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April 8, 2020

To: All WIOA Subrecipients of the Orange County Workforce Development Board

From: Carma Lacy
Director of Workforce Development

Subject: Conflict of Interest -Serving Applicants/Participants with a Close Relationship
Information Notice No. 20-OCWDB-08
Supersedes Information Notice No.18-OCDB-11

PURPOSE:

This policy provides guidance to all Orange County Workforce Development Board (OCWDB) One Stop Service Providers on the requirements for the provision of the Workforce Innovation and Opportunity Act (WIOA) training services.

EFFECTIVE DATE:

This notice is effective on the date of issuance.

REFERENCES:

Workforce Innovation and Opportunity Act, Public Law 113-128

20 CFR 684.630

BACKGROUND:

The WIOA program, while not an entitlement, should be accessible to any individual who is eligible and suitable for services available in the local area, subject to local workforce development board (WDB) policies and procedures. However, when applicants have a close relationship to the WIOA staff, management, and other specific stakeholders of the workforce development system, attention must be given to ensure access to program services is not based upon this relationship or political influence. It is possible that even without an intention to misuse WIOA funds, the decision to enroll an individual in the program could be perceived as improper and cause potential non-compliance with state and/or federal law.

All subrecipients of WIOA funds agree, that they will comply with the standards of conduct for maintaining the integrity of the program and avoid any conflict of interest in its administration including, but not limited to, 29 U.S.C. 2832 (g), chapter 6301 of the Revised Code, and California ethics law.

Local elected officials, WDBs, designated fiscal agents, and administrative entities must help meet the objectives of the WIOA through effective



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policies, procedures, and safeguards that ensure the integrity of these public funds. Safeguards must be in place throughout the State that ensure all individuals served in the program are not only eligible and suitable, but also served in a manner that is free from the perception of any impropriety or conflict of interest.

Definitions

Bright-line test - an objective rule that resolves a legal issue in a straightforward, predictable manner.

Close relationship - the applicant's prior and/or present social interactions and/or business dealings with stakeholders of the workforce development system gives a reasonable observer cause to believe that the applicant's access to WIOA program services would be based upon this relationship, as opposed to demonstrated need.

Close family member - parents, stepparents, spouse, domestic partner, children, stepchildren, foster children, siblings, grandchildren, grandparents, and any immediate relatives by blood or marriage (i.e., in-laws, cousins, nieces, nephews, aunts, and uncles).

Stakeholders - individuals not related but have direct or indirect management or responsibility for managing the WIOA workforce system (including WIOA executive staff, supervisors, local elected officials, contractors (e.g., adult, dislocated worker, or youth program vendors), WDB and subcommittee members, WIOA employees, and One Stop center partner staff).

Policies and Procedures

When applicants have a close relationship to WIOA staff, management, and other specific stakeholders of the workforce development system, attention must be given to ensure access to program services is not based upon this relationship or political influence. Although this determination may be simple if the applicant is a close family member or friend, it may be more difficult if the applicant has a close relationship with WIOA staff, management, and other stakeholders.

There is no bright-line test for the determination of such a relationship. WIOA staff, management, and other workforce development systems are advised to avoid the appearance of impropriety by abstaining from directly assisting and/or influencing the application process of friends, close family members, former and/or present colleagues, and persons with whom they have an ongoing social or business relationship.

An "arms-length determination" of eligibility must be conducted by a staff member that has no relationship with the individual. Likewise, decisions relating to approving training, supportive services, job referrals, or other service needs must be made by the OCDB director or an authorized designee with no such relationship to the applicant. Stakeholders identified in this issuance shall not use their position to influence a decision to enroll an individual in the WIOA program.

General Requirements

When applicants have a close relationship to WIOA staff, management, and other specific stakeholders of the workforce development system, attention must be given to ensure access to program services is not based upon this relationship. Although this determination may be simple if the applicant is a close family member or friend, it may be more difficult if the applicant has a close relationship with WIOA staff, management, and other stakeholders.

However, at a minimum, when an applicant for services is friends, a close family member, former and/or present colleague, and/or has an ongoing social or business relationship with any of the following categories of individuals, said relationship must be disclosed if known to the applicant, and managed in accordance with the terms and conditions of this policy:

1. WDB members
2. Local Elected Officials
3. WIOA executive staff and supervisors
4. WIOA employees
5. One Stop center partner staff
6. WIOA sub-recipients and/or contractors, and/or
7. County employees

Disclosure of potentially conflicting relationships will be solicited from individuals seeking services other than basic career services, or minimally staff assisted basic career services, otherwise individuals who are being considered to be enrolled/registered for services. Documentation of the disclosure, including the name of the person and the nature of the relationship, must be maintained in the participant's file. When a relationship exists, it must be disclosed at the time of application to the program.

Also, when the individuals listed above are aware that friends, close family members, former and/or present colleagues, and persons with whom they have an ongoing social or business relationship is seeking any enrolled/registered WIOA services (those other than basic career services, or minimally staff assisted basic career services), disclosure must be made by that individual to the highest supervisor/manager of the organization where individual works, and/or the Director for the Workforce Area. The individual must identify the individual or individuals. Upon so being so notified, the Provider Director of that organization will make a written disclosure to the Area Workforce Executive Director. If it is the Director for the Area Workforce that has to make the disclosure, s/he shall make the required disclosure to the Chief Elected Official for the Workforce Area.

Once an immediate family or close personal relationship is disclosed, the existence of that relationship must be documented. Each Provider Director in charge of WIOA staff shall maintain a list of all disclosed individuals seeking WIOA services other than core services and provide a copy of said list to all state or local program monitors and auditors at the onset of all monitoring visits.

In addition to the documentation of the personal relationship and maintenance of the list, before any enrolled/registered WIOA services can be provided, the WIOA agency and staff that is attempting to address the needs of the applicant will after seeking the consultation and approval of the Director for the Area, develop a written plan for determining the eligibility of the individual in a way that resolves all real or potential conflicts of interest, and/or perceptions of impropriety following the procedures outlined below. If the Area Director is the one with the conflicting family relationship, then the Chief Local Elected Official shall be consulted and provide the approval for an alternative plan for determining eligibility. In the rare case that this process will not resolve a real conflict, or the appearance of a conflict, the Area will have the eligibility determination made by another Job Center or another Youth Provider. If that cannot resolve the conflict then the Area will have another Area WIB determine eligibility, preferably one that is adjacent to the same.

General Procedures for Resolving Disclosed Potential Conflicts of Interest

When it can, and when it will resolve the conflict of interest or potential conflict of interest, the Area Workforce in conjunction with its contractual partners will resolve the disclosure of an applicant for services is friends, a close family member, former and/or present colleague, and/or has an ongoing social or business relationship with any of the categories of individuals seeking services in the social or business relationship with any of the categories of individuals seeking services:

1. A staff member with no personal relationship, bias, special interest or prejudice will develop the individual employment plan ("IEP") and/or the individual service plan ("ISP") for the applicant.
2. An unbiased WIOA supervisor will be assigned to determine initial eligibility status.
3. The appointed supervisor will attest to having no personal relationship, bias, special interest or prejudice regarding the applicant.
4. After eligibility has been established by the appointed supervisor, the applicant will be referred to a WIOA staff person who has no personal relationship, bias, special interest or prejudice to assess the applicant's skills, barriers and training needs.
5. Following the completion of this step, the individual's ISS, IEP, and/or all training plans will be drafted in final form and forwarded to the individual(s) responsible for making the final determination decision.
6. The Provider Director will review the training request and either approve or deny the application. One Stop staff who may have a personal relationship, bias, special interest or prejudice regarding the applicant must remove themselves from making the decision, as appropriate.
7. The applicant will at all times be provided with WIOA intensive and/or training services as staff person will remain the contact person for the applicant until the applicant is exited and deemed necessary and appropriate per WIOA rules and regulations. The assigned WIOA provide follow-up services to the applicant.

When the preceding procedures cannot be used to resolve the conflict, (i.e., situations in which the conflict involves a family relationship of an individual that would stand in supervision of those individuals that would normally be assigned/involved), then this procedure will not be used and a different procedure addressing all potential conflicts will be determined and agreed upon before any services requiring registration/enrollment are provided.

ACTION

Bring this policy to the attention of all staff.

INQUIRIES

If you have any questions regarding this policy, please contact your Contract Administrator at 714-480-6500.