



CONFLICTS OF INTEREST

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Region VIII



Conflicts of Interest: General

- What is a conflict of interest?
 - “A real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.”
 - Source: Black’s Law Dictionary.



Conflicts of Interest: General (cont.)

- Two types of conflicts of interest (COIs):
 - Procurement
 - Non-procurement



Procurement Conflicts of Interest

- Procurement is the process of obtaining any one of the following:
 - Property
 - Supplies/Equipment
 - Services
- Common services include:
 - Employment
 - Construction
 - Engineering/Architecture, etc.
 - Legal





Procurement COIs (cont.)

- Procurement COIs are governed by 24 C.F.R. Part 85 or 24 C.F.R. Part 84, Program Regulations, NOFAs, state/local law, and Grantees'/Recipients' procurement policies.
- Non-procurement COIs are governed by Program Regulations, Program Specific Contracts (such as ACC, HAP, etc.), NOFAs, state/local law, and Grantees'/Recipients' conflict of interest policies.





Procurement COIs (Cont.)

- Generally, HUD's regulations at 24 C.F.R. Part 84 and 85 prohibit an employee, officer or agent of the grantee/subgrantee or recipient/subrecipient from participating in the 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.





Procurement COIs (cont.)

- 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....**





Procurement COIs (cont.)

- Note that even ***apparent*** conflicts of interest are prohibited.
- There are no exceptions for procurement conflicts of interest.
- A request for a regulatory waiver can be submitted pursuant to 24 C.F.R. § 5.110
 - Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this title and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).



Procurement COI Example

- The State Housing Finance Corporation (SHFC) hired ABC Associates to administer a Homebuyer Assistance Program funded with HUD HOME funds.
 - John is the President and partner of ABC Associates and also serves as the Executive Director of SHFC.
- *Is this a conflict of interest under Part 85?*





Procurement COI Example (cont.)

Answer: Yes. John has a financial interest in the firm hired to administer the program.

- What's next?
 - The City of Heartland may request a waiver of the prohibition against conflicts of interest in procurement, however regulatory waivers regarding conflicts of interest after the fact are not routinely granted.



Non-procurement COIs

- Precisely what constitutes a conflict?
 - The answer varies by program.
 - *You must consult program regulations and program-specific guidance.*
- Generally, however, the requirements prohibit employees, board members, etc. of a grantee/recipient from having any personal or financial interest in any transaction funded by the HUD program.





Non-procurement COIs (cont.)

- Conflicts of interest must be disclosed both publicly and to HUD.
- Upon request, HUD may waive certain conflicts for good cause (only if permitted under state and local law).
- Each program has a different waiver process
 - Some programs have waiver approval at the local level
 - Other programs require submission and consideration of the request by Headquarters.



Process for Requesting a Waiver or Exception

- It is the recipient's/grantee's responsibility to submit a written request for a waiver or exception to its local HUD program office.
- For most programs, a request for a waiver or exception must include:
 - Public disclosure of the conflict (including a description of how the disclosure was made), and
 - An Opinion of grantee's/recipient's attorney that the exception does not violate State or local law.





Process for Requesting a Waiver or Exception (cont.)

- In the request for a waiver or exception, the grantee/recipient should address any factors for consideration set forth in the relevant program regulations.
- The program office considering the request may ask the grantee/recipient for additional documentation, etc. prior to making a final determination.





Process for Requesting a Waiver or Exception (cont.)

- Generally speaking, HUD must consider whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict.





Process for Requesting a Waiver or Exception (cont.)

- IMPORTANT
 - Mere submission of a request for a waiver or exception does not authorize a recipient to engage in any activity or enter into any contract that constitutes a conflict.
 - **A waiver or exception is not granted until the recipient receives such determination in writing from HUD.**





Best Practices

- Recipients should adopt procedures for determining when a conflict of interest exists, for reporting the conflict to HUD, and for disclosing it to the public as required by the applicable program regulations.





Non-procurement COIs (cont.)

- Examples:
 - Contracts (such as a HAP contract) between a housing authority and a member of the local governing body or other public official.





Non-procurement COIs (cont.)

- Examples:
 - Considering a sibling of an employee of the housing authority/community development office/TDHE for a job opening.





Non-procurement COIs (cont.)

- Examples:
 - Spouse of a PHA employee owns rental properties under a Section 8 HAP contract with the PHA.





Non-procurement COIs (cont.)

- Although each of the previous examples constitute a prohibited conflict of interest, the grantee/recipient may request that HUD grant an exception to the prohibition for any of these situations.



Questions?

- As a best practice, always consult your local program office with questions about potential (apparent or real) conflicts of interest.

