

Office of Recovery Programs Conflict of Interest for Federal Financial Assistance Frequently Asked Questions

This document is a resource and contains answers to frequently asked questions (FAQs) regarding conflict of interest (COI) for recipients, that may also serve as pass-through entities, and subrecipients of Federal financial assistance awards issued by the U.S. Department of Treasury, Office of Recovery Programs (ORP).

These FAQs provide information consistent with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR Part 200). It also provides examples of common types of real and potential COIs. Recipients are advised to consult the terms and conditions associated with their specific awards for the COI policy requirements, which must apply to each activity funded under their award(s). Recipients should direct questions and documentation regarding their awards to respective ORP programs, as applicable.

1. What is a conflict of interest?

For ORP programs and awards, a conflict of interest (COI) may occur when an individual or non-Federal entity (NFE) is unable, or appears to be unable, to be impartial in conducting their responsibilities to ORP and the public in compliance with the requirements associated with an ORP financial assistance award. This also includes situations that create, or may create, a real or apparent conflict.

1.1 If I have a COI policy and it does not conform to this guidance, do I need to do anything differently?

Treasury encourages recipients and subrecipients to align their COI policies and procedures with this FAQ, but recipients are not required to make updates as long as their policy was previously in compliance with the COI requirements as set forth in their award terms and conditions.

1.2 What is a real conflict of interest?

In the context of ORP programs and awards, a real COI, also referred to as an actual COI, may occur when an employee, officer, or agent of an NFE has a financial or other interest in, or a tangible personal benefit from carrying out certain actions when conducting their responsibilities associated with administering Federal financial assistance.

1.2.1 What are examples of real conflicts of interest?

Example 1

The Executive Director of an NFE owns stock and is on the Board of Directors of a company that has been awarded a contract using the NFE's grant funds and the Executive Director contributed to the decision to award the contract.

Example 2

Organizations submitted grant proposals to an NFE. The NFE assembled a panel of employees to review proposals. A parent of one of the NFE panelists is a board member for one of the organizations that submitted a proposal.

Example 3

An individual has been asked to serve on the technical evaluation panel to review proposals for a new computer search system for an NFE. However, the individual and their spouse own a majority of the stock for a company that submitted a proposal for the computer search system.

Example 4

The NFE is a small organization and the wife of the NFE Executive Director is an accountant and has been contracted to provide accounting services for implementation of the grant.

Example 5

A Vice President of an NFE has a son who works for a company that provides specific computer programs. The Vice President calls his son to get the name of the computer program and adds the specific name to the request for proposals.

1.3 What is a perceived conflict of interest?

In the context of ORP programs and awards, a perceived COI is when a reasonable person with knowledge of the relevant facts questions an individuals' impartiality in carrying out certain actions when conducting their responsibilities associated with administering Federal financial assistance. A perceived COI is a situation that appears to be a real COI at face value.

1.3.1 What are examples of perceived conflicts of interest?

The following examples are provided to illustrate circumstances that could be perceived as conflicts of interest, but, in fact, may not be. When a recipient, pass-through entity, or subrecipient identifies similar circumstances, it is recommended that they take proactive steps to document how a situation is not a real COI. Documentation may include written statements that are maintained with award documents in accordance with the record retention requirements for grant files.

Example 1

An NFE provides financial bonuses to employees whose salaries are paid from a grant because there are leftover grant funds; however, the NFE's policies and procedures do not discuss this use of funds.

Example 2

A spouse of an NFE employee serves without compensation on the board of directors for a nonprofit and the nonprofit submitted a proposal to the NFE.

Example 3

An NFE makes a subaward or a contract using grant funds to an organization that employs the spouse or another relative who lives in the same household as an employee, officer, or agent of the NFE.

Example 4

An employee of an NFE who has responsibilities for testing new long distance radio equipment just learned that his sister-in-law has accepted employment as a process engineer with the contractor's corporation and was awarded a grant from the NFE.

Example 5

A company has affiliates all over the country. The parent company assembled regional panel review teams comprised of affiliates from across the county. The parent company evaluated all review panels against their written standards for COIs. Several panel review teams noticed proposals from organizations where they work part-time.

2. Under what types of circumstances would ORP Federal financial assistance recipients notify ORP of conflicts of interest?

NFEs must disclose in writing any perceived COIs to ORP or the pass-through entity consistent with the terms and conditions of their award(s).

2.1 I am a direct recipient of a Federal financial assistance award administered by Treasury ORP. Should I notify ORP of conflicts of interest related to the award?

Yes. Recipients of Federal financial assistance awards provided by ORP with any potential COIs must provide written COI disclosures directly to ORP. Recipients should contact their respective ORP programs with specific questions.

2.2 I am a pass-through entity. Should I notify ORP of potential conflicts of interest for my subrecipients that relate to the ORP award?

Yes. Pass-through entities that receive potential COI disclosures from subrecipients related to their ORP award must provide the subrecipient's written disclosure of such COI to ORP.

2.3 I am a subrecipient, should I notify the ORP of potential conflicts of interest related to the ORP award?

Yes. Subrecipients that received ORP funds as a subaward from a recipient must provide written COI disclosures to the direct recipient.

3. What information should be included in a conflict of interest policy?

NFEs should review the terms and conditions of their awards relative to COI policies as well as other authoritative guidance. COI policies should address how NFEs manage COIs in their administration of Federal awards and local funds.

4. What information is recommended to be included in conflict of interest written standards of conduct?

The written standards should also address organizational COIs. COI standards of conduct should specify that employees, officers, or agents of the NFE may not participate in the selection, award, or administration of a contract supported by a Federal award if they have a real or perceived COI. COI standards of conduct are also recommended to describe disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the NFE.

5. What information should be included in a conflict of interest disclosure?

It is recommended that COI disclosures pertaining to awards under ORP financial assistance programs include the following content:

- a) A description of the COI.
- b) Contact information for all parties and organizations involved in the COI, including names.
- c) A description of the plan and/or actions taken to eliminate, mitigate, or otherwise resolve the COI.
- d) Signature from the Authorized Organization Representative (AOR) of the NFE, or equivalent.
- e) The completed COI disclosure should be sent through email to the normal point of contact for the impacted program. The contact e-mail addresses for ORP federal financial assistance programs are listed below:
 - Capital Funds Project: CapitalProjectsFund@treasury.gov
 - Coronavirus Relief Fund: CARES@oig.treas.gov
 - Emergency Rental Assistance: EmergencyRentalAssistance@treasury.gov
 - Homeowner Assistance Fund: HAF@treasury.gov

- Resources and Ecosystems Sustainability, Tourists Opportunities, and Recovered Economies: Restoreact@treasury.gov
- Local and Assistance Tribal Consistency Fund: LATCF@treasury.gov
- State and Local Fiscal Recovery Funds: SLFRF@treasury.gov
- State Small Business Credit Initiative Technical Assistance Program: SSBCI_Information@treasury.gov

6. How much time does a non-Federal entity have between when they identify a conflict of interest and when they notify ORP or Treasury OIG?

Recipients of ORP Federal financial assistance are advised to provide ORP written disclosure of the COI within a reasonable amount of time of discovery of the COI, and in accordance with the terms and conditions of their award agreement. Written disclosure should generally be provided no later than 15 days after discovery. It is recommended that the recipient not proceed with the particular area where there is a real or perceived conflict until ORP or OIG provides a response to the recipient in reference to the COI.

7. Under what circumstances should recipients of ORP Federal financial assistance notify the Treasury Office of Inspector General (OIG) of conflicts of interest?

If an NFE has a question regarding whether a finding results in fraud, waste, or abuse they are advised to review the following OIG website: <https://oig.treasury.gov/report-fraud-waste-and-abuse>

7.1 What is fraud?

Per 2 CFR Part 200.435, fraud includes:

- Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,
- Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and
- Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).

7.2 What is waste?

Waste is the misuse, mismanagement, or abuse of resources to the detriment (or potential detriment) of the U.S. government. Waste also includes incurring unnecessary costs resulting from inefficient or ineffective practices, systems, or controls.

7.3 What is abuse?

Abuse is excessive or improper use of Federal financial assistance in a manner contrary to the requirements in statutes, regulations, policies, and the terms and conditions of awards. Abuse can be financial or non-financial in nature.

8. What do I do if I am not sure whether a conflict of interest involves fraud, waste, or abuse?

If an NFE has a question regarding whether a finding results in fraud, waste, or abuse they are advised to review the following OIG website: <https://oig.treasury.gov/report-fraud-waste-and-abuse>

9. Do I need to keep documentation on conflicts of interest?

Yes. Recipients, subrecipients, and pass-through entities should maintain the written COI disclosure documentation with their award documents in accordance with the record retention and access requirements in 2 CFR Part 200.334 through 200.338 and the terms and conditions in their award agreement.

9.1 Where do I maintain documentation related to conflicts of interest?

Disclosures must be maintained in accordance with the record retention and access requirements in 2 CFR Part 200.336 and the terms and conditions of an NFE's award agreement.

9.2 How long do I need to maintain documentation for conflicts of interest?

Documentation for COIs must be maintained in accordance with the record retention and access requirements in 2 CFR 200.334 and the terms and conditions in an NFE's award agreement.

9.3 Who may access conflict of interest documentation?

Per 2 CFR Part 200.337(a), the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the NFE which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the NFE's personnel for the purpose of interview and discussion related to such documents.

10. What could happen if I do not disclose conflicts of interest to ORP?

ORP may impose any of the remedies available to federal awarding agencies described in 2 CFR Part 200.339 or the NFE's award agreement, as applicable, which may include suspension or debarment per 2 CFR Part 180 and Treasury's implementing regulations at 31 CFR Part 19.