

STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS

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**SUBJECT:** Conflict of Interest

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**NUMBER:** 2.10.9

**EFFECTIVE:** June 2013

**REVISED:** June 2016

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**APPROVAL**



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**PURPOSE:**

To outline the policies and procedures for the Department of Community Affairs to document compliance with Conflict of Interest requirements and HUD's implementing regulations found at 24 CFR 570.611 (CDBG Other Program Requirements: Conflict of Interest), 24 CFR 570.489(h) (CDBG Program Administrative Requirements for States), and 2 CFR 200 (c) (1) and (2).

**POLICY:**

An organizational conflict of interest means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advise the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Conflicts of interest in the award and/or administration of contracts must be avoided.

*No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. 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."*(2 CFR 200.318 (c) (1).

Other federal regulations with which the grantee must comply are the conflict of interest requirements in 24 CFR 570.611.

In some cases certain CPD programs contain waivers and alternative requirements, relevant statutory provisions for grants provided under the Federal Notice issued for that program. In order to meet the requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) Program (Robert T. Stafford Disaster Relief and Emergency Assistance act of 1974 commonly referred to the "Stafford Act") as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternative

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requirements for this crosscutting element. Note that wherever a conflict occurs between the crosscutting requirements and the special requirements as noted in the Stafford Act and the Disaster Relief Appropriations Act of 2013, the latter shall take precedence.

**DISASTER RECOVERY WAIVERS OR ALTERNATE REQUIREMENTS:**

None.

**I. CONFLICT OF INTEREST APPLICABILITY**

In the procurement of supplies, equipment, construction, and services by recipients and sub recipients, the conflict of interest provisions in 2 CFR 200.317- 2 CFR 200.326, and the provisions of 24 CFR 570.611 apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its sub recipients, or to individuals, businesses or other private entities under eligible activities which 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 or § 570.455).

**II. CONFLICT OF INTEREST REQUIREMENTS**

Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons<sup>1</sup> who exercise or have exercised any functions or responsibilities with respect to CDBG-funded activities, or who are in a position to participate in a decision making process or to 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 who they have family or business ties, during their tenure or for one year thereafter.

Further, no employee, officer or agent of the grantee or sub grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest,

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<sup>1</sup> Applies 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 sub recipients which are receiving federal funds.

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real or apparent, would be involved. Such a conflict would arise when there is a financial or other interest in the firm selected for award by:

- the employee, officer or agent of the grantee or sub grantee,
- 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 above

In addition, the Department of the Treasury (“Treasury”) requires that all employees involved in the “drafting, reviewing, evaluating or making contract awards, or substantively assisting in any of those tasks, or authorizing payments under those contracts” must complete a *Personal and Business Relationships Disclosure Form*, which is reviewed and approved by Treasury’s Ethics Liaison Officer. These forms must be completed annually and employees are subject to discipline and/or prosecution for submitting false information. Moreover, the Division of Purchase and Property (DPP) requires all employees who serve on Evaluation Committees for contract proposal submissions to complete a form that requires committee participants to maintain confidentiality and that screens participants for potential conflicts of interest. This process is documented in a DPP Standard Operating Procedure.

### **III. SOLICITATION OF GRATUITIES**

The State’s or sub grantee’s officers, employees or agents shall not solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements.

The State and its sub grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct must provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State’s and its sub grantee’s officers, employees, or agents, or by contractors or their agents. HUD may provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

### **IV. EXCEPTIONS**

Upon the written request of the recipient, HUD may grant an exception to the conflict of interest prohibition on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient’s program or project. An exception may be considered only after the recipient has provided the

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following:

- A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

In determining whether to grant a requested exception after the recipient has satisfactorily met these requirements of paragraph, HUD shall consider the cumulative effect of the following factors, where applicable:

- Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- Whether an opportunity was provided for open competitive bidding or negotiation;
- Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- Whether the interest or benefit was present before the affected person was an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or sub recipients which are receiving federal funds;
- Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- Any other relevant considerations.

## **V. WRITTEN STANDARDS**

The State must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. These specific written

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standards were addressed in Provision II of this Policy, “Conflict of Interest Requirements.”

The State of New Jersey State Ethics Commission administers and enforces the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. Pursuant to section 21(k) of the Conflicts Law, the Commission is authorized to promulgate, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., such rules and regulations as may be necessary to effectuate the purposes of the statute.

Section 21(o) of the Conflicts Law directs the Commission to prepare, and ensure distribution to each State officer and employee and special State officer and employee in the Executive Branch, a plain language ethics guide designed to provide a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning applicable ethical standards. The goal of the guide is to promote ethical day-to-day decision making, to give general advice regarding conduct and situations, to provide easy reference to sources, and to explain the role, activities and jurisdiction of the Commission. Each State officer and employee and special State officer and employee must certify that he or she has received the guide, reviewed it and understands its provisions.

## **VI. STATE CONFLICT OF INTEREST GUIDELINES**

The following is contained in the “State of New Jersey Plain Language Guide to New Jersey’s Executive Branch Ethics Standards”:

*As a State officer or employee or special State officer or employee, you are prohibited from acting in your official capacity in any matter in which you have a direct or indirect personal or financial interest that might be expected to impair your objectivity or independence of judgment. As a practical matter, this means that you should not participate, even informally, on a matter in which you have a personal or financial interest.*

- *You could have an incompatible personal or financial interest through such things as:*
- *A purchase, sale, lease, contract, option, or other transaction;*
- *Property or services; and*
- *Employment or negotiations for prospective employment.*

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*Your relationship to a party involved in the matter, such as a relative, cohabitant, or person who is providing funds, goods or services to you.*

*The Conflicts Law contains an exception that permits you to represent yourself in negotiations or proceedings concerning your own interest in real property.*

***Prohibitions on Contracts with a State Agency***

***Special State Officers and Employees.*** *You may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with the State agency with which you are affiliated if you have any duties or responsibilities in connection with the purchase or acquisition of property or services. This prohibition also applies to your partners and to any corporation that you control, or in which you own or control more than 1% of the stock. The prohibition does not extend to other State agencies.*

***State Officers and Employees.*** *You, along with your partners or any corporation you control or in which you own or control more than 1% of the stock, may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with any State agency, whether or not it is the agency for which you work.*

***Limited Exceptions to these Prohibitions.*** *Three categories of contracts are exempt from the general prohibition on contracting with the State. However, before entering into a contract falling within any of these categories, approval must first be obtained from the Commission. The three categories are:*

- *Those purchases, contracts, agreements, or sales that are made after public notice and competitive bidding. The Commission typically approves such contracts unless the contract in question is with the State employee's own agency. In these situations, the Commission has determined that such contracts raise the issue of an appearance of impropriety under section 23(e) (7) of the Conflicts Law.*
- *Those contracts that may be awarded without public advertising and competitive bidding pursuant to N.J.S.A. 52:34-9 and N.J.S.A. 52:34-10. (See attached.)*
- *Any contract of insurance entered into by the Director of the Division of Purchase and Property, Department of Treasury, pursuant to N.J.S.A. 52: 27B-62.*

*In addition, there are two statutory exemptions that do not require advance approval by the*

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*Commission:*

- *Contracts for the development of scientific or technological discoveries or innovations: Section 19.1 of the Conflicts Law excepts contracts for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its supplemental code of ethics authorizing these contracts that minimizes actual conflicts of interest, and the contract complies with the code procedure.*
- *Certain rental agreements with State agencies: Section 19.2 of the Conflicts Law excepts rental agreements with a State agency that operates a facility which rents space or provides services to assist small businesses employing fifty people or less, pursuant to the same terms and conditions as those offered to members of the public generally.*

***Prohibitions on Representing Parties other than the State.*** *There are severe restrictions on your ability (and that of any partnership, corporation, or firm in which you have an interest) to represent, appear for, or negotiate on behalf of a person other than the State in connection with any cause, proceeding, application, or other matter, including a negotiation concerning the acquisition or sale of property of any sort, pending before any State agency. See N.J.S.A. 52:13D-15 and 16.*

*Representation does not only involve personally appearing before a State agency on behalf of an individual or entity. Under Commission precedent, representational activities also include:*

- *correspondence to a State agency on behalf of a third party;*
- *telephone calls to a State agency on behalf of a third party; and*
- *A State employee's signature on an application or other document submitted to a State agency on behalf of a third party (e.g., an engineering report).*

*You should carefully review these restrictions or consult with your ELO if you are considering taking any action on behalf of another person or entity that might be considered representing, appearing for, or negotiating on behalf of that person or entity in opposition to the State or before a State agency.*

*For special State officers or employees, the restriction on representing parties other than the State is limited to their own agencies.*

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*Advisory Opinions. If you think that you may have a conflict of interest, you should ask your ELO or the Commission for an opinion. These cases are frequently very fact-sensitive, and the Commission decides each individually. See Advisory Opinions, below, for information on how to find advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.*

Please refer to the attached Exhibits for additional detail:

**EXHIBIT 1: New Jersey State Ethics Commission Outside Activity Questionnaire**

**EXHIBIT 2: Plain Language Guide to New Jersey's Executive Branch Ethics Standards**