

Interim Policy on Conflict of Interest

Reference:

Workforce Innovation and Opportunity Act (WIOA) Sec. 101, 102, and 107; Workforce Innovation and Opportunity Act – Notice of Proposed Rulemaking, 20 CFR §§ 679.430, 683.200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule (Uniform Guidance), 2 CFR 200.

Background:

The State Plan must establish a policy that identifies the circumstances that may present a conflict of interest for a State board or local board member, or the entity or class of officials that the member represents, and procedures to resolve such conflicts.¹

This conflict of interest policy ensures that individuals employed by or representatives of organizations entrusted with public funds and their immediate family members will not personally or professionally benefit from the award or expenditure of such funds. This policy provides that each grant recipient and subrecipient must ensure that no individual in a decision-making capacity engages in any activity if a conflict of interest (real, implied, apparent, or potential) is involved. This includes decisions involving the selection, award, or administration of a grant, subgrant or contract supported by WIOA funds.

Action:

After a 10 day review period, this policy is considered a final interim policy. Questions and comments should be submitted in writing to the WIOA Policy Mailbox: ndol.wioa_policy@nebraska.gov.

Local areas need to establish a policy on conflict of interest addressing the provisions identified in this policy as well as ensure their local WIOA Plan addresses the requirements set forth in this policy.

Policy:

Caseworkers

Career planners and other caseworkers cannot enroll, case manage, or otherwise directly work with family members as participants, applicants, or registrants. When a family member of a career planner or case worker is in need of services, that person must be assigned to someone else in order to avoid a real or apparent conflict of interest.

State and Local Boards

A member of the State board, a local board, or a standing committee must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide

¹ WIOA Section 102(b)(2)(E)(i)

any direct financial benefit to that member or a member of his or her immediate family.² Neither membership on the State board, a local board, or a standing committee, nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.³

In accordance with § 200.112 of the Uniform Guidance, recipients of federal awards must disclose in writing any potential conflict of interest to the Department of Labor. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.⁴

Entities Performing Multiple Functions

Local organizations often function simultaneously in a variety of roles, including local fiscal agent, local board staff, One-Stop operator, and direct provider of career services or training services. Any organization that has been selected or otherwise designated to perform more than one of these functions must develop a written agreement with the local board and chief elected official to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and Nebraska's conflict of interest policy.⁵

Procurement

Issues Related to Employees

Each grant recipient and subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the grant recipient and subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, grant recipients and subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the grantee or grant recipient and subrecipient.⁶

Issues Related to Parent, Affiliate, or Subsidiary Organizations

If the grant recipient and subrecipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the grant recipient and subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary

² WIOA Section 101(f)(2) and 107(h) and, 20 CFR § 683.200(c)(5)(i)

³ 20 CFR § 683.200(c)(5)(ii)

⁴ 20 CFR § 683.200(c)(5)(iii)

⁵ 20 CFR § 679.430

⁶ 20 CFR § 200.318(c)(1)

organization, the grant recipient and subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.⁷

Issues Related to Board and Council Members

Every state or local Workforce Development Board member in Nebraska, regardless of occupation, is considered a public official. Consequently, they are subject to the Nebraska Political Accountability and Disclosure Act.⁸ Those circumstances that would constitute a conflict of interest for all members of the state and local boards would include hiring of immediate family members, soliciting or accepting something of value, use of a public position for personal gain, use of public resources, and interests in contracts.

Issues Related to Grant Recipients and Subrecipients

In accordance with § 200.112 of the Uniform Guidance, recipients of federal awards must disclose in writing any potential conflict of interest to the Department of Labor. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.⁹

Incumbent Worker Training

As stated above, a state board member, a local board member, or a standing committee member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or the member's immediate family.¹⁰ For example, a local board member who is also an employer who wants to use services on a fee-for-service basis would be prohibited from voting to approve the use of local area services, facilities, or equipment for employment and training activities to such board member's incumbent workers.

Disclaimer:

This policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

⁷ 2 CFR § 200.318(c)(2)

⁸ The Nebraska Political Accountability and Disclosure Act (Neb. Rev. Stat. 49-1401 to 49-14141) addresses, among other things, conflicts between the private interests of public officials and his or her duties as such an official.

⁹ 20 CFR § 683.200(c)(5)(iii)

¹⁰ 20 CFR § 683.200(c)(5)(i)