



## Housing Contract Administration

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### Conflict of Interest

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November 2022

## GUIDANCE

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Published in the United States of America by:

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Frankfort, KY 40601  
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## Notice

Kentucky Housing Corporation (KHC) provides this guidance as a resource for conflicts of interest that may arise through the administration of the following federal and state funding sources administered by KHC's Housing Contract Administration Department:

- HOME Single Family Production
- AHTF Single Family Production
- AHTF Single Family Repair
- HOME Tenant Based Rental Assistance (HOME TBRA)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Emergency Solutions Grant (ESG)
- Continuum of Care (COC)
- Healthy at Home Eviction Relief Fund (HHERF)
- American Rescue Plan Emergency Rental Assistance (ARP-ERA)

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Please contact a KHC technical assistance representative at the [Housing Contract Administration \(HCA\) Help Desk](#) if you have questions or need additional assistance.

**Contents**

- Section I – Conflict of Interest Policy ..... 4
  - Types of Conflict of Interest Transactions ..... 4
  - Due Diligence Documentation..... 4
- Section II – Conflict of Interest Procedures ..... 5
  - Step 1 - Determine if potential conflict exists ..... 5
  - Step 2 – Notify KHC..... 5
  - Step 3 – Complete and submit waiver request ..... 6
  - Step 4 – Decision ..... 6
- Section III – Conflict of Interest Resources ..... 7
  - Conflict of Interest Definitions ..... 7
  - Conflict of Interest Decision Tree ..... 8

## Section I - Conflict of Interest Policy

**Kentucky Housing Corporation Conflict of Interest Policy:** All KHC-funded partner agencies are responsible for identifying situations in which a conflict of interest, whether real or perceived, may exist. If a potential conflict of interest is identified, in addition to following any agency conflict of interest policy, the KHC funded partner agency **MUST** request an exemption and receive written approval from KHC using the steps addressed in this guidance prior to assistance being provided.

**Types of potential Conflict of Interest transactions:** This list is not all-inclusive.

- **Non-Procurement Conflict of Interest transactions:** In general, all HUD Community Planning and Development Program regulations (HOME, ESG, COC, & HOPWA) prohibit grant-assisted activity benefiting funded partner agency employees, board members, or relatives of employees and board members.
- **Procurement Conflict of Interest transactions:** In general, 2-CFR 200 prohibits procurement of goods or services from organizations with an organizational or individual conflict of interest.
- **Kentucky Non-Profit Conflict of Interest Transaction:** KRS 273.219 – (1) A conflict of interest transaction is a transaction with the nonprofit corporation in which a director of such corporation has a direct or indirect interest...(2) For the purposes of this section, a director of a nonprofit corporation shall be considered to have an indirect interest in a transaction if: (a) Another entity in which he has a material financial interest or in which he is a general partner to a party to the transaction; or (b) Another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

**Due Diligence Documentation:** The KHC Funded partner agency should obtain and maintain evidence that the following groups have been asked to identify potential conflicts of interests:

- **Employees and volunteers** should be asked if they are:
  - Related to applicants and/or clients
  - Related to contractors, vendors, and landlords
- **Board members** should be asked if they are:
  - Related to applicants and/or clients
  - Related to contractors, vendors, and landlords
- **Contractors and vendors** (including landlords paid rental/leasing assistance) should be asked if they are:
  - Related to employees and/or board members
  - Related to the applicant and/or client being assisted\*
- **Applicants and clients** should be asked if they are:
  - An employee or related to an employee
  - A board member or related to a board member

## Section II – Conflict of Interest Procedures

### Step 1: Determine if a *potential* conflict of interest exist

Potential conflicts of interest may arise from many situations. Use the decision tree located at the end of this publication to determine if the situation is or has the appearance of a potential conflict of interest. Some common examples of potential conflicts of interest are, but not limited to the following scenarios.

- A client presents for assistance and/or services and this client is related to someone who works at the agency or who is a board member of the agency.
- A vendor or contractor hired by the agency is related to someone who works at the agency or who is a board member of the agency.
- A landlord for an assisted unit is related to someone who works at the agency or who is a board member of the agency.
- A board member works for a company that has been hired to perform work for the agency.
- A landlord/vendor/contractor for an assisted unit is related to the client being assisted.\*
- An affiliated, subsidiary, or related agency is receiving or being paid with grant funds for a product or service.
- A volunteer or employee at the agency applies for assistance.
- A family member of a volunteer or employee applies for assistance.
- A vendor or contractor used by the agency for grant related expenditures is asked to donate money, goods, or services to an agency fund-raising event.

It is the KHC-funded partner agency's responsibility to identify, disclose, and document potential conflicts of interest. Not doing so can result in: findings; frozen, forfeiture or repayment of funds; suspension; debarment; and/or potential prosecution. Conflicts of interest are situations and not allegations. ***Even the appearance of a conflict is a potential conflict of interest.*** If you have questions on whether something constitutes a conflict of interest, you must contact KHC prior to the transaction.

### Step 2: Notify KHC in Writing by Completing & Submitting a waiver request

Using the Modification/Waiver Request form in the draw management system, you must notify KHC of the potential conflict of interest situation. You will complete the form with the information or attach the evidence as described below:

- A. A written narrative must include specific information about the potential conflict of interest transaction and any information you may have that is relevant to whether it is, or is not, an actual conflict of interest.

In order for your request to be processed as quickly as possible, your narrative must be very specific, very detailed, and explain exactly all the persons involved in the conflict situation, their roles, and how their roles do or do not relate to the federal funding.

- **Example # 1:** If the potential COI situation involves an employee's and/or board member's relative who is seeking assistance, you must detail:
  - 1) exactly how the person seeking assistance came to know about the program;
  - 2) how they applied;
  - 3) the employee's and/or board member's role;
  - 4) whether or not the employee and/or board member is involved with the federal funding in question and if so, how they are involved;
  - 5) the application process;
  - 6) all persons involved in the application and approval process;
  - 7) how the person seeking assistance is eligible in every other way; and
  - 8) how, from the agency's perspective, it would further the mission of the program to serve the person seeking assistance.
  
- **Example # 2:** If the potential COI situation involves a vendor/landlord who is related to an employee or board member, then you must detail:
  - 1) exactly how the vendor is related to the employee/board member;
  - 2) how the vendor/landlord was selected (explain the bid process, if a bid; the quoting process, if a quote; or other vendor/landlord selection method used);
  - 3) all the persons involved in the vendor/landlord selection process and whether the potentially conflicted employee/board member had a role in that process;
  - 4) whether or how the employee or board member benefits in any way from the transaction;
  - 5) how not using this vendor/landlord could affect the federal funding and/or the person seeking federal assistance; and finally,
  - 6) why a COI exception should be granted in order to further the mission of the federal program.

The examples above do not encompass all the different types of conflict situations; however, they give the idea of the level of detail needed in the narrative for the most commonly seen potential conflict of interest situations. KHC and/or the federal funder (e.g., HUD/US Treasury) may determine that additional information is needed to make a determination. To avoid delays in processing the request, it is best to be as detailed as possible with the narrative initially submitted.

- B. A letter from the funded partner agency's legal counsel stating that granting the COI exception would not violate any laws, statutes, or local ordinances.
  
- C. Evidence of public disclosure of the potential conflict of interest. Examples:
  - A copy of the newspaper advertisement with the dates of publication accompanied by an affidavit of publication from the newspaper.
  
  - A copy of minutes from a board of director's meeting (that is open to the public) in which the potential conflict of interest was disclosed and discussed

- A screenshot of the funded partner agency's website/social media page showing the public disclosure of the potential conflict

**Please Note: Submission of a waiver request does not authorize a KHC-funded partner agency to engage in any activity related to the transaction that involves the potential conflict of interest. A waiver or exception is not granted until the KHC-funded partner agency receives such determination in writing.**

### **Step 3: Decision**

Upon receipt of the waiver request documentation, KHC will submit the request to the federal agency (e.g., HUD, DOE, etc.) for consideration, except when the conflict involves state funds, in which case, KHC legal counsel will make final waiver determinations. With federal funding, the federal agency determines whether the threshold requirements are met and whether the circumstances fall within the exception criteria permitted by the regulations. KHC and/or the federal agency may request additional information, if necessary. The KHC-funded partner agency will receive a decision in writing. Until the written decision is received, the KHC-funded partner agency is not authorized to engage in any activity related to the transaction.

\* HOPWA allows for a possible exception to the potential conflict of interest created between a landlord and the assisted client by means of a "reasonable accommodation." For more information, please see the [HOPWA rule](#).

## Section III – Resources

### Conflict of Interest Definitions

**Employee:** For the purpose of conflict of interest, the term employee includes both paid and unpaid (such as volunteers), as well as those persons paid on a contract basis, and those persons acting as an agent or consultant, or on behalf of the funded partner agency.

**Exception:** The mechanism by which HUD waives the conflict-of-interest provisions.

**Family ties (i.e., what does “related to” encompass? Who is a relative?):** The spouse, parent, child, brother, sister, grandparent, grandchild, including steps, and in-laws; and any person cohabitating with a covered person, as well as any immediate family member related by blood, marriage, or adoption, but not distant relations such as cousins, aunts, uncles, who do not reside with the covered person.

*Example # 1:* A cousin living with the covered person is a potential conflict. A cousin not living with the covered person would not be a potential conflict.

*Example # 2:* A brother or stepbrother living with the covered person is a potential conflict. A brother or stepbrother not living with the covered person is still a potential conflict.

**Individual Conflict of Interest:** An employee, agent, consultant, officer, elected official, or appointed official, or other person working on behalf of the funded partner agency:

1. Who exercises or has exercised any function, or responsibility with respect to activities assisted under the funded program, *or*
2. Who is in a position to participate in a decision-making process, *or?*
3. Who gains inside information with regard to activities assisted under the program...

...For either him or herself, or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

**Non-Procurement:** Transactions that do not involve the procurement of goods, or services.

**Organizational Conflict of Interest:** Because of relationships with a parent company, affiliate, or subsidiary organization, the funded partner entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

**Procurement:** Procurement is the process of obtaining any property (purchase or lease), supplies, equipment or services. Some common services include employment, construction, engineering or architecture services, legal services, accounting services, etc.

**Vendor:** Any person or company you purchase goods or services from, including goods or services purchased on behalf of clients. Some examples are: a building contractor, a landlord, an office supply store, a consultant, a Certified Public Accountant, etc.

Types of Conflicts of Interest

