

Public Housing Authority
ETHICS
Reference Manual

**Guidance on Ethics Matters for
Public Housing Authorities**



**Prepared by Office of General Council
and Office of Public Housing and Indian Housing
U.S. Department of Housing and Urban Development**

FOREWORD

February 2003

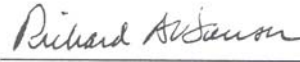
This marks the first edition of HUD's Public Housing Authority¹ Ethics Reference Manual. This manual is a compilation of ethics related materials and is intended to be a handy resource for PHA officials seeking guidance for complying with the range of federal ethics requirements applicable to public housing agencies.

We encourage you to read, closely review, and familiarize yourself with this manual's contents, as well as the statutory and regulatory sources of authority cited in the manual. Many of the questions you will encounter can doubtlessly be resolved by the straightforward application of these rules and regulations. Where doubt exists in the appropriate course of action, you are encouraged to seek guidance in advance to assure compliance with all applicable federal and state requirements.

HUD stands ready to assist you in the interpretation and application of these requirements and you should not hesitate to contact your local HUD ethics official for additional guidance. Adherence to high ethical standards is essential to maintain public confidence in the integrity of housing programs and activities.



Michael Liu, Assistant Secretary
for Public and Indian Housing



Richard A. Hauser, General Counsel

¹ Note that the statutory term in the United States Housing Act of 1937 is "public housing agency".

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INTRODUCTION

Many public housing authorities (“PHAs”) administer both Public Housing and Section 8 programs. Some PHAs administer only a Public Housing program and others administer only a Section 8 program. Under both programs there is an Annual Contributions Contract and under the Section 8 program there are regulations and Housing Assistance Payment (“HAP”) contract provisions that govern conflicts of interest. In addition, State enabling legislation may contain supplemental conflict of interest provisions applicable to housing authority commission members and employees. PHAs should closely consult with their attorneys for guidance on the full range of conflict of interest prohibitions and the recommended steps to avoid such conflicts

Part A of this manual addresses Public Housing conflict of interest provisions while Part B addresses Section 8 conflict of interest provisions. Part C describes Hatch Act requirements and provides a sample form to be used when requesting waivers or exceptions to conflict of interest prohibitions.

PART A- PUBLIC HOUSING

SECTION 19(A) OF THE PUBLIC HOUSING ACC – CONTRACTS AND ARRANGEMENTS WITH INDIVIDUALS

Section 19(A) of the 1995 Public Housing ACC² provides:

“(A)(1) In addition to any other applicable conflict of interest requirements, neither the HA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under this ACC in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

“(i) Any present or former member or officer of the governing body of the HA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HA or a business entity.

“(ii) Any employee of the HA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

² PHAs that have not yet adopted the 1995 ACC should follow the conflict of interest provisions in the ACC they are currently utilizing.

“(iii) Any public official, member of the local governing body, or State or local legislator, or any member of such individual’s immediate family, who exercises functions or responsibilities with respect to the project(s) or the HA.

“(2) Any member of these classes of persons must disclose the member’s interest or prospective interest to the HA and HUD.

“(3) The requirements of this subsection (A)(1) may be waived by HUD for good cause, if permitted under State and local law. No person for whom a waiver is required may exercise responsibilities or functions with respect to the contract to which the waiver pertains.

“(4) The provisions of this subsection (A) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

“(5) Nothing in this section shall prohibit a tenant of the HA from serving on the governing body of the HA.”

Requests for waivers of this provision must be approved by HUD Headquarters. Field offices will perform the first review of such requests and submit recommendations to HUD Headquarters.

**SECTION 19(B) OF
THE PUBLIC
HOUSING ACC –
NEPOTISM
RESTRICTIONS**

Section 19(B) provides:

“(B)(1) The HA may not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

“(i) Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the HA.

“(ii) Any employee of the HA who formulates policy or who influences decisions with respect to the project(s).

“(iii) Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the HA.

“(2) The prohibition referred to in subsection (B)(1) shall remain in effect throughout the class member’s tenure and for one year thereafter.

“(3) The class member shall disclose to the HA and HUD the member’s familial relationship to the prospective employee.

“(4) The requirements of this subsection (B) may be waived by the **HA Board of Commissioners** for good cause, provided that such waiver is permitted by State and local law. (Emphasis added.)

“(C) The requirements of subsections (A) and (B) of this section do not apply to contracts entered into by an Indian Housing Authority, its contractors or subcontractors, although such contracts remain subject to other applicable conflict of interest requirements.³

“(D) For purposes of this section, the term ‘immediate family member’ means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a ‘half’ or ‘step’ relative, e.g., a half-brother or stepchild).”

A PHA’s Board of Commissioners considering the issuance of a waiver of this section pursuant to section 19(B)(4) should ensure that its determination of “good cause” is well documented.

**SECTION 20 -
INTEREST OF A
MEMBER OR
DELEGATE TO
CONGRESS**

Section 20 of the Public Housing ACC provides:

“No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise from it. (As used in this section, the term “resident commissioner” refers to an individual appointed to oversee a territory or possession of the United States of America, e.g., Guam.)”

**EXAMPLES OF
CONFLICTS UNDER
SECTIONS 19 AND 20
OF THE ACC**

- 1) Contracts – including hiring or employment contracts – entered into between a housing authority and a family member of a housing authority official – for example, where a member of the Board of Commissioners is the parent of an individual who is being considered for employment as the housing authority’s director of

³ Note that although this provision remains in the ACC, it has no force and effect, since all Indian housing assistance is now provided under the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4101 *et seq.*

facilities. See section 19(A)(1)(iii) of the ACC.

- 2) Contracts between a housing authority and a former housing authority board member or official whose tenure ended less than one year ago
- 3) Contracts between a housing authority and a member of the local governing body or other public official.
- 4) PHA employees seeking election to local governmental boards and offices, such as a city council or board of selectmen, if such boards and offices exercise authority over housing authority operations. Employees may seek election but if elected, may have to resign.
- 5) A PHA employee engaged in simultaneous service on the Board of Commissioners of his or her PHA. The individual may have to take a leave from his or her board position to serve temporarily as a PHA official.
- 6) Any conflict of interest situation prohibited by State or local law, including but not limited to the conflict of interest prohibitions set forth in State PHA enabling legislation.

The above list is intended to be illustrative of some situations that would give rise to conflict of interest issues. Each situation must be evaluated in light of the particular facts and local law.

**ADDITIONAL PUBLIC
HOUSING
REGULATIONS**

Another HUD regulation, 24 C.F.R. § 964.145 sets forth conflict of interest requirements applicable to resident council officers. Also, the regulations pertaining to the Mixed Finance Development of Public Housing Units, found generally at 24 C.F.R. § 941.600, provide that the PHA must certify, in its mixed-finance proposal that it will “ use an open and competitive process to select the partner and/or the owner entity and shall ensure that there is no conflict of interest involved in the PHA’s selection of the partner and/or owner entity used to develop and operate the proposed public housing units.” See § 941.606(n)(1)(ii). Additional requirements are set forth at § 941.606(n)(1)(ii)(A) and (B). Also note the necessity to adhere to conflict of interest requirements in selection of legal counsel.

**SECTION § 85.36
 (“THE COMMON
RULE”) –**

Inasmuch as the responsibilities of a housing authority involve the expenditure of monies in procurement activities funded wholly or in part through HUD, 24 C.F.R. § 85.36 also applies. This

**ETHICS IN
PROCUREMENT**

regulation, frequently referred to as “the Common Rule,” establishes a uniform scheme for ensuring the propriety of procurement activities of grantees and subgrantees that receive grants from federal agencies.⁴ PHAs should also note that the Common Rule applies to expenditures of grant funds for the purposes of obtaining legal counsel.

Moreover, PHAs are required to include as a part of their construction contracts Form HUD-5370 (“General Conditions of the Contract for Construction – Public Housing Programs”), which contains provisions intended to implement the anti-kickback requirements of the Common Rule.

In particular, the Common Rule, at 24 C.F.R. § 85.36, provides in pertinent part as follows:

“(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

“(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

“(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

“(i) The employee, officer or agent,

“(ii) Any member of his immediate family,

“(iii) His or her partner, or

“(iv) An organization which employs, or is about to employ, any of the above,

“ has a financial or other interest in the firm selected for award.

⁴ Because Section 8 housing assistance payments are not grants, they are not subject to 24 C.F.R. Part 85.

The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest."

Also, 24 C.F.R. § 85.36(i) requires that certain contracts of grantees and subgrantees include, among other requirements, a provision that expressly mandates:

"(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3). (All contracts and subgrants for construction or repair.)"

PART B

SECTION 8 TENANT BASED ASSISTANCE REGULATION- HOUSING CHOICE VOUCHER PROGRAM

HUD's Section 8 regulation at 24 C.F.R. § 982.161 is a conflict of interest provision applicable to PHAs that administer Section 8 Tenant-Based Assistance. This provision and its subsections fall within 24 C.F.R. part 982, whose heading is "Section 8 Tenant Based Assistance: Housing Choice Voucher Program".

Captioned "Conflict of Interest," 24 C.F.R. § 982.161 provides:

"(a) Neither the PHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

"(1) Any present or former member or officer of the PHA (except a participant commissioner);

"(2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs;

“(3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or

“(4) Any member of the Congress of the United States.

“(b) Any member of the classes described in paragraph (a) of this section must disclose their interest or prospective interest to the PHA and HUD.

“(c) The conflict of interest prohibition under this section may be waived by the HUD **field office** for good cause. (Emphasis added.)”

The PHA should not execute the HAP contract until the HUD Field Office makes a decision on the waiver request.

**SECTION 8
HAP CONTRACT
HOUSING CHOICE
VOUCHER PROGRAM**

The Section 8 HAP contract for the Housing Choice Voucher Program, between the PHA and the owner of a unit occupied by an assisted family details the types of interest that are prohibited under the contract.

Section 13 of the HAP contract refers to those classes of persons mentioned in § 982.161(a) as “covered individuals” and further provides:

“(b) A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter.

“(c) ‘Immediate family member’ means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.

“(d) The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract term.

“(e) If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD.

“(f) The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

“(g) No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.”

**SECTION 8
HAP CONTRACT-
MODERATE
REHABILITATION
PROGRAM**

There are two different versions of Moderate Rehabilitation HAP Contracts. However, the conflict of interest provision reads the same:

“No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the Section 8 Program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to the Section 8 Program, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in this Contract or in any proceeds or benefits arising from the Contract or in any proceeds or benefits arising from the Contract. This provision may be waived by HUD for good cause.”

There is also a provision entitled “INTEREST OF MEMBER OR DELEGATE TO CONGRESS”

“No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits arising from the Contract.”

**SECTION 8-
MODERATE
REHABILITATION
PROGRAM- ACC**

The conflict of interest provision in the ACC for the Moderate Rehabilitation program is found in Part II, Terms and Conditions of the ACC section 2.18 “Interests of Members, Officers, or Employees of PHA, Members of Local Governing Body, or other Public Officials.

“(a) Neither the PHA nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project in which any of the following classes of persons has an interest, direct or indirect, during tenure or for one year thereafter:

- “(1) any member or officer of the PHA except those members or officers who have an interest in the Section program by reason of their tenancy in a Section 8 unit,
or
- “(2) any employee of the PHA who formulates policy

or who influences decisions with respect to the Section 8 Program or

“(3) any public official, member of a governing body, or State legislator who exercises functions or responsibilities with respect to the Section 8 program”

“(b) Any members of the classes described in paragraph (a) must disclose their interest or prospective interest to the PHA and HUD and may, with appropriate justification, if consistent with State law, apply through the PHA to HUD for a waiver.

“(c) No person to whom a waiver is granted shall be permitted (in the capacity as member of class described in paragraph (a)) to exercise responsibilities or functions with respect to an Agreement or Contract executed, or to be executed, on his or her behalf, or with respect to an Agreement or a Contract to which this person is a party.

“(d) Notwithstanding the provisions of paragraphs (a) through (c), a PHA responsible for the administration of the Contract may, with prior HUD approval and pursuant to a contract between the PHA and the Owner of existing housing or moderately rehabilitated units exercise management and maintenance responsibilities with respect to the units covered by Contracts.

“(e) The PHA and contractors and subcontractors shall insert in all contracts, subcontracts, and arrangements entered into in connection with any Existing Housing or Moderate Rehabilitation Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the provisions of paragraphs (a) through (e).

“(f) The provisions of paragraphs (a) through (e) of this section shall not be applicable to the Depository Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.”

The provision “INTEREST OF MEMBER OR DELEGATE TO CONGRESS” as stated in the Moderate Rehabilitation HAP contract, also appears in this ACC.

**SECTION 8 –
PROJECT BASED
ASSISTANCE
CONTRACTS**

For PHAs that administer Project-Based Assistance⁵, there are many different HAP contracts, and HAP conflict of interest provisions (with various section numbers). Also, PHA conflict of interest provisions are embedded in various ACC forms (e.g. the

⁵ Not to be confused with Project-Based vouchers, for which the standard voucher provision applies.

Housing Finance Agency ACC for a project of New Construction/Substantial Rehabilitation). For PHAs who are new Contract Administrators for the Project-Based Section 8 Program, there is a special form of ACC with a significantly different conflict of interest clause.

When faced with a conflict of interest issue for Project-Based Assistance contracts that are administered by the PHA, be sure to check the particular HAP contract and the ACC to ensure a complete review of any applicable conflict of interest provisions.

PART C

HATCH ACT PROVISIONS APPLICABLE TO STATE EMPLOYEES

The Hatch Act may also apply, in many instances (see, e.g., 5 U.S.C. §§ 1501 - 1508), to the political activities of certain state and local employees. The activities in which such employees may or may not engage are detailed in the Hatch Act.

The Office of Special Counsel operates a website that provides guidance concerning Hatch Act issues at www.osc.gov. PHA employees with questions about the Hatch Act's application to their activities are strongly urged to contact the Hatch Act section of the Federal Office of Special Counsel to seek a written opinion. They may do so by calling 1-800-85-HATCH and asking to speak to a Hatch Act Counselor or by sending an e-mail to hatchact@osc.gov. Such an opinion should be sought prior to engaging in the questionable activities, of course, and it is essential that PHA staff understand that only the Office of Special Counsel, not local HUD staff, is authorized to render an authoritative opinion on the Hatch Act.

**SAMPLE FORM FOR REQUESTING A PUBLIC HOUSING ACC WAIVER
OR SECTION 8 EXCEPTION FOR A CONFLICT OF INTEREST
PROHIBITION**

NAME OF HOUSING AUTHORITY _____

DATE OF YOUR REQUEST _____

NAME/TITLE OF PERSON REQUESTING REVIEW _____

WHAT SPECIFIC CONFLICT OF INTEREST PROVISION IS THE SUBJECT OF THIS
REQUEST?

PROVIDE A TITLE, POSITION OR OTHER DESCRIPTION OF THE INDIVIDUAL
INVOLVED IN THE CONTRACT OR ARRANGEMENT THAT GIVES RISE TO THE
CONFLICT OF INTEREST

DESCRIBE THE NATURE OF THE CONFLICT OF INTEREST IN DETAIL

DATE AND MANNER OF DISCLOSURE OF THE INTEREST TO THE PHA

WHOM MAY HUD CONTACT FOR MORE INFORMATION?

DESCRIBE IN DETAIL THE REASON THAT "GOOD CAUSE" IS PRESENT FOR HUD TO GRANT A WAIVER/EXCEPTION. ATTACH DOCUMENTATION THAT EVIDENCES "GOOD CAUSE".

ATTACH SUPPORTING DOCUMENTATION, AS WELL AS AN ANALYSIS OR OTHER EVIDENCE THAT THE CONTRACT OR ARRANGEMENT DESCRIBED IN YOUR REQUEST IS IN COMPLIANCE WITH STATE LAW. THIS SHOULD BE SUPPORTED BY A LOCAL ATTORNEY'S OPINION AS TO STATE LAW COMPLIANCE.

HUD PROGRAM STAFF RECOMMENDATION:

(Signature)

(Date)

(Name and Title)

HUD LEGAL REVIEW COMMENTS:

(Signature)

(Date)

(Name and Title)

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0000

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