



INDIANA
WORKFORCE
DEVELOPMENT

TO: State Workforce Innovation Council Chairperson
Marion County Workforce Investment Board Chairperson & Director
Regional Workforce Board Chairpersons
Regional Operators
Directors of Operations for Northern and Southern Indiana

FROM: Teresa L. Voors
Commissioner, Indiana Department of Workforce Development

THROUGH: Dustin Stohler, Deputy Commissioner, Legal Affairs and Administration

THROUGH: Dale Wengler, Deputy Commissioner, Policy and Field Operations

DATE: April 4, 2008

SUBJECT: DWD Policy 2007-33
Guidance on Indiana Code § 22-4.5-7-6, 22-4.5-7-7, and 22-4.5-7-8

Purpose

To provide guidance on I.C. § 22-4.5-7-6, 22-4.5-7-7, and 22-4.5-7-8, which prohibit any person from simultaneously serving as both Regional Workforce Board Member, Regional Operator, Fiscal Agent, Service Provider, or Provider of Direct Client Services in the same or different region of the state.

Rescission

None

Content

I.C. § 22-4.5-7-6, 22-4.5-7-7, and 22-4.5-7-8 prohibit any person from simultaneously serving as a Regional Workforce Board Member, Regional Operator, Fiscal Agent, Service Provider, or Provider of Direct Client Services (all referred to herein as “Workforce Development Entities”).¹ The purpose of these statutes is to increase competition, avoid conflicts of interest, and eliminate any appearance of impropriety. The Indiana Department of Workforce Development will interpret these statutes broadly to mean that a person is “serving as” a Regional Workforce Board Member, Regional Operator, Fiscal Agent, Service Provider, or Provider of Direct Client Services if that person has any interest, financial or otherwise, in the success of a Workforce Development Entity. “Person” shall include, but is not limited to, any individual, business entity whether for or not for profit, or vendor.

¹ A person who serves as a regional operator may also serve as a fiscal agent I.C. § 22-4.5-7-7(a).

Examples of Financial Interest

An individual may be found to have a “financial interest” in an entity if he or she:

- Has an ownership interest in a Workforce Development Entity;
- Is employed by a Workforce Development Entity as an employee and/or independent contractor;
- Serves as officer or director of a Workforce Development Entity;
- Receives benefits or other consideration from a Workforce Development Entity;
- Is related to an individual with a financial interest in a Workforce Development Entity;
- Is party to any agreement or agreements with a Workforce Development Entity whereby he or she: 1) receives more than \$25,000 or is compensated based on the profits of the entity; or 2) agrees not to compete with the business entity.

A Vendor may be found to have a “financial interest” in a Workforce Development Entity if it:

- Is party to any agreement or agreements with an entity whereby it: 1) receives more than \$25,000 or is compensated based on the profits of the entity; or 2) agrees not to compete with the business entity or otherwise restricts competition;
- Employs an individual with a financial interest in an entity.

A corporation, LLC, partnership, or other type of business entity may be found to have a “financial interest” in a Workforce Development Entity if it:

- Has any commonality of owners, officers, directors, trustees, and key employees with the Workforce Development Entity;
- Shares financial books and records, bank accounts, tax returns, and assets with the Workforce Development Entity;
- Shares office space, equipment, supplies, and facilities with the Workforce Development Entity;
- Shares joint business plans, policies, and bylaws with the Workforce Development Entity.

Caveat

The above lists are not all-inclusive. Regional Workforce Board Members, Regional Operators, Fiscal Agents, Service Providers, and Providers of Direct Client Services must be sensitive to any situation where they have a business interest that may unfairly benefit from their involvement with the Regional Workforce Board, Regional Operator, Fiscal Agent, Service Provider, or Provider of Direct Client Services or any other situation that would appear to a reasonable person to be a conflict between public and personal interests or an interference with free market economy. This includes the sharing of any employees and/or other resources.

PROCEDURES

Declaration/Approval/Waiver

Any Regional Workforce Board Member, Regional Operator, Fiscal Agent, Service Provider, or Provider of Direct Client Services who identifies a potential conflict of interest shall notify the Indiana Department of Workforce Development within thirty (30) days of identifying the potential conflict. The notification must be filed by providing a written description of the matter, detailing the nature and circumstances of the conflict, along with material evidencing the declared conflict.

The Indiana Department of Workforce Development will coordinate an impartial review to determine if the matter is allowable. The Department may request the Workforce Board Member, Regional Operator, Fiscal Agent, Service Provider, or Provider of Direct Client Services to provide additional information or documentation for review. The declarant(s) will have a period of time, not to exceed 30 days, to provide the requested material.

Determination

A written decision will be rendered within thirty (30) days of receipt of the notification. If the Indiana Department of Workforce Development requests additional information from the Workforce Board Member, Regional Operator, Fiscal Agent, Service Provider, or Provider of Direct Client Services, a decision will be made within thirty (30) days of receipt of the material. If the requested material is not submitted, the Department will make a determination based on the evidence that is available.

The Department may waive, at its sole discretion, the application of this policy in cases where the conflict is warranted, ethical, legal, or unavoidable and is consistent with the intent of this policy.

Penalties for Violations

If the Indiana Department of Workforce Development determines that a Workforce Development Entity fails to comply with this policy or commits fraud, waste, abuse, or other violation of state or federal law, the Indiana Department of Workforce Development may:

- Order the parties to cease and desist from any activities found to violate this policy;
- Issue a notice of intent to revoke approval of all or part of the agreement affected;
- Decertify the Workforce Development Entity involved;
- Prohibit the future use of vendors or business entities involved;
- Select an alternative entity to administer the program for the local area involved;
- Disallow any funds distributed to any individual, business entity, or vendor with a financial interest; or
- Make other such changes as the Indiana Department of Workforce Development determines necessary to secure compliance.

Penalties will be issued in the written determination. The Workforce Development Entity will have a period of time, not more than 60 days, to take appropriate corrective actions and submit comment to the Indiana Department of Workforce Development.

Considerations

The following criteria will be considered before issuing a penalty to a Workforce Development Entity:

- Nature and circumstances of violation;
- Knowledge of noncompliance;
- Receipt and/or attempt to receive waiver;
- Attempt and willingness to comply;
- Severity of infraction; and
- Previous violations.

Questions regarding this policy should be sent to:

Amy Smith-Rubeck, MA, LMHC
Director of Policy
Indiana Department of Workforce Development
10 North Senate Avenue, SE 304
Indianapolis, IN 46204
ARubeck@dwd.IN.gov

Review Date

October 1, 2009

Ownership

DWD Policy Unit
Indiana Department of Workforce Development
10 North Senate Avenue
Indianapolis, Indiana 46204
Telephone: 317/233-6078

Effective Date

Immediately