

## **205 Conflict of Interest**

*Approval Date: May 25, 1990*

*Revision/Review Date: January 23, 2020*

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The Board of Trustees recognize that in the normal course of business, a Conflict of Interest may arise. It is important that the Board of Trustees and Employees disclose all potential Conflicts of Interest to the General Manager/CEO (Ethics Officer) or his/her designee, so that appropriate action is taken if any is necessary. This policy will describe the disclosure process and the appropriate action taken for an actual and perceived conflict of interest.

### **1. Purpose**

The purpose of this Policy is to provide guidance to Employees in identifying and handling potential and actual conflicts of interest that may arise in procurement and contract administration and/or could reasonably be seen as influencing the employee's duty to act in the best interest of CEC in any business activity.

This Policy establishes the procedure CEC will use to govern procurement and contract administration conflicts of interest, and any other type of situation that could be considered a conflict of interest. The Policy further establishes the procedure for the disclosure and monitoring of immediate family and business relationships among Employees that could give rise to procurement, contract administration and other types of conflicts of interest with CEC.

### **2. General Rule/Policy**

The general rule is that Employees of CEC are obligated to avoid and disclose ethical, legal, financial, or other conflicts of interest involving procurement and contract administration for the Cooperative and remove themselves from a position of decision-making authority with respect to any procurement, contract administration or conflict of interest situation. This Policy places special emphasis on protecting against those conflicts that may arise when conducting business with outside vendors and contractors on behalf of CEC.

No Clay Electric Cooperative, Inc. (CEC) Employee shall participate in the selection, award, or administration of a contract, or any other CEC business process, if he or she has a real or apparent Conflict of Interest. In furtherance of this policy, all Employees of CEC shall perform their duties in accord with the following Policy.

### **3. Definitions**

An "Employee" is any employee or Trustee of the Cooperative.

A "Conflict of Interest" is a situation where an Employee is in a position to derive personal benefit for themselves, or a member of their immediate family, from actions or decisions made in their official CEC capacity. It can also be a situation that may exist if an activity or gift influences or has the appearance of influencing the objectivity of an employee to perform his or her procurement, contract administration or other duties in the best interest of CEC.

"Ethics Officer", General Manager/CEO is the person so designated to oversee proper compliance with this Policy.

"Ethics Committee", is the group of 3 or more staff members and/or General Manager/CEO so designated for reviewing and determining whether an Employee has a Conflict of Interest situation.

"Immediate Family" means an employee's spouse, parents, grandparents, siblings, children and grandchildren; the parents, and siblings of the employee's spouse; and the spouses of the

employee's children and their siblings. Familial connections may be derived by full or half blood, or by adoption.

#### 4. Identification of Conflict of Interest Situations

An Employee should be particularly careful of a real or apparent Conflict of Interest when the business matter at hand involves:

1. Immediate Family
2. Personal Gain
3. Gain for Outside Business of Employee or Immediate Family
4. Gifts and Entertainment

Where any of these factors exist regarding a CEC business matter, disclosure of the conflict of interest situation should occur in accordance with this Policy. Appendix A to this policy provides additional examples of conflicts of interest.

##### A. Financial Interests

A conflict of interest may exist when an Employee, or an immediate family member of an Employee, has a financial interest in any outside entity that may or does conduct business with the Cooperative.

##### B. Gifts and Entertainment

A conflict of interest may exist when an employee solicits or receives gifts, gratuities, entertainment, trips that require overnight lodging, or anything else of significant value (e.g. financial payments, awards, loans, services, fees, etc.) for the purpose of influencing the action of CEC or of the recipient.

Examples of situations which would **not** create a Conflict of Interest include:

- Business-related meals, refreshments, and recreational activities such as golf or picnics not exceeding a total of \$200 in value from any one individual or organization for any given year.
- Reasonable travel for the inspection of contracted goods.
- Gifts from immediate family members that are not intended to influence a business relationship and are not given to influence the recipient's duties or responsibilities relative to the Cooperative;
- Promotional items such as caps, mugs, pens, t-shirts, etc., when it is the vendors' normal practice to provide such items to all potential customers and there is no intent to influence the recipient's duties or responsibilities relative to the Cooperative;

While it may be difficult to judge the value of gifts offered to the Cooperative's employees, it is important to also consider the appearance of impropriety. Employees should refrain from accepting a gift when there is a reasonable appearance of impropriety. Employees offered any item of value (except for those mentioned above) should immediately report the offer **PRIOR** to accepting the gift or entertainment item.

#### 5. Disclosure and Management of Conflicts of Interest

If an Employee thinks that a particular situation may create a real or apparent Conflict of Interest, the Employee shall make full disclosure to their Department Chief or District Manager. The disclosure should be made **BEFORE** any business is transacted on the Cooperative's behalf relative to the potential conflict, and the Employee shall remove himself/herself from any

related business decision-making process until a determination has been made relative to the potential Conflict of Interest. If warranted, the Department Chief or District Manager will discuss with the Ethics Committee any facts pertinent to the potential conflict. Considering the nature of the potential conflict, the Ethics Committee may consult with Counsel for the Cooperative to achieve a resolution of the conflict issue in the best interests of CEC. The decision of the Ethics Committee to manage the potential conflict will be binding for all CEC Employees.

#### **6. Ethics Committee Decisions**

If an Employee is determined to have a real or apparent Conflict of Interest, the Ethics Committee will disqualify the Employee from acting on any procurement or contract administration matter or participating in any procurement or contract administration decision(s) that could be impacted by the conflict. If an Employee fails to comply with this Policy and its requirement to disclose potential conflicts, the selection and award of the contract is not automatically invalidated. At the point the conflict is made known, the Ethics Committee will immediately review all pertinent facts and determine the best course of action. If it is determined that the action will stand, such determination will be documented in writing and maintained in the files of the Ethics Officer and filed in the Employee's official personnel file.

#### **7. Contracts with Employees**

CEC may enter into contracts for the provision of goods or services with one or more Employees, or entities in which the Employee or an immediate family member may have a material financial interest, if the same opportunity to enter into contracts is made available to other similarly situated Employees or contractors. These contracts are to be procured in accordance with CEC's standard procedures. However, any such contract shall be submitted to and approved by the Ethics Officer and the Board of Trustees. If an Employee has any duties or responsibilities related to procurement of such contract, he or she shall immediately recuse from those actions, and not be involved in any part of the contract selection or award.

#### **8. Exception Regarding an Affiliated Cooperative**

This Policy recognizes that different conflict rules apply to contracts and procurement involving a cooperative (herein, an "Affiliated Cooperative") in which CEC is a member. Specifically, an Employee is not disqualified from decisions regarding procurement or contract administration involving an Affiliated Cooperative solely because of the Employee's service as an officer or board member of the Affiliated Cooperative entity, as long as a prohibited Conflict of Interest does not otherwise exist. An Employee who serves as an officer or board member of an Affiliated Cooperative shall disclose his or her role with the Affiliated Cooperative to the Ethics Officer. If a contract administration or procurement decision involving, or potentially involving, federal grant funds arises between CEC and the Affiliated Cooperative in which the Employee is expected to participate, the Employee shall disclose his involvement with the Affiliated Cooperative and the contract administration or procurement decision to the Ethics Committee, and the Ethics Committee shall assure that the cost analysis required by CFR Title 2 Part 200.323 is performed with respect to that contract administration or procurement decision.

#### **9. Disclosure Certificate**

All Employees must complete and sign the Conflict of Interest Certification and Disclosure Form, included as Appendix B to this Policy. The Ethics Officer shall maintain copies of completed Forms for each Employee. Each Employee is responsible for ensuring that this Form is kept current and must immediately submit an updated Form to their Department Chief or District Manager, who will forward to the Ethics Officer, if there is any material change to any of the information contained in the form. All Conflict of Interest Certification and Disclosure

Forms, including documentation of decisions from the Ethics Committee, shall be filed in the respective Employee's official personnel file.

**10. Review of Disclosure Certifications**

The Ethics Officer shall annually review all Conflict of Interest Certification and Disclosure Forms and generally monitor compliance with this Policy.

**11. Consequences for Failure to Comply with Policy**

Any Employee that does not comply with this Policy shall be subject to disciplinary action, including termination, if so warranted by the offense.

**12. Interpretation**

This Policy cannot describe all procurement, contract administration or other types of conflict of interest situations that may arise involving the Cooperative. Therefore, Employees must use good judgment to avoid any appearance of impropriety. Appropriate circumstances may also justify exceptions to the application of this Policy. If you have any questions about this Policy or its application, please err on the side of caution and transparency and seek advice from your Department Chief or District Manager and, if needed, the Department Chief or District Manager will contact the Ethics Committee.

**13. Annual Distribution of Policy**

This Policy shall be distributed by the Ethics Officer to all Employees on an annual basis.

**14. Appendix A, Examples of Conflicts of Interest Activities and Relationships**

**15. Appendix B, Procurement Conflict of Interest Certification and Disclosure Form**

## APPENDIX A

**EXAMPLES OF CONFLICTS OF INTEREST ACTIVITIES AND RELATIONSHIPS**

The following activities illustrate types of potential or actual conflicts of interest that should be avoided and disclosed, as applicable, in accordance with this Policy. The list is not all inclusive and is intended only to provide guidance.

- Self-benefit: Using your position or relationship within the Cooperative to promote your own interests or those of your immediate family, including the use of confidential or privileged information acquired during employment at CEC for the benefit or gain of yourself or an immediate family member.
- Influence peddling: Soliciting benefits for yourself or an immediate family member from outside organizations in exchange for using your influence to advance the interests of that organization within the Cooperative.
- Other business relationships and dealings: Approving contracts with organizations in which you or a member of your immediate family have a significant financial or other interest or relationship, particularly if you are in a position to influence major decisions, are responsible for review, negotiation and approval of the contracts, or otherwise direct the Cooperative's business dealings with that business or entity.
- Property transactions: Directly or indirectly leasing, renting, trading, or selling real or personal property to or from the Cooperative.
- Use of the Cooperative property for personal advantage: Using or taking Cooperative resources, including facilities, equipment, personnel, and supplies, for private use or other unauthorized non-Cooperative activities.
- Recording or reporting false information: Misrepresenting, withholding, or falsifying relevant information required to be reported to external parties or used internally for decision-making purposes, to derive personal benefits.
- Dealings with Vendors or Contractors: Personally, accepting anything of significant value from organizations or individuals that have or will have proposals pending before CEC or do business with the Cooperative.

Appendix B

**CONFLICT OF INTEREST CERTIFICATION AND DISCLOSURE FORM**

As described by Clay Electric Cooperative’s Conflict of Interest Policy, the undersigned Employee states:

- A. I affirm that I have received or have access to, have read, and understand the Conflict of Interest Policy.
- B. I agree to comply with the Conflict of Interest Policy.
- C. Based upon my good faith belief, to the best of my knowledge, and except as disclosed below, I certify that I currently comply with the Policy.
- D. I disclose the following information or facts regarding any potential Conflict of Interest that could impact my compliance with the Conflict of Interest Policy:

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- E. I agree to disclose any changes or new potential Conflicts of Interest to my Department Chief or District Manager. My Department Chief or District Manager will report it to the Ethics Committee.
- F. I understand and acknowledge that my noncompliance with the Conflict of Interest Policy may lead to sanction, disqualification, removal or other actions, consistent with law and Cooperative policies and procedures.

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Printed Name

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Signature

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Employee Title

Date