

# Conflicts of Interest Policy

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## I. Introduction

### A. Applicability & Scope of Federal Compliance

This policy is intended for adoption by State of Vermont American Rescue Plan Act (ARPA) subrecipients. Federal regulations require that subrecipients have written conflict of interest policies and procedures that govern the actions of **all employees engaged in the selection, award, or administration of contracts**. Your organization may adopt this policy in its entirety or may use it to supplement or modify your existing conflict of interest policies and procedures to ensure federal compliance.

This policy is designed specifically with ARPA compliance in mind, and following the procedures outlined herein will help to ensure that any conflicts of interest are identified and addressed in compliance with ARPA terms and conditions and any federal regulatory requirements *as they pertain to ARPA*.

This policy is not necessarily a one-size-fits-all guarantee of federal compliance for all federal grants. If your organization is conducting activities under any other federal programs, you should confer with your agency point of contact regarding whether this policy is complete and consistent with regard to the requirements of that program.

This policy also does not include any requirements that may have been imposed by the state agency making the subaward to your organization (otherwise known as the pass-through entity). You should consult the controlling documents for your subaward and coordinate with your pass-through entity point of contact to ensure you are meeting all non-federal requirements.

### B. Policy Management

This policy reflects the federal regulatory requirements for ARPA as of the day it was promulgated. It is your responsibility as a federal subrecipient to remain aware of any regulatory changes and to incorporate them into this policy.

If you make changes to this policy, you should:

- (1) Ensure those changes are consistent with federal requirements.
- (2) Maintain a record of all changes, as well as backup copies of all versions of the policy.

### C. Recordkeeping – General Requirements

ARPA terms and conditions require that all records be preserved for a minimum of 5 years past the point when all grant funds are expended or returned to the U.S. Department of Treasury. In general, your organization should follow this rule *unless the terms and conditions of your subaward specify a longer record retention period*.

**If the terms and conditions of your subaward specify a shorter record retention period, you still must adhere to the longer retention period required by Treasury.**

There are specific record-keeping requirements for property acquired with federal grant funds, which should be addressed in your organization's recordkeeping policy. Your state agency point of contact can provide additional information on recordkeeping requirements.

## D. Agency Oversight

Your organization is required to cooperate with the subrecipient monitoring process implemented and carried out by you administering agency.

Your administering agency, the State of Vermont, and the U.S. Department of Treasury are entitled to examine any documents, papers, or other records pertaining to the federal award. Those entities are also entitled to have reasonable access to your organization's personnel for interviews and discussions related to those documents.<sup>1</sup> This right of access lasts as long as the records are maintained. The only exception to this rule is when review of the records would involve disclosing the true name (as opposed to a pseudonym) of a victim of a crime. Under those circumstances, you should inform your administering agency that permitting access to records would result in such a disclosure and discuss with them how to proceed.

## E. Responsibility

Your organization is solely responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements and other grant-related activities. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. The standards expressed in this policy do not relieve your organization of any contractual responsibilities under your contracts.

# II. Personal Conflicts of Interest

## A. Prohibited Interest in Federally Funded Contract

No employee, officer, or agent of your organization may participate in the selection, award, or administration of a contract supported by a federal award if he or she has an actual, potential, or apparent conflict of interest.<sup>2</sup>

Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.<sup>3</sup>

## B. Procedure for Addressing Personal Conflicts of Interest

An actual, apparent, or potential conflict of interest must be disclosed by the individual with the conflict or the employee who discovers the conflict immediately. **Your organization must then provide written notice of the conflict to the administering state agency.**<sup>4</sup>

Once an actual, apparent, or potential conflict of interest has been identified, your organization should employ an ethical partition procedure (sometimes known as a "firewall," or "cone of silence") to partition the employee from all communications, decisions, and other work pertaining to the source of the conflict and the transaction. This procedure serves several goals:

- To prevent actual bias or self-dealing in the decision-making process.

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<sup>1</sup> 2 CFR 200. 227

<sup>2</sup> 2 CFR 200.318

<sup>3</sup> 2 CFR 200.318

<sup>4</sup> U.S. Department of the Treasury Coronavirus State Fiscal Recovery Fund Award Terms and Conditions, item 8.

- To shield your organization from the appearance of bias or self-dealing, even where none exists.
- To foreclose even the potential for actual or apparent bias or self-dealing.
- To eliminate to the greatest extent possible your employee's individual responsibility for segregating their own interests or those of their family from those of your organization.

As a result, it is not sufficient merely to restrict the partitioned employee's decision-making power. You must also take steps to shield them from having information that might intentionally or accidentally grant some advantage, however slight, to the source of the conflict. For example, an employee who in no way participates in the decision-making process might still have access to information regarding the nature of your organization's priorities, timeline, or budget which could be used to some real or apparent advantage.

The procedure employed should be tailored to the role of the employee and the nature of conflict and the transaction, but should at a minimum include:

- Ensuring that the partitioned employee is removed from all email groups, chains, and other communications regarding the source of the conflict and the transaction.
- Removing meetings, deadlines, etc. from any calendars shared with the partitioned employee or otherwise removing their ability to view those events.
- Removing the partitioned employee as the point of contact for any aspect of the transaction.
- Excluding the partitioned employee from any in-person discussion of the source of the conflict or the transaction and informing other employees that they should not discuss the source of the conflict or the transaction where the partitioned employee might overhear.
- Ensuring that the partitioned employee plays no role in drafting any documents (RFPs, contracts, guidelines, etc.) and is not asked to provide formal or informal input on the source of the conflict or any aspect of the transaction.

The required partition procedures may necessitate changes to the standard practices of your organization. For example, office-wide emails, newsletters, and calendars cannot include references to the source of the conflict or the transaction.

The partitioned employee must also take personal responsibility for maintaining the partition. This includes, but is not limited to:

- Proactively identifying communication threads, shared calendars, or other potential or actual leaks in the partition and ensuring those leaks are corrected.
- Informing or reminding their fellow employees of their partitioned status and taking steps to remove themselves from any discussions involving the transaction or source of the conflict.
- Actively avoiding exposure to information regarding the source of the conflict or transaction.
- Informing the source of the conflict of their partitioned status and making clear that they will not be providing information about or participating in the transaction.

### Recordkeeping

As part of maintaining a complete record of the transaction from which the conflict of interest arose, you should document:

- When and in what manner the conflict of interest was discovered.
- The nature of the conflict of interest.
- The partition procedure employed.
- Any breaches in partition protocol and how those breaches are corrected.

### C. Prohibited Gift, Gratuities, Tips, or Incentives

The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The following **extremely limited** exceptions apply:

- **Unsolicited** gifts, etc. may be accepted if the total value received from a single individual or their affiliated organization does not exceed fifty dollars (\$50.00).

Examples:

Contractor pays for a business lunch worth \$30.

Contractor sends a box of chocolates worth \$40 to your office as a holiday gift.

Contractor gifts you a bottle of wine worth \$20 as a birthday gift.

- **Unsolicited** gifts, etc. may be accepted if they are perishable, cannot reasonably be returned, and will be wasted if you do not consume it.

Examples:

Contractor surprises your office with several pizzas delivered at lunchtime.

Contractor buys you a flower arrangement worth \$60 for your birthday.

**Under no circumstances may an employee solicit anything of value.**

Notwithstanding the exceptions described above, any gifts, gratuities, incentives, or tips received by any member of your organization must be returned as soon as possible.

### D. Sanctions for Violation

Failure to comply with this policy must be grounds for sanction, including, but not limited to:

- Issuance of a verbal or written warning.
- Issuance of a verbal or written reprimand.
- Mandatory training on the requirements of this policy.
- Removal from the role which gave rise to the violation or exclusion from future roles that would provide opportunity for future violation.
- Termination of employment.

All violations of this policy should be documented, along with any corrective action taken or sanction imposed, and maintained with the record of the transaction giving rise to the conflict of interest.

#### **Public Employees, Public Officials, Legislative Employees, Constitutional Officials, Elected Officials, and Family Members:**

The above policy is recommended only for private entities. State employees, officials, and their families are governed by the State policy on accepting and soliciting gifts, summarized [here](#).

## III. Organizational Conflicts of Interest

Organizational conflicts of interest arise when, because of a relationship with a parent company, affiliate, or subsidiary organization, your organization is unable or appears unable to be impartial in conducting a procurement action involving the related organization. In every case, it is particularly important to document not only the decisions made regarding a particular procurement action, but also the reasons for those decisions. If an affiliated organization is chosen for a contract or is given a positive evaluation, you must maintain a record thoroughly justifying those decisions.

**Once the conflict of interest is discovered, your organization must immediately provide written notice of the conflict to your administering agency.<sup>5</sup>**

Organizational conflicts of interest typically appear in 3 forms:

#### A. Biased Ground Rules

##### Character of Actual, Apparent, or Potential Conflict

This form of organizational conflict of interest arises when a related entity or an employee of a related entity plays a role in drafting the rules or requirements for a procurement procedure or specific contract and also bids on that contract. This can arise from any stage of rule creation, from the drafting of procurement policies and procedures themselves to the creation of specific criteria or solicitations for an individual contract.

##### How to Avoid the Conflict

A Biased Ground Rules conflict of interest can be avoided by ensuring that no related entities or their employees who may be potential contractors are consulted in the drafting of internal procurement policies or the rules or requirements for specific transactions, or by excluding any related organizations who assisted in the drafting of procurement rules and requirements from eligibility for the contract.

#### B. Impaired Objectivity

##### Character of Actual, Apparent, or Potential Conflict

An Impaired Objectivity conflict of interest arises when an entity is put in a position to evaluate its own performance or make decisions based on its own financial interests rather than the interests of the project. This conflict of interest can arise when your organization will obtain some direct or indirect material advantage from granting a contract to an affiliated organization or from giving a positive evaluation of the affiliated organization's performance of a contract.

##### How to Avoid the Conflict

When possible, a blind review of proposals can prevent the appearance of bias in the selection of an affiliated organization. At any stage of the contracting process, a neutral outside entity can be employed to review the qualifications of bidders or provide an unbiased evaluation of the related entity's performance. At all stages, it is crucial that detailed records be kept documenting the reasons why a related entity is chosen over other qualified bidders for a contract or why their performance was given a positive evaluation.

#### C. Unequal Access

##### Character of Actual, Apparent, or Potential Conflict

An Unequal Access conflict of interest arises when a related entity has access to non-public information that is competitively useful in obtaining a contract. For example, a related entity may have access to budget information that is not publicly available and be able to scale its proposal for a contract accordingly, giving it an unfair competitive advantage.

##### How to Avoid the Conflict

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<sup>5</sup> U.S. Department of the Treasury Coronavirus State Fiscal Recovery Fund Award Terms and Conditions, item 8.

This conflict can be avoided by maintaining strict information controls between related entities. Information about prospective procurement actions should not be made available to related entities unless necessary. Employees who have regular contact with related entities should be made aware of these concerns and should be cautioned to avoid sharing non-public information with employees of related entities.