

OFFICE OF WORKFORCE OPPORTUNITY
WIOA POLICY ISSUANCE – 2015-004

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CONFLICT OF INTEREST POLICY

1. **Background:** The Workforce Innovation and Opportunity Act (“WIOA”) and the New Hampshire Revised Statutes Annotated require that the Office of Workforce Opportunity (BOARD) adopt standards for conflict of interest and self-dealing transactions. These rules (the Rules) have been adopted to implement these policy requirements.

2. **Definitions:** For convenience, these Rules use a number of defined terms. Wherever you see the following terms in the Rules, set out with initial capital letters, they will have the following meanings. If capitalized terms aren’t defined below:

2.1 The State Workforce Innovation Board (Board) is what these Rules refer to as a “Regulated Body”. So is any committee or subcommittee of the Board, or any other formal or informal body which from time to time performs tasks for the Board (or for the Board’s committees and subcommittees). A Regulated Body is essentially a body whose work could conceivably give rise to Conflict of Interest concerns; including existing and/or new committee formed, or a small, informal working group that was organized by the chairperson of the Board for ad hoc tasks.

2.2 “Members” are individuals whose participation in Board affairs could give rise to a Conflict of Interest. A person is a “Member” of a Regulated Body if she has been appointed to serve on that entity, however that appointment occurs. It doesn’t matter whether the person is voting or non-voting. Any Member or Associate Member of the Board falls into this category.

Any person holding a proxy for a Member has in effect been deputized to act as a Member. Therefore, that proxy-holder is also automatically treated as a Member when he/she attends a Proceeding as a proxy-holder for an absent Member.

2.3 Conflicts aren’t limited to situations in which a Member has a direct personal interest in a matter. It can also arise from participation in a matter by his family members, or by organizations with whom the Member has certain ties, where it would be natural to assume some favoritism could be shown. The Rules refer to those persons and organizations as “Member Affiliates”.

A person is a “Member Affiliate” if he is part of the Member’s immediate family (grandparents, parents, children, grandchildren, spouse or in-laws). The term also includes any group, entity or organization (a) in which a Member (or one of his Member Affiliates) has a direct or indirect Financial Interest; or (b) for which a Member serves as an officer, director, trustee, employee, consultant, advisor or representative (paid or unpaid). Example: If Mary is both a Member and a director of a for-profit company, the company is a Member Affiliate. Mary’s father-in-law falls into the same category, and so does the not-for-profit organization she sits on in her spare time. If Mary is merely a volunteer for the not-for-profit, then it is not a Member Affiliate because she is not in a policy-making position.

Where a person holds a proxy for someone else, these tests will apply both to the grantor of the proxy and to the proxy-holder: In other words, if John holds a proxy for Mary, and Mary’s brother has a Financial Interest in a Transaction, then John should recuse himself in the session in which the Transaction is formally acted on. However, it is Mary’s responsibility to identify the Conflict of Interest, and to advise John of it so he can take the proper steps.

2.4 The Rules are primarily concerned with undertakings that involve economic commitment or gain, and refer to those undertakings as “Transactions”. That term will include a proposed contract, process, delegation or other form of interaction between the Board and any third person, which provides or is likely to provide economic benefit to the third person and involves or is likely to involve economic cost to the Board.

2.5 It would be unrealistic to prohibit a Member from participating in preliminary aspects of program development, shaping an RFP or identifying a list of qualified vendors simply because she (or her Member Affiliate) might eventually emerge as the successful bidder at a later stage. Instead, these Rules focus on assuring that the more sensitive aspects of the Board process are free of Conflicts of Interest.

A Member with a Conflict of Interest should not participate in or vote on any formal action by a Regulated Body that results either in approval of a Transaction with a specific party, or of the definitive economic terms on which it will be completed, and that Member should not be present when the final decision is taken. This kind of formal action (and the session or meeting at which it is undertaken) is referred to as a “Proceeding”, if the action results in a commitment by the Regulated Body to enter into the Transaction. A formal action that results in the adoption of specific economic terms and conditions on which the Transaction will subsequently be offered for procurement purposes also falls into the category of a Proceeding.

Using the example we started with in Section 2.3, if Mary is a Member of the Executive Committee, and the Executive Committee is to act on a Transaction between the Board and Mary's not-for-profit organization, the session at which the formal vote is taken on economic terms or awarding the contract is a Proceeding, and the Rules will require Mary to recuse herself from voting on the Transaction. However, Mary could participate in earlier sessions in which the RFP is developed, even though she knows her organization will bid on it, and those earlier sessions are not considered Proceedings.

- 2.6 When a Member is "recused," then he or she is required to refrain from participating, voting upon or being present at the stage of a Proceeding when the Conflict of Interest Transaction is acted upon. He or she may be present at, participate and vote upon other matters presented during the Proceeding that do not involve consideration of the Transaction
- 2.7 There are certain circumstances which could give rise to conflicts of interest for a Member, which involve a combination of factors. These circumstances are grouped under the concept of a "Conflict of Interest". Where these circumstances exist, the Rules require that the Member follow a specific course of action.

A Member of a Regulated Body has a "Conflict of Interest" when the Regulated Body has scheduled a Proceeding to consider a Transaction where any of the following is applicable: (a) the Member (or her Member Affiliate) presently has a direct or indirect Financial Interest in the Transaction; or (b) she (or her Member Affiliate) will - with the passage of time and nothing more - acquire a direct or indirect Financial Interest in that Transaction. This can occur, for instance, where a Member also is affiliated with an entity that knows that - once the Transaction is completed - it will be bidding for subcontracts from the entity which enters into the Transaction with the BOARD, and has actually prepared its bid package.

Let's use the example of Mary in Section 2.3. The reason Mary has to recuse herself is because she has a Conflict of Interest if she participates in a Proceeding which approves a contract which Mary's not-for-profit is bidding on; the not-for-profit is Mary's Member Affiliate, and has a definite Financial Interest in the Proceeding. The same is true of her for-profit company, of course. And if her father-in-law owned the company, Mary would still have a Conflict of Interest. That's because one of her Member Affiliates owns the company.

2.8 A "Financial Interest" in a Transaction is a key ingredient in a Conflict of Interest. A Member has a "Financial Interest" in a Transaction if the direct or indirect economic or pecuniary interests of the Member (or of her Member Affiliate) may be

affected in any material way by the outcome of the Transaction. It doesn't matter how that economic or pecuniary interest may be designated. Economic or pecuniary interests can include (by way of example) equity interests, compensation, fees or stipends, stock options, royalties, loans and other income or participation rights that offer that person the prospect of financial return.

Looking at the example in Section 2.3, Mary has a direct economic interest in the Transaction if her own company is involved in the Transaction. While she may not directly benefit from the contracts in the other two examples, her relationship with the not-for-profit and her family relationship with her father-in-law, raise concerns that she will not be even-handed in her judgment. Mary might have an indirect economic interest if she didn't own shares of the company directly, but had a legal interest in a trust which did.

2.9 Representatives of a State agency which have a Financial Interest in a given Transaction would be governed by the same ground rules. If that agency is a Member-Affiliate of a Member (or of the Member's proxy or delegate), then that Member (or proxy) could participate in the preparatory steps in assessing the Transaction, but should be recused from the final Proceedings on the Transaction.

3. **Existing Conflicts - General Rule:**

3.1 A Member is prohibited from being present at, participating in final discussions of or voting in a Proceeding where a Conflict of Interest Transaction is to be acted upon. When there is a Proceeding which will deal definitively with a Conflict Transaction, the conflicted Member should not participate in the discussion or vote at the Proceeding, and should withdraw from the session. The Regulated Body may declare itself in executive session to consider a Conflict Transaction, and the executive session will for these purposes be considered a separate Proceeding. Prior to the session at which final decisions are made, the Member may join in preliminary discussion and debate concerning the Conflict Transaction. At these prior sessions, he may vote on program design and specifications or on procedural or technical matters (for instance, scheduling of discussions) that have only an incidental bearing on the final economic terms of the Transaction.

3.2 (a) Members who are employees of and who represent state agencies (and their proxies) have independent legal duties to act in a disinterested fashion in the public's behalf when they are considering Conflict of Interest Transactions which do not involve their own agencies. Therefore, the "log-rolling" provisions of these Rules do not apply to them in those cases.

(b) There is a different Rule for Members who are not affiliated with state agencies. If such a Member had a Conflict Transaction approved by the BOARD within a given fiscal year, then if there is another Proceeding within the same fiscal year in which any other Member is recused for Conflict of Interest reasons, the first Member must recuse herself from the second Proceeding, too, even if she doesn't have a Conflict of Interest in the second Proceeding. This is required to avoid the appearance of "log-rolling" amongst Members – "you look out for my interests, and I'll look out for yours."

3.3 Please also refer to Section 6 of these Rules for additional restrictions which apply to "Charitable Trusts".

- 3A. **Future Conflicts - General Rule:** Once a Member participates in a Proceeding concerning a Transaction, he cannot subsequently acquire any Financial Interest in that Transaction, and should take all reasonable steps to preclude his Member Affiliates from subsequently acquiring such a Financial Interest. If a Member discovers that his Member Affiliate has subsequently acquired such a Financial Interest, the Member must (i) immediately notify the Chairperson of the Board (and the chair of all other committees of the Board on which he or she sits) of that fact, in writing, (ii) provide all details of the Financial Interest known to the Member, and (iii) cooperate with the Chairperson in investigating the circumstances and - where possible - in taking remediation measures.
4. **Statement of Economic Interest:** State laws require individuals appointed to board or commissions to file a statement of financial disclosure. Each Member of the Board appointed by the Governor of the State of New Hampshire receives notification regarding financial disclosure requirements and a financial disclosure form with their appoint letter, as is required to file the form with the NH Secretary of State's Office within 14 days. In addition, in the interest of maintaining full disclosure, Board members may elect to file a statement of economic interest (*sample statement attached*) with the Board at any time. Such statements must include, at a minimum, the Member's:
- 4.1 current position(s) of employment;
 - 4.2 current position(s) as a paid director, officer, or agent of a corporation or similar entity;
 - 4.3 position(s) as officers, directors, trustees or executives with not-for-profit organizations which have done or are likely to do any business with the State agencies whose activities are within the scope of the Board's responsibility.

No disclosure need be made of the Member's compensation, fees, or other specific financial information. All such statements shall be held in the strictest confidence by the Chairperson, and shall be subject to disclosure only as required by applicable law.

5. **Voluntary Disclosure:**

5.1 Any Member with a potential or actual Conflict of Interest must disclose that fact to the Chairperson of the Board in writing as soon as the potential conflict is discovered and, in any event at least seven (7) days prior to the date for a Proceeding involving the Conflict Transaction. The disclosure and the Member's absence from the Proceeding should be reflected in the minutes of the Proceeding, in accordance with applicable law. *(A sample conflict of interest disclosure letter is attached.)*

5.2 If an unanticipated Conflict of Interest arises in the course of a Proceeding, the Member must verbally declare the Conflict of Interest and explain what it is, and the declaration must be clearly noted in the minutes.

5.3 Each Member is responsible for determining whether any potential or actual Conflict of Interest exists or arise during his/her service on the Board. Members who discover after the fact that such a condition exists must immediately report the fact in writing to the Board Chairperson (and to the chair of any other Board committee on which the Member serves)..

6. **Charitable Trusts; Other Statutory Provisions.**

6.1 An entity identified as a Charitable Trusts must file annual reports with the Division of Charitable Trusts of the State of New Hampshire. This statute imposes independent restrictions on the activities of charitable trusts and their trustees and directors. Amongst these restrictions are a requirement to publish notice of certain Conflict Transactions, that the Division of Charitable Trusts be advised in advance of certain Conflict Transaction, and that the Trust maintain records of all Conflict Transaction.

6.2 There are other conflicts policies that may govern specific Board activities, in addition to these rules. One example is the conflict of interest rules set out in [the Federal Procurement Policy], which is applicable to awards of federally-funded contracts. In such circumstances, the strictest of the conflict policies will be applied.

7. **Justification for Conflict Transactions:** As a precondition to entering into a Conflict Transaction, all disinterested members of the Regulated Body must conclude that under all of the circumstances the Conflict Transaction is the best alternative available to the Board . The findings must make specific reference to the presence or absence of competitive bids, and should identify specific considerations which led it to enter into the Conflict Transaction, and to determine that the contract or purchase was adequately bid or negotiated, and that the terms of the contract or price of the purchaser are fair and reasonable to the Board. These findings must be reduced to writing.

8. **Other Procedures:** The Board may adopt other procedures that serve to minimize the appearance of conflicts of interest.
9. **Technical Support:** The Board will provide technical assistance to coordinate compliance with the Conflict of Interest standards, and to assist in answering questions and avoiding potential problems. All Members are urged to utilize this capability whenever there is even the most remote question concerning possible Conflicts of Interest.
10. **Amendment; Waiver:**
 - 10.1 Any amendment or modification of these Rules must be approved by the vote of at least 3/4ths of the Members present of the Board, at a duly called meeting where a quorum of Members is present.

Action:

Chief Elected Officials and Board members should insure that all appropriate people in their respective areas have copies of this policy.

Conflict of Interest Attachment 1

SAMPLE

STATEMENT OF ECONOMIC INTERESTS

I currently hold (or held in the last twelve months) the following positions of employment:

I currently serve (or have served within the last twelve months) as a member, director officer or agent of or for the following corporations, partnerships, firms, associations, or other entities for which compensation other than per diem and expenses is paid:

I currently serve (or have served in the last twelve months) as a member, director, trustee, officer or agent of or for the following not-for-profit organizations:

I have made inquiry of each entity listed in response to item I, II, III above. The following describes any benefits or services that that entity has provided to the Board for any of its programs for a fee, or any benefits or services that the Board have provided to that entity for a fee, within the last five (5) program years:

I am able to identify the following relationships between my Member Affiliates (or entities in which my Member Affiliates participate) and the Board which fall into the categories described in the preceding sentence:

These statements are true and complete to the best of my knowledge.

Date: _____

Signed: _____

Title: _____

SAMPLE

DISCLOSURE LETTER OF (POTENTIAL) CONFLICT OF INTEREST

Office of Workforce Opportunity
172 Pembroke Road
Concord, New Hampshire
Attention: State Board Chair

Dear Chair:

This letter serves to notify you of a (potential) Conflict of Interest that I have with regard to a matter that will or may come before the Board for consideration.

The matter at issue is ... *(Briefly describe the potential conflict in detail making sure to fully describe the (potential) conflict.)*

This information is provided in order to inform you of a (potential) Conflict of Interest, as is required by the Conflict of Interest Policy. I will keep all persons informed as to any changes in circumstances by written notification. I will comply with all applicable requirements of the Board and all applicable laws with regard to this situation.

Please contact me at your earliest convenience in order to discuss this situation.

Sincerely,

(Signature)

Board Member

cc: Board Members