

Conflict of Interests

for the Continuum of Care Program

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Overview of today's presentation

1. Identify a Conflict

What is a conflict? Who is impacted? Which regulations do I follow?

2. Decide how to address a Conflict

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

3. 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.



"Yes, I am employee of the month again. And yes, I'm the one who chooses the employee of the month. And no, I don't see a conflict of interest."



"Try this—I just bought a hundred shares."

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

Program Conflict of Interest Rules apply

TODAY: ONLY DISCUSSING NON-PROCUREMENT

Prohibited Conflicts

Noteworthy Types of CoC 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.

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.

What Conflicts are Prohibited? 24 CFR 578.95

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What Conflicts are Prohibited? 24 CFR 578.95

Other Conflicts (d)

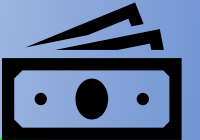
No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position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

What Conflicts are Prohibited? 24 CFR 578.95



Other Conflicts (d)

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What Conflicts are Prohibited? 24 CFR 578.95

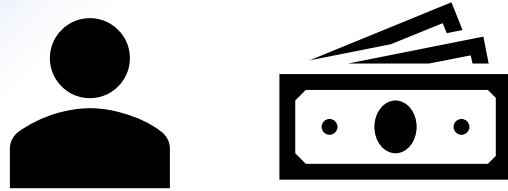
Other Conflicts (d)



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...

What Conflicts are Prohibited? 24 CFR 578.95

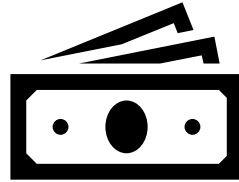
Other Conflicts (d)



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

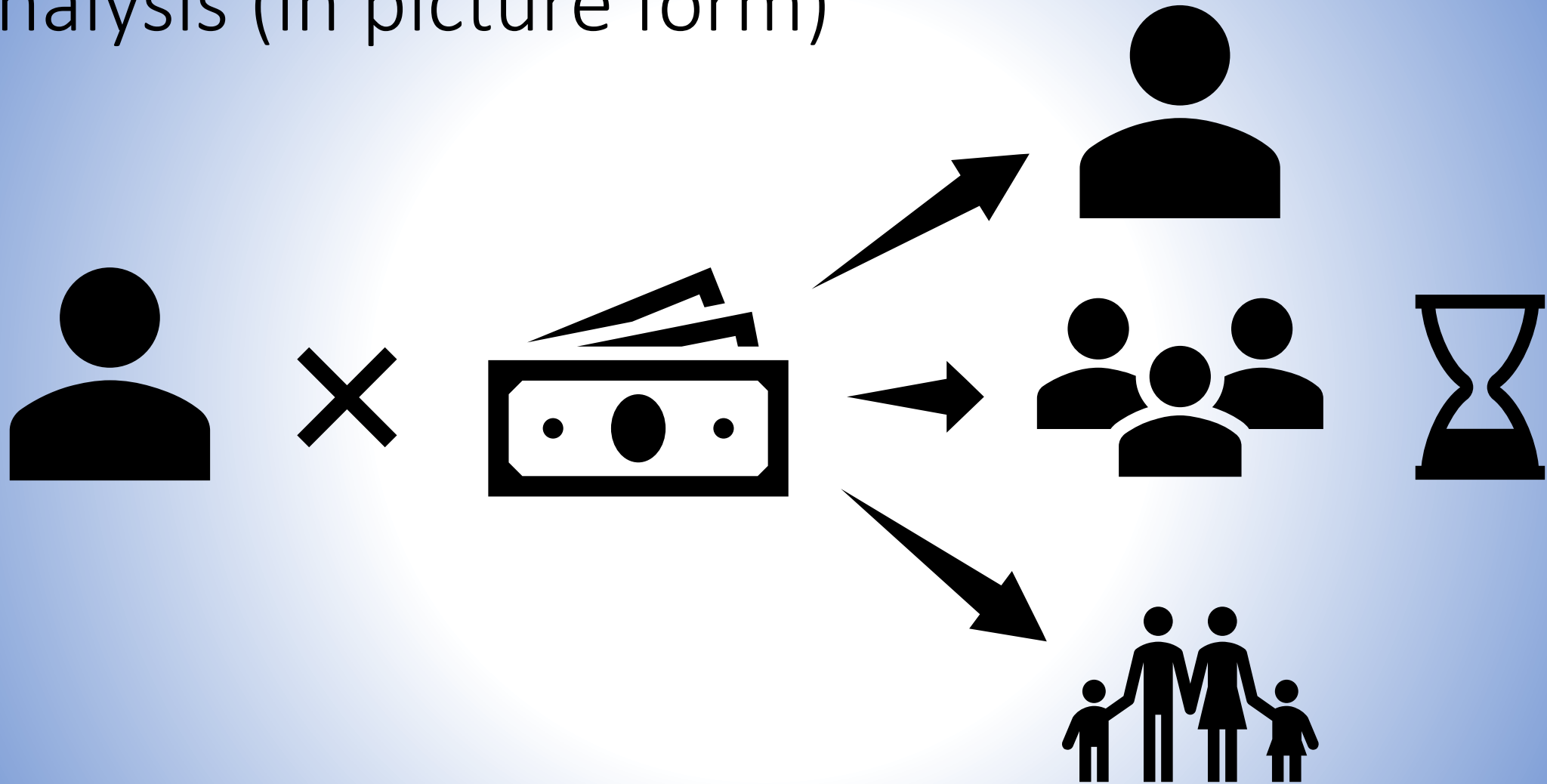
Other Conflicts (d)



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.



Analysis (in picture form)



Analysis (in question form)

- Question 1: Is the individual a “covered person” under 24 CFR 578.95(a)?
- Question 2:
 - a: Does the individual, in this role, exercise any functions or responsibilities with respect to CoC activities?
 - b: Does the individual make decisions on CoC-assisted activities?
 - c: Will the individual gain inside information on CoC activities in role?
- Question 3:
 - a: Is there a financial interest or benefit from a CoC-assisted activity?
 - b: Is there a financial interest in a contract, subcontract, or agreement with respect to CoC-assisted activity?
 - c: Is there a financial interest in the proceeds derived from the assisted activity?
- Question 4: Does the financial interest or benefit run to the individual, a business associate, or a family member during the individual’s tenure or for one year thereafter?

4 Yes = Conflict of Interest

Covered Persons (Question 1)

An:

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

Of

1. A recipient, or
2. A subrecipient

Covered Roles (Question 2)

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

Covered Interests (Question 3)

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 (Question 4)



Time



For:

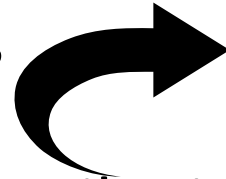
1. themselves

-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

You've identified a conflict!
Now what?

Addressing a Conflict

1. Identify the conflict in advance and prevent it from occurring
2. Seek a waiver from HUD

HUD Process for Granting Exceptions

On a **case-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

EXAMPLES

Disclaimer

Examples are illustrative, not authoritative.

Example 1

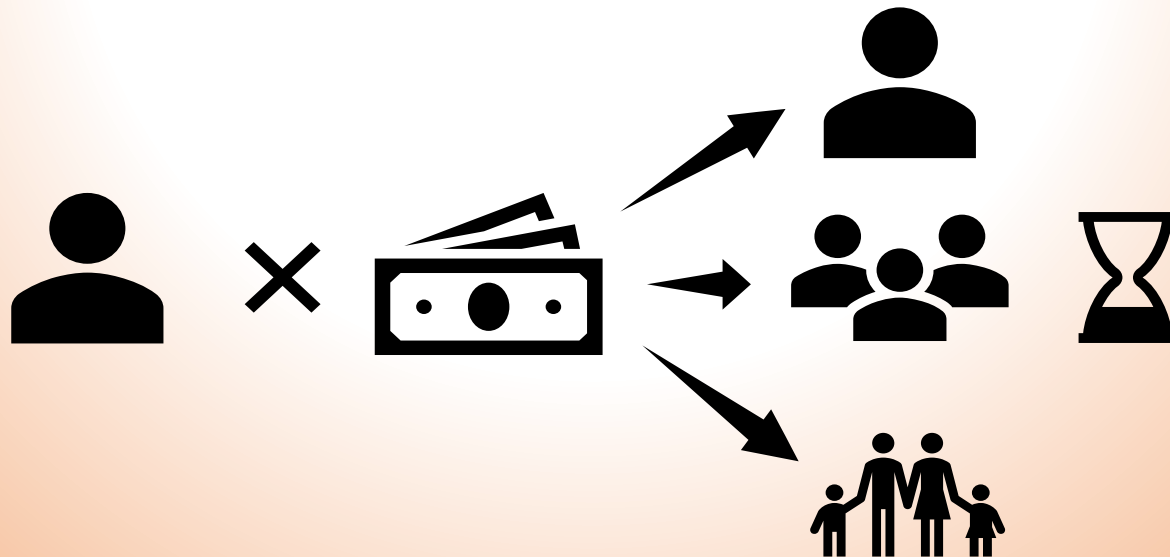
Bengal Housing Services (BHS) is a direct recipient of CoC funds.

- Annie, the newest BHS Board member, is the owner of a several rental apartments throughout Parkvale
- Annie is not directly involved with renting the homes and instead uses a management company.

Will Annie violate HUD's conflict of interest rules if, unbeknownst to Annie, the management company enters into an agreement to provide housing to a needy, homeless family and receives CoC rental assistance payments?

Answer Choices

- A. No, because it is not Annie renting the properties.
- B. No, because Annie has been in her position at the BHS for less than a year.
- C. Yes, unless Annie was elected and not appointed to the BHS Board.
- D. Yes, because Annie would obtain a financial benefit.



Answer

D. Yes, because Annie would obtain a financial benefit.

HUD's CoC conflict of interest regulations provide that no appointed official of a recipient or subrecipient who exercises any functions or responsibilities with respect to CoC activities may obtain a financial benefit from the CoC activity. 24 CFR § 578.95(d)(1).

Annie must instruct her management company to not accept COC-funded rental subsidies or the recipient must receive an exception from HUD for the potential conflict.

Example 2

The Village of Seinfeld sought a contractor to complete facility improvements to a transitional housing complex by sealed competitive bids.

- The project will be funded with CoC funds.
- Van Nostrand and Associates is the engineering firm which will oversee the project.
- Vandelay Industries was the low bidder for the job and has been selected for the award of this contract.
- The principals of the engineering firm and the construction company are brothers-in-law.

Is Seinfeld required to request a waiver of CoC regulations for this project?

Answer Choices

- A. Yes, a conflict of interest exists because the principals are immediate family members and a CoC conflict waiver is required.
- B. No, the Village of Seinfeld **may elect** to submit a waiver request but is **not required** to.
- C. No, since brother-in-law is not considered an immediate family member.
- D. No, CoC conflict of interest rules are inapplicable.

Answer

D. No, CoC conflict of interest rules are inapplicable.

However, this **IS a procurement COI**. Thus, the COI procurement conflict of interest rules (2 CFR Part 200) are applicable.

Example 3

Schrodinger, a nonprofit direct recipient, has allocated CoC funds to the Higgs Boson Homeless Center (“Center”)

Six months ago, Amy resigned from Schrodinger’s board and took a full-time job running the Center. Amy has published a complete disclosure in two local newspapers and executed a statement under oath affirming that no conflict exists between the CoC and the Center.

- Does Amy need to request a waiver?

Answer Choices

- A. No, the CoC program allows for these kinds of situations so that organizations like the Center can hire quality candidates like Amy.
- B. No, Amy is not in a position to request such a waiver, but the Center (the subrecipient) may request a waiver.
- C. No, Amy is not in a position to request such a waiver, but Schrodinger (the recipient) may request a waiver.
- D. No, because Amy is no longer officially involved with the CoC.

Answer

C. Amy is not in a position to request such a waiver, but Schrodinger (the recipient) may request a waiver.

Waiver requests must come from the **recipient** of program funds.

The CoC regulations define a recipient as an applicant who signs a grant agreement with HUD. 24 CFR § 578.3.

Accordingly, Amy cannot apply for the an exception to the implicated CoC Conflict of Interest regulation – only the direct recipient can.

Example 4

Schrodinger, a nonprofit direct recipient, has allocated CoC funds to the Higgs Boson Homeless Center (“Center”)

Six months ago, Amy resigned from Schrodinger’s board and took a full-time job running the Center. Amy has published a complete disclosure in two local newspapers, executed a statement under oath attesting that no conflict of interest exists, and **provided the Center with a legal opinion from her attorney confirming that there is no conflict of interest.**

- May a COI exception request be sent to HUD?

Answer Choices

- A. No, there is no need to request an exception because Amy has satisfied all of the COI requirements.
- B. No, because the opinion must come from the attorney for the subrecipient who has the conflict, not Amy's personal attorney.
- C. No, because the opinion must come from the attorney for the CoC recipient, not Amy's personal lawyer.
- D. No, because there is a nonwaivable prohibition of this conflict for a full year following Amy's departure from the CoC recipient.

Answer

C. The opinion must come from the attorney for the CoC recipient, not Amy's personal lawyer.

The waivable conflict prohibitions extends to covered individuals for one year after their position (employment, elected status, contract, agency, appointment, etc.), regardless of whether the individual was in the position when the decision was made.

Therefore, there is a conflict. The attorney opinion and request for a waiver must come from the recipient.

Example 5

Schrodinger, a nonprofit direct recipient, has allocated CoC funds to the Higgs Boson Homeless Center (“Center”)

Six months ago, Amy resigned from Schrodinger’s board and took a full-time job running the Center. Schrodinger published a complete disclosure in two newspapers and Schrodinger’s attorney has provided an opinion confirming that the exception does not violate any internal policies.

Two years earlier, in a case involving almost identical facts, HUD provided an exception allowing a former Schrodinger employee to take on a job at the Center.

- Is a new COI exception from HUD required?

Answer Choices

- A. No, because the CoC recipient may rely on the HUD's previously granted exception.
- B. No, so long as the CoC recipient retained a written copy of HUD's previous exception.
- C. Yes, the recipient must go through the formalities, but since HUD previously approved an almost-identical request, it will be granted.
- D. Yes, the recipient must go through the formal exception request process, and Amy cannot start her new job until/unless HUD grants an exception to the CoC COI provision.

Answer Choices

D. Yes, the CoC recipient must go through the formal exception request process and Amy cannot start her new job until/unless HUD grants a exception to the CoC COI provision.

HUD is not bound by previous determinations to grant an exception. Per 24 CFR 578.95(d)(2), HUD reviews COI exception requests on a case-by-case basis.

Example 6

Michael B. Jordan is the mayor of Wakanda. As mayor, he is extremely concerned about the increasing homelessness in Wakanda. He attends national conferences and has established committees and taskforces of city employees to address homelessness in the city. He sits on the Board of the local CoC in his ex officio capacity as mayor.

During the ranking and scoring time of CoC applications, the CoC Board unanimously decides to nominate Mayor Jordan as Chair of the Ranking Committee. One of the applications for funds is for a new shelter facility to be built by the city on the very edge of Wakanda. It is in a strategic location that, the entire CoC agrees, would alleviate many of needs and serve area recipients tremendously.

Is Mayor Jordan able to award the funds to this shelter?

Answer Choices

- A. Yes, because the CoC Board unanimously agrees that it is the right solution to alleviate homelessness.
- B. Yes, so long as the CoC requests a waiver from the local HUD office.
- C. Yes, because Mayor Jordan has the expertise to know the best place to locate the new shelter, he is the perfect person to make this decision.
- D. No, because the organization Mayor Jordan represents is being considered for the CoC award.

Answer

D. No, because the organization Mayor Jordan represents is being considered for the COC award.

This is an **nonwaivable** conflict under 24 CFR 578.95(b). This conflict could be addressed by **removing the conflict** (such as by making the Mayor ineligible for the ranking committee).

As a board member and representative of a potential recipient of funds, the Mayor is prevented from participating in, influencing discussions, or influencing resulting decisions concerning the award of the grant.

Example 7

HUD notified the Cute Puppies CoC that it would be a conflict of interest for its sub-recipient, ASSIST, to rehabilitate a building using CoC funds when the executive director of ASSIST is also owner of the building to be rehabilitated.

The CoC has now come to HUD asking for an exception to this conflict.

One of the threshold requirements for an exception is that the conflict be publicly disclosed.

At its regular meeting, the CoC board approved a resolution authorizing the CoC to enter into an agreement with ASSIST.

Did Cute Puppies comply with disclosure requirements of 24 CFR § 578.95(d)(2)(i)(A)?

Answer Choices

- A. Yes, so long as the disclosure was done in accordance with the CoC's bylaws.
- B. Yes, because the CoC revealed that it would enter into an agreement with ASSIST at its regular meeting.
- C. No, because the disclosure did not inform the public about the nature of the conflict.
- D. No, because HUD was not invited to the meeting where it was disclosed.

Answer

A. Yes, so long as the disclosure was done in accordance with the CoC bylaws.

At a minimum, disclosure should inform that:

1. The Board is awarding CoC funds to ASSIST to rehab a building owned by ASSIST's ED.
2. The creates a conflict of interest.
3. The CoC is disclosing such a conflict in connection with a request the CoC has made to HUD for an exception to the rules.

Example 8

The Seaside nonprofit directly receives CoC funds. Martha is the number 2 in charge of Seaside. Recently, Martha's estrange brother applied for and was selected to receive temporary rental assistance paid from the CoC funds. In her role, Martha does not review or create policies for which individuals qualify for rental assistance, but she does participate in general discussions related to utilizing CoC funds.

Does Seaside need to request a waiver?

Answer Choices

- A. No, because there is no violation of state law.
- B. No, because Martha's estrange brother is a member of a group or class of persons intended to be the beneficiaries of the assisted activity.
- C. No, since Martha did not have any say in the use of the program funds her estranged brother would benefit, there is no conflict.
- D. Yes, even though Martha does not have a role in rental assistance funds discussion.

Answer

D. Yes, even though Martha does not have a role in selecting her brother to receive the rental assistance funds discussion.

Martha is in a position to participate in the decision-making process and is a “covered persons” under 24 CFR § 578.95(d).

That her brother is a member of the group/class intended to be the beneficiary of the assisted activity is a consideration HUD would use to determine whether or not to grant a waiver.

Example 9

Alice is the City Manager for Succulent Springs and sits on the CoC board.

Alice's husband, Danny, owns a local grocery store. Because of his prominent business role in the community, Danny serves as an unpaid member of the Board for the Succulent Spring Community Board, a non-profit corporation that receives CoC funds to address shelter needs for the city.

- The City Manager has made public this potential conflict and has recused herself from voting on CoC funding for the Community Board.
- Can Danny remain on the recipient's Board?

Answer Choices

- A. No, unless they get a divorce.
- B. No, because the City Manager can't even influence the decisions relating to the Community Board.
- C. Yes, because the City Manager disclosed the conflict.
- D. Yes, because there is no conflict.

Answer

D. Yes, because there is no conflict.

This is not a conflict of interest under 24 CFR § 578.95(d) because there is no “financial interest or benefit” flowing from the non-profit to Alice or her husband. Thus, Danny may continue his service on the Board.

Final Question

What were the key take away(s) from today's Conflict of Interest training?

- A. COIs can be difficult to spot.
- B. COIs often occur when public duties and private interests overlap.
- C. All COIs must be identified and resolved by eliminating the conflict or, if the conflict is waivable, obtaining a written exception from HUD.
- D. When in doubt, talk to your local HUD CPD Office.
- E. All of the above.