



THE OAKLAND, BERKELEY/ALAMEDA COUNTY COC

Conflict of Interest Policy

June 2023

1. Purpose

The purpose of the Conflict of Interest policy is to protect Everyone Home, the Oakland, Berkeley/Alameda County Continuum of Care (CoC), when it contemplates entering into a transaction or arrangement that might benefit the private interests of CoC board members, staff, consultants, volunteers, funding recipients or subrecipients, or members of a committee with governing board delegated powers, which might result in a possible excess benefit transaction. The Conflict of Interest policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

The Department of Housing and Urban Development (HUD) requires non-Federal entities that receive Federal assistance awards, excluding States, to develop and maintain written standards/codes of conduct covering conflicts of interest and governing the actions of interested parties engaged in the selection, award, and administration of contracts.

Continuum of Care Boards are covered by Federal and state regulations and 24 C.F.R. §578.95 (b-d) and 24 C.F.R. §576.404 (a-b), which define conflicts of interest and the required actions to avoid conflicts of interest. CoCs are required to have a code of conduct that covers conflict of interest in compliance with 2 C.F.R. §200.3189(c)(1).

CoC board members, staff, consultants, volunteers, funding recipients or subrecipients, or members of a committee with governing board delegated powers are expected to use good judgment, to adhere to high ethical standards and to conduct their affairs in such a manner as to avoid any actual or potential conflict between the personal interests and those of the CoC. A conflict of interest exists when the loyalties or actions are divided between the interests of the CoC and the interest of the board members, staff, consultants, volunteers, funding recipients or subrecipients, or members of a committee with governing board delegated powers. Both the fact and the appearance of a conflict of interest should be avoided.

1. Definitions

For purposes of this policy, the following terms have the specific meanings:

a. Conflict of Interest

HUD's CoC Interim Rule Section §578.95 identifies four types of conflicts of interest:

- i. Individual conflicts of interest regarding provision of services, which occur when interested parties indirectly benefit financially or otherwise by the activities carried out using CoC grant funds. This includes any decision or activity made by a recipient or subrecipient that gives the appearance of impropriety;
- ii. Organizational conflicts of interest regarding provision of services, which occur when interested parties are unable, or potentially unable, to render impartial assistance or perform objectively;
- iii. Conflicts of interest related to the procurement process, which occur when interested parties violate the code of conduct or conflict of interest rules of 2 C.F.R. §200.112 during the procurement of goods, supplies, equipment, or services; and
- iv. Conflicts of interest related to CoC Board decision-making, which occur when CoC Board members or officers participate in or influence discussions or decisions concerning the award of a grant or other financial benefits to organizations that the member or officer represents.

Such conflicts are presumed to exist in those circumstances in which CoC board members, staff, consultants, volunteers, funding recipients or subrecipient, or committee member's actions may have a preferential impact upon the agency or entity employing the CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers. Such actions are presumed to include, but are not limited to, the development of policies in which a self-serving bias may be present, as well as in decisions affecting the allocation of resources.

A CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers must take certain affirmative steps to prevent, address, and/or manage conflicts of interest.

b. Interested Person

Any CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

c. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- i. An ownership or investment interest in any entity with which the CoC has a transaction or arrangement;

- ii. A compensation arrangement with the CoC or with any entity or individual with which the CoC has a transaction or arrangement; and / or
- iii. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the CoC is negotiating a transaction or arrangement.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists. Compensation for persons with lived experience or for staff is not a conflict of interest.

d. Compensation

Includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. Gifts or gratuities by anyone for someone's personal benefit are not insubstantial if they are in excess of \$25.

2. Activities that Constitute a Conflict of Interest

A conflict of interest occurs when CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers takes an action which results, or has the appearance of resulting in personal, organizational, or professional gain.

No CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers may participate in or influence discussions and/or decisions concerning the award of a grant or other financial benefit(s) to the CoC that the member represents or to the member individually. All interested persons must identify actual or perceived conflicts of interest as they arise and comply with this policy. Disclosure should occur at the earliest possible time and, if possible, prior to the discussion of any such issue. Individuals with a conflict of interest should abstain from discussing and voting on any issue in which they may have a conflict.

Conflicts of interest include the following:

- a. When a CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers participates in or influences decisions concerning the award of a grant or other financial benefit to the organization that the member, staff, recipient or sub-recipient represents (including as a staff, board member, or volunteer).

A board member is considered to represent an organization if that person is an employee, agent, consultant, volunteer, board member/officer, or elected or appointed official of the organization.

- b. When a CoC board member, staff, consultant, volunteer, funding recipient or subrecipient member of a committee with governing board delegated powers participates in or influences decisions concerning grant awards or other financial benefits to organizations with whom they have immediate family or business ties, during their tenure or during the one-year period following their tenure.
- c. When a CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers participates in making rent reasonableness determinations and housing inspections on units that the board member, staff, volunteer, funding recipient, subrecipient, or related entity owns.
- d. When a CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers may condition an individual's or family's acceptance of emergency shelter or housing owned by the recipient, subrecipient, or parent or subsidiary of the subrecipient, as a condition of assistance.
- e. When a funding recipient or subrecipient provides an individual or family with any type of Homelessness Prevention (HP) assistance when the participant is living in housing owned by the recipient, subrecipient, or parent or subsidiary of the subrecipient.
- f. When a funding recipient or subrecipient carries out the initial evaluation for rapid rehousing (RRH) or HP assistance for an individual or family when the participant is living in housing owned by the recipient, subrecipient, or parent or subsidiary of the subrecipient.
- g. When a voting member of the governing board who receives compensation, directly or indirectly, from the CoC for services votes on matters pertaining to that member's compensation.
- h. When a voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the CoC for services votes on matters pertaining to that member's compensation.

3. Conflict of Interest Procedures

a. Duty to Disclose

Each CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers has a duty to disclose any actual, possible, or perceived conflict of interest. They must disclose the existence of a financial interest and be given the opportunity to disclose all material facts

to the board and / or members of committees that the board has delegated powers considering a proposed transaction or arrangement.

Participation on the Review and Rank process for the CoC local program annual funding will require an additional conflict of interest form specific to the Review and Rank process.

b. Disclosure

Annual Disclosure: Continuum of Care board members, staff, consultants, volunteers, funding recipients or subrecipients, or members of a committee with governing board delegated powers shall complete and sign an annual conflict of interest statement, disclosing issues with any possible relationships or areas of influence. The forms shall be returned to the Collaborative Applicant and remain on file with the Collaborative Applicant and/or their designee for at least 5 years.

The annual disclosure shall affirm such person:

- i. Has received a copy of the conflicts of interest policy,
- ii. Has read and understands the policy, and
- iii. Has agreed to comply with the policy.

Verbal Disclosure Continuum of Care board members, staff, consultants, volunteers, funding recipients or subrecipients, or members of a committee with governing board delegated powers shall verbally disclose potential conflicts of interest prior to participating in discussions that may result in decisions that may confer financial benefit on themselves, family members, spouse or partner, or organization in which they in any official capacity.

c. Recusal

Any CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers has a duty to recuse themselves, including stating a reason, at any time from involvement in any decision or discussion in which they believe they have or may have a conflict of interest, without going through the process for determining whether a conflict of interest exists.

d. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the CoC board or delegated committees, an interested person shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

e. Addressing the Conflict of Interest

- i. The CoC Leadership Board and/or relevant committees shall review the material facts of the conflict of interest. The transaction may be approved only if a majority of the directors or committee members, not counting the vote of such person, concludes that:
 - 1. The proposed transaction is fair and reasonable to the CoC;
 - 2. The CoC proposes to engage in this transaction for its own purposes and benefits and not for the benefit of such person; and
 - 3. The proposed transaction is the most beneficial arrangement which the CoC could obtain in the circumstances with reasonable efforts.
- ii. The minutes of any meeting at which such a decision is taken shall record the nature of the affiliation and the material facts disclosed by such person and reviewed by the Chair of the board.
- iii. After exercising due diligence, the governing board or committee shall determine whether the CoC can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- iv. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the CoC's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.
- v. When real or perceived or possible conflicts of interest arise, CoC board members, staff, consultants, volunteers, funding recipients or subrecipients, or members of a committee with governing board delegated powers must disclose the conflict to those present. The disclosure and the member's recusal from any discussion / vote related to the topic must be recorded in the meeting minutes.
- vi. The recusal process must be described in the CoC Governance Charter.

f. Obligations of the Collaborative Applicant

The CoC's Collaborative Applicant will verify that all recipients and sub-recipients, current or proposed, have a Code of Conduct statement on file as part of the threshold requirements for inclusion in the annual CoC NOFO application.

g. Annual Conflict of Interest Requirements

Each year, CoC board members, staff, consultants, volunteers, funding recipients or subrecipients, or members of a committee with governing board delegated powers will be required to review and sign a conflict of interest form.

4. Violations of the Conflict of Interest Policy

- a. If the governing board or committee has reasonable cause to believe a CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers has failed to disclose actual or

possible conflicts of interest, it shall inform them of the basis for such belief and afford them an opportunity to explain the alleged failure to disclose.

- b. If, after hearing the CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers respond and after making further investigation as warranted by the circumstances, the governing board or committee determines the CoC board member, staff, consultant, volunteer, funding recipient or subrecipient, or member of a committee with governing board delegated powers has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

5. Records of Proceedings

The minutes of the CoC board and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the CoC board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

6. Exceptions and Changes to Policy

The CoC reserves the right to make an exception to this policy and procedures based on communication from HUD that impact the CoC's ability to carry out the policy and procedures as described above. The CoC also reserves the right to amend this policy on an annual basis.