the LWDB expenditure of those resources consistent with WIOA regulations. In such cases the required MOU will reflect that process and provide related requirements for ensuring the LWDB maintains current cost allocation methodologies consistent with Uniform Guidance 2 CFR 200.

WIOA requires one-stop partners to contribute funding to establish and maintain the one stop system based on each partner's proportionate use of the system and the relative benefits received consistent with Uniform Guidance (2 CFR 200)

WIOA Section 121(h)(1)(B)(i) and 121(h)(2)(C)

WIOA Provisions	Minimum Information Necessary for MOU
Funding of Services and Operating Costs WIOA Section 121(c)(2)(A)(ii) Describe how the cost of such services and the operating costs of such system will be funded, including— (I) Funding through cash and in-kind contributions (fairly evaluated), which contributions may include funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations. (II) Funding of the infrastructure costs of one-stop centers in accordance with subsection (h)	<u>Overall, One-Stop Operating Budget</u> • Develop a budget which identifies the overall local area **KANSAS**WORKS system operating and infrastructure costs including the delivery of career services. <u>Infrastructure Costs: Local Funding Mechanism</u> • In identifying the infrastructure costs, methodology and allocation, LWDBs, chief elected officials, the designated state workforce agency, and all other partners, shall negotiate in good faith to reach a consensus for the infrastructure funding agreement under an agreed upon local funding mechanism. Failure to reach a consensus will trigger the state funding mechanism detailed in Section VII below. Alternatively, core and required partners may opt to enter into an interagency agreement with the designated state workforce agency to negotiate, allocate and document expenditure of infrastructure funds on their behalf. • Develop a budget outlining the infrastructure costs of the local area **KANSAS**WORKS system with a detailed description of what specific costs are included in each line item. The detailed description should include costs per workforce center and affiliated site and other site-specific costs. • Identify the cost allocation methodology chosen to charge each partner in proportion to its use of the one-stop system and benefit received, in accordance with Uniform Guidance (2 CFR 200 et seq.) • Identify the initial proportionate share of infrastructure costs allocated to each partner based on the agreed upon cost allocation methodology, each partner's estimated total contribution amount, and whether it will be provided through cash, non-cash (in-kind), or

WIOA Provisions	Minimum Information Necessary for MOU
	third party in-kind contributions. This initial determination must be periodically reconciled against actual costs incurred and adjusted accordingly. • For any identified non-cash or in-kind contributions, the method by which the value of the contribution was or will be fairly evaluated • If in-kind contributions will be used to meet a partner's required contribution they must be included in the original Overall Operating Budget <u>Other System Costs</u> • Develop a budget outlining the other system costs of the local area **KANSAS**WORKS system with a detailed description of what specific costs are included in each line item. The detailed description should include costs per workforce center and affiliated sites and other site-specific costs. The budget must include applicable career services. The budget may should also include any other shared costs agreed upon by the one-stop partners. • Identify the cost allocation methodology agreed to by all partners to charge other system costs according to if benefit is received and their proportionate use in accordance with Uniform Guidance (2 CFR 200 et seq.). • Identify the initial proportionate share of other system costs allocated to each partner based on the agreed upon cost allocation methodology, each partner's estimated total contribution amount, and whether it will be provided through cash, non-cash (in-kind), or third-party in-kind contributions. This initial determination must be periodically reconciled against actual costs incurred and adjusted accordingly.

WIOA Provisions	Minimum Information Necessary for MOU
	• For any identified non-cash or in-kind contributions, the method by which the value of the contribution was or will be fairly evaluated • If in-kind contributions will be used to meet a partner's required contribution they must be included in the original Overall Operating Budget

V. Impasse Resolution for MOU Service Coordination and Additional Costs other than Infrastructure Costs

The following procedures will be used to resolve impasse situations:

1. The LWDB and partners must document the negotiations, proposed cost shares for each partner and efforts to develop an MOU.
2. Failure to execute an MOU must be reported by the LWDB to Commerce and to any other relevant state agency.
3. To overcome the impasse the LWDB must request technical assistance from Commerce in writing and include the unresolved issue(s) and supporting documentation. The written request must be submitted to WorkforceSvcs@ks.gov.
4. Commerce will review details of the impasse and provide technical assistance during the 60 calendar days after receipt of the request for technical assistance. If necessary, Commerce may consult with, and seek assistance from, the U.S. Department of Labor (USDOL), other federal agencies, state agencies and other partner agencies to resolve the impasse.
5. If the LWDB and Commerce are unable to resolve any impasse through technical assistance, Commerce will notify partners of the negotiation failure and convene the Dispute Resolution Review Panel.

   The Review Panel will be comprised of one legal department representative from each of the designated state agencies for the Core Partners (Commerce, Kansas Board of Regents and Department for Children and Families.) If one of the designated state agencies is the appellant, that agency shall recuse itself from the Panel to be replaced by an alternate counsel from another state agency.

The decision of the Panel will be issued within 30 calendar days in writing and will be final.

Process for Resolution of Impasse regarding Service Coordination and/or Costs Other than Infrastructure Costs

Process
Notice of impasse submitted to Commerce for review and delivery of technical assistance
If impasse remains unresolved, Commerce will notify partners and schedule the Dispute Resolution Review Panel
Decision rendered from Dispute Resolution Review Panel
Signatures obtained
MOU approved, signed and in place
In conjunction with local plan modification, review of MOU completed, necessary modifications approved, signed and in place;
Subsequent review and modifications to MOUs shall be done in conjunction with local plan modifications in the fourth quarter of the second program year of the four-year planning period -OR- any time changes are necessary. The Local Workforce Development Board and Chief Elected Officials will attest to this review using the attached attestation form and submit as directed.

Unresolved Impasse Related to Cost Sharing Other than Infrastructure Cost Funding

If an impasse related to cost sharing other than infrastructure cost funding is not successfully resolved using the processes described in this policy, the KWSB must report the failure to the US Secretary of Labor.

VI. Guidance For Determining Equitable and Stable Methods of Funding Costs of Infrastructure

Local workforce development boards are required to negotiate with **KANSAS**WORKS partners to allocate infrastructure costs to each partner based on their usage of and benefit from the **KANSAS**WORKS system and its services. Because Uniform Guidance (2 CFR 200) does not provide a specific definition of proportionate use and relative benefit, the following guidance is provided to assist local workforce development boards and their partners in allocating costs in an equitable and reasonable manner consistent with WIOA. All costs must be allowable, reasonable, necessary, and allocable.

The following factors should be considered in developing a methodology for allocating costs among partners:

1. Partner's Proportionate Use
    a. The use of the **KANSAS**WORKS system by a partner's Cost Eligible Participants based on the proportion of a partner program's customers compared to all customers served by the local area **KANSAS**WORKS system.
    b. The amount of square footage occupied by a partner program in instances of staff co-location.
    c. Other another allocation base consistent with Uniform Guidance

i. Proportionate resources available to fund the **KANSAS**WORKS system;
Demographic proportion of the general population eligible for a program applied to the **KANSAS**WORKS system traffic records in **KANSAS**WORKS.com and workforce center records.

2. Partner's Relative Benefit
   a. Often relative benefit is addressed within local area lease agreements based on the square footage occupied by each partner and the number of FTE positions of each partner. For partners not co-located, these costs may be allocated based upon a methodology agreed to by the partners using the proportionate use factors listed above or by another methodology which is consistent with Uniform Guidance.

VII. Impasse Resolution for Infrastructure Costs - State Funding Mechanism

If the LWDB and any one of the required one-stop partners fail to reach consensus on funding infrastructure costs under the local funding mechanism in any program year, the state funding mechanism will be triggered for that program year and for each subsequent program year for which a consensus is not reached. Prior to providing notice to the Governor, the LWDB may request technical assistance as follows:

The LWDB and partners must document the negotiations, proposed infrastructure cost shares for each partner and efforts to develop the local funding mechanism for infrastructure costs.

1. Failure to implement the local funding mechanism must be reported by the LWDB to Commerce and to any other relevant state agency.
3. To overcome the infrastructure cost sharing impasse the LWDB must request technical assistance from Commerce in writing and include the unresolved issue(s) and supporting documentation. The written request must be submitted to WorkforceSvcs@ks.gov.
4. Commerce will review details of the infrastructure cost sharing impasse and provide technical assistance during the 30 calendar days after receipt of the request for technical assistance. If necessary, Commerce may consult with, and seek assistance from, the U.S. Department of Labor (USDOL), other federal agencies, state agencies and other partner agencies to resolve the impasse.
5. If the LWDB and Commerce are unable to resolve any infrastructure cost sharing impasse through technical assistance, Commerce will notify partners of the negotiation failure and convene the Dispute Resolution Review Panel.

The Review Panel will be comprised of one legal department representative from each of the designated state agencies for the Core Partners (Commerce, Kansas Board of Regents and Department for Children and Families.) If one of the designated state agencies is the appellant, that agency shall recuse itself from the Panel to be replaced by an alternate counsel from another state agency.

The decision of the Panel will be issued within 30 calendar days in writing. If partners choose to not implement the local funding mechanism as directed by the Panel, the state funding mechanism will be triggered.

If a LWDB fails to submit an infrastructure funding agreement they will be required to provide notice to the Governor of failure to reach consensus through a local funding mechanism. The Notification must include the following:

1. The local WIOA plan.
2. The cost allocation methodology or methodologies proposed by the partners to be used in determining the proportionate share.
3. The proposed amounts or budget to fund infrastructure costs and the amount of partner funds included.
4. The type of funds (cash, non-cash, and third-party in-kind contributions) available.
5. Any proposed or agreed upon one-stop center or system budget.
6. Any partially agreed upon, proposed, or draft infrastructure funding agreements; and
7. Any additional materials that the LWDB or the Governor find to be appropriate.

Following receipt of Notification, the Governor will follow the steps below to implement the state funding mechanism:

STEP 1: Governor Determines Infrastructure Budget

The governor must determine the infrastructure budget in one of two ways.

1. If the local area provides an agreed upon infrastructure budget with the Notification and only the individual programmatic contributions to infrastructure based upon proportionate use of the one-stop system and relative benefit received are at issue, the Governor may accept the infrastructure budget from which each partner's contribution will be calculated consistent with the cost allocation methodologies contained in Uniform Guidance.

2. If an agreed upon budget is not submitted with the Notification, or the Governor determines that the agreed upon budget does not adequately meet the needs of the local area, then the Governor must use a formula determined by the **KANSAS**WORKS State Board (KWSB). This formula considers the following factors:
    a. The number of one-stop centers in the local area.
    b. The total population served by such centers.
    c. The services provided by such centers; and
    d. Any factors relating to the operation of such centers in the local area that the KWSB determines are appropriate in developing the infrastructure budget.

STEP 2. Governor Establishes Cost Allocation Methodology

After determining the Infrastructure Budget in Step 1, the Governor must establish a cost allocation methodology that determines the distribution of infrastructure funding costs among the local one-stop partners in accordance with the principles of proportionate use and relative benefit consistent with Uniform Guidance, all relevant Federal regulations and statutes, further regulatory guidance and the partner programs' authorizing laws and regulations. Beyond these requirements, the determining factor

can be a wide range of variables, such as number of customers served, square footage used, or a different basis that is agreed upon for determining each partner's contribution level for infrastructure costs. The methodology established by the Governor shall take into account the total of maximum funding allowable under each partner's program for infrastructure costs and each program's proportion of these total funds allowed. In determining the total maximum funding allowable under each partner's program, the Governor shall apply the calculated statewide funding caps. This methodology will be used in determining each partners' proportionate share of infrastructure funding costs.

STEP 3. Partners' proportionate shares are determined

Using the methodology established in Step 2, the Governor will determine each required one-stop partner's proportionate share of infrastructure funding costs taking into consideration the costs of administration of the **KANSAS**WORKS system, the statutory requirements of each partner, each partner's ability to fulfill the requirements and all other applicable federal and state legal requirements. Partners will be notified of their determined costs in writing.

The established WIOA appeals process included in the State Plan shall apply to any appeals related to the Governor's determination of Infrastructure Funding under the state funding mechanism.

Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual

Attestation of Review of Memoranda of Understanding

Local Area: _____ Date: _

KANSASWORKS Policy 5-25-00 requires the Local Workforce Development Areas to review Memoranda of Understanding (MOU) every two years, along with its review of its Local Workforce Development Plan.

By signing below officials in the local workforce development area hereby attest all Memoranda of Understanding have been reviewed and there is no need for modification of any of its Memoranda.

_____ _____
Local Area Executive Director Local Workforce Development Board Chair

_____
Chair of Chief Elected Officials

Submit electronically to the WIOA Administrator at WorkforceSvcs@ks.gov.