



Conflict of Interest Guidelines

There is a potential for conflicts of interest in all organizations, no matter the size and makeup of the organization. Most members have numerous professional and personal affiliations and in some cases are asked to join because of their affiliations. Most affiliations are not problematic. The potential for possible conflicts of interest is greater within the Florida Developmental Disabilities Council (Council or FDDC) because of the makeup of the Council – representatives of state agencies, service providers, families and self-advocates – and the comparative smallness of the developmental disabilities services community. It is also exacerbated by the nature of the Council’s work – allocating funding for projects to be performed. These factors could lead to situations in which members have dual obligations and unavoidable conflicts of interest or commitment.

These guidelines were designed to provide guidance to Council staff and members in managing such conflicts, which, if not recognized and corrected, could erode public trust in the Council and call into question the integrity of the Council’s efforts to serve individuals with developmental disabilities and their families. Left unaddressed, they could even result in legal action against the Council as an organization, members and staff.

All Council decisions and subsequent actions must not only serve individuals with developmental disabilities and their families but must also be fair. Thus, any appearance that Council members and their families and associates have an advantage in securing contracts or other advantages because of their membership on the Council must be avoided.

The most effective way to ensure that conflicts of interest do not become problematic is to take a proactive approach to managing them. Organizations should create an environment that encourages open communication, transparency and accountability amongst members and staff.

A Council member must meet certain standards of conduct and attention in fulfilling his or her duties to the Council. One of these standards is the duty of loyalty. When acting on behalf of the Council, the duty of loyalty requires Council members to make decisions that they believe are in the best interest of the Council, rather than their own interests or those of a third party.

Members are expected to make objective, fair, and impartial decisions; to avoid conflicts of interest; and, when a conflict exists, to recuse themselves from deliberations and decisions as necessary. These guidelines will explain how to do this in most cases.

1. To whom does the conflict of interest policy apply?

- Florida Developmental Disabilities Council members, Committee members, Resource members and staff.
- Relatives of Council members.

"Relative" means:

- (a) an individual who is a legal relation by blood or marriage
 - (b) a person who is engaged to be married to the member or who otherwise holds himself or herself out as or is generally known as the person whom the member intends to marry or with whom the member intends to form a household, or any other person having the same legal residence as the member.
- Partners and business associates of Council members
 - Organizations of which Council members are employees, officers, directors, or consultants.

Q. Why does conflict of interest apply to my family and my close relationships?

A. We are naturally inclined to favor those close to us. The mandate that a Council member cannot benefit by his or her service includes possible preferences for close others when acting on Council business. And, it is equally important that the Council avoid the appearance of a conflict.

2. What is a conflict of interest or a conflict of commitment?

- A *conflict of interest* exists when personal or financial interests influence a member's judgment or dispose that member to prefer a certain outcome.
- A *financial conflict of interest* occurs when a member, relative or associate benefits or could benefit financially, directly or indirectly, from membership on the Council or a Committee; including, but not limited to, compensation from contracts and grants, gifts, gratuities, discounts, consultancies, etc.
- A *conflict of commitment* exists when there is a personal interest that may impair the independence of a member's judgment, as when a member or a relative is receiving services from an applicant organization or is a party to a legal action in which the applicant organization is also a party. It could also appear to be present when a Council member holds a position of authority within the organization, even if it is an unpaid position.

Q. My spouse was in a car accident and is suing the driver of the other car, who happens to be the Chief Financial Officer of a provider who has submitted a proposal. Do I have a conflict?

A. You have a conflict in that your personal loyalty to a family member may influence your judgment, or may reasonably be seen to be an influence.

3. Disclosure

Disclosure of circumstances which present or could lead to a conflict of interest or commitment does not create a presumption that any person has violated this policy. Reporting such circumstances allows the Council to determine whether the circumstances would unfairly benefit an applicant organization or a member and to respond as necessary to protect the integrity of the Council and retain the public's trust. The Council may require you to recuse yourself from certain decisions or you may be required by your

employment with a State Agency to recuse yourself in certain situations. Reporting such conflicts at the earliest opportunity is the responsible action of each and every individual.

In order to fulfill the Council's commitment to eliminating or managing conflicts of interest, upon appointment, each member must complete a Conflict of Interest Disclosure Form and an Annual Disclosure of Associations Form listing organizations with whom they are associated and a list of individuals to whom they are related and/or associated who might benefit from the activities and decisions of the Council. This disclosure need not disclose personal financial information. The disclosure will be updated annually. It is in the best interest of the Council for members to disclose dual roles so that the public is aware and public trust can be maintained.

As Council meeting agendas are developed and action items are placed on the agenda for vote, review the information and list Council members who may be in conflict. During the meeting have the Chair (or someone else from the Executive Committee) ask the member(s) to disclose their conflict (real or perceived) publicly so that it is noted in the record and the member can recuse themselves from discussion and vote. No one with a disclosed conflict of interest may participate in the screening and/or selection for grants/contracts or vote on relevant funding decisions.

As soon as the conflict of interest is known, a member should complete a Declaration of a Conflict of Interest Form prior to the meeting or discussion of the issue.

If the conflict becomes apparent during discussions, the member should disclose the conflict and submit a completed Declaration of a Conflict of Interest Form within fifteen days.

A member must not benefit by failing to disclose a conflict in a timely manner. The Executive Committee will review late disclosures/failed disclosures and make recommendations to the Council regarding participation and sanctions.

4. Does having a family member or associate with a developmental disability create a conflict of commitment?

No. Members who have a developmental disability or have a relationship with someone with a developmental disability shall not be construed as having a conflict solely because of that disability or relationship. However, members should not take actions that specifically benefit family members or associates.

Q. The FDDC is considering contracts for services in three counties. I want my county to be one of them so those services are available to my eligible family member. Since services are genuinely needed in my county, why is it wrong to lobby for my county?

A. Contracts should be awarded according to independent criteria. As a Council member, you are acting as a fiduciary of the Council. That is, you are acting as a trusted agent for the benefit of all individuals with developmental disabilities and their families.

Q. I am a self-advocate and a member of Council. There is a proposal before the Council to vote to decrease funding for certain self-advocacy activities with high overhead costs that have not been as effective as originally proposed. I feel torn between supporting other self-advocates and supporting the Council's financial and community goals. As a Council member, how should I vote?

A. As a Council member, you are acting as a fiduciary of the Council and should act in its best interest. Your vote should benefit all individuals with developmental disabilities and their families and not focus just on the desires of self-advocates.

5. Do I have a conflict if I work for a state agency that contracts with FDDC?

Yes or no – depending on the facts. Agencies with which members are associated are not prohibited from presenting to the Council or receiving grants so long as Council members do not share in the profits or receive compensation with respect to those grants and activities or disclose any information not available to the public. The conflict must be disclosed and other procedures followed, such as not voting on the issue. However, your role in the state agency may preclude you from activities that do not comport with that agency's policies. For instance, some state agency members abstain from voting on the FDDC legislative platform to avoid a conflict of interest in case their agencies adopt a different legislative platform.

As part of a legal opinion provided by the FDDC Counsel, particular attention should be paid to the general procurement standards of 45 C.F.R. § 75.327(c)(1), where it states in part:

...

No employee, officer, or agent 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.

...

Q. I work for an agency which compensates me from grants and contracts. The agency has applied for an FDDC contract and proposes to use part of the budget to compensate me for administering the contract. I recused myself from voting on the contract. What's the problem?

A. A Council Member cannot receive compensation from FDDC funds.

6. A Council member should not serve on the Monitoring or Advisory Committee for a project where he or she has a direct or indirect financial interest or any other interest to avoid any appearance of a conflict of interest.

With regard to specific area of expertise or experience, an exception could be made by the Executive Director or Chairperson for an individual to serve on an Advisory Committee.

Q. The Council received an application for funds from an organization that funds family advocacy groups. I am a Council member and manage one of the groups as a volunteer, not an employee. Do I have a conflict?

A. Yes. As a Council member, you should not participate in the creation of the activity, discussion of the activity, the vote to award funds to projects that your organization may benefit from, and you cannot participate in the monitoring of progress towards the efforts. All of these activities would fall under conflict of interest (direct and perceived).

Q. I am a Council Member and on the board of an agency applying for a contract with FDDC. I receive no salary but the agency does provide health insurance for me and my spouse. I have been told I cannot monitor even though I receive no wages. Is this correct?

A. You are being compensated since you receive something of value – health insurance. You have a direct interest in the financial health of the agency and therefore an interest in the contract award. You would be wise to decline the responsibility of serving on the monitoring team of an agency where you serve as a board member. Conflicts of interest go far beyond financial influence.

7. Whenever any current Council member, member of a goal subcommittee, or one whose term of service on the Council has ended within the previous year perceives that an issue or matter coming before the Council for official action creates, or has the potential of creating, a conflict of interest, the current or former member shall so advise the Council; the matter at issue will be referred to the Executive Committee for review and recommendation.

8. Gifts

A member, relative, or associate may not accept, take, seek, or solicit, directly or indirectly, anything of economic value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, that is intended to influence his/her decision, vote, or action or that the recipient should know was given to influence a vote or other action.

A gift is that which is accepted, or given to another, directly, indirectly, or in trust, for which equal or greater consideration is not given, including:

1. Real property or the use of real property.
2. Transportation, lodging, or parking.
3. Food or beverage.
4. Membership dues.

5. Entrance fees, admission fees, or tickets to events, performances, or facilities.
6. Plants, flowers, or floral arrangements.
7. Personal services for which a fee is normally charged by the person providing the services.
8. A preferential rate or terms on a debt, loan, goods, or services or forgiveness of an indebtedness.
9. Tangible or intangible personal property or the use of tangible or intangible personal property.

Q. I am monitoring a contract and attend an event where the provider invites me to dinner as their guest. What should I do?

A. Accepting the “gift” (of dinner) invites the accusation that those who have not offered you gifts are placed at a disadvantage. FDDC and your constituents are best served by members avoiding any emotional or financial “debts.” Thus you should pay for your own dinner or decline to attend the dinner.

Q. A contract includes the requirement that a FDDC member attends a conference and receives free registration. Since it’s part of the contract, is it a gift?

A. No. It is our standard practice to include such a provision in all contracts that involve planning or hosting conferences for the Council. Therefore, there is no favor shown to one provider over another.

Also, as the provider is selected during a separate review process prior to the execution of the contract, the inclusion of such a requirement does not influence the member’s judgment in awarding the funds.

9. Compensation for services to FDDC in a private capacity

No member, acting in a capacity outside his or her role on the Council shall, either directly or indirectly, provide any goods, services or representation, for compensation, to the Council during the term of the member’s appointment and for a period of one (1) year following the conclusion of the member’s service on the Council.

10. Knowledge gained from FDDC (This is very important!)

Members may not disclose or use information not available to the general public and gained by reason of their Council activities for personal gain or benefit or for the personal gain or benefit of any other person or business entity.

Q. We are preparing a Request for Proposals (RFP) which will go out next month. I have mentioned details of it to a provider whom I know to help them prepare. Nothing is secret, since the RFP will soon be available to everyone. I'm not getting anything out of this so what's the problem?

A. This gives one provider an undeserved advantage, the very definition of unfair. All providers are due the same consideration. Revealing information selectively shows a preference and corrupts the integrity of the competitive process. Keep Council business in confidence!

Q. I volunteer at a local center for autistic children and sit on their Advisory Committee. They are looking for some grants and additional funding to increase the services provided. Can I provide them with advice on what grants are available through FDDC?

A. If the IFP or grants have already been made available to public, you can direct the center to the information but you cannot disclose any information that is not available to the general public. In addition, you are advised to not participate or vote on any aspect of funding or the proposal to avoid a potential conflict or the appearance of favoritism.

11. Salary match for grant

No member shall use a portion of his or her salary as a match for a FDDC grant or a FDDC contract.

Q. I work for an agency that has applied for an FDDC contract. I won't receive any compensation from the contract, but the agency wants to use my salary to fulfill part of the contract match requirement. Is this ok?

A. No, a member's salary may not be used as match for a FDDC contract. The agency may still be awarded a FDDC contract, but will need to fulfill the match requirement with other sources.

12. Employment opportunities

Members shall disclose in writing opportunities for employment, income or honoraria that result from a relationship with a Council awardee/grantee/contractor. Members shall recuse themselves from any deliberation that includes a person or organization with whom the member or a relative or associate is negotiating or has any arrangement concerning prospective employment.

Q. A provider that did not receive a competitive grant last year called me to ask if I might be interested in a position. Since they do not currently have any contracts with FDDC, can I pursue the job?

A. Yes, but the contact needs to be disclosed. The provider may apply for contracts in the future, which might not be allowable, depending on your length of service. Moreover, you may be a candidate in part because of your FDDC service and the opportunity for someone in your position to improve their credibility or their chances in the future.

13. Speaking on behalf of FDDC

All policy decisions are made at Council meetings. No individual or committee can speak for the full Council or act for the Council unless specifically authorized to do so (see Council policy on representing the Council). When acting or speaking in a private capacity, when presenting views and opinions contrary to Council policies or for which the Council has no official position, the member must make clear that such views are given as an expression of personal opinion, not of Council position.

Q. I have been invited to speak at church about my experiences raising a daughter with developmental disabilities. The introduction includes my membership on the Council but I am not speaking about policy issues, do I still need to preface my comments with a disclaimer that I am not speaking for the Council?

A. Yes. A reasonable person would make connections between your comments and your FDDC service. Anytime you are identified with FDDC you should disclaim except when authorized to speak on its behalf.