

HRSA's Federal Financial Assistance Conflict of Interest Policy

On this page:

- [1.0 Purpose](#)
 - [2.0 Applicability and Relationship to other Policies](#)
 - [3.0 Definitions](#)
 - [4.0 Situations Requiring Disclosure](#)
 - [5.0 Disclosure Requirements by Recipient Type](#)
 - [6.0 Timing of Disclosures](#)
 - [7.0 Content of Disclosures](#)
 - [8.0 HRSA Actions](#)
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1.0 Purpose

The Health Resources and Services Administration (HRSA) has established this Federal Financial Assistance Conflict of Interest Policy (COI Policy) pursuant to [45 CFR §75.112](#), which requires that awarding agencies establish conflict of interest policies for federal awards that:

- 1) Address conditions under which outside activities, relationships, or financial interests are proper or improper;
- 2) Provide for advance notification of outside activities, relationships, or financial interests, and a process of review as appropriate; and
- 3) Outline how financial conflicts of interest may be addressed.

This policy addresses such conditions; identifies when and how a non-federal entity (NFE) must provide written notification of such outside activities, relationships, or financial interests to HRSA or, in the case of grant subrecipients, to the pass-through entity, and describes a process of review of such disclosures; and discusses the means by which financial conflicts of interest may be addressed.¹

[Top of Page](#)

2.0 Applicability and Relationship to Other Policies

This COI Policy, except as noted below, applies to all NFEs receiving HRSA financial assistance, either directly (from HRSA) or indirectly (i.e., through a subaward from a pass-through entity). This policy supplements and does not replace or supersede conflict of interest requirements in program statutes and regulations. Where HRSA-funded public health research is concerned, this policy aligns with the requirements of [42 CFR part 50 subpart F](#).

For the purposes of this COI Policy, institutions of higher education that are instrumentalities of a state under applicable state laws are subject to the requirements applicable to such entities.

For the purposes of this COI Policy, subawards have the same meaning as in 45 CFR §75.2. Subawards generally do not include NFE transactions in the form of loans, loan guarantees, interest subsidies and

¹ 45 CFR §75.2

principal forgiveness, purchases of insurance or similar transactions entered into with borrowers by recipients of revolving loan fund capitalization grants, or other HRSA financial assistance agreements where agency funds may be used for lending activities. However, the terms and conditions of HRSA financial assistance agreements may include COI provisions applicable to an NFE's transactions with lenders and borrowers.²

[Top of Page](#)

3.0 Definitions

*Affiliate:*³ Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Such control may – but is not required to be – evidenced by the following:

- 1) Interlocking management or ownership;
- 2) Identity of interests among family members;
- 3) Shared facilities and equipment;
- 4) Common use of employees; or
- 5) A business entity, which has been organized following the exclusion of a person that has the same or similar management, ownership, or principal employees as the excluded person.

Applicant: An organization or NFE that submits a proposal and/or final Standard Form 424, Application for Federal Assistance (SF-424) or Application for Federal Assistance SF-424 Research and Related (R&R) for an award of federal assistance.

COI Point of Contact: The individual designated by the NFE as having responsibility for disclosing in writing to HRSA and resolving a potential COI. This should ordinarily be the Project Director as the Authorized Representative of the NFE.

Conflict of interest: A significant financial interest that could directly compromise or bias professional judgment and objectivity related to the management of federal financial assistance.

*Federal Financial Assistance:*⁴

- 1) Assistance that NFEs receive or administer in the form of:
 - a) Grants;
 - b) Cooperative agreements;
 - c) Non-cash contributions or donations of property (including donated surplus property);
 - d) Direct appropriations;
 - e) Food commodities; and
 - f) Other financial assistance (except assistance listed in 45 CFR §75.2(b).

and
- 2) For 45 CFR §75.202 and subpart F, Federal financial assistance also includes assistance that NFEs receive or administer in the form of:
 - a) Loans;
 - b) Loan Guarantees;
 - c) Interest subsidies; and
 - d) Insurance

² 45 CFR §75.101

³ 2 CFR §180.905

⁴ 45 CFR §75.2

- 3) *Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in [45 CFR §75.502](#)(h) and (i) (relating to Medicare and Medicaid payments for providing patient care services).

*Immediate Family:*⁵ Members include one party with any of the following relationships to another party:

- 1) Spouse, and parents thereof;
- 2) Children, and spouses thereof;
- 3) Parents, and spouses thereof;
- 4) Siblings, and spouses thereof;
- 5) Grandparents and grandchildren, and spouses thereof;
- 6) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
- 7) Any individual related by blood or affinity whose close association with a NFE employee is the equivalent of a family relationship.

*Institution of Higher Education:*⁶ An educational institution in any state that—

- 1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of 20 USC 1091(d);
- 2) is legally authorized within such state to provide a program of education beyond secondary education;
- 3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary [of Education];
- 4) is a public or other nonprofit institution; and
- 5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary [of Education] for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

*Non-Federal Entity:*¹ A state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.

*Pass-through entity:*¹ A NFE that provides a subaward to a subrecipient to carry out part of a federal program.

*Recipient:*¹ An entity, usually but not limited to an NFE, which 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.

*State:*¹ Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

⁵ 45 CFR §75.465(c)(4)

⁶ 45 CFR §75.2, citing 20 U.S.C. §1001

*Subaward:*¹ An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

*Subrecipient:*¹ A NFE that receives a subaward from a pass-through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

[Top of Page](#)

4.0 Situations Presenting Potential Conflicts of Interest and Actions Applicable to Such Situations

A NFE receiving federal assistance from HRSA must comply with the HRSA written policy on conflict of interest. If an NFE conducts activities supported by grant funding through subrecipients (including subawards under 45 CFR §75.351), the NFE must take reasonable steps to ensure that these organizations or individuals also comply with this conflict of interest policy and notify the NFE receiving federal assistance directly from HRSA of any actual or perceived conflicts of interest.

This policy addresses the following potential situations and how they should be addressed by the NFE:

- a) **The selection, award and administration of contracts by NFEs.**⁷
 - (1) A potential COI relative to NFE procurement is presented in the following circumstances:
 - i. A NFE's 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.
 - ii. A NFE's officer, employee, or agent solicits or accepts gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
 - (2) The NFE must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
 - (3) No employee, officer, or agent of the NFE 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.
 - (4) The officers, employees, and agents of the NFE may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, NFEs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
 - (5) The NFE's standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the NFE.

⁷ 45 CFR §75.327(c)(1)

b) Procurement actions presenting organizational COIs in relation to a parent, affiliate or subsidiary organization that is not a state, local government or Indian tribe.⁸

An organizational potential COI is presented where, *because of relationships with a parent company, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe*, an NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

- (1) If the NFE has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the NFE must also maintain written standards of conduct covering organizational conflicts of interest.
- (2) The NFE must disclose in writing to HRSA (or to the pass-through entity, in the case of a subrecipient) any potential organizational COI supported by a federal award, including what measures were taken by the NFE to resolve the potential organizational COI.

c) Situations that raise concerns about the appearance of a loss of impartiality.

A potential COI is presented where the employee, officer, or agent of the NFE is involved in a particular matter involving specific parties and the employee, officer, or agent of the NFE knows (or should know) that:

- (1) The matter is likely to affect the financial interests of a member of an employee, officer, or agent of NFE's household; or
- (2) One or more of the parties to the matter is or is represented by one of the following:
 - i. A person or organization with whom the employee, officer, or agent of the NFE has or seeks a business relationship;
 - ii. A person who is a member of an employee, officer, or agent of the NFE's household;
 - iii. A person who is a relative with whom the employee, officer, or agent of the NFE has a close personal relationship;
 - iv. A person or organization for whom the employee, officer, or agent of the NFE's spouse, parent, or dependent child is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
 - v. Any person or organization for whom the employee, officer, or agent of the NFE has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; or
 - vi. An organization, other than certain political organizations, in which the employee, officer, or agent of the NFE is an active participant.

d) NFE actions in situations that raise potential COI concerns:

A potential COI should be considered by the NFE as to whether it is truly a COI or a perceived COI. In either case, the NFE should take steps to mitigate the situation. To determine if a perceived COI should be addressed:

- (1) NFE's should consider whether a reasonable person with knowledge of the relevant facts would question the NFE's impartiality if the NFE participated in the matter.
- (2) If the NFE concludes that the NFE's impartiality would be questioned, the NFE should not participate in the matter.

⁸ 45 CFR §75.327(c)(2)

- (3) NFEs must disclose in writing to HRSA (or to the pass-through entity, in the case of a subrecipient) any potential COI supported by a federal award, including what measures were taken by the NFE to resolve the potential COI.

[Top of Page](#)

5.0 Disclosure Requirements by Recipient Type

- a) *NFEs that are states (including territories and political subdivisions):* Where a potential COI is presented, states must provide disclosures to HRSA under the situations described in Section 4.0⁹.
- b) *NFEs that are not states (including territories and political subdivisions):* Must provide COI disclosures to HRSA under the situations described in Section 4.0.
- c) *NFEs that are pass-through entities:* Must require subrecipients receiving or being considered for a subaward to disclose to the NFE, in writing, the potential COI situations described in Section 4.0. The pass-through entity must in turn disclose the potential COI, in writing, to HRSA.
- d) Failure to make required disclosures may result in any of the remedies described in [45 CFR §75.371](#), including suspension or debarment. (See also 2 CFR parts 180 and 376, and 31 U.S.C. §3321).
- e) *NFEs that receive federal funds from pass-through entities:* Must provide COI disclosures to the pass-through entity under the situations described in Section 4.0.

[Top of Page](#)

6.0 Timing of COI Disclosures

- a) For COI disclosures required by Sections 4.0, NFEs must provide to HRSA written disclosure of potential COIs, as applicable, within 30 calendar days of discovery of the potential COI, and in accordance with the terms and conditions of their award.
- b) Pass-through entities (including states) must require that subrecipients disclose potential COI described in Sections 4.0 to them within 30 calendar days of discovery of the potential COI and in accordance with the terms and conditions of their award. In turn, pass-through entities must disclose subrecipient COIs to HRSA within 30 calendar days of receiving notification of a potential COI by the subrecipient unless HRSA approves, at the request of the pass-through entity, a longer period of time to resolve and/or disclose the COI.

[Top of Page](#)

7.0 Content and Template for COI Disclosures

- a) All COI disclosures, including potential COI disclosures, must be in writing, from the Authorized Organization Representative (AOR) of the NFE. Such disclosures should be sent by email communication.

⁹ 45 CFR §75.326

- b) For the potential COIs described in Sections 4.0, NFE must provide HRSA with any information regarding its plan and/or measures taken to eliminate, mitigate or otherwise resolve the COI.
- c) Template for disclosing potential COIs:
 - 1) Email format: To 'HRSA Project Officer or Grants Management Specialist' (from notice of award)
 - 2) Insert in subject line: *COI Disclosure for Award #*
 - 3) Extension request for disclosure of COI: Yes____ No____
 - i. Revised requested submission date____ or N/A
 - 4) Describe potential COI:
 - 5) Describe plan and/or actions taken to eliminate, mitigate or otherwise resolve the COI:

[Top of Page](#)

8.0 HRSA Actions

- a) HRSA will include a term and/or condition in all notice of awards referencing this COI policy. Such notifications will identify HRSA's point of contact for COI disclosures.
- b) HRSA will review COI disclosures and plans/measures identified by NFEs to resolve the COI. HRSA will ordinarily respond to this communication within 30 calendar days of the disclosure, unless a longer period of time is necessary due to the complexity of the situation.

[Top of Page](#)