



Conflicts of Interest

HUD Program

Community Development Block Grant (CDBG)

Presentation to Community Grants Advisory Commission

Why does the City care about Conflicts of Interest?



The City has its own Conflict of Interest policy to follow for Boards and Commissions, in addition to requirements under the state. Additionally, the City and the Community Grants Advisory Commission also has obligation to demonstrate and document good governance, to protect the **integrity** and **credibility** of the Community Development Block Grant (CDBG) program, its grant programs and all funds, to maintain the **trust** and **confidence** of our constituents.



Managing conflicts of interest is part of the commitment to implement **risk management**.



With that in mind...



- Here's what is covered in this presentation:
 - What is a conflict of interest?
 - Situations and examples
 - Recognizing when you have a conflict of interest
 - When and how to disclose a real or potential conflict
 - Managing conflicts of interest



What is a Conflict of Interest?



A conflict of interest involves risk of **benefit** and/or **bias**.

BENEFIT

Example: A conflict of interest arises when an employee or commissioner may **benefit personally** (or appear to do so) from dealings with an entity or person conducting business with the City, reviewing grants, **including indirect benefits** such as to family members or businesses with which the person is closely associated.

BIAS

Financial or other considerations may **compromise** (or have the appearance of compromising) the **objectivity** or independent professional **judgment** in the discharge of duties and responsibilities under the Consolidated Grants Process.

Conflicts of interest can be real – or they can appear real.



- If a situation looks like a conflict of interest or feels like a conflict of interest, it's likely there is some level of conflict.
- Use the **“reasonable person test”**:
If a reasonable, disinterested person would conclude that an individual might emphasize personal interests over other interests for which he/she has responsibility, there is, at the very least, the appearance of a conflict of interest.

HUD Standards



- **Non-procurement Standards:**
- **Federal Regulations at 2 CFR 200.112 require HUD to establish conflict of interest policies for Federal awards and require non-Federal entities to disclose in writing any potential conflict of interest to HUD or a pass-through entity in accordance with HUD's policy.**
- **In general, all CPD program regulations, including CDBG, prohibit grant-assisted activity benefitting relatives of people who work for the grantee or the pass-through entity.**
- **eCFR :: 24 CFR 570.611 -- Conflict of interest.**

HUD Regulation (CDBG) 570.611



■ § 570.611 Conflict of interest.(a) Applicability.

- (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.317 and 200.318 shall apply.
- (2) (2) In all cases not governed by 2 CFR 200.317 and 200.318, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to § 570.203, 570.204, 570.455, or 570.703(i)).
- (3) **(b) Conflicts prohibited.** The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.
- (4) **(c) Persons covered.** The conflict-of-interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

Are all Conflicts automatically “bad”?



- No.
- Having a conflict of interest is not necessarily a problem or a “bad thing”. **Having a conflict of interest and doing nothing about it is a problem!** HUD may grant an exception to non-procurement conflicts of interest on a case-by-case basis. It is the recipient’s responsibility to submit a written request for an exception to its local HUD CPD office.
- When submitting a request, the recipient must provide the following documentation as threshold requirements for consideration: • A public disclosure of the conflict (include how the disclosure was made); and • An opinion of the recipient’s attorney that the exception does not violate State or local law.
- HUD determines whether threshold requirements are met and whether the circumstances fall within exception criteria permitted by the regulations. Remember that submitting a request does not authorize a recipient to engage in any activity or enter into any contract that constitutes a conflict. **You (The City) may proceed only after you receive the approval in writing from HUD.**



BEST PRACTICE....

■ HUD's Best Practice Requirements:

The notification and subsequent actions should be recorded in minutes of board or management meetings.

Record-keeping best practices includes documenting:

- Conflict-of-interest notifications;
- Cases of failure to disclose;
- Disclosure by others (for example colleague or member of the public);
- Reviews or investigations of alleged
- Assessment of the matter and how it was considered;
- Action taken or resolution; and
- Annoying or trivial claims. conflicts;

Other Conflict Situations and Examples:



✓ **Accepting personal gratuities**

- Board member receives a “free” large-screen TV from a vendor seeking a grant with the City. “Just try it and see if you like it. No worries.”

✓ **Using or disclosing confidential information**

- A Commissioner or employee uses an agency’s confidential donor list to solicit gifts for a community non-profit organization or activity.

✓ **Maintaining roles that conflict**

- A person who serves as a board member and votes against an activity to benefit their board.



Think you have a conflict?

Consider these questions...



If you suspect a conflict, report it.

Regardless of whether it's real or perceived, a conflict is a conflict.



- **As soon as you suspect a conflict exists:**
 - **Disclose** it. Transparency is key. Staff provides a list of the agencies that apply prior the application process and forms for the CGAC to determine.
 - **Talk** with your staff contact or the City Secretary's office before taking action if there's any risk of a conflict. The City will **Mitigate** the conflict by taking steps to ensure a fair and level playing field among multiple qualified vendors, in the process, including disclosure, consulting with HUD, City Attorney, etc. The member must **Abstain** from decisions or other involvement where there is a risk of bias – real or perceived.

Exceptions to the COI Rule. What factors are considered in determining whether to request an exception



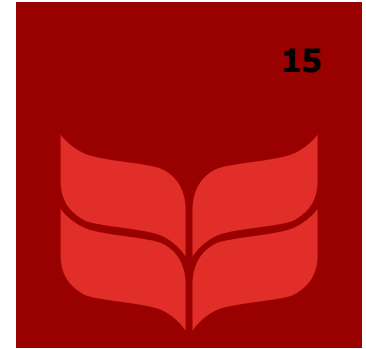
- 1. Allowing the exception would provide a significant cost benefit or essential expertise to the project;
- 2. An opportunity was provided for open competitive bidding or negotiation.
- 3. The person affected is a member of a group of low- or moderate-income persons and the exception will allow such person to receive the same interests as the group.
- 4. The person affected has withdrawn from his or her functions or responsibilities, or the decision -making process with respect to the assisted activity.
- 5. Was the interest or benefit present before the affected person was in the “conflicting” position.
- 6. Undue hardship to recipient or person affected when weighed against public interest served by avoiding the prohibited conflict.
- 7. Any other relevant considerations

STEPS TO BE TAKEN....



- City has to complete a HUD waiver request form which requests information on the following:
- The title and position of the individual that is involved in the contract or arrangement that gave rise to the conflict of interest.
- A description of the nature of the conflict of interest.
- Information on the date and manner in which the conflict was disclosed to the City and Public.
- **Provide a justification of the reason that “good cause” is present for HUD to grant a waiver.**
- Attach documentation that provides evidence of “good cause”.
- Attach supporting documentation, as well as any analysis or other evidence that the contract or arrangement is in compliance with state or local law. In addition, the documentation should include a local attorney’s legal opinion that the waiver request is in compliance with state law.
- The completed form must be reviewed and approved by the City Attorney, City Manager.

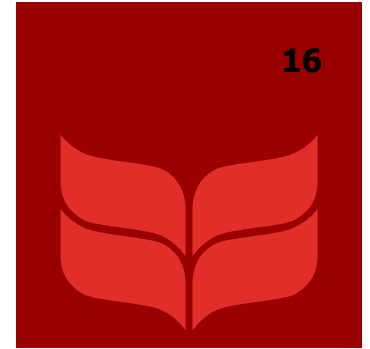
Illustration



- **Cybil Civic is a Commissioner of Fort Travis County, Texas.**
 - Cybil is also Vice-president of the Board of Directors of American Handicapped Citizens of Fort Travis County (AHC).
 - She does not receive a salary or any other compensation for serving on AHC's Board.
 - AHC is subrecipient (funded agency) of \$25,000 in CDBG grant funds from the County.
- ***Is there a conflict of interest?***



Answer Choices



- A. No, if Cybil resigns from her position as VP of AHC's Board.**
- B. No, because Cybil has no financial interest in AHC.**
- C. Yes, because AHC received \$25,00 in CDBG grants.**
- D. Yes, unless AHC gives the County back the \$25,000 of CDBG funding.**



Answer

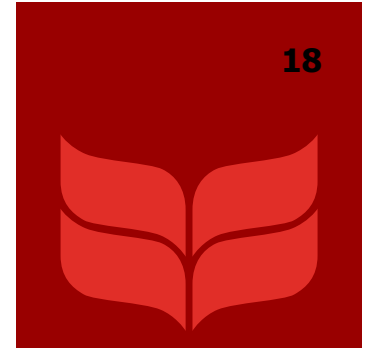
B. No, because Cybil has no financial interest in AHC.

- * Cybil may continue to serve as a County Commissioner of the County and also as VP of AHC's Board.*
- * A conflict of interest would arise in this situation only if Cybil received a salary or other compensation for her AHC Board service. 24 CFR § 570.611(b)*



Situation #2

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- **The City of McKinneyville plans to apply for CDBG funds to reconstruct Oak Street. The Mayor of Bluebonnet owns two rental homes located in the project area.**
- *Is there a conflict of interest?*



Answers



Yes. The Mayor will benefit from the CDBG-funded improvements; therefore, a conflict exists between the public duties of the Mayor and her private interest in her properties.

Because the conflict is based on benefit as a property owner and not on a purchasing or contracting opportunity, this is considered a non-procurement conflict of interest.

Q: May CDBG funds be used for this project?

A: The City may request an exception to the prohibition on conflict of interest, based on the best interest of the community. Such an exception may be granted for non-procurement conflicts. The city should complete the exception request as described prior to taking any action on the project.

How would this be perceived?

Situation #3



- **You are a member of the Community Grants Advisory Commission. You receive the applicant list from city staff, and you see two agencies on the list where you volunteer as a board member. Also, you forgot that a family member is a paid staff member – just got hired. However, you don't volunteer at that location.**
- *Are there any conflict of interests?*
- *What do you do?*



Answer:

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- **Responses from the CGAC....**



Reminder:

Exceptions – HUD Funding



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- Remember that submitting a request does not authorize a recipient to engage in any activity or enter into any contract that constitutes a conflict. You may proceed only after you receive the approval in writing from HUD.



Closing thoughts...

1. Conflicts of interest may more frequent due to collaborations, relationships, etc. Be alert to the **risk**.
2. A **perceived conflict** can be as potentially damaging as a real conflict.
3. Err on the side of caution. It's better to **over-disclose** than under-disclose. There may be option to exception requests. Is it necessary? Is it worth it?

