Conflict of Interest (Federal awarding agencies)

A conflict of interest is generally understood as "a conflict between the private interests and the official responsibilities of a person in a position of trust."[1] Within financial assistance, both real and perceived conflicts must be properly mitigated.

Overview

The Uniform Guidance requires Federal awarding agencies to "establish conflict of interest policies for Federal awards."[2] These policies are meant to address conflicting financial interests, and relationships (personal or business), real or perceived, that could compromise the impartiality of non-Federal entities receiving Federal grants or cooperative agreements from a Federal awarding agency.

Federal employees must conduct themselves according to ethical standards set forth in applicable Federal statute, regulation, and policy. With regard to Federal financial assistance, conflicts of interest and impartiality are two important ethics topics Federal staff must consider when conducting official duties. [3] This is especially true during the pre-award and post-award phases of a Federal award, where the risk of violation of these ethics rules is highest. Department of the Interior policy AAAP-0008 Conflict of Interest and Mandatory Disclosures for Financial Assistance establishes ethical standards for its employees when conducting proposal evaluations, award selection, and award management on discretionary awards.

Authorities

18 U.S.C. 208 Acts Affecting a Personal Financial Interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.
5 CFR 2635 Subpart D – Conflicting Financial Interests

§2635.402 Disqualifying financial interests.

(a) Statutory prohibition. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

5 CFR 2635 Subpart E – Impartiality in Performing Official Duties

§2635.501 Overview.

(a) This subpart contains two provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under §2635.502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in §2635.502 to determine whether he should or should not participate in a particular matter.

§2635.502 Personal and business relationships.

(a) Consideration of appearances by the employee. Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

1. In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

2. An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) Definitions. For purposes of this section:

1. An employee has a covered relationship with:

   (i) A person, other than a prospective employer described in §2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction; NOTE: An employee who is seeking employment within the meaning of §2635.603 shall comply with subpart F of this part rather than with this section.

   (ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

   (iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

   (iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

   (v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

§200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

[80 FR 43308, July 22, 2015]


200.112

.112-1 Conflict of Interest

Q: Section 200.112 states “The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.” Does this policy refer to scientific conflicts of interest that might arise in the research community?
A: No, however Federal agencies may have special policies or regulations specific to scientific conflicts of interest, such as HHS’s policy at 42 CFR Part 50. The conflict of interest policy in 2 CFR 200.112 refers to conflicts that might arise around how a non-Federal entity expends funds under a Federal award. These types of decisions include, for example, selection of a subrecipient or procurements as described in section 200.318.

.112-2 Conflict of Interest – Scientific Collaborations

Q: Section 200.112 states “The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.”

A: FAQ 112-1 confirmed that this requirement does not refer to scientific conflicts of interest that may apply to projects supporting research. Scientific collaborations on research and development projects are generally the result of close collaboration prior to the submission of applications for support. Accordingly, virtually all of these collaborations might be considered to include a potential conflict of interest. The potential conflict is mitigated by the disclosure of these collaborations pursuant to agency requirements.

Q: Does Section 200.112 apply when a pass-through entity awards a subaward to support scientific collaboration on a research and development project?

A: Yes. When a subaward for scientific collaboration on a research and development project is included in the application for assistance or requested for prior approval and approved by the Federal awarding agency, the disclosure of any potential nonscientific conflict of interest, if required by the Federal awarding agency, provides sufficient information to the Federal awarding agency for the purpose of compliance with section 200.112.

Department of the Interior Policy


Definitions:

This section incorporates by reference 2 CFR Part 200, Subpart A, Acronyms and Definitions including, but not limited to the following additional terms:

A. Conflict of Interest is defined as any relationship or matter which might place the Recipient, its employees, and/or its Subrecipients in a position of conflict, real or apparent, between their responsibilities under the agreement and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decisionmaking affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the Recipient and/or Recipient’s employees and Subrecipients in the matter.

B. Close Personal Relationship means a Federal award program employee’s childhood or other friend, sibling, or other family relations that may compromise or impair the fairness and impartiality of the Proposal Evaluator and Advisor and Grants Officer in the review, selection, award, and management of a financial assistance award.

C. Discretionary Federal Financial Assistance means Federal awards including grants and agreements that are awarded at the discretion of the agency.

D. Employment means:

1. In any capacity, even if otherwise permissible, by any applicant or potential applicant for a Federal financial assistance award

2. Employment within the last 12 months with a different organization applying for some portion of the award’s approved project activities and funding to complete them OR expected to apply for and to receive some portion of the award and/or

3. Employment with a different organization of any member of the organization employee’s household or a relative with whom the organization’s employee has a close personal relationship who is applying for some portion of the award’s approved project activities and funding to complete them OR expected to apply for and to receive some portion of the award.

E. Non-Federal entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal award as a Recipient or Subrecipient.

F. Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term Recipient does not include Subrecipients.

G. Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual who is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Action:

A. Proposal evaluators and advisors, including members of evaluation committees, must render impartial, technically sound, and objective assistance and advice to protect the integrity of the proposal evaluation and award selection process. A Federal employee is prohibited from participating in his or her government capacity in any particular matter when the employee, his or her spouse, minor child, outside business associate, or a person or organization with whom the employee is negotiating or has an arrangement for prospective employment, has a financial interest in the particular matter (see 18 USC §208).

B. Employees are prohibited from having a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his or her government duties and responsibilities (see 5 CFR § 2635.402 and 5 CFR § 2635.502). Employees are also prohibited from engaging in, directly or indirectly, a financial transaction resulting from, or primarily relying on, information obtained through his or her government employment (see 5 CFR § 2635.702 and 5 CFR § 2635.703). In addition, 43 CFR § 20.401403 contains other regulations concerning conflicts of interest involving employees of specific bureaus and offices. Employee Responsibility and Conduct Regulations for the Department of the Interior are contained in 43 CFR Part 20, 5 CFR § 2634, 5 CFR 2635, and 5 CFR § 2640.
C. With the exception of contracting personnel, proposal evaluators and advisors are not required to file a Statement of Employment and Financial Interest (DI210) unless they occupy positions identified in 5 CFR § 2634.202 and 5 CFR 2634.904. Therefore, upon receipt of a memorandum of appointment, each proposal evaluator and advisor shall sign and return the attached Conflict of Interest Certificate to the Grants Officer or official responsible for the review. If an actual or potential conflict of interest exists, the appointee shall not be allowed to evaluate or provide advice on a potential applicant's proposal until the conflict has been resolved with the servicing Ethics Counselor. Signed certificates from all proposal evaluators and advisors must be retained in the master file for the Funding Opportunity Announcement.

D. During the evaluation process, each proposal evaluator and advisor is responsible for assuring that there are no financial or employment interests which conflict or give the appearance of conflicting with his or her duty to evaluate proposals impartially and objectively. Examples of situations which may be prohibited or represent a potential conflict of interest may include, but are not limited to:

1. Financial interest, including ownership of stocks and bonds, in a firm which submits, or is expected to submit, an application in response to the funding opportunity
2. Outstanding financial commitments to any applicant or potential applicant
3. Employment in any capacity, even if otherwise permissible, by any applicant or potential applicant
4. Employment within the last 12 months by any applicant or potential applicant
5. Any nonvested pension or reemployment rights, or interest in profit sharing or stock bonus plan, arising out of the previous employment by an applicant or potential applicant
6. Employment of any member of the immediate family by any applicant or potential applicant
7. Positions of trust that may include employment, past or present, as an officer, director, trustee, general partner, agent, attorney, consultant, or contractor
8. A close personal relationship that may include a childhood or other friend, sibling, or other family relations that may compromise or impair the fairness and impartiality of the proposal evaluator or advisor and grants officer during the proposal evaluation and award selection process, and the management of an award and
9. Negotiation of outside employment with any applicant or potential applicant.

E. Each proposal evaluator and advisor must immediately disclose in writing to the Grants Officer or the individual responsible for the review as soon as it becomes known that an actual or potential conflict of interest exists. The grants officer must obtain the assistance of the servicing Ethics counselor in order to reach an opinion or resolution. A record of the disposition of all conflict of interest situations must be included in the award file.

Frequently Asked Questions

What are the requirements for employees engaged in application evaluation for Federal financial assistance?

DOI AAAP-0008 requires that its bureau and office employees engaged in proposal evaluation or advising sign a Conflict of Interest Certificate. If the employee determines that a actual or potential conflict of interest exists that prevents them from signing the COI certificate, they must immediately disclose the conflict in writing to the Grants Officer or the individual responsible for the review and recuse themselves from the review pending resolution. The Grants Officer must obtain the assistance of the servicing Ethics counselor to reach an opinion or resolution. A record of the disposition of all conflict of interest situations must be included in the official award file.

Are Federal employees from other agencies who participate in Service financial assistance application reviews required to sign the DOI Conflict of Interest Certificate?

Yes. All proposal evaluators and advisors (Federal and non-federal) must read and comply with DOI-AAAP-0008. This includes signing the COI Certificate and disclosing in writing any actual or potential conflicts of interest to the appropriate program official.

We have non-federal reviewers on our review panel from the private sector, state agencies, and local governments. Are they required to sign a Conflict of Interest Certificate and recuse themselves if they note a conflict?

Yes. Please refer to the above FAQ.

Do Partners for Fish and Wildlife and Coastal program staff need to sign the DOI COI Certificate in addition to the program's Annual Conflict of Interest Certification Form?

Yes. Each fiscal year, all Partners for Fish and Wildlife Service and Coastal Program employees must sign and return to the designated point of contact the PFW&CP Annual Conflict of Interest Certification prior to participating in any review or evaluation process in that fiscal year. This program-specific form does not include the certification requirements in DOI-AAAP-0008, therefore any Partners or Coastal program employees participating in proposal review and selection processes must also complete the certification attached to DOI-AAAP-0008.
When should an employee sign the Conflict of Interest Certificate?

Per DOI-AAAP-0008, employees should sign and return the Conflict of Interest Certificate to the Grants Officer or responsible review official after they receive a memorandum of appointment assigning them as a participant in a review committee. Ideally, this should happen prior to beginning the review process so that any issues can be resolved prior to beginning application reviews.

What if an employee signs the Conflict of Interest Certificate and then later becomes aware of a potential conflict of interest during the review process?

DOI AAAP-0008 states that affected employees immediately disclose in writing to the Grants Officer upon discovery of an actual or potential conflict of interest. The Grants Officer would then work with the servicing Ethics Counselor on an opinion or resolution.

Where are the signed Conflict of Interest Certificates housed?

All signed certificates from must be retained in the master files for the Funding Opportunity Announcement.

What are some situations that may represent an actual or potential conflict of interest?

DOI AAAP-0008 provides several situations Service employees must consider when working with Federal financial assistance.

Learning Aids

Related Pages

Conflict of Interest (non-Federal entities)

Resources

U.S. Fish and Wildlife Service Ethics Program

References


2. 2 CFR 200.112

3. Conflicts of interest, governed by 18 U.S.C 208, prohibits Federal employees from participating in official matters that could have an effect on their financial interests or the financial interest of certain other people. Impartiality, governed by 5 CFR 2635.502, builds on the conflict of interest rule by requiring employees to avoid even the appearance of a lack of impartiality in work assignments involving an expanding on the group of people and organizations the employee must consider. Visit the FWS Ethics Program website here for more information.