

ATTACHMENT D

MEMORANDUM OF UNDERSTANDING IMPASSE

The Workforce Innovation and Opportunity Act (WIOA) and the Commonwealth requires that the MassHire Workforce Board (Local Board); Chief Elected Official and MassHire Required Partners enter good faith negotiations to develop and execute a local Memorandum of Understanding (MOU) relating to the operation of the MassHire delivery system in the local area.

The MassHire Workforce Board must report to the Governor, the MassHire Workforce Development Board (State Board), and the State Workforce Agency (Department of Career Services) when MOU negotiations with MassHire partners have reached an impasse. There are two separate processes for impasse resolution: 1. The Impasse Resolution Process; and 2. State Infrastructure Cost Funding Mechanism.

This policy delineates the processes for Local Partners to inform the Commonwealth that the Local Workforce Area has reached an impasse.

Definitions

Local Partner

The local partner is the local representative of the required MassHire partner with the authority to negotiate the MOU on behalf of the partner agency.

State Partner

State Partner Agency Head or Designee responsible for the administration and oversight of WIOA required programs, activities and services.

Petitioner

Any party to the MOU may seek resolution under this policy; however, the MassHire Workforce Board will be responsible to formally petition the State for that resolution.

State Workforce Agency

The MassHire Department of Career Services (MDCS) is the designated State Workforce Agency (SWA) with primary responsibility for oversight of the MA Workforce Development system and, as such, will act as liaison to oversee the impasse resolution process. MDCS is to coordinate the process and ensure that issues are being resolved in accordance with the policy and provide notification to appropriate State and Federal agencies as applicable.

Ground Rules

1. Any party to the MOU may seek guidance or technical assistance on potential impasse at any time under this policy through the appropriate State Agency administering its programs, activities and services.

2. The MassHire Department of Career Services (MDCS) should be notified of any guidance or technical assistance requests received through a Partner agency to ensure coordination across partners.
3. All formal requests for MOU impasse resolution must be submitted by the MassHire Workforce Board. The formal request may be submitted at any time throughout the Fiscal Year but if impasse on an issue other than infrastructure funding still exist the formal request must be submitted **by March 31st** of the current Fiscal Year in which the MOU is being negotiated. If the impasse is due to non-agreement on infrastructure funding - the MassHire Workforce Board must notify MDCS no later than **December 31st** of the current Fiscal Year in which the MOU is being negotiated.
4. The formal request must be submitted on the attached MOU Impasse Resolution form to the MassHire Department of Career Services at PolicyQA@mass.gov. Subject line should state Local MOU Impasse Resolution Request.
5. All timeframes specified within this policy are **business days**. To ensure prompt resolution of the request, action taken should be as soon as possible, however not later than the prescribed timeframes.
6. This MOU Impasse Resolution process consists of three steps (1) Formal Request to State Partners, (2) Appeal to State Board, and (3) Notification of Impasse to Federal agencies. Although there are three steps, resolution may be attained at any step throughout the process.
7. Final determinations are specific to each individual request.

Impasse Covered Under This Policy

An impasse covered under this policy is impasse related to issues **other than** infrastructure funding. The impasse occurs when there remains no resolution after attempting to negotiate the manner in which services and shared funding will be provided through the MassHire Workforce system.

Step 1. – Formal Impasse Resolution Request to State Partners

- The MassHire Workforce Board submits the MOU Impasse Resolution form to the MassHire Department of Career Services (MDCS) at PolicyQA@mass.gov. Subject line should state Local MOU Impasse Resolution Request.
- The MDCS will notify all appropriate State Partners of receipt of request within **one business day**.
- MDCS will convene a Local meeting **within four business days** to discuss the impasse with MassHire Workforce Board and appropriate Local and State Partners.
- If agreement is reached at the meeting, MDCS will provide a written summary outlining that agreement to the MassHire Workforce Board and all appropriate State Partners.

The summary will be sent by email within **two business days** following the meeting and the matter will be considered **resolved**.

- If no agreement is reached at the meeting, MDCS will convene a State meeting within **two business days** with appropriate State Partners to make determination on proposed impasse resolution.
- If State Partners agree to a determination on proposed impasse resolution, a written summary of proposed resolution will be provided **within five business days** of the Local meeting. The MassHire Workforce Board will include resolution in MOU and obtain Partner signatures.

Step 2. – Appeal to State Board

- If impasse for reasons other than infrastructure funding, cannot be reached through a State Partner agreement or a Local Partner is not satisfied with the State Partner resolution, the MassHire Workforce Board may appeal the MassHire Workforce Development Board as delineated within MassWorkforce Issuance 100 DCS 03.101.02 Unified Workforce Development System Complaint and Appeals Process.

Step 3. – Notification to Office of the Secretary U.S. Department of Labor

- If an impasse remains after the appeal to the MassHire Workforce Development Board the Commonwealth will inform the U.S. Department of Labor Employment and Training Administration.

STATE INFRASTRUCTURE FUNDING MECHANISM

Impasse Covered Under This Policy

An impasse covered under this policy is an impasse related to infrastructure funding. The impasse occurs when there remains no resolution after attempting to negotiate the manner in which infrastructure funding will be provided to the MassHire Workforce system.

The Governor is required to issue guidelines to state programs and to local areas regarding infrastructure funding. Local areas must follow these guidelines and allow the state grantee to monitor local areas for compliance with the Governor's guidelines. This guidance must be consistent with Uniform Circular rules and include:

1. The appropriate roles of the MassHire partner programs in identifying MassHire infrastructure costs;
2. Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner in proportion to relative benefits received consistent with Federal cost principles; and

3. The timelines regarding notification to the Governor for not reaching local agreement and triggering the State-funded infrastructure mechanism and timelines for a MassHire partner to submit an appeal in the State-funded infrastructure mechanism. Appeal process (21 days from Governor's determination) must be in the State Plan.

Agreement is achieved when all of the MassHire partners sign the MOU with the MassHire Workforce Board, which includes:

1. A final agreement regarding funding of infrastructure that includes the elements listed in 20 CFR §678.755 or
2. An interim funding agreement that includes as many of these elements as possible and must be finalized within 6 months of when the MOU is signed, or the Governor must be notified.

Failure of the State Partners, CEO, MassHire Workforce Board and MassHire partners to reach consensus and sign the local MOU with the final agreement by the beginning of each fiscal year (July 2016 & by July 1st of each subsequent fiscal year) ensures that infrastructure costs will still be funded by triggering the state MassHire infrastructure funding mechanism.

After consulting with State and MassHire Workforce Boards and CEOs, the Governor then determines the amount that each partner will contribute, and the State Board determines how the contributed funds will be allocated to the local areas.

The allocation formula must take into account:

1. The number of MassHire centers in a local area
2. The population served by such centers
3. The services provided by such centers
4. Other factors relating to the performance of such centers that the State Board determines are appropriate and that are consistent with Federal cost principles

The Governor then uses this formula to allocate funds to the local areas that did not use the local funding mechanism to fund MassHire infrastructure costs so long as that funding distribution is consistent with Federal cost principles for each of the affected MassHire partners.

LOCAL FUNDING MECHANISM:

Must meet all of the following requirements:

1. Infrastructure costs are funded through cash and fairly evaluated in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing MassHire delivery system operations;

2. Contributions must be negotiated between MassHire partners, chief elected officials and the MassHire Workforce Board and the amount to be contributed must be included in the MOU;
3. The MassHire partner program's proportionate share of funding must be calculated in accordance with the Uniform Circular (2 CFR 200) based upon a reasonable methodology in proportion to relative benefits received and must be allowable and allocable;
4. Partner shares must be periodically reviewed and reconciled against actual costs incurred and adjusted as necessary on an annual fiscal year basis.

LIMITATIONS ON PARTNER CONTRIBUTIONS

§678.738 includes the limitation for MassHire partners' contributions based on a percentage of their funding allocation. These limitations do not apply to the local funding mechanism, instead placing a cap on required contributions determined by the Governor as follows:

1. WIOA Formula and Wagner-Peyser – Not to exceed 3 percent of the amount of funds provided to carry out that program for a program year;
2. Other MassHire partners – Not to exceed 1.5 percent of the amount of Federal funds provided to carry out that education program or employment and training program in the state for a fiscal year;
3. Carl D. Perkins – Cap determined based on the funds made available for State administration of post-secondary level programs and activities;
4. Vocational Rehabilitation – For the entity or entities administering the programs described in WIOA Sec 121 (b)(1)(iv), the allotment is based on the one state allotment even in instances where that allotment is shared by two state agencies and will not be required to provide from that program a cumulative portion that exceeds:
 - 1.25 percent of the amount provided to carry-out such program in the state for FY18
 - 1.5 percent of the amount provided to carry-out such program in the state for FY19 and following years

If the above limitations result in funding less than each partner's proportionate share and contribute to inadequate funding of the allocation amount determined by the State Board (678.745), the Governor may direct the MassHire Workforce Board, Chief Elected Officials and MassHire Partners to re-enter negotiations to reduce the infrastructure costs to reflect the amounts available for such costs, discuss proportionate share of each partner or to identify alternative sources of financing consistent with the benefit, authorizing laws and regulations, Federal cost principles and other applicable legal requirements.

After re-negotiation, the local parties may sign an MOU, but, if agreement can still not be reached, nor alternative sources identified, the Governor may adjust the specified allocation in accordance with the amounts available and the limitations.