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Policy Number:	2020-1
Subject of Policy:	Conflict of Interest
WIOA Citation:	WIOA Public Law 113-128 enacted July 22, 2014 TEGL 27-14 WIOA §§ 101(f) s 102(b)(E)(i) s 107(h) s121 (d)(4)(A) NPRMs 20 CFR §§ 679.430 s683.200 (c)(5) & (g) & (h) 2 CFR 200.112 & 200.318
Prior Policy:	This is a new policy;
Action:	Approve this policy to satisfy State and Federal regulations.
Effective Date:	January 31, 2019

FEDERAL POLICY

2 CFR 200.211 & 2CFR 200.318 is Local Board Policy. (attached)
 26 CFR 1.501(c)3-1 is Local Board Policy. (attached)

STATE POLICY

PY15-07 Conflict of interest is Local Board Policy. (attached)
 MRS Title 13-B, §718 is Local Board Policy. (attached)
 Maine Attorney General Guide to Charitable Corporations (attached)

PURPOSE

This purpose of this policy is to satisfy requirements of both Maine’s Workforce Development System, and its public charity operation requirements. This policy is intended to supplement but not replace any applicable State or Federal laws governing conflict of interest.

BACKGROUND

The integrity of, and public trust in, Maine’s one-stop delivery system relies on the good character of all entities entrusted with funds and responsibility for guiding, overseeing, and/or delivering services. It is incumbent upon those in such positions to avoid even the perceived appearance of conflict of interest. This guidance is to safeguard that any individual with decision-making capacity will not engage in any activity for which a conflict of interest (real, implied, apparent, or potential) is involved. This includes decisions involving the selection, award, or administration of grants, subgrants, or contracts, or any parts thereof, that are supported by Federal or State funds.



POLICY

Board and Committee Members:

No State or Local Board member, or standing committee member shall cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization that member directly represents), nor on any matter which would provide any direct financial or personal benefit to that member or a member of his/her immediate family. In such instances, a board member shall abstain from voting. The abstention must be reflected in the official minutes of the meeting. Neither membership on such board or standing committee, nor the receipt of WIOA funds to provide training and related services by itself violates these conflict of interest provisions.

Board and committee members, chief elected officials and staff must be informed of and educated about situations that could be perceived as a conflict of interest and the requirements of this policy and must sign a statement affirming their understanding of these requirements and their agreement to formally disclose any potential conflict of interest while performing their duties.

Awardees/Contractors/One-Stop Operators

Awardees, contractors, and grant recipients of WIOA funds must disclose, in writing, any potential conflict of interest, including any conflict of interest arising from the relationships of the one-stop operator with any particular training service provider or other service provider.

Staff Members:

State Agency or Service Provider staff members serving in a case management capacity, must not enroll, case manage, or otherwise work directly with family members as participants, applicants, or registrants. When a family member is in need of services, he or she must be assigned to a different caseworker/case manager (preferably at a different service site) to avoid any real or perceived conflict of interest. Family includes any staff members' spouse, parents, children, brothers or sisters and spouses of such parents, children, brothers or sisters.

Duty to Disclose:

Any individual subject to this policy who suspects that his or her personal or financial advantage may be considered a conflict of interest, real or perceived, must disclose all material facts to the appropriate director and/or members of the relevant board or committee or appropriate agency manager. If the facts demonstrate that a real or perceived conflict of interest exists, the director, board chair or agency manager may require that the individual recuse him or herself from involvement in, or discussion or vote on, the matter at hand and will ensure that such recusal is documented in the official minutes of the meeting or other pertinent agency document file.



Multiple Roles

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 that clarifies how it will carry out its responsibilities while demonstrating compliance with WIOA regulations, relevant OMB circulars, and this conflict of interest policy.

Nepotism

Nepotism is the practice among those with power or influence of favoring relatives and friends by giving them jobs. NPRM 20 CFR 683.200(g) states that: "No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual. To the extent that a local requirement regarding Nepotism is more restrictive than this provision the local requirement must be followed."

Competitive Selection/ Procurement

As required under 2 CFR 200.318, entities authorized to award contracts on a competitive basis must maintain written standards of conduct covering conflicts of interest and governing the activities of its employees and/or members engaged in the selection, award or administration of a contract funded with Federal funds.

No employee, officer or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such conflict arises when the employee, officer, or agent or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or gains a tangible personal benefit from such contract.

Entities with decision making authority over WIOA funds, State and local entities from all four core partners must not solicit or personally accept gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor or participant. However, entities may set standards for situations in which the financial interest is not substantial, the consideration is not related to the procurement activity, and/or the gift is an unsolicited item of nominal value. Entities or members knowingly violating this policy may be subject to disciplinary action that may range from formal reprimand, to dismissal and, depending upon degree of violation, debarment, suspension or termination of awardee status.

Mandatory Disclosure:

All recipients of Federal awards must disclose, as required under 2 CFR 200.113, in a timely manner, in writing to the awarding agency or pass-through entity, any and all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the



Federal award. Failure to make required disclosures can result in temporary withholding of cash payments, disallowed costs, suspension or termination of the award, and other remedies for non-compliance including suspension and debarment.

Local Board Policy Requirements:

This conflict of interest policy meets these above requirements. This policy requires that each board member and chief elected official sign a conflict of interest form, that is dated and that affirms their understanding of an agreement to the requirement to formally disclose any potential conflict of interest and to abstain from voting or participating in the selection or awarding of contracts and amendments to contracts to service providers should such conflict of interest, perceived or real, be evident. This includes alterations to the financial terms of any contracts with a service provider.

Perceived Conflict of Interest is the one and the same as Conflict of Interest

It is incumbent upon Local Board members, CLEOs, and staff to avoid even the perceived appearance of conflict of interest. This guidance is to safeguard that any individual with decision-making capacity will not engage in any activity for which a conflict of interest (real, implied, apparent, or potential) is involved.

If such a conflict is declared or perceived and reasonably documented, a Board member shall abstain from voting on items, leave the room during discussion, and not influence members of the Board or CLEOs as is the spirit of Sunshine proceedings through any method of communication or influence including via social media, texting, telephone calls or emails. Board members, CLEOs and staff may provide reasonable documentation to communicate their agreement or disagreement of the conflict of interest.

Influence is defined as “to sway or affect based on prestige, wealth, ability, or position” by means which “operates without any direct or apparent effort”.¹ It has also been called “the capacity or power of persons or things to be a compelling force on or produce effects on the actions, behavior, opinions, etc., of others”.²

Disciplinary Actions - WIOA

2 CRF 200.318 calls for written standards of conduct covering conflicts of interest and governing the actions of its employees, officers and agents engaged in the selection, award and administration of contracts. It also requires provisions for disciplinary actions to be applied

¹ American Heritage Dictionary. (Dec 15, 2019), Definition of “influence, <https://ahdictionary.com/word/search.html?q=influence&submit.x=44&submit.y=11>

² Dictionary.com. (Dec 15, 2019), Definition of “influence, <https://www.dictionary.com/browse/influence?s=t>



for violations of conflict of interest or governance standards by officers, employees, or agents of CWMWDB.

This Local Policy includes the required disciplinary provisions: The procedures for such individual and unusual circumstances are at the discretion of the CLEOs, who may further give such authority to the full Board.

Maine Attorney General Says– Look Out for Conflict of Interest

As a board member, you have a duty to act in the interest of the corporation. Board members must avoid transactions in which they or their family members benefit personally, unless such transactions are fair to the corporation and approved by the full board.

The board of directors may approve (before or after the fact) transactions which are fair to the corporation, even if a member has a personal interest, if the other board members know of that interest and the details of the transaction. Such approval requires a vote by a majority of the board members who have no direct or indirect interest.

If the board is unable to make a decision regarding a transaction in which a board member has a personal interest, one or more board members may request that the transaction be approved by the Attorney General or by the Superior Court.

The board should consider adopting a conflict of interest policy to help guide decision making when faced with conflict issues.

Because the interests of the organization as a whole are paramount, Maine law requires that no more than 49% of the individuals on the board of directors may be "financially interested persons."

An individual who has received or is entitled to receive compensation for personal services rendered to the corporation by that individual within the previous 12 months is a financially interested person. The spouse, brother, sister, parent or child of the board member is also considered in determining financial interest.

The board should consider requiring directors to complete annually a disclosure statement listing other organizations or businesses in which they have a personal or financial interest. Finally, on the topic of conflict of interest, Maine law prohibits loans from charitable corporations to its directors or officers.



END

Adopted 1/28/2020 by the CWMWDB and CLEO.