



New Hampshire Department of
BUSINESS AND
ECONOMIC AFFAIRS



August 24, 2020

The Honorable Mary Jane Wallner, Chairman
Fiscal Committee of the General Court
State House
Concord, NH 03301

His Excellency, Governor Christopher T. Sununu
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

The New Hampshire Department of Business and Economic Affairs (BEA) and the New Hampshire Department of Employment Security (NHES) jointly request approval for the following actions:

- (1) Pursuant to RSA 9:16-a, I, authorize the New Hampshire Department of Business and Economic Affairs (BEA), Office of Workforce Opportunity (OWO) to transfer grant funds between expenditure classes, in the amount of \$4,523,000.00, effective upon Fiscal Committee and Governor & Executive Council approval, through June 30, 2021. **100% Federal Funds**

Funds within the Office of Workforce Opportunity shall be transferred within 03-22-22-220510-14530000 as follows:

03-22-22-220510-14530000 Office of Workforce Opportunity			SFY 2021		
Class	Account	Class Description	Adjusted Authorized FY21 Budget	Requested Action	Adjusted FY21 Budget
000	407779	FEDERAL FUNDS	(\$25,493,076)		(\$25,493,076)
		GENERAL FUNDS	(\$80,125)		(\$80,125)
TOTAL REVENUE:			(\$25,573,201)	\$0	(\$25,573,201)
010	500100	PERSONAL SERVICES PERM CLAS	\$994,541		\$994,541
020	500200	CURRENT EXPENSES	\$71,313		\$71,313
022	500255	RENTS-LEASES OTHER THAN STA	\$132,638		\$132,638
024	500225	MAINT OTHER THAN BUILD-GRN	\$10,000		\$10,000
026	500251	ORGANIZATIONAL DUES	\$32,331		\$32,331
027	582703	TRANSFERS TO DOIT	\$46,972		\$46,972
029	500290	INTRA-AGENCY TRANSFERS	\$206,586		\$206,586

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030	500301	EQUIPMENT NEW REPLACEMENT	\$8,142		\$8,142
037	500165	TECHNOLOGY-HARDWARE	\$18,581		\$18,581
038	500176	TECHNOLOGY-SOFTWARE	\$12,238		\$12,238
039	500190	TELECOMMUNICATIONS	\$36,744		\$36,744
040	500800	INDIRECT COSTS	\$358,042		\$358,042
041	500801	AUDIT FUND SET ASIDE	\$49,403		\$49,403
042	500620	ADDITIONAL FRINGE BENEFITS	\$174,041		\$174,041
046	500464	CONSULTANTS	\$50,000		\$50,000
049	584927	TRANSFER TO OTHER STATE AGE	\$1,799,218		\$1,799,218
050	500109	PERSONAL SERVICE TEMP APPOI	\$101,806		\$101,806
057	500535	BOOKS PERIODICALS SUBSCRIPT	\$36,083		\$36,083
060	500601	BENEFITS	\$453,705		\$453,705
066	500543	EMPLOYEE TRAINING	\$6,575		\$6,575
067	500557	TRAINING OF PROVIDERS	\$46,740		\$46,740
069	500567	PROMOTIONAL MARKETING EXP	\$264,375		\$264,375
070	500704	IN STATE TRAVEL REIMBURSEME	\$31,201		\$31,201
080	500714	OUT OF STATE TRAVEL REIMB	\$55,916		\$55,916
085	588527	INTERAGCY XFR OUT OF FED FN	\$2	\$4,523,000	\$4,523,002
102	500731	CONTRACTS FOR PROGRAM SERVI	\$20,359,806	(\$4,523,000)	\$15,836,806
103	502664	CONTRACTS FOR OP SERVICES	\$216,203		\$216,203
TOTAL EXPENDITURES:			\$25,573,201	\$0	\$25,573,201

(2) Contingent upon approval of action item #1, authorize BEA to enter into a **SOLE SOURCE** Memorandum of Understanding (MOU) with NHES (VC# 302587), Concord, NH in the amount of \$16,592,000.00, to coordinate services currently managed by BEA and NHES and streamlines the delivery of workforce programs funded through the U.S. Department of Labor Employment. This integration of service achieves programmatic and fiscal efficiencies. Effective upon Governor & Executive Council approval from September 30, 2020 through June 30, 2021, whichever date is latest, with the option to renew for an additional four-year period, with the approval of Governor and Council. **100% Federal Funds**

(3) Contingent upon action items #1, and #2, and pursuant to RSA 14:30-a, VI, authorize the New Hampshire Department of Employment Security (NHES) to accept and expend \$4,523,000 of federal funds from the New Hampshire Department of Business and Economic Affairs (BEA), Office of Workforce Opportunity (OWO) effective upon Fiscal Committee and Governor & Executive Council approval, through June 30, 2021. **100% Transfer of Federal Funds.** Funds will be accepted and expended within 02-027-027-270010-80400000 as follows:

02-027-027-270010-80400000 Employment Security			SFY 2021		
Class	Account	Class Description	Adjusted Authorized FY21 Budget	Requested Action	Adjusted FY21 Budget
000	404625	FEDERAL FUNDS	(\$27,161,426)		(\$27,161,426)
001	484922	TRANSFERS FROM OTHER AGENCY	(\$895,757)		(\$895,757)
003	407549	REVOLVING FUNDS	(\$11,658,183)		(\$11,658,183)
009	402338	AGENCY INCOME	(\$593,391)		(\$593,391)
00D	488522	TRANSFERS FROM OTHER AGENCY FROM FF	\$0	(\$4,523,000)	(\$4,523,000)
TOTAL REVENUE:			(\$40,308,757)	(\$4,523,000)	(\$44,831,757)
10	500100	PERSONAL SERVICES PERM CLAS	\$13,320,158	\$108,391	\$13,428,549
11	500126	PERSONAL SERVICES UNCLASSIF	\$232,480		\$232,480
12	500128	PERSONAL SERVICES UNCLASSIF	\$108,451		\$108,451
13	500131	PERSONAL SERVICES UNCLASSIF	\$347,354		\$347,354
18	500106	OVERTIME	\$1,078,239		\$1,078,239
19	500105	HOLIDAY PAY	\$25,499		\$25,499
20	500200	CURRENT EXPENSES	\$567,986	\$58,174	\$626,160
22	500255	RENTS-LEASES OTHER THAN STA	\$378,659	\$64,855	\$443,514
23	500291	HEAT ELECTRICITY WATER	\$408,681	\$71,092	\$479,773
24	500225	MAINT OTHER THAN BUILD-GRN	\$189,559	\$30,728	\$220,287
26	500251	ORGANIZATIONAL DUES	\$25,500		\$25,500
27	582703	TRANSFERS TO DOIT	\$4,713,939	\$152,792	\$4,866,731
28	582814	TRANSFERS TO GENERAL SVCS	\$1		\$1
30	500331	EQUIPMENT NEW REPLACEMENT	\$36,906	\$14,807	\$51,713
37	500174	TECHNOLOGY-HARDWARE	\$441,500	\$20,823	\$462,323
38	509038	TECHNOLOGY-SOFTWARE	\$6,468,800	\$20,798	\$6,489,598
39	500188	TELECOMMUNICATIONS	\$409,380	\$70,348	\$479,728
40	500800	INDIRECT COSTS	\$364,575	\$8,401	\$372,976
41	500801	AUDIT FUND SET ASIDE	\$26,420	\$4,523	\$30,943
42	500620	ADDITIONAL FRINGE BENEFITS	\$1,159,817	\$36,874	\$1,196,691
46	500460	CONSULTANTS	\$4,000		\$4,000
47	500240	OWN FORCES MAINT BUILD-GRN	\$9,210		\$9,210
48	500226	CONTRACTUAL MAIN BUILD-GRN	\$282,288	\$58,121	\$340,409
49	584927	TRANSFER TO OTHER STATE AGE	\$9,104		\$9,104
50	500109	PERSONAL SERVICE TEMP APPOI	\$707,078	\$158,578	\$865,656
57	500531	BOOKS PERIODICALS SUBSCRIPT	\$11,300		\$11,300
59	500117	TEMP FULL TIME	\$302,068	\$193,958	\$496,026
60	500601	BENEFITS	\$8,034,620	\$202,629	\$8,237,249
61	500536	UNEMPLOYMENT COMPENSATION	\$20,000		\$20,000

62	500538	WORKERS COMPENSATION	\$125,000		\$125,000
65	500542	BOARD EXPENSES	\$15,000		\$15,000
66	500544	EMPLOYEE TRAINING	\$6,907		\$6,907
70	500700	IN STATE TRAVEL REIMBURSEME	\$84,900		\$84,900
80	500710	OUT OF STATE TRAVEL REIMB	\$37,000		\$37,000
85	588512	INTERAGCY XFR OUT OF FED FN	\$0		\$0
102	500731	CONTRACTS FOR PROGRAM SERVI	\$175,000	\$3,215,000	\$3,390,000
103	500740	CONTRACTS FOR OP. SERVICES	\$156,848	\$32,108	\$188,956
211	501530	CATASTROPHIC CASUALTY INS	\$3,373		\$3,373
229	500764	SHERIFF REIMBURSEMENT	\$5,500		\$5,500
230	500765	INTERPRETER SERVICE	\$15,657		\$15,657
TOTAL EXPENDITURES:			\$40,308,757	\$4,523,000	\$44,831,757

EXPLANATION

BEA and NHES wish to enter into an agreement to transfer the day-to-day management of workforce employment programs from BEA to NHES. To achieve this transfer of accountabilities, BEA and NHES request Fiscal Committee and Governor and Council approval for the actions listed above. BEA and NHES agree that the integration of these employment and training services will achieve programmatic and fiscal efficiencies. In particular, recent changes on the federal level creates an obvious duplication of services for Dislocated Workers, which would be eliminated with this change in program management.

Information for Action Item #1

Funds will be transferred as follows:

Class 085 – Increase Inter-Agency Transfers Federal: by \$4,523,000 to cover the cost of an MOU between BEA OWO and NHES under which NHES will provide oversight and delivery of services relevant to workforce programs.

Class 102 – Decrease Contracts for Program Services: by \$4,523,000 due to MOU with NHES.

The following information is provided in accordance with the Budget Officer's instructional memorandum dated April 17, 1985.

- 1) Justification: This is a **SOLE SOURCE** agreement between two State agencies. The goal of the MOU is to integrate services currently managed by NHES, with grant programs currently managed by BEA, by moving program operations into one state agency. NHES is the sole agency with

accountability for same/similar workforce programs that BEA is seeking to integrate. This MOU coordinates and streamlines the oversight and delivery of services relevant to workforce programs, specifically Workforce Innovation and Opportunity Act (WIOA) Title I Adult and Dislocated Worker State Formula Funded programs, the State Senior Community Services Employment Program (SCSEP), Mature Worker Demonstration grant, and the Mine Safety and Health Administration (MSHA) Safety Training program. Integration of same/similar workforce employment and training programs will provide streamlined services to citizens through a shared case management system and staff that oversee multiple programs ensuring ongoing and direct access to programs and other resources designed to assist them with their employment and training needs.

- 2) Does transfer involve continuing programs or one-time projects?
 - o This transfer involves continuing programs.
- 3) Is this transfer required to maintain existing program level or will it increase the program level?
 - o Maintain existing program level.
- 4) Cite any requirements, which make this program mandatory.
 - o The Workforce Innovation and Opportunity Act (WIOA) of 2014
- 5) Identify the source of the funds on all accounts listed on this transfer.
 - o 100% Federal Funds
- 6) Will there be any effect on revenue if this transfer is approved or disapproved?
 - o No
- 7) Are funds expected to lapse if this transfer is not approved?
 - o No
- 8) Are personnel services involved?
 - o No
- 9) If yes, answer the following: N/A
 - Number of positions budgeted in each account.
 - Number of positions filled in each account.
 - Reason for vacant positions.
- 10) Have any positions been transferred previously in these accounts?
 - o No
- 11) Will any positions be transferred as a result of this request?
 - o No

Information for Action Item #3

The funds for NHES will be budgeted as follows:

Class 010 – Personal Services, Permanent: to be used to fund three (3) full-time permanent positions (40989, 11031 and 11302).

Class 020 – Current Expense: to be used for direct supplies, materials and the portion of operating expenses associated with the positions involved with the programs.

Class 023 - Utilities: to be used to support the portion of operating costs associated with the positions involved in the programs.

Class 024 - Maintenance, Other than Building & Grounds: to be used to support the portion of operating costs associated with the positions involved in the programs.

Class 027 - Transfer to DoIT: to be used to support the portion of DoIT costs associated with positions involved in the programs.

Class 030 - Equipment: to be used to support necessary office equipment/furniture purchases for the positions involved in the programs.

Class 037 - Technology, Hardware: to be used to support necessary laptop and related peripheral purchases for the positions associated with the programs.

Class 038 - Technology, Software: to be used to support the purchase of necessary software products as well as for the portion of operating costs associated with the positions involved in the programs.

Class 039 - Telecommunications: to be used to support the portion of operating costs associated with the positions involved in the programs.

Class 040 - Indirect Costs: to be used to cover indirect costs incurred under the programs.

Class 041 - Audit Fund Set Aside: to be used to cover audit fees incurred under the programs per State requirement.

Class 042 - Additional Fringe Benefits: to be used to cover additional fringe benefit costs incurred under the programs.

Class 050 - Personal Services, Part-time: to be used to support two (2) part-time positions and portions of seven (7) existing full-time positions responsible for providing services under the programs.

Class 059 - Personal Services, Temporary: to be used to fund five (5) existing full-time temporary positions (8T2957, 9T2844, 9T2845, 9T1104, and 9T2606).

Class 060 - Benefits: to be used to pay benefit costs associated with the positions involved in the programs.

Class 102 - Contracts for Program Services: to be used pay for program contracts under the programs.

Class 103 - Contracts for Operational Services: to be used for the portion of operating expenses associated the positions involved with the programs.

The following information is provided in accordance with the Comptroller's instructional memorandum dated September 21, 1981.

1) List of personnel involved:

Position Title	Count
Employment Counselor Specialist	2
Accountant II	1

2) Nature, Need, and Duration:

- a. Programs are anticipated to continue into the next biennium and will be included in our biennium budget request.

3) Relationship to existing agency programs:

- a. None.

4) Has a similar program been requested of the legislature and denied?

- a. No.

5) Why wasn't funding included in the agency's budget request?

- a. NHES did not anticipate the decision to transfer programs.

6) Can portions of the grant funds be utilized?

- a. No.

7) Estimate the funds required to continue this position(s):

- a. The salary cost of the three positions is approximately \$117,605 annually.

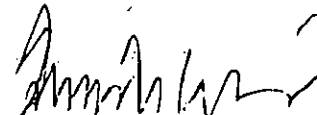
There are no General Funds required with this request. In the event that these funds become no longer available, General funds will not be requested to support these expenditures.

Respectfully submitted,



Taylor Caswell,
Commissioner
NH Department of Business and Economic Affairs

Respectfully submitted,



George N. Copadis,
Commissioner
NH Department of Employment Security

MEMORANDUM OF UNDERSTANDING

BETWEEN

**NEW HAMPSHIRE DEPARTMENT OF BUSINESS AND ECONOMIC AFFAIRS,
OFFICE OF WORKFORCE OPPORTUNITY**

AND

NEW HAMPSHIRE EMPLOYMENT SECURITY

This Memorandum of Understanding ("MOU") is by and between the State of New Hampshire, Department of Business and Economic Affairs ("BEA"), Office of Workforce Opportunity (OWO), (collectively, "BEA/OWO") and New Hampshire Employment Security ("NHES") (collectively, the "Parties"). This MOU is intended to set forth the respective roles of the Parties in oversight and delivery of services for certain state and federal workforce programs as set forth below. In furtherance of that intent, the Parties agree as follows:

I. AUTHORITY

This MOU is entered into under the authority of NH RSA Chapter 12-O (Department of Business and Economic Affairs), Section 12-O:20 and Section 12-O:44. This MOU shall be construed in accordance with and governed by the laws of the State of New Hampshire and federal laws, rules and policies applicable to the implementation of programs described herein, including, without limitation:

- A. The Workforce Innovation and Opportunity Act ("WIOA") (Pub.L. 113-128) and USDOL Final Rule Implementing Titles I and III of WIOA, 20 C.F.R. Part 652; sections 652.1 – 652.303 ("WIOA Final Rule") and BEA/OWO's WIOA policy and procedures.
- B. Wagner Peyser Act of 1933, P.L. 17- 30 (1933), as amended by WIOA.
- C. Title V of the Older Americans Act of 1965, as amended, 42 U.S.C. 3056 et seq.; and the Older Americans Act Reauthorization Act of 2016, Public Law No: 114-144. (collectively, "OAA").
- D. The Federal Mine Safety and Health Act of 1977, Public Law 91-173 as amended by the MINER Act of 2006 ("MSHA"); and MSHA guidance policy.
- E. Federal Coal Mine Health and Safety Act of 1969, P.L. 91-173 (1969) ("FCMHSA").

F. OLDER AMERICAN RECAPTURE FOR PY17 PY18/ 17.235

II. PROGRAMS

A. The purpose of the MOU is the coordination of oversight and delivery of services under WIOA Title I Adult and Dislocated Worker State Formula funded programs under grants administered by the United States Department of Labor ("USDOL"), the Senior Community Service Employment Program ("SCSEP") and the MSHA Safety Training grant.

B. As a condition of this MOU, services shall be provided in accordance with all applicable laws and regulations, policies and guidance set forth by BEA and/or the State Workforce Innovation Board ("SWIB"), and as described in the NH WIOA Combined State Plan, as amended from time to time.

C. WIOA Adult Program, Programs Serving Adults and Dislocated Workers

The Workforce Innovation and Opportunity Act (WIOA), signed into law on July 22, 2014, is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. The purpose of the WIOA Adult and Dislocated Worker Programs is to provide workforce development activities allowable under WIOA and applicable USDOL grants to eligible job seekers that will advance the employment, retention and earnings of those individuals, and optimize their occupational skill level attainment. Services must be available statewide and delivery should be seamless, easy, coordinated and accessible across multiple partners and populations.

D. Senior Community Service Employment Program (SCSEP)

The SCSEP is a community service and work-based job-training program for older Americans authorized by the OAA. The program provides training for low-income, unemployed seniors. Participants also have access to employment assistance through American Job Centers. SCSEP is designed to help those aged 55 and older update their jobs skills, build work experience and confidence, and continue to have economic security and well-being. The State SCSEP program operates in Belknap, Merrimack and Rockingham counties and is expected to serve approximately 44 people annually, contingent on continued funding.

E. Mining Safety Training (MSHA)

The U.S. Department of Labor's Mine Safety and Health Administration ("DOL/MSHA") awards grant funding to states to reduce mining accidents, injuries and illnesses by

supporting safety and health training courses and other programs. Federally mandated safety training is required. Grants cover training and retraining of miners working at surface and underground coal and metal and nonmetal mines, including miners engaged in shell dredging or employed at surface stone, sand and gravel mining operations. Authorized by the FCMHSA, the state's grants programs have received funds to provide safety and health training to miners since 1971. NH's program offers the required annual refresher-training course for surface mining operations.

F. SCSEP Mature Worker Demo Grant

The Mature Worker Demo Project is a pilot project awarded through the Older Americans Act to States who apply to operate a project that offers unique and/or alternative service delivery approaches for adults 55+ plus who are eligible under SCSEP guidelines. The NH Mature Worker demo is in its last year of operation and offers services through the NH Works offices that focus on the AARP reemployment guidance for individuals 55+ followed by an On-the-Job Training or Incentive Hire approach to full-time employment

III. EFFECTIVE DATES

This MOU is effective September 30, 2020 or upon Governor and Executive Council approval, whichever is later, through June 30, 2024; unless terminated by either party as provided herein. The MOU may be extended for up to four (4) additional years upon mutual agreement of the parties, contingent upon satisfactory performance, continued funding and approval of the Governor and Executive Council.

IV. TERMINATION

- A. Either party may unilaterally terminate this MOU, with or without cause, upon written notice to the other party, in which case the termination shall be effective thirty (30) days after the date of that notice, or a later date specified in the notice or agreed to by the Parties (the "Termination Date").
- B. In the event of termination, NHES shall be responsible for the delivery of specified services only until the end of business on the Termination Date and BEA/OWO shall be liable for payment in accordance with the payment provisions of the MOU only for actual services rendered through the Termination Date.

V. GENERAL RESPONSIBILITIES

- A. NHES will deliver services to eligible recipients in accordance with this MOU and will provide to BEA/OWO all data, information and reports described in this MOU

regarding the services provided and as may be reasonably requested by BEA/OWO from time to time.

- B. NHES will designate a WIOA Administrator to act as liaison with BEA/OWO and be responsible for the overall management and coordination of this MOU.
- C. BEA/OWO will designate one or more persons act as to act as liaison with NHES with respect to the MOU.
- D. NHES will monitor and coordinate all responses to federal and state audits, subject to the following:
 - 1) BEA will conduct an annual on-site monitoring (programmatic and financial) review with respect to each funding source authorized by this MOU. In addition, BEA/OWO will conduct quarterly reviews of NHES's electronic files, paper files and staff practices to ensure compliance with funding source requirements ("desk reviews").
 - 2) NHES will respond to any BEA/OWO monitoring and/or federal audits under this MOU within fifteen (15) calendar days after receiving the monitoring/audit request report.
 - 3) NHES shall correct deficiencies identified by state monitoring or federal audit under this MOU within thirty (30) calendar days after receiving the audit report. Such correction is limited to those deficiencies that are within the control and responsibility of NHES.

E. WIOA Adult and Dislocated Worker Programs

- 1) NHES shall be the Administrator of the WIOA Adult and Dislocated Worker Programs for BEA.
- 2) All MOU funds allocated for the WIOA Dislocated Worker and Adult programs shall be expended consistently with WIOA regulations governing administration and program costs, cost allocation requirements and establishment of a line-item budget mutually agreed upon by the Parties, and negotiated annually with DOL.
- 3) NHES shall provide direct services consistent with WIOA service requirements to eligible Dislocated Workers (as defined by WIOA Section 133 (b)(2)(B)), ensuring the coordination and integration of job search and career services with existing NHES programs for unemployed workers to eliminate duplication of services, create efficiency of services and reduce costs.

4) NHES responsibilities for Dislocated Worker services shall include:

- a) Conducting outreach activities sufficient to recruit eligible Dislocated Workers to achieve annual enrollment goals, which are determined based on annual funding.
- b) Determination and documentation of individuals' eligibility for services under the WIOA Dislocated Worker program in accordance with WIOA regulations and guidance letters.
- c) Provision of information and referral services to maximize access to all services available to assist individuals in achieving employment and training goals.
- d) Provision of Basic Career Services as defined by WIOA (20 CFR § 678.430) to all eligible Dislocated Workers. (WIOA Final Rules 20 CFR 652.206 and 208) (TEGL 19-16 Operating Guidance for WIOA). Includes Labor Exchange Services provided by Employment Services ("ES") staff under the Wagner-Peyser Act and WIOA.
- e) Provision of Individualized Career Services, including assessment and development of individualized employment programs for eligible Dislocated Workers. (See services provided by ES staff, WIOA Final Rules 20 CFR 652.206 and 208, and TEGL 19-16 Operating Guidance for WIOA).
- f) Provision of Follow-up Services for up to 12 months following an individual's exit from the program as defined under WIOA. (WIOA Section 134 (c)(2)(A) (xiii) 20 CFR Sec. 678.430 (c)).
- g) Provision of Individual Training Accounts (ITAs) and On-the-Job Training (OJT) Services - governed by sections 20 CFR 680.200 through 680.230 and 20 CFR 680.300 through 680.350 of the WIOA Final Rule, and in accordance with SWIB policy and procedure governing funding allocations and individual caps for training.
- h) Provision of Support Services – NHES shall approve and authorize the payment of support services, including ITA and OJT, for Dislocated Workers in accordance with policy and procedures developed in consultation with BEA/OWO.
- i) Entering timely, complete and accurate Dislocated Worker participant data, service activity and performance information in the WIOA case management system modules of the State's Job Match system ("JMS") to

ensure participant and performance outcomes are tracked for federal reporting purposes.

- j) Responsibility for meeting annual performance goals negotiated with US DOL. The approved goals for dislocated workers for PY20 and PY21 are shown in the following table. In future years, BEA will negotiate goals with USDOL after consultation with NHES.

WIOA Dislocated Workers Goals	PY20	PY21
Employment (Second Quarter after Exit)	86.7%	87.0%
Employment (Fourth Quarter after Exit)	82.0%	82.5%
Median Earnings	\$7,850.00	\$8,900.00
Credential Attainment Rate	67.5%	68.0%
Measurable Skill Gains	75.0%	75.5%

- k) Monitoring the functionality of JMS/WIOA modules specific to case management of Dislocated Worker services to ensure current and complete tracking of information to support federal reporting requirements. NHES will ensure that the functionality of those modules remains updated to conform to federal requirements.
- l) Ensuring that staff approve training for Dislocated Workers for only those programs/courses approved on the State's Eligible Training Provider List.
- m) Ensuring that employment and re-employment services to individuals and businesses funded through the Dislocated Worker grant are coordinated with other NH Works system partners, including BEA/OWO.
- 5) NHES responsibilities for WIOA Adult Program services shall include:
- a) NHES shall oversee the delivery of services available through the WIOA Adult funding stream to ensure quality of services and compliance with WIOA regulations and operational directives.
- b) NHES shall ensure that Adult services are available statewide, services offered are consistent across the state, and eligible individuals access services through the State's network of NH Works Centers (i.e, one-stop centers).

- c) NHES shall competitively procure the services of a single qualified service provider, no less than once every four years. A subcommittee of the State Workforce Innovation Board (SWIB) shall serve as the review team for the selection of a provider, with final approval of the service provider being reserved to NHES.
- d) NHES shall enter into a subrecipient agreement (per WIOA regulations) for no longer than four consecutive years, for the delivery of WIOA Adult services statewide.
- e) NHES shall consult with BEA/OWO prior to its entry into an initial subrecipient agreement with respect to Adult services to ensure full compliance with WIOA requirements, consistency of effort with the core elements of the NH WIOA Combined State Plan, and alignment with SWIB priorities.
- f) NHES shall provide training and on-going technical assistance to subrecipient staff to ensure that subrecipient staff are knowledgeable about WIOA rules and procedures (programmatic and fiscal) applicable to the delivery of services and regarding allowable uses of WIOA Adult funding.
- g) NHES shall ensure that the subrecipient conducts outreach activities designed to recruit under-served target populations and to meet annual recruitment goals, which will be established by NHES based on available funding.
- h) NHES shall conduct subrecipient monitoring activities as follows:
 - 1. An annual on-site review of the subrecipient is required.
 - 2. The on-site review shall include an evaluation of compliance with programmatic and fiscal management requirements as established by the subrecipient agreement and by WIOA.
 - 3. Quarterly desk reviews are required for each subrecipient receiving WIOA funds.
 - 4. NHES shall submit final monitoring reports, including subrecipient responses regarding corrective action items, to BEA within 30 days of completion. BEA/OWO shall provide technical assistance as needed.
- i) NHES shall be responsible for meeting annual performance goals negotiated with USDOL. The approved goals for adults for PY20 and PY21

are set out in the following table. In future years, BEA/OWO will negotiate goals with USDOL after consultation with NHES.

WIOA Adults	FY20	FY21
Employment (Second Quarter after Exit)	79.0%	81.0%
Employment (Fourth Quarter after Exit)	73.5%	74.0%
Median Earnings	\$6,000.00	\$6,600.00
Credential Attainment Rate	60.0%	61.0%
Measurable Skill Gains	65.0%	65.5%

6) NHES responsibilities for the Senior Community Services Employment Program (SCSEP) include:

- a) Prior to the effective date of this MOU, BEA/OWO will assign to NHES the contract with the Community Action Program Belknap-Merrimack Counties, Inc. (BMC-CAP) for the delivery of SCSEP services for the State SCSEP program (the SCSEP Contract") and will transfer to NHES the balance of any funds held for expenditure under the SCSEP Contract by BEA/OWO.
- b) Beginning on the effective date of this MOU, and after and contingent upon assignment of the SCSEP Contract and the transfer of associated funds, if any, to NHES, NHES shall assume and manage the SCSEP contract.
- c) NHES shall conduct monitoring activities to ensure BMC-CAP complies with SCSEP rules and is meeting performance goals established under the SCSEP Contract.
 1. NHES shall conduct an annual on-site monitoring for program and fiscal compliance.
 2. NHES shall conduct quarterly desk reviews.
 3. NHES shall submit final monitoring reports to BEA.
- d) The NHES WIOA Administrator shall work with the SCSEP Program Director to complete quarterly performance reports required by US DOL, which shall be submitted to BEA.
- e) The NHES WIOA Administrator shall work with BEA administrator to draft and submit the annual SCSEP grant application to USDOL.

- 7) NHES responsibilities for the Miner Safety Training program include:
- a) Prior to the effective date of the MOU, BEA/OWO will assign to NHES the contract for Miner Safety Training with the National Safety Council of Northern New England (NSCNNE) for the delivery of miner safety refresher courses (the "NSCNNE Contract") and will transfer to NHES the balance of any funds held for expenditure under the NSCNNE Contract by BEA/OWO.
 - b) Beginning on the effective date of this MOU, and after and contingent upon assignment of the NSCNNE Contract and the transfer of associated funds, if any, to NHES, NHES shall assume and manage the NSCNNE Contract.
 - c) NHES shall conduct an annual on-site monitoring for program and fiscal compliance, including a review of program income to ensure NSCNNE meets established program service goals under the NSCNNE Contract and submit annual final reports to BEA/OWO.
 - d) The NHES WIOA Administrator shall work with the Executive Director of NSCNNE to complete quarterly performance reports required by MSHA, which shall be submitted to BEA/OWO.
 - e) The NHES WIOA Administrator shall work with BEA administrator to draft and submit the annual MSHA grant application to USDOL.
- 8) NHES responsibilities for the Mature Worker Demo pilot program shall include:
- a) NHES shall deliver the services for the Mature Worker Demo project consistent with the terms and conditions of the grant application and subsequent modifications, as approved by USDOL.
 - b) NHES shall be responsible for meeting program goals as established in the grant application and subsequent modifications (e.g., enrollments, employment outcomes and expenditures).
 - c) NHES shall develop a line-item budget for the project for BEA approval.
 - d) NHES shall complete quarterly reports as required and submit the reports to BEA.

VI. CONTRACT MANAGEMENT REVIEWS

- A. Either party to this MOU may request to meet to discuss any component of this agreement, including planning, proposed changes to this MOU, scope, change with respect to performance and/or reporting requirements, and/or to resolve any issues

in performance of the duties defined in this MOU.

- 1) The party requesting the meeting shall be responsible for setting the agenda, arranging for the logistics and inviting the relevant stakeholders.
- 2) Parties shall provide seven (7) days advance notice to the extent feasible, and an agenda shall be distributed no less than two (2) days in advance of the meeting date.

B. The NHES contacts for this MOU are:

- MOU Content: Richard Lavers (603) 228-4064
- Billing: Jill Revels (603) 229-4449
- Services to Participants: Pamela Szacik (603) 228-4051

C. The BEA contacts for this MOU are:

- MOU Content: WIOA State Director (603) 271-0337
- Fiscal Management: Laura Lieberman (603) 271-7277
- Technical Assistance & Monitoring: WIOA Program Administrator (603) 271-0462

VII. PROCEDURES/ INTERNAL CONTROLS

- A. As a condition of this MOU, NHES assumes responsibility for the specific operational, fiscal, and monitoring responsibilities cited in this MOU consistent with serving as a subrecipient of federal funds. As such, NHES agrees to carry out these duties consistent with the conditions and terms stipulated in this MOU, in accordance with applicable federal and state laws, regulations and requirements.
- B. Consistent with the intent of this MOU to serve as a cooperative agreement between NHES and BEA/OWO, NHES agrees to maintain a direct and ongoing relationship with BEA/OWO as, respectively, a recipient and subrecipient, as defined by OMB guidelines, of funds disbursed under USDOL grants for delivery of the services described in this MOU.
- C. With respect to NHES's subrecipient agreement with the service provider for WIOA Adult services and under the SCSEP Contract and the NSCNNE Contract, NHES shall serve as the primary source of technical assistance for WIOA Title I subrecipient staff, consulting with BEA/OWO as appropriate.
- D. BEA/OWO shall serve as the primary contact with the USDOL for Title I Adult and

Dislocated Worker grant related issues, consulting with NHES as appropriate.

- E. NHES shall collaborate with BEA/OWO to develop and implement statewide Title I Adult and Dislocated Worker services and/or programs consistent with the needs of eligible groups in accordance with WIOA Adult and Dislocated Worker regulations, and in alignment with the direction set forth by SWIB and/or the NH Works One-Stop Operator Consortium.
- F. All services/programs implemented through this MOU must be allowable WIOA activities as defined in WIOA regulations and outlined in the NH WIOA Combined State Plan.
- G. WIOA Adult and Dislocated Worker services and/or programs shall, to the greatest extent feasible, not be duplicative of services and/or programs that are currently available in the community.
- H. NHES shall develop written program and financial management policies and procedures for internal and subrecipient staff to ensure compliance and consistency of process.
- I. BEA/OWO staff shall provide direct and ongoing technical assistance to NHES regarding the MOU, program requirements and/or federal guidance upon request.
- J. BEA/OWO is required under WIOA regulations to periodically monitor, evaluate and review through on-site visits, all program administration and management practices, and programs/services supported with funds under this MOU in order to ensure compliance with the applicable provisions of WIOA and the WIOA Final Rule, and terms and conditions of USDOL grant funding, and the terms of this MOU.
 - 1) BEA/OWO shall notify NHES no less than one (1) month in advance to schedule on-site monitoring reviews.
 - 2) BEA/OWO shall provide NHES with a written outline identifying policy, procedures, documents, staff and/or other applicable items that will be included in the review; no less than three (3) weeks prior to the scheduled monitoring event.
 - 3) BEA/OWO will provide NHES with a copy of the monitoring tool BEA will use to document the review process no less than three (3) weeks prior to the scheduled monitoring event.
 - 4) BEA/OWO shall schedule an entrance meeting prior to any on-site meeting to review the monitoring tools and process.
 - 5) NHES shall comply with monitoring requirements and provide access to information and staff necessary to complete the monitoring review.

- 6) NHES shall respond to monitoring reports and/or corrective action directives as specified in Section V.D (1) – (3) of this MOU and shall otherwise assist with problem resolution for any audit and/or compliance findings noted by BEA/OWO, its auditor, or any federal regulatory review body.
- K. NHES shall conduct annual Data Validation for WIOA Title I Adult and Dislocated participant files consistent with the Policy and Procedures developed through mutual agreement by the Interagency Directors Group, to ensure all WIOA core partner programs comply with US DOL Data Validation requirements.
- L. WIOA Annual Report – NHES shall collaborate with BEA/OWO to provide content for and assist in the writing of the WIOA Annual Report, as prescribed by the US DOL, which is due by December 1st for each program year.
- M. NH WIOA Combined State Plan – NHES and BEA shall collaborate to draft and submit the two-year plan update for submittal in June 2022.
- N. NHES shall develop and maintain internal controls and other administrative requirements to appropriately allocate, budget, and track WIOA Adult and Dislocated Worker fund expenditures consistent with WIOA limitations and in accordance with OMB guidance.
- O. NHES will support the implementation and maintenance of WIOA tracking and reporting systems including the WIOA case management system within the State's JMS, Performance Accountability and Customer Information Agency (PACIA) reporting, and customer satisfaction surveys.
- P. NHES shall budget WIOA Adult and Dislocated Worker funds to contribute to the shared One-Stop infrastructure costs consistent with a cost allocation plan approved by the NH Works Consortium, as stipulated in the NH Works MOU.
- Q. NHES shall develop policy and procedures for co-enrolling eligible participants in all programs conducted through the NH Works system and under the NH WIOA Combined State Plan, as amended from time to time including, without limitation, programs authorized by WIOA and the Wagner-Peyser Act, the Jobs for Veterans State Grants ("JVSG") and the Reemployment Services and Eligibility Assessment (RESEA) programs.
- 1) Co-enrollments shall be allowed to the extent funding is available and co-enrollment benefits the participant.
 - 2) Performance outcomes are assigned to each funding source, and participants shall not be exited until all planned activities are complete for each funding source.

- 3) Each partner program will be responsible for ensuring performance goals are achieved.
- R. NHES shall use the **NH Works – American Job Center** branding when referencing the services funded by the WIOA Title I Adult and Dislocated Worker program, including policy and procedure documents, promotional and other related material.
- S. In addition to cooperating in scheduled audits, monitoring and reviews as described in Sections V.D. and VII.J above, NHES shall cooperate with BEA/OWO, to the extent feasible and with reasonable notice, to provide ad hoc data and/or reports deemed necessary for BEA/OWO to manage program effectiveness.
- T. NHES will use the state reporting system (JMS WIOA Modules) for all WIOA and related case management and client tracking functions. The federal SPARQ (Senior Community Service Employment Program Performance and Results) system will be used for the SCSEP case management and reporting.
- 1) The Miner Training program does not provide case management services. However, NHES will be responsible for tracking and reporting on an annual basis the services delivered and the numbers of participants served under the NSCNNE Contract.
- U. The NHES WIOA Administrator will work in concert with the NH Economic and Labor Market Information (ELMI) staff assigned to the PACIA unit, to assure the accurate and timely collection of data required for compiling quarterly and annual information on individuals participating in the WIOA Title I Adult and Dislocated Worker programs for federal reporting purposes.
- V. Record Retention Requirements – NHES shall retain all records pertinent to this MOU including participant, employee, financial, statistical, and non-expendable property records and supporting documents for a period of three (3) years based on exit date for participants and program years for financial records, or for up to six (6) years for participants selected for Data Validation review.
- 1) If, prior to the expiration of any applicable retention period, any litigation or audit is in place or a claim is instituted involving a grant to which any retained records pertain, NHES shall retain the records beyond the applicable retention period until the litigation, audit, or claim has been finally resolved.
- 2) At the end of the retention period, NHES agrees to carry out the destruction or disposal of any or all WIOA related documents, in a manner that preserves the confidentiality of participant information.

- W. Participant Grievance procedures – NHES shall ensure that all applicants for federally funded services receive a written grievance procedure notice, and are verbally informed of his/her right to a fair hearing, and that a signed copy attesting to the receipt of this information is included in each applicant's case management file.
- 1) NHES shall ensure that written policies and procedures for the grievance process are in place and readily available to program participants upon request.
 - 2) NHES shall ensure that all personnel funded with WIOA funds receive training in the grievance policy and procedures applicable under WIOA.
- X. Equal Opportunity/Civil Rights –With respect to operation of the WIOA funded program or activity, the Parties will comply with the nondiscrimination and equal opportunity provisions of Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972 as amended, and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37.
- Y. Veterans' Priority Provisions – NHES agrees to comply with the provisions of the "Jobs for Veterans Act" (JVA), Public Law 107-288 (38 USC 4215) as implemented by the Final Rule published on December 19, 2008 at 73 Fed. Reg. 78132. The JVA provides priority of service to veterans and spouses of eligible veterans for the receipt of employment, training and placement services. Please note that the Priority of Services definition under WIOA may be different from the rules under Wagner-Peyser. The WIOA definition shall apply for providing services under this MOU.
- Z. Title of Property – Title to real or non-expendable personal property received or acquired by the NHES under this MOU is subject to the terms and conditions of use and disposition as set forth in U.S. Department of Labor and State surplus property regulations.

VIII. PROTECTION OF CONFIDENTIALITY

- A. NHES agrees to maintain participant confidentiality at all times.
- 1) NHES shall ensure that staff having access to personal data or other confidential information receive training in the laws and regulations relating to confidentiality.
 - 2) NHES agrees to ensure the physical security of personal data gathered through the WIOA application and case management process, and to limit access to such information to only those staff for whom it is necessary for purposes related to the performance or evaluation of this MOU.
 - 3) NHES shall develop a policy on procedures for handling and sharing Personally

Identifiable Information (PII) and train all staff, including subrecipient staff, on procedures.

B. In performing its obligations under the MOU, BEA/OWO may gain access to information possessed and used by NHES in the performance of its statutory duties (the "Confidential Information"). The Confidential Information includes, without limitation, information exempted from public disclosure under RSA 91-A:6 and information which the Department is required to maintain as confidential pursuant to RSA 282-A:118, 120, and 121; 42 U.S.C. § 503(a)(1); and 20 C.F.R. Part 603.

- 1) BEA/OWO shall not use the Confidential Information except as directly connected to and necessary for BEA/OWO's performance under the MOU, unless otherwise permitted under the MOU.
- 2) BEA/OWO agrees:
 - a) To restrict access to the Confidential Information to only those authorized employees who need it to perform their duties in connection with the intended uses within the confines of this MOU;
 - b) To store the Confidential Information in an area that is physically safe from access by unauthorized persons during duty hours as well as non-duty hours or when not in use;
 - c) That it will not disclose to any individual or organization nor duplicate any information received pursuant to this MOU, except as expressly permitted by N.H. RSA 282-A: 118, 119, 121, and 159, II.
 - d) To advise all personnel who will have access to the Confidential Information of its confidential nature, the safeguards required to protect it, and the civil and criminal sanctions for non-compliance contained in the applicable Federal and State statutes;
 - e) That BEA/OWO's personnel who will have access to the Confidential Information shall be knowledgeable of all confidentiality provisions, including: RSA Chapter 91-A, including without limitation, RSA 91-A:6; RSA 282-A:118, 120, and 121; 42 U.S.C. § 503(a)(1); and 20 C.F.R. Part 603;
 - f) That BEA/OWO will, within thirty (30) days of the effective date of this MOU and before any information is shared, provide to NHES a statement attesting

that all personnel having access to information provided by NHES have been advised of the confidentiality requirements of this MOU;

- g) That BEA/OWO will, prior to any sharing of information, provide NHES a list of all officers and employees, by position, who will have the authority to request, receive, and obtain information from NHES and shall update NHES' list: (a) whenever an individual identified in such list leaves the employ of BEA/OWO or otherwise ceases to have such authority; and (b) prior to granting such authority to any individual not already included in the list provided to NHES.
- h) That BEA/OWO shall report to NHES in writing, promptly and fully, any suspected or actual violation of the confidentiality requirements of this Contract.
- i) Any disclosure of NHES's Confidential Information shall require the prior written approval of NHES. BEA/OWO shall immediately notify NHES if any request, subpoena, or other legal process is served upon BEA/OWO regarding NHES's Confidential Information, and BEA/OWO shall cooperate with NHES in any effort it undertakes to contest the request, subpoena, or other legal process.
- j) In the event of the unauthorized use or disclosure of NHES's Confidential Information, BEA/OWO shall immediately notify NHES, and NHES shall immediately be entitled to pursue any remedy at law or in equity, including, but not limited to injunctive relief.

IX. BUDGET AND METHOD OF PAYMENT

- A. This MOU will be for a term beginning September 30, 2020 and terminating on June 30, 2024.
- B. Funding is provided by the U.S. Department of Labor under the following provisions

Funding Source	Program	CFDA#
WIOA Title I, Formula (ETA)	Adult	17.258
WIOA Title I, Formula (ETA)	Dislocated Worker	17.278
US Dept. of Labor (SCSEP)	Senior Community Services Employment Program	17.235
US Dept. of Labor (MSHA)	Mining Safety Refresher Courses	17.600
US Dept. of Labor (SCSEP)	Mature Worker Demo Grant	17.235

- C. The SWIB shall determine an annual allocation of funds consistent with federal guidelines for the distribution of WIOA Title I Adult and Dislocated Worker formula funds to State.

- D. Subject to NHES and BEA compliance with the terms and conditions of this MOU, BEA/OWO shall reimburse NHES for actual expenses incurred in accordance with an annual line-item budget, negotiated in June of each year covered in this MOU.
- E. NHES shall submit reimbursement for funds using a mutually agreed format for invoicing that includes a breakout of expenses by program and administration costs (as defined by US DOL for WIOA reporting purposes), direct and indirect costs, and expense to budget analysis, consistent with an approved line-item budget.
- F. NHES is responsible for ensuring that all WIOA funds are expended consistent with WIOA, US Department of Labor, and OMB guidelines for allowable charges to administration costs and allowable charges to program costs.
- G. NHES shall charge indirect costs based on its most recent approved indirect cost rate.
- H. NHES does not have authority to expend funds beyond those negotiated annually. This MOU is an umbrella agreement that includes estimated funding for a four-year period. Funds are available and budgeted annually for each program year based on actual federal awards from US DOL. NHES shall not be reimbursed for any costs outside of any approved annual budget.
- I. NHES shall develop a cost allocation plan in conformity with USDOL requirements for the proportionate distribution of funds.
- J. The total amount of all payments made to NHES for costs and expenses incurred in the performance of this MOU shall not exceed \$16,592,000 in total for all funding sources, further delineated by funding source in the table below. Estimates are provided for planning purposes only; available funding for each program, for each year shall be determined annually based on actual grant awards.

Funding Source	Estimated Annual Amount	Estimated Total
WIOA Adult	2,000,000	8,000,000
WIOA Dislocated Worker	1,500,000	6,000,000
SCSEP	450,000	1,800,000
Miner Safety Training	73,000	292,000
SCSEP Mature Worker Demo	500,000	500,000

- 1) Funds are further delineated by program and administration funds. Administrative funds shall be limited to the maximum amount allowed for each grant funded

through this MOU.

Funding Source	Cap on Allowable Administration Funds
WIOA Adult & Dislocated Worker	10%
Mining Safety Grant	10%
SCSEP	3.5%
SCSEP Mature Worker Demo	10%

- K. NHES shall not have authority to carry-forward funds from one program year into another, unless otherwise approved by BEA/OWO in writing.
- L. NHES shall maintain an inventory of property and equipment either purchased or leased with funds made available through this MOU for review upon request.
- M. NHES must have written authorization from BEA/OWO prior to using funds made available through this MOU to purchase any property or equipment with a cost in excess of \$2,500.
- N. NHES shall develop a cost allocation plan (a US DOL requirement) for the proportionate distribution of funds for shared costs.
- O. NHES shall establish a system for tracking and reporting accruals in conformity with USDOL requirements on the invoices submitted to BEA/OWO. NHES is responsible for ensuring that subrecipients report accruals to NHES on a timely basis.
- P. NHES shall present to BEA/OWO monthly invoices for services and related expenses for each funding source covered by the MOU. Each such invoice shall be payable to NHES in accordance with the State's 30-day minimum payment schedule.

- 1) Invoices shall be sent to:

Office of Workforce Opportunity
Attn: Fiscal Administrator
100 North Main Street, Eagle Square
Concord, NH 03301

- 2) Payment shall be made to:

NH Employment Security
Attn: Fiscal Administrator
45 S. Fruit Street
Concord, NH 03301

- Q. NHES shall maintain sufficient documentation on file in their offices to support invoices, and make such documentation available for review by authorized BEA/OWO staff and/or its auditors.
 - R. BEA/OWO and NHES will review the actual cumulative costs associated with this MOU on a quarterly basis to ensure compliance with line-item budget expenditures and overall costs. Upon mutual agreement, funds may be adjusted within line item categories as needed.
 - S. Notwithstanding any provision of this MOU to the contrary, all obligations of BEA/OWO hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. BEA/OWO shall not transfer funds from any other source in the event that funds are reduced or unavailable.
 - T. All services in this MOU are subject to change based on federal regulatory changes to the WIOA. If changes to the scope of responsibilities are necessary in response to regulatory changes, NHES and BEA/OWO will enter into good-faith negotiations to adjust costs associated with the services provided under this MOU.
 - U. NHES is solely responsible for paying to BEA/OWO any disallowed costs resulting from a State and/or Federal audit, or which may be associated with the misallocation of federal funds authorized through this MOU, including costs expended on individuals who were erroneously determined to be eligible for services. Other federal funds may not be used to cover disallowed costs.
 - V. Program Income – The addition method shall be required for use of all program earned under grants covered in this MOU.
- X. OTHER PROVISIONS**
- A. The parties hereto do not intend to benefit any third parties and this MOU shall not be construed to confer any such benefit.
 - B. In connection with the performance of the services, NHES and BEA shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon BEA/OWO, including, but not limited to civil rights and equal opportunity laws.
 - C. Both Parties, through their Commissioners, will attempt to resolve any disputes, and if a dispute cannot be resolved by the Commissioners, the dispute shall be submitted to the Attorney General and the Attorney General's decision shall be final and binding on

both Parties.

- D. Any one or more of the following acts or omissions by BEA/OWO or NHES shall constitute an event of default hereunder ("Event of Default"); failure to pay timely, failure to submit any report required hereunder; or failure to perform any other material covenant or condition of this MOU.
- 1) Upon the occurrence of any Event of Default, the non-defaulting party may take any one, or more, or all of the following actions:
- a) Give the defaulting party written notice specifying the Event of Default and require it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this MOU, effective two (2) days after giving notice of termination; and
 - b) Give the defaulting party written notice specifying the Event of Default and suspend all services under this MOU until such time as the Event of Default has been cured; and
 - c) Treat both the MOU as breached and pursue any of its remedies at law or in equity, or both.
- E. This MOU may be amended, waived or discharged by an instrument in writing signed by both Parties.
- F. Neither party shall be liable for delays caused by fire, accident, labor dispute, war, insurrection, riot, act of government, act of God, or any other cause reasonably beyond its control; but each party shall use all reasonable efforts to minimize the extent of any such delay.
- G. Neither party may assign its rights or delegate its obligations hereunder without the prior written consent of the other party, which consent will not be unreasonably withheld, provided that NHES may assign its rights to receive monies due and becoming due.
- H. Neither party shall be deemed to have waived any right hereunder unless such waiver is in writing and executed by a duly authorized officer of the waiving party. No waiver by either party of any right hereunder shall constitute a waiver of any right on any other occasion. Nothing herein shall be deemed to waive the sovereign immunity of the State, which is hereby expressly reserved.
- I. The invalidity or unenforceability, in whole or in part, of any provision, term or condition

hereof shall not affect the validity or enforceability of the remainder of such provision, term or condition or of any other provision, term or condition.

XI. SPECIAL PROVISIONS

NHES shall assure compliance with applicable WIOA assurances and the special provisions outlined below. US DOL requires certain provisions be included in all federally funded agreements in excess of \$10,000.

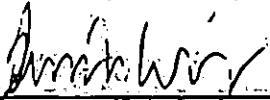
- A. WIOA is incorporated herein as if fully written.
- B. The WIOA Final Rule is incorporated herein as if fully written.
- C. Federal Standards and Uniform Administrative Requirements for State and Local Governments, Institutions of Higher Education and Other Non-Profit Organizations and OMB Super Circular in effect January, 2015 are incorporated herein as if fully written.
- D. Political Activities – NHES and/or any subrecipient of WIOA funds through NHES shall not provide financial assistance under this MOU for any program, which involves political activities. Nor shall NHES select a vendor or subrecipient of WIOA funding based on political affiliations or belief.
- E. Conflicts of Interest - NHES shall follow the SWIB conflict of interest policy and procedures when awarding contracts for services funded under the WIOA Title I Adult or Dislocated Worker program.
- F. Salary and Bonus Limitations: In compliance with Pub. L. 111-117 (Division D, sec. 107) none of the funds made available under this MOU shall be used by the NHES or a subrecipient of NHES to pay the salary and bonuses of an individual, as either direct costs or indirect costs, at a rate in excess of Executive Level II.
- G. Nepotism – No individual may be placed in an employment activity funded by this MOU if a member of his/her immediate family member is engaged in an administrative capacity for the employing agency. To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement shall be followed.
- H. Buy American Notice Requirement: To the greatest extent practicable, and the extent to which purchases are allowable in this MOU, NHES agrees to purchase American made equipment and products. (See WIOA Section 505 – Buy American Requirements).

- I. **Certification Regarding Debarment:** NHES shall not award funds to any entity barred from receiving federal funds. A contract award must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. 1986 Comp., p. 189), and 12689 (3 C.F.R. 1989 Comp., p. 235), "Debarment and Suspension." The SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- J. **Intellectual Property Rights:** The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purpose:
 - 1) The copyright in all programs developed under this MOU's funds, including a sub-grant or MOU with NHES; and
 - 2) Any rights of copyright to which NHES purchases ownership with these MOU funds (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.
 - 3) Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material. Although they may be used to pay costs for obtaining a copy, which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with MOU funds, including intellectual property, these revenues are program income. Program income is added to the MOU and must be expended for allowable MOU activities.
- K. To the extent such provisions apply to this MOU, NHES shall comply with the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C 1251-1387), as amended. Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, order of regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- L. NHES to the extent applicable to this MOU shall comply with Solid Waste Disposal Act to the extent provisions may apply to this MOU, including Sec. 200.322 and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.]

- M. NHES to the extent applicable to this MOU shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) and the "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subrecipients on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").
- N. NHES to the extent applicable to this MOU shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification.
- O. NHES to the extent applicable to this MOU shall comply with the Rights to Inventions Made Under a Contract or MOU. See, 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative MOUs".
- P. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by NHES in excess of \$100,000 that involve the employment or mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- Q. Unionization and Anti-Unionization Activities/Work Stoppages –
 - 1) No funds under this MOU shall be used in any way to either promote or oppose unionization.
 - 2) No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional training involves individuals employed under a collective bargaining agreement which contains a union security provision.
 - 3) No participant may be referred to or placed into, or remain working in any position which is affected by labor disputes involving work stoppage.
- R. Consultation with Labor Organizations – Any assistance program conducted with funds made available under this MOU which will provide services to a substantial number of members of a labor organization shall be established only after full consultation with such organization.

SIGNATURES

For New Hampshire Employment Security



George N. Copadis
Commissioner
New Hampshire Employment Security

7/31/20

Date

For New Hampshire Business and Economic Affairs

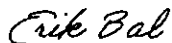


Taylor Caswell
Commissioner
New Hampshire Business and Economic Affairs

8/24/2020

Date

The preceding Memorandum of Understanding, having been reviewed by this Office, is approved as to form, substance, and execution.



9/1/2020

Office of the Attorney General

Date

I hereby certify that the foregoing Memorandum of Understanding was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on:

Date of Meeting

Item #