STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE SERVICES
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Workforce Services Policy - Conflict of Interest

Effective Date: February 20, 2017

Duration: Until Changed

This policy has been amended February 22, 2018 to further clarify functions of the fiscal agent, staff to the board, One-Stop Operator, and service providers. A section has been added-titled "Functions of the Fiscal Agent, Board Staff, One-Stop Operator, and Service Providers' on page 6 to clarify these roles and explain that service delivery cannot be performed by the Local Workforce Development Board, staff to the board, or the fiscal agent.

Subject:
Conflict of Interest Policy under Workforce Innovation and Opportunity Act (WIOA) governing WIOA Program Operators, American Job Centers, Local Workforce Development Boards/Chief Local Elected Officials, other elected officials.

Purpose:
To ensure that individuals or representatives of organizations entrusted with public funds will not personally or professionally benefit from the award or expenditure of such funds. This policy is established to provide direction-specifically to sub-recipients, contractors, staff, and members of Tennessee's Local Workforce Development Boards-in order that business can be conducted within guidelines that will prevent actual, potential, or questionable conflicts of interest.

Scope:
Office of the Governor, Tennessee Department of Labor and Workforce Development (TDLWD); Division of Workforce Services (WFS); Tennessee Department of Economic and Community Development (ECD); Tennessee Department of Education (TNED); Tennessee Department of Human Services (DHS); State Workforce Development Board (SWDB); Title I – Adult, Dislocated Worker, and Youth Programs, Title II – Adult Education and Family Literacy Act Program(AE); Title III – Wagner-Peyser Act Program (WP); Title IV – Vocational Rehabilitation Program (VR); Regional Planning Council (RPC); Local Workforce Development Boards (LWDB); Local Workforce Development Areas (LWDA);

American Job Center (AJC); One-Stop Operator (OSO); Workforce System Sub-Recipients (Sub-Recipients); Workforce System Partners (Partners)

Background:
A conflict of interest situation arises when an individual or organization has a financial or other personal interest-and participates in the selection process-to award funds to an organization. One of the key responsibilities of the Tennessee Department of Labor and Workforce Development (TDLWD) is to ensure that individuals or representatives of organizations entrusted with public funds will not personally or professionally benefit from awards, administration, or expenditures of such funds. Safeguards must be in place to ensure that all those served in the program are not only eligible and suitable but also protected from even the perception of impropriety or conflict of interest.

I. Instructions:

The State Workforce Development Board (SWDB) shall have a conflict of interest policy that, at minimum, meets the following requirements:

A. Each grant recipient and sub-recipient must abide by a written code of standards to govern the performance of those awarding and administering WIOA contracts and sub-grants[1].

B. Each grant recipient and sub-recipient must ensure that no individual in a decision-making capacity engages in any activity if a conflict of interest is involved, even if only a perception of impropriety or conflict of interest exists. This includes decision-making that involves the selection, award, or administration of a grant, sub-grant, or contract supported by WIOA funds.

II. Providing Services to Participants Funded under the WIOA Program:

WIOA is not an entitlement program; training and services should be accessible to any individual, in any local area, who is eligible for available services subject to Local Workforce Development Board (LWDB) policies and procedures. When applicants have a close relationship with WIOA staff members (including management and other specific stakeholders of the workforce development system) access to program services should not be based on such relationships or on political influence. It is possible that, even without any intention to misuse WIOA funds, a decision to enroll an individual in the program could be perceived as improper. Such a perception could cause noncompliance with state and/or federal law.

III. Funding Integrity:

General authorization to provide funds to participants will comply with the standards of conduct for maintaining the integrity of the program and avoiding any conflict of interest in its administration.
Chief Local Elected Officials (CLEOs), Local Workforce Development Boards (LWDBs), designated fiscal agents, and administrative officials must help meet the objectives of WIOA through effective policies, procedures, and safeguards to ensure the integrity of these public funds. Throughout the Local Workforce Development Areas (LWDAs) safeguards must be in place, ensuring that all those served in the program are not only eligible and suitable but also detached from being part of the perception of impropriety or conflict of interest.

IV. Program Integrity:

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[1] 2 CFR 200.318(c)(1)

LWDBs must establish a disclosure statement on the eligibility or intake form to clarify that the following entities of the workforce development system will not provide direct service during the intake, or eligibility determination, of a family member or close acquaintance. No workforce staff or member will have a personal or business relationship with-or a positive bias for, including a special interest in that particular applicant. Such workforce members are:

- Local Elected Officials (LEOs)
- LWDB members
- LWDB subcommittee members
- WIOA executive staff and supervisors
- WIOA employees
- American Job Center partner staff
- WIOA sub-recipients and/or contractors

Any WIOA form that determines eligibility and grants a benefit to an applicant-such as training, a gas card, or money-should include a uniform disclosure stating the staff member making determination and signing the form is not related to the applicant nor is a close personal acquaintance of the applicant.

Documentation of such disclosures, including the name of the person providing intake and eligibility determination and the nature of their relationship to the applicant, must be maintained in the participant's file. When such a relationship exists it must be disclosed at the time of application to the program.

LWDBs are encouraged to develop agreements, or memorandums of understanding, with other LWDBs. Such agreements and memorandums should include accepting referrals for an eligibility determination and an assessment of whether it is appropriate for an applicant to receive services. When referring a WIOA applicant, the following questions should be asked:
Is this applicant a family member or a close acquaintance of:

- Staff at the American Job Center
- LWDB or subcommittee member
- WIOA executive staff member or supervisor

A LWDA may avoid accusations that certain decisions were influenced by a conflict of interest by having another LWDB conduct determinations and/or assessments of eligibility and appropriateness for service.

V. Documentation and Tracking:

LWDAs must provide a list of workforce entities who have disclosed any of these close relationships to WIOA staff, to management, or to other specific stakeholders of the workforce development system. This list should be given to the Program Accountability Review (PAR) unit monitors at the onset of all monitoring visits.

VI. Monitoring for Compliance:

LWDBs are required to provide training concerning internal conflicts of interest and must document proof of training; documentation of training must be available for review and audit purposes. This training should involve any of the entities mentioned who are directly involved with making

assessments and determining the eligibility of participants. LWDBs must also ensure that all new staff members and providers are informed about this policy.

VII. Local Workforce Development Boards:

All LWDBs (and Youth Standing Committees) shall, at minimum, meet the following requirements:

A. Voting on Matters under Consideration by the Local Workforce Development Board:

- A LWDB member may not cast votes or participate in any decision making about services provided by such member (or by any organization which that member directly represents). This includes:
  - Any provision of services by such member (or by an entity that such member represents); or
  - Any action which gives direct financial benefit to such member, to the immediate family of such member, or any organization the member represents[2].

B. Engaging in Other Activities that May Pose a Conflict of Interest:

A LWDB member may not cast votes or participate in any decision-making on any matter that would provide any direct financial benefit to that member or to that member's organization.

II. Duties of Local Workforce Development Board Members:

- Recuse themselves from their official LWDB duties if they involve a conflict of interest.
- Advise the board of any potential conflicts of interest.
- Ask the board for an opinion if there are any doubts whether or not specific situations involve a conflict of interest.
- Provide a written declaration to the LWDB Chairperson that includes all substantial business interests or relationships such board members, or their immediate families, have with all businesses or organizations that have received, currently receive, or are likely to receive contracts or funding from the LWDB. Such provisions should be made to the LWDB prior to members taking office.
- Appoint an individual to review the disclosure information in a timely manner and to advise the LWDB Chairperson and appropriate members of potential conflicts.
- Ensure members disclose the nature and extent of the interests or relationships and abstain from discussions and voting on, or refrain in any other way from participating in, decisions on such matters. This should be done prior to discussions, votes, or decisions on any matters before a LWDB. If such members, or persons in the immediate family of such members, have substantial interests in or relationships to business entities, organizations, or properties that would be affected by any official LWDB action. All such abstentions must be recorded.
- Select or designate an organization to perform duties related to WIOA, such as developing a written agreement with the LWDB and CLEOs. This agreement clarifies how the organization will carry out its multiple responsibilities while demonstrating compliance with WIOA, corresponding regulations, relevant Office Management and Budget circulars, and with this conflict of interest policy. This agreement is also to: limit conflict of interest, minimize fiscal risk, and develop appropriate steps within the single entity performing multiple functions.
- Ensure that LWDBs and their contractors make this information available to appropriate staff members to ensure that they are familiar with its requirements in order to prepare state or local plans and the conflict of interest policy.

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[2] 29 CFR 97.36(b)(3)

- Ensure that the LWDB requires its members, or its administrative staff members, do not directly control the daily activities of its workforce service providers, its workforce system partners, or its contractors.
- Make sure that any LWDB, selected as a One-Stop Operator (OSO), establish sufficient "firewalls" and conflict of interest policies and procedures that are consistent with this policy.

III. Functions of the Fiscal Agent, Board Staff, One-Stop Operator, and Service Providers:

A single entity may not perform the functions of Fiscal Agent, LWDB staff, OSO, and career service provider. The fiscal agent may function in a duel capacity as staff to the board, or alternately, LWDBs may hire direct staff for this function. However, in order to ensure compliance with firewall requirements the Fiscal Agent, staff to the LWDB, or other board staff entities may not be a provider of career services[3].

An entity designated by the CLEO as fiscal agent may not also serve as the OSO and/or provider of career services. This prohibition is in place to ensure fiscal integrity with monitoring, performance, and procurement requirements. An entity serving as LWDB staff (or the LWDB itself), may not serve as the OSO and/or career service provider (except for services under WIOA Section 171). LWDBs must competitively procure the OSO[4]. The Request for Proposal (RFP)-submitted by the OSO-may include the provision of career services, thus allowing a single entity to serve as OSO and service provider. If the RFP does not include this scope, the LWDB must competitively procure the services providers and follow for consumer choice[5]. A single entity may serve as fiscal agent and staff to the board, or separate entities may be used for each function. A LWDB may also opt to form as a 501(c) and hire direct staff to carry out board functions.

IV. Penalty:

If any of the entities mentioned in "Program Integrity" section of this policy are not in compliance with this conflict of interest policy, Workforce Services staff may temporarily withhold cash payments pending correction of the deficiencies reported by PAR. Furthermore, the SWDB shall have the authority to decertify a LWDB for fraud or abuse at any time after providing notice and an opportunity for comment[6].

Contact:

For any questions related to this policy, please contact the Program Integrity Unit at Workforce.Board@tn.gov.

Kenyatta Lovett, Workforce Services Assistant Commissioner

Revised: February 4, 2020

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[3] WIOA Section 134(c)(2)(C)
[4] WIOA Section 121(d)(2)(A)
[5] WIOA Section 107(d)(10)(E)
[6] WIOA Section 107(c)(3)(A)