

TEXAS WORKFORCE COMMISSION LETTER

ID/No: WD 34-02

Date: October 22, 2002

Key Word: Administration

To: Local Workforce Development Board Executive Directors
Commission Executive Staff
LWDA Coordinators
Commission Local Offices

From: Luis M. Macias, Director, Workforce Development Division

Subject: Local Workforce Development Boards: Compliance with Conflict of Interest Requirements

PURPOSE:

To remind Local Workforce Development Boards (Boards) of the importance of compliance with State and federal conflict of interest requirements.

REFERENCE:

Workforce Investment Act §117(g) (29 USCA §2832(g))
Workforce Investment Act Final Rules, 20 CFR §§ 645.230 and 667.200
United States Department of Labor regulation, 29 CFR §97.36
Texas Government Code, §2308.257
Texas Workforce Commission Local Workforce Development Boards Rule,
40 TAC §801.13

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and State laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and State laws, rules, policies, and required procedures with a “No Local Flexibility” rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a “No Local Flexibility” rating is indicated by “must” or “shall.”

Failure to comply with the federal and State laws, rules, policies, and required procedures with a “No Local Flexibility” rating may result in corrective action, up to and including sanction and penalty.

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

BACKGROUND:

Boards have the authority and the responsibility for providing planning, oversight, and evaluation of workforce development, training and services activities in their local workforce development areas (workforce areas).

Because Boards are responsible for administering programs, which expend hundreds of millions of dollars of public funds each year, Boards must avoid even the appearance of allowing personal interests to affect decisions involving the use of public funds.

PROCEDURES:

To ensure that Boards and their appropriate staff comply with federal and State laws and regulations aimed at preventing conflicts of interest, Boards must adopt the following procedures:

NLF

Development of Board Conflict of Interest Policies: Each Board must adopt a conflict of interest policy. The policy must include the minimum requirements of State and federal laws and regulations.

NLF

A Board’s conflict of interest policy may be more restrictive than the State and federal requirements.

LF

A Board’s conflict of interest policy must include provisions for penalties, sanctions, and other disciplinary actions for any direct violations of the policy.

NLF

The following definitions must be included in a Board’s conflict of interest policy:

NLF

(1) **Immediate family:** Any person related within the first degree of affinity (marriage) or consanguinity (blood) to the person involved.

(2) **Substantial interest:** A person has a substantial interest:

- (A) in a business entity if:
 - (i) the person owns 10 percent or more of the voting stock or shares of the business, owns 10 percent or more, or owns \$5,000 or more, of the fair market value of a business; or
 - (ii) funds received by the person from the business exceed 10 percent of the person's gross income for the previous year;
- (B) in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more; or
- (C) if the Board member is related to a person in the first degree of affinity or consanguinity who has a substantial interest as defined in subparagraph (A) or (B) of this paragraph.

Maintenance of a Written Code of Standards of Conduct: Boards administering activities operating with United States Department of Labor (DOL) funds must develop and maintain a written code of conduct governing the performance of individuals engaged in the award and administration of contracts. Boards shall require that any contractor operating with DOL funds also develop and maintain a written code of conduct.

NLF

DOL regulation at 29 CFR §97.36 provides:

No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

A Board may set rules allowing acceptance of unsolicited gifts of nominal intrinsic value. The standards shall provide for penalties, sanctions, or other

LF

disciplinary actions for violations. The Board may establish additional prohibitions to prevent real, apparent, or potential conflicts of interest.

Disclosure of Interest: Texas Workforce Commission rule at 40 TAC §801.13 provides:

NLF

- (c) A Board member shall avoid even the appearance of a conflict of interest. Prior to taking office, Board members must provide to the Board Chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations which have received, currently receive, or are likely to receive contracts or funding from the Board. Such declarations shall be updated within 30 days to reflect any changes in such business interests or relationships. The Board shall appoint an individual to timely review the disclosure information and advise the Board Chair and appropriate members of potential conflicts.
- (d) Prior to a discussion, vote or decision on any matter before a Board, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization or property that would be pecuniarily affected by any official Board action, that member shall disclose the nature and extent of the interest or relationship and shall abstain from voting on or in any other way participating in the decision on the matter. All such abstentions shall be recorded in the minutes of the Board meeting.

Avoiding the Appearance of a Conflict of Interest: A Board member must neither cast a vote on nor participate in any decision-making capacity on the provision of services by the member or any organization which the member represents.

NLF

A Board member must not participate in any decision-making capacity on any matter, which would provide any direct financial benefit to that member or a member of his immediate family.

NLF

A Board member must not participate in any discussions, including discussions with other Board members or Board staff, or in any other way attempt to use his position on the Board to influence a decision on a matter in which there is a real or apparent conflict of interest. A Board member must not directly or indirectly influence, encourage, or lobby any person, including any other Board member or Board staff, regarding any matter in which the member, his immediate family, or the organization, which he

NLF

represents, has a substantial interest or from which the member would receive financial benefit. A Board member must not participate in any procurement activities including the development of requests for proposals for any matter in which the member, his immediate family, or the organization, which he represents, has a substantial interest or from which would receive financial benefit.

Nepotism: No individual may be placed in a Welfare-to-Work activity if a member of that person's immediate family is engaged in an administrative capacity for the employing agency.

NLF

No individual may be placed in a Workforce Investment Act employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

NLF

A Board may adopt more restrictive standards regarding nepotism than those listed above.

LF

ACTIONS REQUIRED:

Boards must ensure that appropriate staff are apprised of and comply with the requirements in this WD Letter.

INQUIRIES:

Direct inquiries to John Fuller at (512) 463-7459 or by e-mail to john.fuller@twc.state.tx.us.

Rescissions: None	Expiration: Continuing
-------------------	------------------------