

WEST OF ENGLAND COMBINED AUTHORITY Adult Education Funding

THIRD-PARTY DELIVERY FUNDING RULES 2021/2022

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Introduction and Purpose of the Document

1. This guidance document sets out the rules established by the West of England Combined Authority (WECA) in relation to the delivery of Adult Education through a third-party. The equivalent Education and Skills funding agency guidance document is 'Subcontracting funding rules for ESFA funded post-16 funding (excluding Apprenticeships).
2. WECA rules are broadly similar to ESFA rules but are not identical
3. The main differences to ESFA rules include:
 - 3.1. ESFA rules relate specifically to subcontracting. WECA adopts an equivalent approach for all delivery of adult education through a third-party provider.
 - 3.2. WECA requires providers to secure permission to deliver through a third-party in advance of deliver as opposed to notification after the fact.
4. WECA define a Third-Party Provider as:
 - 4.1. Any Third Party engaged by the Provider under a Third-Party Agreement.
5. WECA define a Third-Party Agreement as:
 - 5.1. An agreement, including a subcontract, partnership agreement, service level agreement, secondment agreement or similar between the Provider and a Third-Party pursuant to which that Third-Party (or employees thereof) agrees to provide, Third Party Delivery.
6. WECA defines Third-Party Delivery as:
 - 6.1. Any part of the Provision that is delivered or agreed to be delivered by any Third Party

Your Policies Concerning Third-Party Delivery Including Fees and Charges

7. Any Provider who wishes to deliver WECA funded adult education provision, or any part of WECA funded adult education provision through a Third-Party Provider must have a current policy in place which sets out:
 - 7.1. The rationale for delivering provision through a Third-Party Provider. This must enhance the quality of your learning offer and should normally include one or more of the following:

- 7.1.1. Enhance the opportunities available to learners.
- 7.1.2. Fill gaps in niche or expert provision or provide better access to training facilities.
- 7.1.3. Support better geographical access for learners.
- 7.1.4. Support an entry point for disadvantaged groups.
- 7.1.5. Support individuals who share protected characteristics, where there might otherwise be gaps.
- 7.2. How delivery through a Third-Party Provider enhances the quality of your WECA Adult Education provision
- 7.3. How delivery through a Third-Party Provider supports your long-term strategic objectives (you may not deliver through subcontract to meet short-term funding objectives)
8. You may have a single policy in place which covers both delivery of ESFA provision through subcontract and the delivery of WECA provision through a third-party agreement, on condition that the policy is in place prior to any delivery of WECA Provision through a Third-Party.
9. You must also set out an itemised statement of fees retained and charges that apply including as a minimum:
 - Funding retained for quality assurance and oversight.
 - Funding retained for administrative functions such as data returns.
 - Funding retained for mandatory training delivered to subcontractor staff by the directly funded provider.
 - Clawback for under delivery or other reasons
 - How you will determine that each cost claimed by the Third-Party Provider is reasonable and proportionate to the delivery of their teaching or learning
 - how each cost contributes to delivering high quality learning.
10. Your governing body or board of directors and your accounting officer (senior responsible person) must agree your policy for delivery through a Third-Party Provider
11. WECA will reserve the right to require an explanation where the funding you have retained as your management fee for a Third-Party agreement exceeds 20%.
12. We expect these policies, including the rationale, to be reviewed by you ahead of each funding year, and signed off by those charged with overall responsibility for your organisation in your governance structure.

13. The policy must be approved before any delivery through a Third-Party Provider commences and shared with WECA no later than 31st October in the 2021/22 funding year and no later than 1st July in subsequent funding years.
14. You must only deliver provision through a Third-Party Provider if:
 - 14.1. You have secured permission from WECA to do so in advance of delivery.
 - 14.2. You have staff with, the knowledge, skills, and experience (for example, with appropriate qualifications or experience, as evidenced by their CVs) within your organisation to:
 - 14.2.1. Successfully select Third-Party Providers in line with the requirements of these funding rules and your contract with WECA, and
 - 14.2.2. Contract with and actively manage those Third-Party Providers
 - 14.2.3. Those charged with governance/board of directors and your accounting officer (senior responsible person) determine the Third-Party Provider as being of high quality and low risk to public funds.
 - 14.2.4. You have robust procedures in place to ensure delivery through a Third-Party Provider does not lead to the inadvertent funding of extremist organisations.

Selection and Procurement of Third-Party Providers

15. You may not enter an agreement with a Third-Party Provider to deliver WECA funded adult education provision or any part of WECA funded adult education provision without securing permission from WECA to do so in advance.
16. You must immediately notify WECA about any circumstances which might lead to an actual or perceived conflict of interest. For example, where your organisation and your proposed Third-Party Provider has directors or beneficial owners in common. You must:
 - 16.1. Not award the contract without our written permission,
 - 16.2. Keep as evidence both your request and our reply.
17. You must ensure that you comply with current and relevant procurement regulations. If you are a contracting authority, this means that you must comply with the Public Contracts Regulations 2015 (“the 2015 Regulations”). You must ensure that you select your Third-Party Providers fairly transparently and without discrimination and that you ensure that potential Third-Party Providers have sufficient capacity, quality and

business standing to deliver the provision that is being delivered under the Third-Party Agreement.

18. If your organisation is a contracting authority as defined by the 2015 Regulations, you must comply with the provisions of the 2015 Regulations when selecting and awarding service delivery to a Third-Party Provider. Each organisation must make its own determination about whether it is a contracting authority or not, taking legal advice, as necessary.

Due Diligence Requirements

19. In any event you must carry out your own thorough due diligence checks when appointing Third-Party Providers and ensure that you continue to undertake and review these checks on an annual/ongoing basis with each of your Third-Party Providers. As a minimum, you must undertake the checks identified in the following paragraphs.
20. You must review the circumstances and criteria in the WECA Adult Education Due Diligence and Funding Higher Risk Organisations (hereafter referred to as “funding higher risk organisations policy”) in which WECA would consider a provider (including Third-Party Provider) to be a high-risk provider and as a result will not consider funding or agree applications and/or bids for funding from them.
21. Due diligence checks on Third-Party Provider must apply the criteria in the funding higher risk organisations policy setting out when a provider is high risk and therefore not eligible to be appointed as a Third-Party.
22. Your agreement with any Third-Party Provider should enable your organisation to take appropriate action in line with the funding higher risk organisations policy, not only if your organisation deems it is necessary, but also where WECA requires you to take appropriate action.
23. You must also ensure any Third-Party has the financial ability to deliver the requirements of the subcontract.
24. You must not enter Third-Party Agreements with brand new companies who are yet to submit their first statutory accounts, unless they are able to thoroughly verify the new company’s financial capability
25. You must not award or renew a Third-Party Agreement to any organisation if:
 - 25.1. It has an above-average risk warning from a credit agency.
 - 25.2. Has passed a resolution (or the court has made an order) to wind up or liquidate the company, or administrators have been appointed.

- 25.3. Its statutory accounts are overdue.
26. If a Third-Party does not meet, or continue to meet, the minimum due diligence and financial health checks required (paragraph 25.1 to 25.3 above), you must suspend the right of the Third-Party to recruit new learners. Depending on the circumstances you may be required by WECA to terminate the Third-Party agreement if you have not already done so.
27. You may not enter a Third-Party Agreement with an organisation which is directly funded by WECA to deliver adult education, or an organisation who is funded to deliver WECA adult education provision through a Third-Party Agreement with another directly funded WECA provider.
28. Where a Third-Party agreement is in place no other Third-Party may play a role in the delivery of the specific elements of provision delivered by the Third-Party. I.e. Third-Party delivery may not extend beyond a single level (in absence of specific written permission from WECA to do so)
29. Where the value of a Third-Party Agreement is equal to £100,000 or more for each funding year, you must share the results of your checks with WECA in advance of delivery. WECA will then undertake internal high-risk checks to determine if the Third-Party falls in scope of the Funding higher risk organisations policy. If they do, you may be required to end your Third-Party Agreement with that organisation, and we may restrict your future use of Third-Party Provider.
30. Where a Third-Party has a Third-Party Agreement valued at £150,000 or greater in any funding year, WECA will carry out additional financial health checks directly with the Third-Party, in line with financial health guidance for organisations contracting with or applying to WECA. You will be required to supply WECA with the relevant documents. If the Third-Party fails WECA financial health checks, you will be unable to take on any new starts with the Third-Party.

Entering into a Third-Party Agreement

31. The provider must describe their delivery arrangements to WECA accurately and without artificial distinctions or distortions. These rules apply to all circumstances within which a Third-Party organisation (or employees thereof, including secondees) plays a role in the delivery of WECA funded Adult Education Provision.
32. If you have not previously delivered provision we fund through a Third-Party, you must secure our written approval before awarding a Third-Party Agreement and keep evidence of the written approval.

33. You may not enter into any Third-Party agreement, or any other form of agreement to fund brokerage. Brokerage includes any arrangements where a third-party matches, for a fee, a provider with an unused allocation with another provider that can secure enrolments of learners to utilise it.
34. You must only award Third-Party Agreements for delivery of WECA Adult Education Provision to legal entities. If the legal entity is a registered company, it must be recorded as 'active' on the Companies House database. Third-Party Provider must hold a valid UK Provider Reference Number (UKPRN) to be eligible to receive funding from us, either directly or through a Third-Party Agreement.
35. You must not agree the use of any Third-Party where this would require you to effectively pass WECA funding to a second level of Third-Party. In other words, all Third-Party Provider must have a direct Third-Party Agreement with your organisation. You may have more than one Third-Party Agreement, but each Third-Party must have a direct Third-Party Agreement with you. The restriction on the level of Third-Party agreements is in place to ensure that:
 - 35.1. Lead providers retain clear and transparent accountability for the quality of training provision.
 - 35.2. Proper and appropriate controls are in place to manage the learner experience,
 - 35.3. Value for money is achieved by mitigating funding being utilised for multiple tiers of Third-Party management.
36. You must make sure that learners supported through Third-Party Agreements know about you and your Third-Party's roles and responsibilities in providing the learning. Learners supported through a Third-Party agreement must have equivalent access to facilities and support as learners to whom you deliver directly.

Subcontracting Threshold and Exemption Cases (Not applicable to Local Authorities)

37. if you wish to deliver to more than 25% of the learners through a Third-Party Agreement, you must submit an exemption case to WECA to obtain WECA's agreement.
38. In your exemption case, we need you to supply the following information about your proposed subcontracting arrangement.
 - 38.1. The full legal name and UKPRN of your proposed Third-Party Provider.
 - 38.2. The elements of delivery you would like to deliver through Third-Party Provider.

- 38.3. Value of each Third-Party Agreements, number of learners and the last planned end date of the provision that would be delivered under the Third-Party Agreement
- 38.4. What the educational rationale is for putting these Third-Party Agreements in place. Your statement in relation to this must be supported by your officers that are charged with governance.
- 38.5. To what extent you are involved in delivery as the lead provider.
- 38.6. What amount of funding is retained by you, the lead provider to cover the costs incurred in monitoring, management and quality assurance of the Third-Party Agreement, and how you use these costs to ensure the Third-Party delivers high quality learning.
- 38.7. To what extent a gap has been identified by WECA which the subcontractor is filling.
- 38.8. To what extent does the learner engage with the lead provider.
- 38.9. What your oversight arrangements are in relation to the delivery of the Third-Party provision.
39. We will consider your request, taking into account the detail you have provided, data and information available within and outside WECA. We will consider:
- 39.1. Your Third-Party Delivery policy, including your fees and charges policy, and whether this has been signed off by your officers who are charged with governance.
- 39.2. If you subcontract more than £100,000 in a funding year, we will consider the external auditor's report on the effectiveness of the processes and controls you have in place for managing subcontractors.
- 39.3. We reserve the right to decline your request, if we do decline it, we will explain why we are declining it.
- 39.4. Whether the Third-Party is delivering to learners who may not otherwise have access to provision, including there being no alternative provision or the characteristics of the learner mean another lead provider may not be suitable.

Terms Which Must be Included Within Third-Party Agreements

40. Before any delivery through a Third-Party commences, a legally binding agreement must be in place between you and the Third-Party.
41. WECA does not provide a template for Third-Party Agreements. The Third-Party Agreement must entitle you to exercise management controls over the Third-Party's activity including access by auditors appointed by either your organisation or WECA. The following paragraphs set out some provisions which must be included in each Third-Party Agreement.
42. As a minimum, you must make sure your Third-Party Agreements include the provisions set out within this section:
 - 42.1. A list of all services your organisation will provide to them and the associated costs for doing so. This must include:
 - 42.2. a list of individually itemised, specific costs that you will charge for managing the Third-Party and how these are reasonable and proportionate to the delivery of provision through the Third Party.
 - 42.3. specific costs for quality monitoring activities and specific costs for any other support activities offered by you to the Third-Party and how these contribute to the delivery of high-quality learning.
 - 42.4. reference to your Third-Party delivery policy, including your rationale for delivery through Third-Party Provider and where it can be found on your website.
 - 42.5. a requirement to give WECA and any other person nominated in writing by WECA, access to its premises and to all documents, records and evidence related to their Third-Party delivery.
 - 42.6. The Third-Party must be under an obligation to provide you with ILR data so that your organisation's data returns to WECA accurately reflect your Third-Party's delivery information.
 - 42.7. The Third-Party must provide you with sufficient evidence to allow you to:
 - 42.7.1. assess its performance against Ofsted's common inspection framework,
 - 42.7.2. incorporate the evidence it provides you with into your self-assessment report; and
 - 42.7.3. guide the judgements and grades within your self-assessment report.
 - 42.8. The Third-Party must always have suitably qualified staff available to provide the education and training funded by WECA.

- 42.9. The Third-Party must co-operate with you if the Third-Party Agreement ends for any reason to make sure that there is continuity of learning.
- 42.10. The Third-Party must tell you if evidence of irregular financial or delivery issues arise. This could include, but is not limited to:
- 42.10.1. non-delivery of training when funds have been paid.
 - 42.10.2. sanctions imposed by an awarding organisation.
 - 42.10.3. allegations of fraud.
 - 42.10.4. an inadequate Ofsted grade.
 - 42.10.5. allegations or complaints by learners, staff members, or other relevant parties.
- 42.11. The Third-Party must not use WECA funding to make bids for, or claims from, any European funding on its own behalf or on behalf of WECA.
- 42.12. The Third-Party must be bound by ESF clauses from your contract being included in the subcontract, even if the provision being delivered through Third-Party Agreement is not funded by the ESF.
- 42.13. The Third-Party must not use WECA funding as match funding for ESF projects.
- 42.14. You must make sure your Third-Party Provider comply with the requirements set out in these funding rules.
- 42.15. You must ensure that you include in your Third-Party Agreement provisions that enable you to terminate the Third-Party Agreement should the Third-Party fail to meet the required due diligence or financial health requirements/standards.
- 42.16. You must ensure that you include in your Third-Party agreement provisions which require The Third-Party to inform you of any changes which impact its ability to meet the due diligence or financial health/require standards required and that your organisation may as a result be required to terminate the Third-Party Agreement with them.
- 42.17. You should take your own legal advice about how best to incorporate these provisions and wider terms and conditions in your Third-Party Agreement

Monitoring of Third-Party Providers and Third-Party Delivery

43. You are responsible for the actions of the Third-Party Provider connected to, or arising out of, the delivery of the services, which you deliver through a Third-Party Agreement. If the Third-Party fails to deliver, you will be responsible for making alternative arrangements for the delivery of education and training, protecting the audit trail, and/or repaying WECA funding.
44. You must manage and monitor all Third-Party Provider to ensure that high-quality delivery is taking place that meets the requirements of the contract you have entered into with WECA for the provision of WECA funded delivery (which includes compliance with WECA funding rules). You must ensure safeguarding is rigorously policed.
45. It is not acceptable for any staff with a direct or indirect financial interest in the Third-Party to undertake any management control activities. This includes signing time sheets or invoices, as well as organising and/or carrying out monitoring activity or visits to check the thirdparty delivery.
46. You must carry out a regular and substantial programme of quality assurance checks on the education and training provided by Third-Party Provider including spot checks and face to face interviews with staff and learners. The programme must:
 - 46.1. Include verifying that learners exist and meet the eligibility criteria for WECA Funding.
 - 46.2. Involve direct observation of initial guidance, assessment and delivery of learning programmes, training and/or direct observation of assessment.
 - 46.3. The findings of your assurance checks must be consistent with your expectations and the Third-Party's records.
47. The prevent duty applies equally to third-party provision. It requires providers to have due regard to the need to prevent people from being drawn into terrorism. All further education providers must comply with relevant legislation and any statutory responsibilities associated with the delivery of education and safeguarding of students, and this includes students receiving provision under a Third-Party Agreement.

Third-Party Delivery: Reporting and External Audit Requirements

48. You must record Third-Party Delivery through completing the relevant sections in your monthly individualised learner record (ILR) returns.

49. If you return ILR data, in accordance with your WECA Grant Funding Agreement you must seek approval from WECA in advance of delivery through completing the relevant section within your Curriculum and Delivery Plan.
50. In accordance with your WECA Grant Funding Agreement you must obtain an annual report from an external auditor if the aggregate total of all Third-Party delivery exceeds or is anticipated to exceed £100,000 in any single funding year. If you are required to produce an equivalent report for ESFA, WECA will accept the same report on condition that WECA funded Third-Party delivery was fully considered (including the types of arrangement which WECA includes within our definition of Third-Party Delivery which ESFA does not include within its definition of Subcontracting).
51. You must supply us with a certificate signed by an external auditor and an authorised signatory to confirm you have received a report that provides assurance on the arrangements to manage and control your Third-Party Delivery. You must send a copy of the external auditor's final report including the action plan of agreed recommendations to adulthoodeducation@westofengland-ca.gov.uk. WECA will review this as part of our overall assurance arrangements. The following ESFA link includes the certificate you must return, as well as guidance and information on expectations: [Providing external assurance on subcontracting controls - GOV.UK](#). WECA intend to issue its own guidance on this, but until that is published, please follow the ESFA guidance replacing 'subcontracting' with 'Third-Party' throughout.

Controls Over Learners, Tutors and Provision

52. You must be able to demonstrate that you exercise all the following key controls:
 - 52.1. You can enrol or reject learners as you would do if the learners enrolled directly by you.
 - 52.2. Learners sign a learning agreement at the time of enrolment; the agreement must reflect the outcome of initial guidance and assessment for an individual student and set out the programme of learning and support which they will undertake.
 - 52.3. The learners' eligibility for WECA funding is confirmed through an enrolment form and/or learning agreement, which must include your name and your logo, and which is signed by the Learner at the start of their programme.
 - 52.4. The programme of learning and support delivered through the third-party has been approved by you in advance of delivery
 - 52.5. There are arrangements in place for assessing the progress of individual learners.

52.6. There are procedures for you to regularly monitor the delivery of programmes delivered through the third-party throughout the period of the programme.

Third-Party Access to WECA Funding

53. You may not enter a Third-Party Agreement with any organisation who has access to WECA funding either directly or through a Third-Party Agreement with another directly funded WECA provider. It is your responsibility to secure assurance regarding this prior to the commencement of delivery.
54. You must make sure that you are the only provider that is claiming WECA funding for the learners that you are claiming funding for. Learners must not be enrolled at more than one directly funded WECA provider or through their Third-Party Provider.
55. You, as the lead provider must claim all the funding for an WECA-funded learner. When a learner is attending different directly funded providers for different components of their programme of learning and support, the lead provider must record all these components and indicate on the individualised learner record which elements are delivered via a Third-Party Agreement.
56. All individual students must have the correct unique learner number recorded.

Distance Third-Party Delivery

57. WECA providers should not enter Third-Party Agreements to support delivery outside their normal recruitment area. WECA defines the 'normal recruitment area' as the area in which the provider is physically situated, taking into account normal travel to learn patterns.
58. WECA will consider granting extraordinary permission to establish third-Party agreements which support delivery beyond the providers normal recruitment area on a case-by-case basis as part of our normal Third-Party Delivery process.
59. Where you do enter into Third Party Agreements which support delivery beyond your normal recruitment area, you must exercise the same level of management, control, safeguarding of learners and assure yourself you still meet all necessary rules.

Glossary

Term	Definition
Brokerage	means the provision by a third party of services, for a fee, to source Third-Party Provider to provide the services on behalf of the provider.
Distance Third-Party delivery	means where the delivery location of the Third-Party is outside the lead provider's normal recruitment area.
Exemption case	means the case submitted by the Provider to WECA to undertake Third-Party delivery in excess of the threshold set out in paragraph 38 above
Funding year	means a period of 12 months starting on 1 August and ending on 31 July.
Learners	means any eligible individual undertaking WECA funded Adult Education Provision
Prevent	Means the prevent strategy, published by the government in 2011, is part of our overall strategy to reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism. In the Act this has simply been expressed as the need to "prevent people from being drawn into terrorism." Further details are available on GOV.UK.
Third-Party Provider	A third-party in receipt of a Third-Party agreement with the Provider which establishes a role in the delivery of the Provision or any part of the Provision

Third-Party Agreement	Any agreement, including a subcontract, partnership agreements, service level agreement, secondment agreement or similar between the Provider and a third-party (including Third-Party Provider within the same group of companies) pursuant to which that third-party (or employees thereof) agrees to provide to the Provider the Provision or any part of the Provision.
Third-Party Delivery	Means any delivery of any element of a WECA funded adult education learner's programme of learning and support by an organisation which falls within the definition of a Third-Party set out above.
Third-Party Delivery Threshold	The proportion of your WECA Adult Education Allocation which Third-Party delivery should not exceed in extraordinary permission from WECA. For 2021/22 the threshold is 25%
Those charged with governance	<p>Means those with responsibility for overseeing the strategic direction of the provider and obligations related to the accountability of the provider. This includes overseeing the financial reporting process. Those charged with governance can include, but is not limited to:</p> <ul style="list-style-type: none"> College Governors/Boards Executive Board of Directors Audit Committee <p>Further details are available on GOV.UK.</p>