

**Policy for Conflict of Interest
Northeast Ohio Consortium Council of Governments
Workforce Innovation and Opportunity Act Policy**

POLICY D-05

I. Purpose.

To ensure that the Area 19 NOC COG Workforce Development Board (WDB) members, staff, the administrative entity and grant recipients do not engage in areas of possible conflict of interest. Board members will not involve themselves in Workforce Innovative Opportunity Act (WIOA) related situations that are a conflict of interest, or appear to be a conflict of interest, and acknowledge that kickbacks, gratuities or gifts of any kind are not accepted nor allowable.

II. Effective Date.

Effective immediately, following adoption on March 4, 2020.

III. Conflict of Interest Defined – Real, Apparent, and Organizational.

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.

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.

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 an 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.

IV. Federal Requirements.

A. Written Agreement Addressing Conflicts of Interest Required.

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 Area 19 Workforce system: local fiscal agent, staff to the LWDB, member of the LWDB, one-stop operator, and direct providers of career services for adults and dislocated worker or youth services.

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).

B. Federal Internal Control Requirements.

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).

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).

According to federal regulation, effective internal controls include:

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.

C. Federal Conflict of Interest Requirements.

The LWDB and the non-Federal entity (i.e. grant recipient represented by the CEO (2 CFR 200.36)) 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).

The LWDB must comply with the conflict of interest provisions included in the State’s local governance policy (WIOAPL 15-18.1) and address these provisions in their bylaws.

D. Federal Firewall Requirements.

Agencies serving multiple roles must create and maintain appropriate firewalls between roles to ensure the transparency and integrity of the local Area 19 Workforce 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 entity, fiscal agent, and one stop operators.

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.

2. The separation of duties must ensure that staff assigned to a specific role (i.e. direct service provider, one stop operator, 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 one stop operator 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 (Area 19 Multi-functional Agreement).
 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.

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 one stop operator, and provides staff to the LWDB. Specifically, the LWDB must:

1. Set policy for the Local Workforce Area (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 one stop operator. The one stop operator's role must include system coordination and may or may not include provision of career services. Career services provided directly by the one stop operator must be procured through a fair and open competitive process;
5. Determine the process for selecting and awarding contracts to service providers for career services not provided by the one stop operator 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 Local Workforce Development Area 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 Area 19 workforce 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 Area 19 Workforce system; and
10. Ensure the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA section 116.

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.

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).

VI. Area Policy.

A. Written Agreement.

The Area 19 Workforce Development Board has and will continue to maintain an Agreement referred as the Multi-Function Agreement, which has a term of July 1, 2018 through June 30, 2021. This Agreement, along with the Intergovernmental Agreement, and the By-laws for the NOC COG, and the By-laws for the Area 19 WDB, adhere to the federal requirements sets forth within this policy.

B. Internal Control, Conflicts of Interest and Firewall Requirements.

The Area 19 WDB has and will continue to maintain an Agreement referred as the Multi-Function Agreement, which has a term of July 1, 2018 through June 30, 2021. Within the Multi-Function Agreement, the Area has provided for and addressed internal control, conflicts of interest, and firewall requirements associated with the NOC COG serving as both the administrative staff of the Area 19 Workforce Development Board, and as the Fiscal Agent of the Area 19 Workforce Development Board, and the Fiscal Agent being supervised by the Executive Director for the NOC COG. Additionally, internal control, conflicts of interest and firewall requirements are addressed within the NOC COG employment manual, other miscellaneous fiscal, program and monitoring policies, the By-laws for the NOC COG, and the By-laws for the Area 19 WDB.

Should a potential for a conflict of interest or an appearance of a conflict of interest arise during the course of conducting business, the following procedures will be followed: Board members, program staff, administrative entities and grant recipients will not in any way involve themselves in their review, processing, recommendation, or approval of proposals, programs, and purchase of goods or services. Board members, program staff, administrative entities and grant recipients will not accept kickbacks, gratuities, or gifts of any kind.

Board members of the WDB will be required within ninety days of commencing a new term, or a reappointment for an additional term. All individuals who serve on a competitive procurement

review or scoring team, and are involved in any stage of the procurement process, from planning through proposal evaluation and contract signing, must sign a nondisclosure and confidentiality statement.

In addition, all board members, program staff and the administrative entity **will not**:

1. Vote on, or be involved in, discussions on proposals or agreements such as: On-the-Job-Training (OJT), Classroom Training (CRT), Individual Training Accounts (ITA), Internships and program services for organizations in which they maintain membership on a governing board or interlocking directorate or hold some other relationship.
2. Use their positions for a purpose that may give the appearance of being motivated by a desire for private gain for themselves or for persons with whom they have family, business or other relationships.
3. Accept kickbacks, gratuities and/or gifts of any kind.

Board members, program staff and the administrative entity **will**:

1. Voluntarily absent themselves from meetings where contracts, including those for program services are being discussed and voted upon when one or more of the situations listed in the background section above exists.
2. Complete and sign a disclosure statement identifying potential areas of conflict of interest. Example shown as “**Exhibit A.**”

VII. Disciplinary Action.

Violation of Conflict of Interest Policy for:

| | |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Board Members: | Sanction by Board Responsibility for disciplinary action rests with the Board. |
| Staff: | Appropriate disciplinary action as outlined in county personnel policies and practices. Appropriate legal action. Responsibility for disciplinary action rests with the Agency Director(s). |
| Administrative Entity: | Appropriate disciplinary action as outlined in the Ohio Revised Code. Appropriate legal action. Responsibility for disciplinary action rests with the Administrative Entity. |

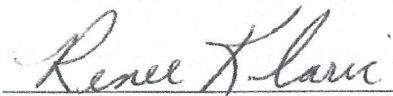
VIII. Other.

These requirements do not prohibit members or their organizations from participating in Workforce Innovation Opportunity Act (WIOA) or County Department of Job & Family Services (CDJFS) contracts, it only limits their participation in decisions involving procurement and service provider selection.

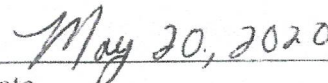
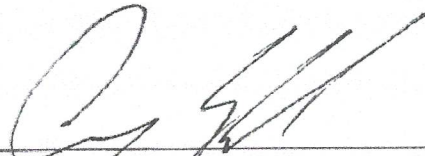
IX. References.

- 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 WIOAPL 15-18.1 (Local Workforce Development Area Governance)

X. Signatures.



Renee Klaric
Area WDB Chair


Date

Casey R. Kozlowski
Ashtabula County Commissioner
Northeast Ohio Consortium Council of Governments,
Chief Elected Official

Date

Original Version Approved: 2020

Subsequent Revisions:

**NON-CONFLICT OF INTEREST/CONFIDENTIALITY STATEMENT
USED FOR COMPETITIVE PROCUREMENT**

I, the undersigned, a member of the Evaluation Committee for Request for Proposal (RFP) for WIOA Services and Programs will perform the evaluation under the guidelines, procedures and requirements of the Local Area 19 Workforce Development Board. I further represent the following:

1. I have a professional interest in seeing that the scoring and evaluation of the vendor responses to this request for proposal can be supported and defended, and that the recommendation of the Evaluation Committee will lead to the selection of the proposal most advantageous to the Local Area 19 NOC COG Workforce, taking into consideration the price and evaluation factors set forth in the RFP.
2. Except as I have disclosed in detail below, I neither have nor shall I during the evaluation acquire any financial interest, direct or indirect, in any provider that would conflict in any manner or degree with my evaluation responsibilities. Members of my immediate family (spouse or children) and other family members who are in my household are subject to the same restriction and disclosure requirements. For purposes of this provision, publicly traded shares in stock of any provider that are selected and administered by a third person, e.g. a mutual fund or retirement plan, are not subject to this restriction. Otherwise, the nature and extent of such financial interests must be disclosed by me to the Local Area 19 NOC COG Workforce for their evaluation of the significance of the financial interest on participation in this evaluation.
3. Notwithstanding my termination of employment or other later disassociation from this evaluation committee, I may not participate in the development of proposals in response to this solicitation.
4. I am aware that this evaluation will involve my knowledge of official and possible provider commercial information not publicly known. I agree not to disclose any confidential or proprietary information gained during the course of my service on this evaluation committee to any person, without written consent of the provider.

If I should become aware of any situation, which might arise, that could alter any of the representations above, or that might otherwise create the appearance of a conflict or other impropriety, I will notify the Area 19 NOC COG Workforce.

Name (print) _____

Title (print) _____

Signature _____

Disclosure of any real, potential or perceived conflict: _____

Exhibit A

AREA 19 NOC COG
WORKFORCE DEVELOPMENT BOARD
DISCLOSURE STATEMENT

WDB _____

Staff _____

LEO _____

I, _____ hereby acknowledge that a potential conflict of interest could arise as a result of my position as _____ of _____ and my service as _____ administrative entity, _____ staff member, _____ member of the Area 19 Workforce Development Board, _____ member of the Area 19 NOC COG Board. Such conflict may arise in one or more of the awarding of a contract or training program to an organization that I as set forth below:

- _____ On-the-Job Training (OJT) contracts
- _____ Classroom Training (CRT) contracts
- _____ Occupational Skills Training and/or Individual Training Account (ITA) contracts
- _____ Incumbent Worker Training (IWT) contracts
- _____ Customized Training and other Service Training contracts
- _____ Specialized participant services
- _____ Work Experience & Internships
- _____ Program and Administrative Services
- _____ The awarding of all other contracts.

I understand that in executing this document, I am not waiving my organization's right to forever participate in a contract. However, in executing the same, I declare that it is my intention to avoid discussions and/or votes on any issue impacting any organization, agency or business I represent.

Organization/Agency/Business

Signature

Date