

**Workforce Arizona Council  
Conflict of Interest Policy**

Approved 02/28/19
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**STATE WORKFORCE CONFLICT OF INTEREST POLICY  
POLICY #8**

**ISSUING AGENCY:** State Workforce Development Board

**SCOPE:** State Workforce Development Board (Workforce Arizona Council), Arizona Department of Economic Security (DES), Arizona Department of Education, Arizona Commerce Authority/Office of Economic Opportunity, Local Workforce Development Boards (LWDB), Local Workforce Administrative Entities (i.e. grant recipients), One-Stop Operators and Workforce Stakeholders

**REFERENCES:** Title I of the Workforce Innovation and Opportunity Act (WIOA) of 2014, (Pub. L. 113-128); WIOA Final Regulations – 20 CFR 679.320, 20 CFR 679.410 and 679.430, 20 CFR 678.600 – 678.635, 20 CFR 683.200, 20 CFR 683.220, USDOL Employment and Training Guidance Letters 15-16, 21-16, State Policy #01 Local Governance.

**EFFECTIVE DATE:** February 28, 2019

**OBJECTIVE:** To establish guidelines for conflict of interest, firewalls, and internal controls required under WIOA for LWDB’s and entities serving in more than one role in the ARIZONA@WORK system.

**TABLE OF CONTENTS:**

- I. Conflict of Interest Defined – Real, Apparent, Organizational
- II. Written Agreement Required
- III. Requirements for Internal Controls
- IV. Requirements for Conflict of Interest Policies
- V. Requirements for Firewalls

**I. Conflict of Interest Defined – Real, Apparent, and Organizational**

A. Conflict of interest refers to circumstances where an individual or an organization the individual represents has competing interests that may affect the individual’s ability to act objectively and without bias. There may be circumstances or actions that have the potential to undermine the impartiality of an individual because of a possible clash between the individual's own interests and their organizational role, or between competing organizational roles, when an individual serves in more than one organizational role.

**Workforce Arizona Council**  
**Conflict of Interest Policy**

Approved  
02/28/19

- B. Interests attributed to the individual with the potential conflict include:
1. Interests of the individual's spouse or children;
  2. Interests of the individual's business partner or outside business interests;
  3. Interests of any organization that the individual serves on behalf of or is an employee of;
  4. Any action or transaction both financial and non-financial that could result in benefit to the individual's financial and non-financial well-being.
- C. Conflicts of interest can be real, apparent, or organizational defined as:
1. Real/Actual conflict of interest: A real conflict of interest exists when an individual in his or her official capacity participates in a decision-making process that has a direct effect on the financial interest of his or her personal or business interest or a member of his or her family.
  2. Apparent conflict of interest: The appearance of a conflict of interest arises where an employee is assigned to participate in an official duty matter where an organization with which the employee has a covered relationship is or represents a party to that matter, or where the matter is likely to affect the interests of a household member, and there are circumstances that would cause a reasonable person with knowledge of the relevant facts to question the employee's impartiality in the official matter.
  3. Organizational conflict of interest: An organizational conflict of interest can arise when actions are taken or may appear to be taken by any entity involved in more than one role, such that the performance of that entity in one role affects its interest in its other role(s). Organizational conflicts must be mitigated with complete separation of duties, supervision, and restrictions on information access.

**II. Written Agreement Required**

- A. The possibility of a conflict of interest is inherent in any organization or entity designated or seeking to be designated to perform more than one of the following functions in the local ARIZONA@WORK system: local fiscal agent, staff to the LWDB, member of the LWDB, one-stop operator (OSO), and direct providers of career services for adults and dislocated worker or youth services.
- B. Any organization or entity that has been selected or otherwise designated to perform more than one of these functions must execute a written agreement with the LWDB and Chief Elected Official (CEO) to specify how the organization will carry out its responsibilities and demonstrate compliance with WIOA and corresponding regulations, Uniform Guidance (2 CFR 200), and the State's conflict of interest policy (20 CFR 679.430).

**Workforce Arizona Council**  
**Conflict of Interest Policy**

Approved  
02/28/19

The written agreement must include the requirements for internal controls, conflict of interest, and firewalls delineated in this policy.

**III. Requirements for Internal Controls**

- A. Recipients of WIOA Title I Adult, Dislocated Worker, and Youth Programs, Title II Adult Education, Title III Wagner-Peyser Act, and Title IV Vocational Rehabilitation funds must have an internal control structure and written policies in place that provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market, or that the U.S. Department of Labor (DOL), the State or the grant recipient considers to be sensitive, consistent with applicable Federal, State and local privacy and confidentiality laws (20 CFR 683.220). DOL has issued specific guidance for the handling and protection of personally identifiable information.

Internal controls are processes established and maintained within an organization to ensure that a Federal award is managed in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award including that the organization evaluates and monitors compliance with applicable laws and regulations, and takes prompt action when noncompliance is identified (Uniform Guidance 2 CFR 200.61 and 200.62, and 20 CFR 683.220).

- B. Internal controls must be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (Uniform Guidance 2 CFR 200.303 and 20 CFR 683.220).
- C. Effective internal controls includes:
1. Process for identifying, evaluating, and deciding how to mitigate risk;
  2. Control activities, documented in written policies and procedures, to ensure management directives are implemented. This includes activities that must have adequate separation of duties such as approvals, authorizations, recording and processing payments, conducting reconciliations, custody of assets, and review of performance;
  3. Information systems sufficient to capture data and other documentation, provide reliable reporting, and demonstrate compliance with Federal and State requirements;
  4. Process for sharing information with staff and Board members; and
  5. Process for monitoring the internal controls to ensure their effectiveness.

**Workforce Arizona Council**  
**Conflict of Interest Policy**

Approved  
02/28/19

**III. Requirements for Conflict of Interest Policies**

- A. The LWDB and the non-Federal entity<sup>1</sup> (i.e. grant recipient represented by the CEO) for the Local Workforce Development Area (LWDA) 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 conflict of interest as defined in this policy (2 CFR 200.318 Uniform Guidance).
- B. The LWDB must comply with the conflict of interest provisions included in the State's local governance policy (Arizona WIOA #1, section X, (H) (k 1-7)) and address these provisions in their bylaws.

**IV. Requirements for Firewalls**

- A. Agencies serving multiple roles must create and maintain appropriate firewalls between roles to ensure the transparency and integrity of the local ARIZONA@WORK system's governance, management, and operation. It is the responsibility of the LWDB to demonstrate that the established firewalls meet the requirements of this policy. Such firewalls pertain to the elected leadership of the State or local area as well as to the Boards. Key areas that require firewalls include procurement and financial system functions and responsibilities, and governance roles/functions including the LWDB and committees, staff to the LWDB, grant administrative entities, fiscal agents, and OSOs.
- B. An appropriate firewall must include the following:
  - 1. A complete separation of duties between the staff functions and duties where the firewall is needed must be created and enforced. For example, there must be a clearly defined firewall between the staff who provide or oversee direct services to program participants and the staff assigned to serve the LWDB etc.

Examples of compliance may include, but are not limited to: 1) the LWDB and its staff exist in an organization separate and distinct from the organization that acts as the One Stop Center Operator and/or service provider; or 2) staff to the LWDB operates in one department of the organization and the One Stop Center Operator and/or service provider operates in another separate and distinct department within the same organization. Departments must demonstrate different reporting structures.

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<sup>1</sup> *Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient (2 CFR 200.36).

**Workforce Arizona Council**  
**Conflict of Interest Policy**

Approved  
02/28/19

2. The separation of duties must ensure that staff assigned to a specific role (i.e. direct service provider, OSO, fiscal agent, etc.) perform only the functions assigned to that role and do not perform functions specifically prohibited for that role.

Examples of conflicts:

- a. The OSO is not permitted to develop the local plan or negotiate local performance measures per WIOA regulations.
  - b. The department responsible for providing adult, dislocated worker, or youth services cannot manage the LWDB member nomination process or conduct other management responsibilities delegated under WIOA to the Chief Elected Official.
3. Responsibilities for the multiple roles must be clearly communicated and documented in a written agreement or policy;
  4. Complete independence over supervision or control of staff;
  5. Physical and electronic access to information is restricted;
  6. Complete confidentiality over information regarding documentation involved in these duties especially when conducting competitive procurement processes; and
  7. Recusal from voting on any related matters applicable to these other duties, when the potential conflict involves the LWDB.
- C. WIOA assigns responsibility and decision-making authority to the LWDB for numerous duties that create an actual or perceived conflict of interest when the LWDB is part of an entity that serves multiple roles. Therefore, firewalls are needed especially when the same entity serves as a direct service provider for adults, dislocated workers, or youth, and/or the OSO, and provides staff to the LWDB. Specifically, the LWDB must:
1. Set policy for the LWDA (in partnership with the CEO), which may include how and where services are provided, as well as monitors performance of the service provider(s);
  2. Develop a budget for the activities of the LWDB, which includes how much to allocate for services;
  3. Negotiate and reach agreement on local performance indicators with the CEO and the Governor;
  4. Determine the roles and responsibilities of the OSO. The OSO's role must include system coordination, and may or may not include provision of career services. Career services provided directly by the OSO must be procured through a fair and open competitive process;

**Workforce Arizona Council**  
**Conflict of Interest Policy**

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----------------------

5. Determine the process for selecting and awarding contracts to service providers for career services not provided by the OSO including whether these services must be competitively procured;
  6. Assess needed changes in services and budget allocation to comply with youth program changes mandated by WIOA;
  7. Identify/select youth service providers best positioned to provide youth program elements resulting in strong outcomes. The LWDB may determine that the grant recipient for the LWDA or designated fiscal agent may provide directly some or all of the youth workforce investment activities. This is a LWDB decision, not a grant recipient decision. If a LWDB chooses to award grants or contracts to youth service providers to carry out some or all of the youth workforce investment activities, the LWDB must award such grants or contracts on a competitive basis (20 CFR 681.400 b);
  8. Provide program oversight, in partnership with the CEO, of youth workforce investment activities authorized under WIOA section 129(c), adult and dislocated worker employment and training activities under WIOA sections 134 (c) and (d); and the entire local ARIZONA@WORK system;
  9. Ensure the appropriate use and management of the funds provided under WIOA IB for the youth, adult, and dislocated worker activities and local ARIZONA@WORK system; and
  10. Ensure the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA section 116.
- D. When procuring services through a competitive process, no entity or individual that has any role in the issuance of a solicitation may compete or submit a proposal under that procurement action including development of requirements, drafting the Request for Proposal (RFP) or Invitation for Bid (IFB), evaluation of proposals/bids, and identification of best entity. If necessary, the entity may have to enlist an outside entity to conduct the procurement process to mitigate risk and conflict of interest.
- E. The same person or department cannot both provide services and oversee/monitor the provision of those services (Joint WIOA Final Rule, page 55898; Federal Register, Vol 81, no. 161, August 19, 2016). There must be appropriate firewalls between staff providing services and staff responsible for oversight and monitoring of services to ensure that the same person or department is not overseeing, monitoring, and evaluating its own performance in providing services. This provision applies when the same entity is a direct service provider and provides staff to the LWDB, or when the one stop operator serves also as a direct service provider (20 CFR 678.625).

**CONTACT ENTITY:** Inquiries regarding this policy must be directed to the Workforce Arizona Council Manager at [Ashley.Wilhelm@oeo.az.gov](mailto:Ashley.Wilhelm@oeo.az.gov) or 602-771-0482.