



FREQUENTLY ASKED QUESTIONS

CENTERS FOR INDEPENDENT LIVING

Conflicts of Interest

Introductory Note: As part of the Administration for Community Living's (ACL) ongoing responsibility to ensure the proper stewardship of federal funds, the following frequently asked questions (FAQs) are intended to help grantees identify and avoid actual or perceived personal conflicts of interest. Per HHS Grant Policy, ACL grantees have an obligation to avoid actual or perceived personal conflicts of interest, including nepotism.

This guidance is intended to help ACL grantees understand when conflicts of interest may be a compliance risk. This FAQ is not a comprehensive guide to every circumstance that could be a violation of a grantee's obligation to avoid personal conflicts of interest. ACL grantees are responsible for understanding the full scope of their legal responsibilities as federal grantees and are strongly encouraged to reach out to ACL program officers with any questions related to conflicts of interest. For the purposes of these FAQs, a "grantee" includes employees acting on behalf of the grantee, and not in their individual capacity.

For purposes of this FAQ, a "Conflict of Interest" is a significant financial interest that could compromise or bias professional judgement and objectivity related to the management of federal financial assistance. A financial interest in this context means potential for gaining, losing, increasing or decreasing a salary, indebtedness, job offer or other thing of monetary value.

Q1: As a federal grantee, what is my obligation to avoid personal conflicts of interest?

A1: Per 45 CFR 75.112 and HHS Grant Policy, ACL grantees are obliged to establish policies to address actual or perceived conflicts of interests in the context of administering their federal award. Every grantee is required to develop a conflicts of interest policy that addresses potential conflicts of interest. Specifically, HHS Grant Policy (Page II-7)

Requires grant recipients to establish safeguards to prevent employees, consultants, members of governing bodies, and others who may be involved in grant supported activities from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties.

All conflict of interest policies must be consistent with state and local laws and cover, at a minimum, expected conduct concerning financial interests, gifts, gratuities, favors, and nepotism.

Q2: What is the difference between an actual and a perceived conflict of interest?

A2: An actual conflict of interest is a significant financial interest that could directly compromise or bias professional judgment and is objectively related to the management of federal financial assistance. A perceived conflict of interest exists if and only if a reasonable, disinterested person would conclude that an individual might emphasize personal interests over other interests that he/she has responsibility for.

Example:

An actual conflict of interest exists if the executive director of an organization hires her spouse to perform administrative tasks under her direct supervision. The executive director will personally financially benefit from the employment of her spouse, and will be unable to supervise a family member in an unbiased way that prioritized the agency over her family.

A perceived conflict of interest might exist where an agency hires a graphic-design firm owned and operated by a relative of the communications manager. A reasonable person could conclude that the communications manager, who would otherwise be responsible for working with the graphic-design firm to meet the agency's needs, might prioritize increasing funding to the graphic-design firm over meeting the needs of the agency in a financially responsible manner.

Q3: Does my agency need a nepotism policy?

A3: Yes. According to the HHS Grant Policy, every grantee must address nepotism in the grantee's conflict of interest policy. In addition to the requirements for the policy in A1 above, the policy must (45 CFR 75.112):

- Address the conditions under which outside activities, relationships, or financial interests are proper or improper.
- Provide for advance notification of outside activities, relationships, or financial interests to a responsible organizational official.
- Include a process for notification and review by the responsible official of potential or actual violations of the standards.
- Specify the nature of penalties that the recipient may impose. These penalties would be in addition to any penalties that HHS or a cognizant Federal agency may impose for infractions that also violate the terms and conditions of award.

HHS requires the grantee to make this policy "available to each of the grantee's officers, each employee and consultant working on the grant-supported program, project, or activity, each member of the board of directors, if applicable, and, upon request, ACL." (HHS Grant Policy Section II-7).

Q4: How does HHS define “nepotism”?

A4: HHS does not have a standard definition of “nepotism.” ACL defines a “conflict of interest” as a significant financial interest that could directly compromise or bias professional judgment and objectivity related to the management of federal financial assistance. As previously noted, the board of directors for each grantee is responsible for adopting and approving policy that is consistent with state and local laws. Many states and localities have specific language and definitions that must be incorporated into your policy.

Q5: What can my agency do if the most qualified person for a job is an applicant with a close personal relationship to a current staff member or a board member?

A5: In certain cases, it may be appropriate to hire an individual even though doing so would appear to be a personal conflict of interest. In this case, the grantee should ensure that there is no supervisory relationship between the conflicted individuals. A grantee must always comply with state and local laws, which may prohibit you from hiring family members or other individuals with a close financial relationship to you in all cases. In other areas, you may be able to hire an individual where a conflict would exist if your agency takes steps to fill the vacant position by determining, in an unbiased way, the most qualified candidate for the job. This unbiased way would need to include:

- Publicly advertising the job announcement,
- Interviewing multiple qualified candidates,
- Recusing, where possible, the staff persons with a conflict of interest from decision-making or other involvement with the hiring process, and
- Ensuring protections against ongoing lack of favoritism

Q6: To whom does a grantee’s conflict of interest policy apply?

A6: A grantee’s conflict of interest policy must apply to all the grantee’s employees, independent contractors, board members, and all “others who may be involved in grant supported activities.” The policy need not apply the same way to all people it applies to. For example, the policy need not treat hiring the spouse of the executive director and hiring the spouse of an independent contractor who works with the grantee for only part of one day per month in the same way.

Q7: What happens if ACL finds that a grantee is operating in violation of its conflict of interest policy?

A7: If a grantee organization violates its conflict of interest policy, ACL may take enforcement actions that include, but are not limited to, withholding cash payments, disallowance of unallowable expenses, and/or termination of the award.

Additional Resources:

- 45 CFR 75.112
- HHS Grant Policy Statement Section II-7

For More Information: Please contact your Independent Living Program Officer.