

# Conflict of Interests

for Continuum of Care Grants

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# Overview

## Two-step Procedure for Conflicts of Interest

### 1. Identify a Conflict

*What is a conflict? Who is impacted? Which regulations do I follow? Are goods being procured? etc...*

### 2. Decide how to address a Conflict

*Now that I've identified a conflict, how do I solve it? What does HUD require to approve a waiver? How do I comply with program requirements? etc...*

## Examples

# Disclaimer

This presentation is informative, but not dispositive. Conflicts of interest are inherently fact specific. If you have any questions, please consult your attorney or the local CPD field office.

# What is a Conflict of Interest?

- “A real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.” - Black’s Law Dictionary
  - REAL/SEEMING INCOMPATIBILITY?
    - Incompatible because they both cannot be met without compromising the other
  - PRIVATE INTERESTS?
    - Generally defined as monetary personal interests
  - PUBLIC/FIDUCIARY DUTIES?
    - Legal obligations owed to the Public, includes abiding by HUD’s fiscal and administrative requirements for expending and accounting for all HUD funds.
    - Legal obligation of utmost good faith, trust, and confidence owed by a fiduciary to the beneficiary;
    - Legal obligation to act with the highest degree of honesty and loyalty toward and in the best interests of the beneficiary.

# Procurement vs. Non-procurement

Procurement includes:

- Supplies
- Equipment
- Construction
- Services by recipients and subrecipients



2 CFR 200.317 and 200.318 apply

Non-Procurement is everything else, and includes:

- Acquisition and disposition of real property
- Provision of assistance by the recipient/subrecipient as an eligible activity
  - Rehabilitation, preservation, and other improvement of private properties pursuant to 24 CFR 570.202
  - Grants, loans, and other assistance pursuant to 24 CFR 570.203 or 570.204



Program Conflict of Interest Rules apply

# Prohibited Conflicts

## Noteworthy Types of Conflicts Outlined in the Regulations

- Procurement (a) -- 24 CFR 578.95(a) and 2 CFR Part 200
- CoC Board Members -- 24 CFR 578.95(b)
- Organizational Conflicts -- 24 CFR 578.95(c)
- Other Conflicts -- 24 CFR 578.95(d)

# What Conflicts are Prohibited? 24 CFR 578.95

## CoC Board Members (b)

No Continuum of Care board member may participate in or influence discussion or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

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CoC Board Members (b)

No Continuum of Care **board member** may **participate** in or **influence discussion** or **resulting decisions** concerning the **award of a grant** or other **financial benefits** to the **organization** that the member **represents**.

This conflict is **UNWAIVABLE**.



# What Conflicts are Prohibited? 24 CFR 578.95

## Organizational Conflicts (c)

An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under § 578.49(b)(2) and § 578.51(g) and housing quality inspections of property under § 578.75(b) that the recipient, subrecipient, or related entity owns.

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# What Conflicts are Prohibited? 24 CFR 578.95

## Other Conflicts (d)

No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

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Other Conflicts (d)



No **covered person**, meaning a person who is an employee, agent, consultant, officer, **or** elected **or** appointed official of the recipient **or** its subrecipients **and** who exercises **or** has exercised any functions **or** responsibilities with respect to activities assisted under this part, **or** who is in a position to participate in a decision-making process **or** gain inside information with regard to activities assisted under this part...



# What Conflicts are Prohibited? 24 CFR 578.95

Other Conflicts (d)



No **covered person** ... may obtain a **financial interest** **or** **benefit** from an assisted activity, have a financial interest in any contract, subcontract, **or** agreement with respect to an assisted activity, **or** have a financial interest in the proceeds derived from an assisted activity ...

# What Conflicts are Prohibited? 24 CFR 578.95

Other Conflicts (d)  

No **covered person** ... may obtain a **financial interest or benefit** ... either for **him or herself** or for those with whom he or she has **immediate family or business ties**, during his or her **tenure** or during the **one-year period** following his or her tenure.

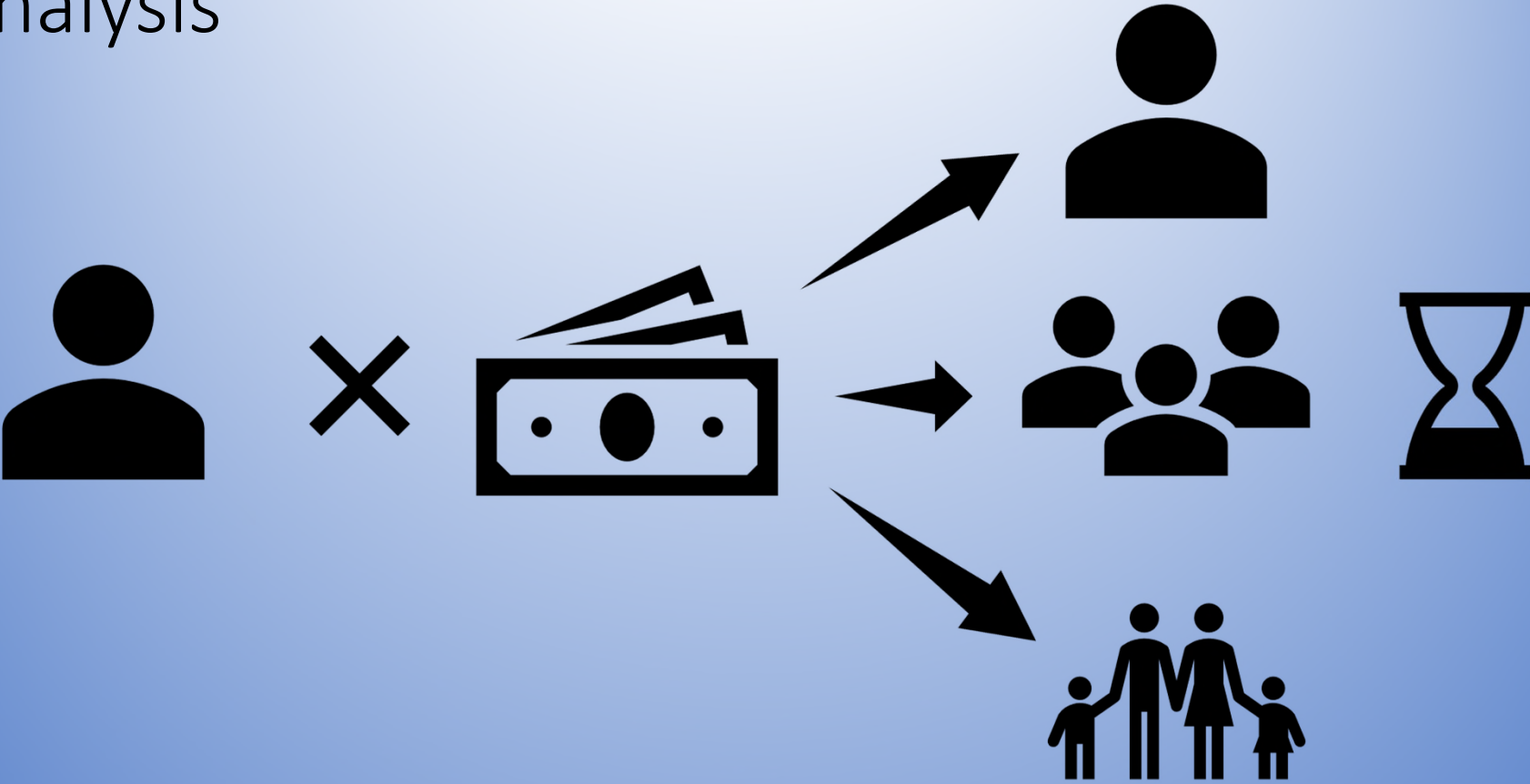


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# Analysis





# Covered Persons

An:

1. Employee
2. Agent
3. Consultant
4. Officer
5. Elected official
- or-
6. Appointed official

Of

1. A recipient, or
2. A subrecipient

And,

Who exercises or has exercised any functions or responsibilities with respect to CoC activities, or who is in a position to participate in a decision-making process or gain inside information on CoC activities

# Covered Interests

An individual may not have a financial interest or benefit from a CoC activity

What is a financial interest or benefit?

What are proceeds?

Beneficiaries



Time



For:

1. themselves

-or-

2. those with business ties

-or-

3. those with immediate family ties



Could include:

- Spouse
- Parent (including stepparent)
- Child (including stepchild)
- Sibling (including stepsiblings)
- Grandparent
- Grandchild
- In-laws
- Whether by blood, marriage or adoption

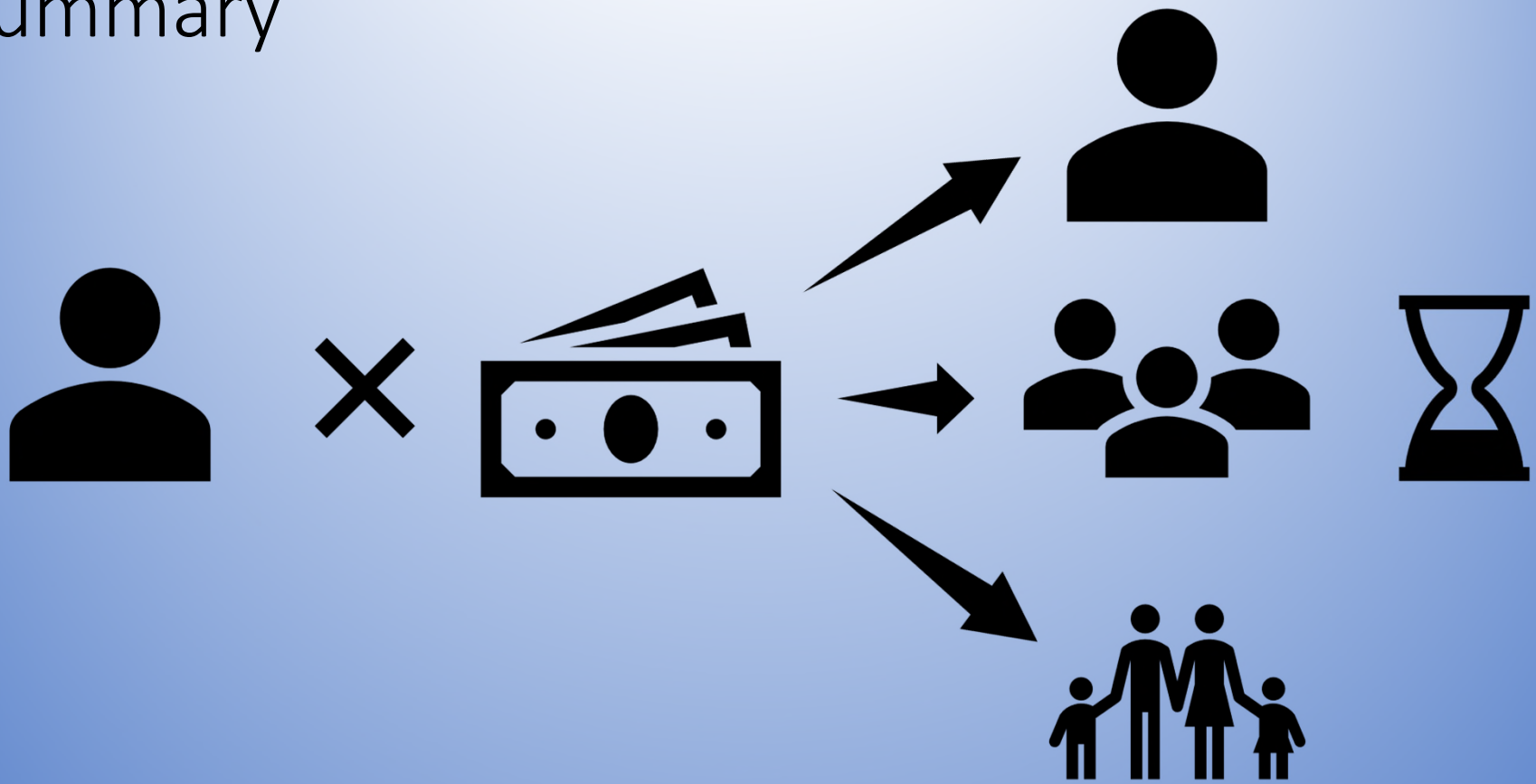
For:

1. The time of their tenure

-or-

2. For one year thereafter

# Summary



# Addressing a Conflict

1. Identify the conflict in advance and prevent it from occurring (i.e., reassign an employee)
2. Seek a waiver from HUD

# HUD Process for Granting Exceptions

On a **cases-by-case basis**,

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On a **cases-by-case basis**, HUD will consider exceptions to 24 CFR 578.95(d) only after the **recipient has provided** the following documentation:

1. A **disclosure** of the nature of the conflict, accompanied by a written assurance
  - a. If a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made;
  - b. If a private nonprofit organization, that the conflict has been disclosed in accordance with the written code of conduct or other conflict-of-interest policy
2. An **opinion** of the **recipient's** attorney that the interest for which the exception is sought would not violate state or local law.
  - a. If the subrecipient is a nonprofit organization, the exception would not violate the organization's internal policies

## Public Disclosure (Nonprofit)

- Must disclose the nature of the conflict in accordance with the nonprofit's written code of conduct or other COI policy
- Disclose that recipient has determined the relationship to be a conflict of interest pursuant to HUD regulations
- Disclose that the recipient is disclosing such a conflict in connection with a request for HUD to grant an exception to the conflict

# Attorney's Opinion

- The exception would not violate the organization's internal policies (if private nonprofit).
- No conflict with state or local law (if government)
- Always from the attorney representing the **recipient**

# Exception Factors (HUD's analysis)

Factors HUD will consider in granting exceptions:

1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
2. Whether an opportunity was provided for open competitive bidding or negotiation;
3. Whether the affected person has withdrawn from his or her functions, responsibilities, or the decision-making process with respect to the specific activity in question;

# Exception Factors (continued)

Factors to be considered for granting exceptions

4. Whether the interest or benefit was present before the affected person was in a conflicted position;
5. Whether undue hardship will result either to the recipient, the subrecipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict;
6. Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;
7. Any other relevant consideration

# Other Considerations

- **Submission** of materials to HUD **does NOT guarantee** an exception will be granted
- Grant of waiver must be evidence in **writing** by HUD
- **Report** all conflicts of interest, including potential conflicts, to your local HUD office
- **Procurement** conflicts are different – different regulations & a different waiver process

# Other Requirements (24 CFR 978.103(a)(12))

## Record keeping requirements:

- Copy of conflict of interest policy developed and implemented; and
- Records supporting exceptions to the conflict of interest prohibitions

# Good Measures

- **Written** policy requiring **annual** conflict-of-interest training, with legal counsel or other qualified individuals reviewing the policy with employees
- Establish a protocol for staff to **self-report** possible conflicts, raise suspected conflict-of-interest issues, or ask for guidance
- **Monitor** employee conflicts and the names of the principals of businesses that may become subrecipients, contractors, or suppliers
- **Formal and written** COI policies and procedures