Ethics in PH Programs

✓ Section 8
✓ Public Housing

Discussion Topics

Conflicts of Interest in:
  Section 8
  Public Housing

NOTE: Presentation will discuss applicable Federal law. Always check on State and local provisions.
Two Types:

- Procurement
- Non Procurement

Procurement of:
- Property
- Service

Governed by:
- 24 CFR 85.36(b)(3)
- HUD handbook 7460.8 REV-2 (3/07)
Procurement Conflicts of Interest

- 24 CFR 85.36(b)(3):
  - No PHA employee, officer or agent shall participate in the selection, award or administration of a contract supported by federal funds if:
    - the employee, officer or agent,
    - any member of his immediate family
    - his/her partner;
    - or an organization which employs him,
    - has a financial interest or other interest in the firm selected for the award.

Non-Procurement Conflicts

- What Regulations and Rules apply?
  - Section 8
    - 24 CFR 982.161
  - Public Housing
    - Section 19 of Part A of Annual Contributions Contract (ACC)
Section 8 Conflicts

24 CFR 982.161

- PHA, its contractors and subs may not enter into a contract in connection with tenant-based programs if the following persons have an interest in the contract:

1. Present or former members or officers of a PHA (except participant commissioners).
2. Employees of a PHA or contractors, subs or agents of a PHA who:
   - formulate policy or who influence decisions regarding the programs.
3. Public Officials, members of governmental bodies, or state or local legislators, who:
   • Exercise functions or responsibilities regarding programs.
4. Member of U.S. Congress.

**ALERT:** Reg applies during the person’s tenure and for one year thereafter.

---

- Any conflicts must be disclosed to PHA and HUD.
- Conflicts of interest may be waived by HUD for good cause.
Section 19 of Part A of ACC

- HA, its contractors and subs may not enter into a contract in connection with a project under the ACC if the following persons have an interest in the contract:

  1. Present or former members or officers of the HA or their immediate families.
  2. Employees of the HA, their immediate families or partners who:
     - Formulate policy or who influence decisions regarding the project(s).
Public Housing Conflicts

3. Public officials, members of the local government body, or state or local legislators, or their immediate families who:
   • Exercise functions or responsibilities regarding the project(s) or the HA.

**ALERT:** Section 19 applies during the person’s tenure and for one year thereafter.

Public Housing Conflicts

- Conflicts must be disclosed to the HA and HUD.
- HUD may waive conflicts for good cause; IF permitted under State and Local law.
  - Person requiring waiver cannot exercise responsibilities or functions regarding the contract to which the waiver pertains.
Section 19 of Part B of ACC

- **HA may not hire a person** in connection with project if prospective employee is immediate family member of:
  - Present or former member or officer of governing body of HA (former tenant commissioner – some exceptions).
  - Employee of HA who makes policy or influences decisions with respect to projects.
  - Public official, member of local governing body, or State or local legislator, who exercises functions or responsibilities with respect to projects or HA.

**Alert:** Prohibition applies during class member’s term and for one year thereafter!

**Alert:** Class member shall disclose family ties to HA and HUD!

The requirements of Section 19 of Part B of ACC may be waived by HA Board of Commissioners for good cause, provided such waiver permitted by State and local law.

HA Board’s determination of good cause should be well documented.
Conflicts of interest not applicable to General Depository Agreements or to utility services.

Conflict of interest policy under Section 19 of the ACC does not prohibit tenants of an HA from serving on the HA Board.

Limits the political activities of federal employees, employees of the District of Columbia government, and certain employees of state and local governments.

**Who Is Covered?** The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants.
Examples of the types of programs which frequently receive financial assistance from the federal government:

- Public health
- Public welfare
- Housing
- Urban renewal and area redevelopment
- Others listed in handout

You may:

- Be a candidate in non-partisan election
- Attend political meetings/conventions
- Contribute money
- Campaign in partisan elections
- Hold office in political parties
Public Housing - Hatch Act (cont’d)

- You may not:
  - Use official influence to interfere in election
  - Coerce political contributions from subordinates in support of political party or candidate
  - Be a candidate in partisan election

Public Housing Conflicts

- Other important points:
  - Section 19 conflict of interest provisions do not apply to Indian HAs.
  - An “Immediate family member” is:
    - Spouse
    - Children
    - Mother or Father
    - Brothers or Sisters
    - “half” or “step” relatives included
When in Doubt?

Contact your HUD Field Office to resolve a question or conflict.

Beware: Contest Coming!
Conflicts of Interest
Some Illustrations

Illustration #1

Judge Judy is the District Judge of Parker County, Texas. She rents property to tenants with Section 8 vouchers. The Judge has no other dealings with the Section 8 Program.

You “judge” the Judge….is this a conflict of interest?
Answer #1

- NO.
- Judge Judy may continue to rent her property to Section 8 voucher holders.
- There is no conflict of interest because she does not exercise any functions or responsibilities with respect to HUD’s Section 8 voucher program: 24 CFR §982.161 (a)(3)
- Should Judge Judy’s properties or tenants come before her in her capacity as District Judge, she would need to seek further advice from HUD.

Illustration #2

Citizen Kane was recently appointed a Commissioner of the Elysian Fields HA.
- Mr. Kane is the Community Affairs Director of Reliance Hospital and serves in an unnamed capacity with the Rio Grande Recovery Program, an affiliate of the Hospital.
- The Recovery Program leases office space from the HA.
- Mr. Kane is a salaried employee of the Hospital, with no stock and/or other ownership interest in the Rio Grande or Reliance Hospital

Can Mr. Kane remain on the HA Board?
Answer #2

♦ YES.
♦ Mr. Kane’s appointment as a Commissioner of the Elysian Fields HA does not constitute a conflict of interest with his employment at Reliance Hospital under Section 19 of the ACC.
♦ Mr. Kane has no interest in the lease which Reliance has with the HA, he is merely a salaried employee of the Hospital, and has no ownership in either the Hospital or its affiliate, the Rio Grande.

Illustration #3

Bay County HA sought a contractor to complete a parking lot by sealed competitive bids.
- The project will be funded with Capital Grant funds.
- Eric Smith and Associates is the engineering firm which will oversee the project.
- Jones Constructors, Inc. was the low bidder for the job and has been selected for the award of this contract.
- The principles of both the engineering firm and the construction company are step-brothers.

Q. Is this a procurement or non-procurement issue?

A. This is a procurement of construction services covered by 24 CFR §85.36.
Can Bay County HA award the contract to Constructors?

A. Yes, because although Eric Smith and the principle of Jones Constructors, Inc. are step-brothers, Bay County HA secured the bid by sealed competitive bid.
B. Yes, because they are not immediate family members.
C. No, a conflict of interest exists because they are immediate family members.
D. No, as long as Eric does not physically handle the money being paid to Jones Constructor’s Inc.

Answer #3

C. No, a conflict of interest exists because they are immediate family members.

- Conflict of interest exists for an agent of the HA to administer a contract supported by Federal funds if a member of his “immediate family” has a financial interest in the company selected for the award.

- Conflict of Interest for Eric Smith & Associates to administer a construction contract funded with Capital Grant money, since Eric Smith’s step-brother is the President of Jones Constructors, Inc.
The San Antonio HA just lifted its hiring freeze. The HA would like to hire Mona Lisa as a receptionist.

- Mona is the step-sister of Leonardo da Vinci, the HA’s Chief of Maintenance and Painting.
- Mona’s salary will be paid with Recovery Act Stimulus funds.

**Is there a conflict of interest?**

**Answer #4**

- **Probably Not.**

  **Section 19(B)(1)(ii) of the ACC provides in part:**

  “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:

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

  The HA’s Chief of Maintenance and Painting would not normally formulate policy or influence decisions with respect to the project(s).
Illustration #5

Anxious Annie, the Reagan County, Texas HA Executive Director, is worried that if her brother wins election to the Board of County Commissioners there will be an actual or perceived conflict of interest.

The HA has over 200 units of Public Housing under ACC with HUD.

*Should Annie be worried?*

Answer #5

**YES.**

If Annie’s brother is elected to the Board of County Commissioners, this will constitute an immediate conflict of interest under Section 19 (A)(1)(iii) of the ACC, since County Commissioners must exercise functions and responsibilities with respect to HAs under State law.
"Thrifty" Waters is the Executive Director of the Seadrift, Texas HA.

- His wife, Alice, builds web sites as a sideline when she is not running her restaurant.
- "Thrifty" would like his wife to build the HA a web site since she can do the job "cheaper" than her competitors.
- You advise "Thrifty" that this "looks like" a conflict under Section 19 of the ACC, Part A, and he would need to request a waiver from HUD.

Should "Thrifty" have "smooth sailing" with a waiver request to HUD?

Answer #6

- Probably Not.
- Section 19(A)(3) provides:
  - HUD may waive a conflict of interest for good cause, "if permitted under State and local law".
  - And that "no person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract to which the waiver pertains..."
- As part of the waiver request, the HA must submit an attorney’s opinion that a waiver of Section 19(A)(1) is permitted by State and local law.
- Moreover, "Thrifty" could not "administer" his wife’s contract. The HA Board of Commissioners would have to make other arrangements, acceptable to HUD, for the contract administration.
Illustration #7

“River” Banks would like to lease property he owns in Gunbarrel City, Texas to a family which has a Section 8 housing voucher.

- Mr. Banks is Executive Director of the Cedar Creek Lake HA.
- The Section 8 program for Gunbarrel City is administered by the Trinity River HA.

**Can Mr. Banks lease his property in Gunbarrel City to the family with the Section 8 voucher?**

Answer #7

**YES.**

- Mr. Banks may do so because the Section 8 voucher program for Gunbarrel City is administered by the Trinity River HA.
- As ED of the Cedar Creek Lake HA, Mr. Banks would have no functions or responsibilities with respect to the administration of the Trinity River HA Section 8 program: 24 CFR §982.161
The HA of Tennessee City, Texas would like to hire Davey Crockett Company to provide technical assistance (TA) for the Section 8 program.

The company is already under contract to the Recovery and Prevention Corps to provide TA for the HA’s public housing program.

Can the HA hire the Crockett Company to do TA for its Section 8 program?

Answer #8

♦ YES.
♦ This is a procurement of services.
♦ Under 24 CFR §85.36(b)(3), HUD’s regulation provides that a conflict of interest arises when an employee, officer or agent of the HA, who participates in the selection, award or administration of a contract supported by Federal funds, has a financial or other interest in the firm selected for the award.
♦ Since no employee, officer or agent of the HA has a financial or other interest in the Davy Crockett Company, the HA may hire the company as its TA provider for the Section 8 program.
Illustration #9

Tou Minney Ironsinthefire was recently elected to Marathon, Texas, City Council.

The Chairperson of the Marathon Neighborhood Association wrote HUD asserting that it is a conflict of interest for Tou Minney to serve on the Marathon City Council, and at the same time, participate in HUD's Section 8 voucher program as a Section 8 landlord.

Do you agree?

Answer #9

NO.

The Marathon City Council has no functions or responsibilities with respect to the administration of the Section 8 housing voucher program under HUD regulations: 24 CFR Part 982.

Consequently, it is not a conflict of interest for Tou Minney to continue with his civic duties to Marathon and also rent his property to eligible Section 8 voucher holders.
Marvin Manager is the administrator of two apartment projects in El Niño, Texas, that participate in HUD’s Section 8 voucher program through the El Niño HA. Marvin is also a HA Commissioner. *Is there a problem here?*

**YES.**

HUD’s Section 8 Housing Choice Voucher regulations provide that the HA may not enter into any contract in connection with tenant-based programs in which any present member of the HA has an interest: *24 CFR §982.161(a)(1).*

Marvin must resign from the HA Board or the HA must seek a waiver of the conflict of interest from HUD.
Thanks for Your Attention!

Go forth and be ethical!