



**STATE OF HAWAII**  
**WORKFORCE DEVELOPMENT COUNCIL**  
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(SN 11)

**WIOA BULLETIN NO. 11-16**

**DATE:** September 16, 2016  
**TO:** WIOA Partners  
**SUBJECT:** Conflict of Interest Policy

**I. Introduction**

29 USC § 3112(b)(2)(E)(i) of the Workforce Innovation and Opportunity Act of 2014 (“WIOA”) requires that the Unified State Plan establish a conflict of interest 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.

This conflict of interest policy aims to ensure that individuals employed by or representatives of organizations entrusted with WIOA 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.

**II. Policy**

It is the policy of WDC that divisions and employees engaged in the administration, oversight, and operation of federal WIOA grant programs minimize organizational conflicts of interest through segregation of duties, disclosure, and recusal in order to foster public and partner confidence.

29 USC § 3111(f) specifically sets forth WDC's obligations regarding conflict of interest. A WDC board member may not vote on a matter under consideration by the WDC board regarding the provision of services by such member or that would provide direct financial benefit to such member or the immediate family of such member. In accordance with 2 CFR § 200.112, recipients of federal awards must disclose in writing any potential conflict of interest to the U.S. Department of Labor.

Subrecipients must disclose in writing any potential conflict of interest to WDC, the recipient of grant funds.

29 USC § 3122(h) sets forth local boards' obligations regarding conflict of interest. Local areas shall 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.

#### **A. Disclosure**

Potential conflicts of interest arise from the Department of Labor's (DLIR) Workforce Development Division's (WDD) required membership on the WDC board and local boards that establish strategic direction and policy and issue and approve competitive requests for proposals which WDD may pursue. It is the policy of the agency that staff who serve on such boards as members or designee members do the following:

- i. Disclose conflicts of interest and recuse themselves from discussions or decisions related to these issues.
- ii. Ensure that disclosures of conflict of interest made during board meetings be documented in meeting proceedings and in approved minutes.
- iii. Contact WDC's Executive Director or the Ethics Commission with questions regarding possible conflicts of interest.

#### **B. Recusal/Abstention**

DLIR and WDD staff who serve as members or designee members of the WDC board or local boards must recuse themselves from involvement in discussions or decisions in which the agency has a conflict of interest. Staff who serve on such boards must do the following:

- i. Abstain from offering motions and/or voting on matters wherein DLIR/WDD has disclosed a conflict of interest, to include physically leaving the room when such discussions are underway so as not to influence deliberations.
- ii. Abstain from activities that could unduly influence the outcome of the award process (e.g., participating in board discussion, development of RFPs, serving on RFP review and scoring panels or committees).

#### **C. Nondisclosure**

DLIR/WDD staff who serve as members or designee members of the WDC board or local boards are prohibited from sharing with any and all DLIR or WDD staff members any advanced, non-public information related to Requests for Proposals that will be issued by those boards and for which WDD may be a respondent to avoid providing an unfair advantage to the agency in the procurement process.

### **III. Conflicts of Interest under the Hawaii State Ethics Code**

Hawaii Revised Statutes §84-14 of the Hawaii State Ethics Code codifies the Standards of Conduct for members of Hawaii's State (but not County) boards, commissions, and committees. Any questions should be directed to the Hawaii State Ethics Commission.

#### **A. Abstention from Official Action**

HRS § 84-14(a) prohibits State employees, including members on State boards, commissions, and committees, from taking any official action directly affecting a business or other undertaking in which the employee has a substantial financial interest or a private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

Under HRS § 84-3, an "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority. A "financial interest" means an interest that is held by individual, his or her spouse, or a dependent child which includes:

- An ownership interest in a business (including ownership of stock in a business).
- A directorship or officership in a business.
- Employment or prospective employment for which negotiations have begun.
- A creditor interest in an insolvent business.
- A loan or other debtor interest.
- An ownership interest in real or personal property.

For example, if a member or his or her spouse is employed by Company A, then he or she has a "financial interest" in Company A under the State Ethics Code. This means that HRS § 84-14(a) prohibits the member from taking any official action affecting Company A. If a matter affecting Company A comes before the WDC board, that WDC board member must disclose this conflict of interest to the WDC Chair and abstain from participating in decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority regarding that matter. This generally means that the member must abstain, not just from voting on the matter, but also from participating in discussions and deliberations about the matter.

#### **B. Acquisition of New Financial Interests**

HRS § 84-14(b) prohibits State employees, including members on State boards, commissions, and committees, from acquiring a new financial interest in any business or undertaking if the member has reason to believe that the business or undertaking may be directly involved in official action to be taken by the member.

### **C. Assistance or Representation of Others**

HRS § 84-14(c), -14(d), and -14(e) prohibits State employees, including members on State boards, commissions, and committees, from assisting or representing any person or business for pay on the following matters:

“(c) No legislator or employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that state or county agency unless the employee has complied with the disclosure requirements of section 84-17.”

### **D. Exception**

29 USC § 3111 and HRS § 202-1 require the appointment of certain WDC board members from private sector, workforce sector, and labor organizations due to their expertise and experience in those areas. For these members, there is an exception in the State Ethics Code [HRS §84-14(a)(2)]. These members are not required to disqualify themselves from board or commission action that will affect their industries or professions as a whole, even though their own financial interests may also be affected by such action. These members are only required to disqualify themselves from action that directly and specifically affects businesses in which they have substantial financial interests.

## **IV. Local Boards/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, Hawaii’s conflict of interest policy, and the relevant county policies.

## V. WDC State Functions

### A. Segregation of Duties

WDC and WDD personnel are prohibited from communications that would (1) interfere with WDC's oversight over WDD as a service provider; and/or (2) give WDD a competitive advantage in the procurement process to be a service provider. WDC and WDD will establish and maintain the following segregation of duties among its internal divisions as it relates to responsibilities under WIOA:

<b>Responsibilities</b>	<b>Title I-Adult, Dislocated Worker, Youth</b>	<b>Title III- Wagner Peyser</b>
Fiscal: Responsible for advising on WIOA fiscal policy and allocating resources for grants and contracts with LWDBs, reimbursing expenditures related to those contracts, and monitoring those contracts for fiscal and programmatic compliance with the law; and submitting federal financial reports to the U.S. Department of Labor (USDOL).	WDC	WDD
Programs: Responsible for WIOA grant reports used by the agency, LWDBs, and others and to analyze performance, apply for grants, and identify potential projects and for submitting required programmatic reports to the USDOL.	WDC	WDD

### B. Separating Administration and Implementation

WDC board will develop strategic initiatives in consultation with local boards; WDC staff will review subsequent proposals and negotiate and recommend funding of local boards; WDC board will serve as the approver of the recommendations; and WDC staff in consultation with the WDC board will provide post-approval administration and oversight of grants and contracts, including performance-related corrective actions.

### C. Data Sharing/Availability

WDC will make WIOA-related financial, participant, and performance data (including federal reports) available to local boards (within the limits of relevant confidentiality provisions).

#### **D. Signature/Approval Authority**

WDC's Executive Director will have signature/approval authority for all WDC and WIOA grants, contracts, and bulletins.

#### **E. Grants Administration Protocol**

WDC staff responsible for administration of WIOA grants and contracts will only engage designated local boards' sub-grantees/contractors. They will not engage sub-sub-grantees/sub-contractors unless explicitly requested by local boards in writing.

#### **References**

- Workforce Innovation and Opportunity Act (WIOA) Sec. 101, 102, and 107
- Workforce Innovation and Opportunity Act (WIOA), 20 CFR 679.430, 20 CFR 683.200
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule (Uniform Guidance), 2 CFR 200.112 and 2 CFR 200.113
- 29 CFR § 97.36(b)(3)
- Hawaii Revised Statutes Chapter 84 – Hawaii State Ethics Code

#### **Disclaimer**

This policy is based on WDC's interpretation of WIOA and the U.S. Department of Labor's Final Rules for WIOA. This policy may change due to the release of further Training and Employment Guidance Letters, and other guidance issued by the U.S. Department of Labor.

#### **Inquiries**

Inquiries regarding this bulletin may be directed to Allicyn Tasaka at 586-9169.

#### **Attachments/Additional Resources**

- Attachment I, Workforce Development Council Organization Structure



ALLICYN C. H. TAsAKA  
Executive Director

c: ASO-WIOA Unit

## Attachment I

### Hawaii Workforce Development Council Organization Structure

