

## **ADMINISTRATIVE POLICY NO. AP- 207, Change #1**

**Subject: WCCNM Conflict of Interest Policy**

**Effective: PY18 12/10/2018**

**SUBJECT: Conflict of Interest Policy** under the Workforce Innovation and Opportunity Act (WIOA) governing WIOA Program Operators, designated fiscal agent and administrative entity, American Job Centers, Local Workforce Development Board/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 for all Grantees, sub-recipients, contractors, staff, and board members of WCCNM conducting services and business within the guidelines that will prevent actual, potential, or perceived and questionable conflicts of interest.

**BACKGROUND:** Based on the 2014 release of new Uniform Administrative Guidance<sup>1</sup>, WIOA expands the definition of “conflict of interest,” from “*direct or indirect*” under WIOA, to “*real, apparent or organizational*” conflict of interest. Safeguards must be in place, ensuring that all those served in the program are not only eligible and suitable but also protected from being part of the perception of impropriety or conflict of interest.

The Workforce Connection of Central New Mexico (WCCNM) recognizes that by its very composition, conflicts of interest and issues concerning the appearance of fairness may arise. Therefore, it is essential for the Board members and Board staff to be sensitive and err on the side of caution when potential, perceived, or real conflict or matters of fairness occur.

WCCNM is committed to maintaining the highest of standards of ethical conduct and to guard against problems arising from real, perceived, or potential conflict of interest. All partners, providers, and one-stop operators at every level of participation in the Workforce System funded by the WIOA are expected to read, understand and apply this policy to ensure system integrity and effective oversight of the Workforce System.

Standards of conduct covering conflicts of interest governing the performance of WCCNM’s employees may be found in Mid Region Council of Government’s Personnel Rules and Regulations. To accomplish these purposes, the WCCNM establishes the following definitions, actions, and guidelines for interpretation:

1. Compliance with the Law: It is the WCCNM’s policy to be knowledgeable of and comply with all applicable laws and regulations of the United States and the State of New Mexico in a manner that will reflect a high standard of ethics. Compliance

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<sup>1</sup> 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (Code of Federal Regulations)

does not comprise one's entire ethical responsibility; rather it is a minimum, and an essential condition for adherence to mission and duties.

2. Areas of concern are those actions or lack of actions which may lead to conflict of interest or the appearance of conflict of interest or to a perception of unfairness related to WCCNM business, Board, and Committee meetings. Specific areas which may pose problems include but are not limited to, comments made in public, information sharing, and disclosure of associations.

**Comments Made in Public:** Central Region Local Workforce Development Board (LWDB) and Committee Members are encouraged to act in a public relations capacity for the LWDB. This includes public speaking engagements and comments in a public forum. Because there is interest in LWDB Member's actions, members should differentiate between descriptive comments, which relate to actions already taken by the Board, and statements, which imply future LWDB decision-making, or the ability to influence decision-making.

**Information Sharing:** LWDB and committee members are encouraged to share information with the community about WCCNM activities. To the extent possible, access to information regarding procurement of services should be available at the same time and under the same circumstances to all parties. Such information includes the local plan, request for proposals, notice of meetings, meeting minutes, and policies.

**Disclosure of Associations:** LWDB and committee members have professional and personal associations throughout the community. Such associations have been and will continue to be of significant benefit to the WCCNM. Where a direct or indirect financial conflict of interest exists, a LWDB or committee member may not vote or serve on a rating team. When associations raise appearance of fairness as to an issue, LWDB and committee members should qualify statements in public by disclosing the association and minutes of the meeting should reflect the disclosure.

3. **DEFINITIONS:** Conflict of Interest - Conflict between the official responsibilities and the private interests of a person or entity that is in a position of trust. *A real, or actual* conflict of interest situation arises when an individual or organization has a financial or other personal interest in, and participates in, the selection of awarding of funds for an organization. Financial or other interest can be established either through ownership or employment. As defined by USDOL, the "*appearance*" of conflict of interest is when there are circumstances that would cause a reasonable person with knowledge of the relevant facts to question the individual's impartiality in the official matter. *Organizational conflict of interest* focuses on the *institution or entity* (and everyone within the institution): because of other activities or relationships, the *institution* is unable to: 1) render impartial assistance or advice, 2) cannot perform work in an objective way, or 3) has an unfair competitive advantage compared to other entities.

4. **Providing Services to Participants Funded under the WIOA Program:** The WIOA program should be accessible to any individual, in any local area, who is eligible and suitable for available services subject to WCCNM policies and procedures. However,

when applicants have a close relationship with WIOA staff members, management, and other specific stakeholders of the Workforce Development System, access to program services should not be based on such relationships or based on political influence. It is possible that, even without any intention to misuse WIOA funds, that 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.

**5. Funding Integrity.** General authorization for providing 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, Local Workforce Development Boards, designated fiscal agents, and administrative officials must help meet the objectives of WIOA through effective policies, procedures, and safeguards that ensure the integrity of these public funds. Throughout the Local Workforce Development Areas 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.

**6. Program Integrity.** Local Workforce Development Boards must establish a disclosure statement on the eligibility or intake form or a document showing that any of 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, or a special interest in, that particular applicant. Such workforce members are:

1. Chief Local Elected Officials
2. Local Workforce Development Board members
3. Local Workforce Development Board subcommittee members
4. WIOA executive staff and supervisors
5. WIOA employees
6. Job center partner staff
7. WIOA subrecipients and/or contractors

Any WIOA form that determines applicant eligibility and grants or confers a benefit (training, gas card, money etc.) to an applicant should include a uniformed disclosure stating the staff member making determination and signing the form is not related to the applicant or a close personal acquaintance of the applicant. Documentation of such disclosures, including the name of the person providing intake and eligibility determination and including the nature of the relationship, 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.

**7. Documentation and Tracking.** Local areas 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.

**8. Monitoring for Compliance.** WCCNM is required to provide training concerning internal conflicts of interest and must document proof of training and make that documentation available for review and audit purposes. This training should involve any of the entities mentioned who will directly be involved with making

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

**9. CONFLICT OF INTEREST POLICY IMPLEMENTATION FOR LOCAL WORKFORCE DEVELOPMENT BOARD, WORKFORCE CONNECTION OF CENTRAL NEW MEXICO:**

- a. No individual in a decision-making capacity shall engage 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 sub grant or contract supported by WIOA or any other federal funds.
- b. WCCNM members may not vote on any matter that would provide direct financial benefit to the member of the WCCNM member's immediate family, or on matters of the provision of services by the WCCNM member or the entity the WCCNM member represents.
- c. WCCNM members must avoid even the appearance of a conflict of interest.
- d. WCCNM member should ask the board for an opinion if there are any doubts whether or not specific situations involve a conflict of interest.
- e. WCCNM members shall monitor potential conflicts of interest and bring them to the WCCNM's attention in the event a WCCNM member does not make a self-declaration.
- f. WCCNM members shall sign the WCCNM Conflict of Interest Code Form and Statement of Financial Interests (included in Conflict of Interest form) .
- g. The WCCNM shall appoint an individual to timely review the disclosure information and advise the WCCNM Chairperson and appropriate WCCNM members of potential conflicts. Signed Conflict of Interest Code Forms shall be maintained by the WCCNM and be made available for review.
- h. Prior to discussion, vote, or decision on any matter before the WCCNM, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization, or property that would be affected by any official WCCNM action, the WCCNM member shall disclose the nature and extent of the interest or relationship and shall abstain from discussion and voting on or in any other way participating in the decision on the matter. All disclosures and abstentions shall be recorded in the minutes of the WCCNM meetings and shall be maintained as part of the official record.
- i. The WCCNM shall ensure that the WCCNM members, WCCNM support staff, fiscal agent, and fiscal agent staff do not direct, and are not involved in, the daily activities of workforce service providers, workforce system partners or contractors.
- j. WCCNM members shall not receive compensation for their services on the WCCNM. WCCNM members may submit a request for reimbursement of

reasonable and allowable expenditures for special circumstances in accordance with the Act and applicable federal and state regulations on a case-by-case basis.

- k. A WCCNM member or a member of a WCCNM committee cannot cast a vote or participate in any decision-making about providing services by such member (or by any organization that member directly represents) or on any matter that would provide any direct financial benefit to the member or to the member's organization.
- l. WCCNM members or a member of a WCCNM committee or agents of the agencies making awards cannot solicit or accept gratuities, favors, or anything of monetary value from awardees, potential awardees, or other parties to agreements. However, the WCCNM allows for situations where the gift is an unsolicited item of nominal value worth \$50.00 or less.
- m. The WCCNM and their contractors shall make this information and policy available to appropriate staff members to ensure that these staff members and contractors are familiar with it and its requirements in order to prepare state or local plans, provide services, and implement the conflict of interest policy.
- n. WCCNM members and their organizations may receive services as a customer of a local workforce service provider or workforce system partner.
- o. Membership on the WCCNM, or being a recipient of WIOA funds to provide training or other services, is not itself a violation of conflict of interest provisions of WIOA or corresponding regulations.

**10.PENALTIES OR DISCIPLINARY ACTIONS:** Violations of this policy may be taken up to and including termination of board membership for violation of this policy by any individual. If any related entities or organizations are not in compliance with this conflict of interest policy, cash payments may be withheld pending correction of the deficiencies. The LWDB Executive Committee may evaluate any violations of these provisions on a case-by-case basis and recommend to the entire board, if and what penalties, sanctions or other disciplinary action are appropriate.

#### **REFERENCES :**

- □ Section 10-16-1 et seq. NMSA 1978
- □ 29 CFR 97.36(3) Procurement
- □ 2 CFR Part 200.112 and 200.318 and Part 2900 - Office of Management and Budget Uniform Guidance on administrative, cost, and audit provisions for federal grants
- □ 20 CFR 679.430
- □ 20 CFR 683.200(c)(5)
- □ WIOA Section 121(d)(4)
  
- □ WIOA Section 107(h)

#### **APPLICABILITY:**

Local Workforce Development Board, One-Stop Operators, Providers, Partners and Contractors.

**INQUIRIES:**

WIOA Manager 505-724-3629