



ALBUQUERQUE HOUSING AUTHORITY

Empowering people in our community through affordable housing and self-sufficiency opportunities

AHA Policy

AHA Policies are in place to ensure accuracy, transparency, and accountability for all AHA programs and AHA employees. AHA staff strives to deliver services with honesty, integrity and goodwill. All policies are written under the guidelines of all Federal HUD policies, regulations, and training.

Policy: CONFLICT OF INTEREST POLICY

Description: Standards of ethics and propriety

Date: July 1, 2014

Purpose

As a municipal Public Housing Authority (PHA) and a public body corporate and politic formed by the City of Albuquerque in the State of New Mexico, the Albuquerque Housing Authority (AHA), is obligated to achieve and maintain certain standards of ethics under state and local law and under its Annual Contributions Contract (ACC) with the United States Department of Housing and Urban Development (HUD). To achieve the highest standard of ethics and propriety, the AHA Board of Housing Commissioners adopted a Conflict of Interest Policy to describe in a single-document the various obligations of the Albuquerque Housing Authority, prescribed by federal, state and city law, and its contractual obligations with HUD. The purpose of the Conflict of Interest Policy is to maintain the reputation and goodwill of the AHA in the city of Albuquerque and the state of New Mexico by ensuring that the public and other governmental entities have confidence in the integrity, independence, and impartiality of the commissioners, officers, employees, and other contractors of the Albuquerque Housing Authority.

SOURCES OF LAW

Certain federal, state and city laws govern the ethics of Public Housing Commissioners and employees of a Public Housing Authority (PHA). This policy should be amended in the future to incorporate any legislative amendments to these statutes that become law.

A. State of New Mexico Municipal Housing Law

The New Mexico Municipal Housing Law, section 3-45-6 NMSA 1978, includes provisions regarding conflicts of interest affecting commissioners and employees:

3-45-6. Prohibited actions.

“Neither a housing authority nor any of its contractors or their subcontractors may enter into any contract, subcontract or agreement in connection with a housing project under any contract in which any of the following persons has an interest, direct or indirect, during the person's tenure or for one year thereafter:

- A. any present or former member of the commission of the housing authority or any member of the member's immediate family. The prohibition established by this subsection does not apply to any member who has not served on the governing body of a resident management corporation and who otherwise has not occupied a policymaking position with the resident management corporation or the housing authority;
- B. any employee of the housing authority who formulates policy or who influences decisions with respect to a housing project, any member of the employee's immediate family or any partner of the employee; or
- C. any public official, member of a governing body or state legislator, or any member of that person's immediate family, who exercises functions or responsibilities with respect to the housing project or the housing authority.”

History: 1953 Comp., § 14-46-6, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 6.



3-45-3. Definitions.

“The following terms, wherever used or referred to in the Municipal Housing Law, shall have the following respective meanings:

S. **"immediate family member"** means:

- (1) a spouse, including a former spouse, a de facto spouse or a former de facto spouse;
- (2) a child or an adult child, including an adopted child, a step-child or an ex-nuptial child;
- (3) a parent or a step-parent;
- (4) a grandparent;
- (5) a grandchild;
- (6) a sibling or a step-sibling;
- (7) a first cousin;
- (8) an aunt or an uncle;
- (9) a father-in-law or a mother-in-law;
- (10) a sister-in-law or a brother-in-law; and
- (11) any other relative who is financially supported.”

History: 1953 Comp., § [14-46-3](#), enacted by Laws 1965, ch. [300](#); 1989, ch. [50](#), § [1](#); 2009, ch. [226](#), § [3](#).

B. State of NM Governmental Conduct Act

The State of New Mexico Governmental Conduct Act was amended in 2011 to expand its application to include all local government agencies, included appointed officials and employees at local housing authorities.

10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section [31-18-15](#) NMSA 1978.

History: 1978 Comp., § 10-16-3, enacted by Laws 1993, ch. [46](#), § [28](#); 2007, ch. [362](#), § [2](#); 2011, ch. [138](#), § [3](#).

10-16-3.1. Prohibited political activities.

A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

History: Laws 2007, ch. [362](#), § [9](#); 2011, ch. [138](#), § [4](#).

10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section [31-18-15](#) NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

History: 1953 Comp., § [5-12-4](#), enacted by Laws 1967, ch. [306](#), § [4](#); 1993, ch. [46](#), § [29](#); 2007, ch. [362](#), § [3](#); 2011, ch. [138](#), § [5](#).

The 2011 amendment, effective July 1, 2011, in Subsection B, permitted public officers and employees to engage in official acts if the financial benefit of their financial interest is proportionally less than the benefit to the general public; and added Subsection C to prohibit public officers and employees from acquiring a financial interest when the interest will affect the officer's or employee's official act.

The 2007 amendment, effective July 1, 2007, deleted Subsection C, which permitted the governor to make an exception to the requirement that a public officer or employee be disqualified from engaging in an official act.

10-16-11.1. State agency or local government agency authority.

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.

History: Laws 2011, ch. [138](#), § [13](#).

10-16-13. Prohibited bidding.

“No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.”

History: 1953 Comp., § [5-12-13](#), enacted by Laws 1967, ch. [306](#), § [13](#); 2007, ch. [362](#), § [7](#); 2011, ch. [138](#), § [10](#).

Annotations: **The 2011 amendment**, effective July 1, 2011, prohibited local government agencies from accepting bids from persons who participated in the preparation of the specifications, qualifications or evaluation criteria of the bid.

C. New Mexico Nepotism Law

The State of New Mexico Nepotism Law of 1925 (section 10-1-10 NMSA 1978) limits the relationships of an elected or appointed public official to employees and candidates for public employment positions:

10-1-10. [Nepotism prohibited; exceptions.]

“It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of this state or by virtue of any ordinance of any municipality thereof, to employ as clerk, deputy or assistant, in such office or position, whose compensation is to be paid out of public funds, any persons related by consanguinity or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the officer, board, council or commission, whose duty it is to approve the bond of the person giving such employment; provided, that this act [10-1-10, 10-1-11 NMSA 1978] shall not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$600 or less a year, nor shall it apply to persons employed as teachers in the public schools.”

History: Laws 1925, ch. 50, § 1; C.S. 1929, § 96-136; 1941 Comp., § 10-110; 1953 Comp., § 5-1-10.

D. City of Albuquerque, City Charter, Code of Ethics

The City of Albuquerque created the Albuquerque Housing Authority Board of Housing Commissioners on July 1, 2011 by adopting City of Albuquerque Resolution 2010-97, which includes the following restriction:

“SECTION 7. CONFLICT OF INTEREST. No member of the Board of Housing Commissioners shall knowingly violate any conflict of interest provision as set out in the Code of Ethics in the City Charter.”

Charter of The City of Albuquerque, New Mexico, Article XII. Code Of Ethics

Section 2. DEFINITIONS.

(k) “Official” means the Mayor, all members of the Council, all members of boards, commissions and committees; all directors and the equivalent thereof for each department, division or section; assistant, associate or deputy department, division or section directors and the equivalent thereof; the Director of Council Services; the Chief Administrative Officer; Deputy or Assistant Chief Administrative Officers and the equivalent thereof and all other city employees appointed directly by the Council, Mayor or Chief Administrative Officer.

Section 4. CONFLICT OF INTEREST.

(a) No official of the city shall knowingly:

1. Disclose or use confidential information concerning the property, government or affairs of the governmental body by which that official is employed or of which the official is a member without proper authorization in order to advance the direct or indirect private financial or other private interests of said official or others;
2. Vote or otherwise participate in the negotiation or the making of any contract with any business or entity in which the official has a direct or indirect private financial interest;
3. Represent private interests in any action or proceeding before the governmental body by which the official is employed or of which the official is a member or any appeal of a decision of such body;
4. Accept any valuable gift, whether in the form of service, loan, thing or promise, from any employee of or applicant for employment with the City of Albuquerque or from any person, firm or corporation which to the official's knowledge is interested directly or indirectly in any manner whatsoever, in business dealings with the governmental body by which the official is employed or of which the official is a member, including donors who are unidentified; provided, however, that this subsection shall not be read as prohibiting an incumbent candidate for any elective office from receiving duly disclosed campaign contributions in accordance with the provisions of Article XIII of this Charter or an official who is a candidate for a non-city office from receiving campaign contributions for that non-city office.

(b) No member of the City Council shall:

...

(c) *Disqualification.* An official is disqualified from participating in a matter when: (1) the official has or is in the process of acquiring a direct interest in an enterprise which would be affected by the official's vote on proposed legislation, unless the interest is common to all members of a profession or occupation of which the official is a member or the general public or a large class of the general public, (2) the official benefits

financially from a direct or indirect interest with a person whom the official knows has an interest in an enterprise or interest that would be affected by the official taking any action, (3) the official benefits financially from a direct interest with a person who is lobbying for the purpose of influencing any action, or (4) the official solicits, accepts, or agrees to accept a loan, other than a loan from a commercial lender in the normal course of business, from a person who would be affected by or has an interest in an enterprise which would be affected by the official's participation in any action.

(Am. Ord 35-1975; Am. Ord. 29-1976; Am. Ord. 91-1980; Am. Ord. 23-1988; Am. Ord. 33-1989; Am. Ord. 34-2006)

HUD ANNUAL CONTRIBUTIONS CONTRACT

The Annual Contributions Contract (Form HUD-53012A) (ACC) between HUD and the Albuquerque Housing Authority prohibits certain interests involving commissioners and employees:

Section 19 – Conflict of Interest

(A)(1) In addition to any other applicable conflict of interest requirements, neither the AHA nor any of its contractors or their contractors 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 AHA, 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 AHA or a business entity.

(ii) Any employee of the AHA 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.

(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 AHA.

(2) Any member of these classes of persons must disclose the member's interest or prospective interest to the AHA 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 requested 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 rates are fixed or controlled by a State or local agency.

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

(B)(1) The AHA 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)(1) may be waived by the HA Board of Commissioners for good cause, provided such waiver is permitted by State and local law.
- (C) [applies only to an Indian Housing Authority]
- (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 of stepchild).

SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

Federal Regulations issued by HUD apply to the Section 8 tenant-based rental assistance program (the Housing Choice Voucher Program) to prohibit certain types of contracts or other arrangement that would create a conflict of interest.

24 C.F.R. § 982.161

§ 982.161 Conflict of interest.

“(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.”

SOURCE: 59 FR 36682, July 18, 1994; 60 FR 34695, July 3, 1995; 60 FR 45661, Sept. 1, 1995; 61 FR 11119, March 18, 1996; 63 FR 23857, April 30, 1998, unless otherwise noted.

AUTHORITY: 42 U.S.C. 1437f and 3535(d).

Statute: [18 U.S.C.A. § 641](#).

Case law: [U.S. v. McKay, C.A.2 \(N.Y.\)2001, 274 F.3d 755](#),

GENERAL RULES

To the extent allowed by federal, state or city law or the HUD ACC, the following rules shall further regulate the conduct of Housing Commissioners and employees to avoid the appearance or risk of impropriety:

A. Economic Benefit

A commissioner or employee shall not take any official action that he or she knows is likely to affect the economic interest of: the commissioner or employee or their immediate family; or a person or business entity from whom the

commissioner or employee, or a spouse, has, within the previous 12 months, solicited, received and not rejected, or accepted an offer of employment, or with whom the commissioner or employee, or a spouse, has engaged in negotiations pertaining to business opportunities. Any commissioner or employee shall disclose such a relationship or interest and refrain from participation in any discussion or official action in the affected matter.

B. Unfair Participation

A commissioner or employee may not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person, including himself or herself, any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A commissioner or employee shall not acquire an interest in, or acquire an interest affected by, any contract, transaction, decision or other matter, if the commissioner or employee knows that the interest will be affected by the impending official action by the AHA. A commissioner or employee may not enter into any agreement or understanding with any person that official action by the commissioner or employee will be rewarded or reciprocated by the other person.

It is the policy of AHA not to employ members of the same family. The exceptions that exist and are documented with AHA as of July 1, 2014 will be allowed to continue but no new exceptions will be granted; subject to any required approval by the AHA Board of Housing Commissioners and/or HUD. For the purposes of this policy, same family shall include: grandparents, parents (including legal guardians or individuals standing in loco parentis), spouses, siblings, children, grandchildren, in-laws (mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law), and domestic partners. "Domestic Partners" means a person with whom another person maintains a household and in an intimate relationship, with a legally recognized marriage. A commissioner or employee shall not appoint or employ or vote to appoint or employ a member of the same family. Any commissioner or employee shall disclose such a family relationship or interest and refrain from participation in any discussion or taking official action in the affected matter a commissioner shall abstain from voting on the affected matter.

C. Gifts

A commissioner or employee shall not solicit, accept, or agree to accept any gift to benefit for himself or herself or an interested business entity that reasonably tends to influence or reward official conduct or that the commissioner or employee knows is being offered with the intent to influence or reward official conduct. A commissioner or employee shall not solicit any gift or benefit but may accept or agree to accept a gift of nominal value and meals in an individual expense of \$100 or less at any occurrence from any individual or business entity doing or seeking to do business with the AHA. Gifts of reasonable value related to a special occasion and the relationship between the donor and recipient, reasonable public awards or rewards for meritorious service or professional achievement, scholarships and fellowships, admissions to events in his or her official capacity or a spouse's position, and solicitations for civic or charitable causes are excluded from this rule.

D. Confidential Information

A commissioner or employee shall not use his or her official position to obtain official information about any person or entity for any purpose other than in the performance of official duties. A commissioner or employee shall not intentionally, knowingly, or recklessly disclose any confidential information concerning the property, operations, policies, affairs, or tenants of the AHA excepted as permitted by the State of New Mexico Inspection of Public Records Act (IPRA) or applicable federal or state law or regulation or court order.

Representation of Private Interests

A commissioner or employee shall not represent any private person, group, or entity before the AHA Board of Housing Commissioners or before AHA staff having policy-making or decision-making responsibility. A commissioner or employee shall not assert the prestige of the commissioner's or employee's position for the purpose of advancing private interests or state or imply that he or she is able to influence AHA action on any basis other than the merits.

Outside Employment

A commissioner or employee shall not solicit, accept, or engage in concurrent outside employment which could be reasonably expected to impair independence of judgment in or faithful performance of official duties. A commissioner or employee shall not provide services to an outside employer related to the commissioner's or employee's official duties. A commissioner shall disclose any outside employment to the AHA Board of Housing Commissioners upon initial appointment and annually. An employee shall disclose any outside employment to the AHA Human Resources Manager upon initial employment and annually.

AHA Property and Resources

A commissioner or employee shall not use, request, or permit the use of AHA facilities, personnel, vehicles, equipment, tools, supplies, property, or resources for personal, private, or political activities or purposes.

Political Activity

A commissioner or employee shall not induce or attempt to induce any other commissioner or subordinate AHA employee to participate in a partisan election campaign, contribute to a candidate or political action committee, or engage in any other political activity relating to a particular party, candidate, or issue, or to refrain from engaging in any lawful political activity (such as voting in elections or attending meetings). A commissioner or employee may encourage another to vote generally.

Third-Party Actions

A commissioner or employee shall not assist or induce, or attempt to assist or induce, any person to violate any provision in this policy. A commissioner or employee shall not circumvent this policy through the acts of another person.

Interest in Contracts

A commissioner or employee shall not have a private or personal financial interest in any contract with the AHA or in the sale to the AHA of any land, materials, supplies, or service. A private or personal financial interest arises when a party to the contract or sale involves the commissioner or employee, or a parent, child or spouse, or a business entity in which the commissioner or employee, or a parent, child or spouse, owns 10% of the voting stock or shares or ownership of the fair market value of the business entity, or a business entity is a subcontractor on an AHA contract, a partner, or a parent or subsidiary business entity.

Disclosure, Determination, and Resolution of Conflicts and Violations

An employee shall disclose any known conflicts of interest, proscribed relationships, or apparent or potential violations of the laws, ACC, regulations or this policy to the executive director upon initial appointment or employment and annually upon the beginning of each fiscal year. AHA counsel shall prepare disclosure forms, and amendments as necessary or reasonable, for approval by the Executive Director, or by the Board of Housing Commissioners if required by HUD. A commissioner shall disclose any known conflicts of interest, proscribed relationships, or apparent or potential violations of the laws, ACC, regulations or this policy to the executive director

upon initial appointment or reappointment and annually upon the beginning of each fiscal year. The members of Board of Housing Commissioners shall submit all disclosure forms to AHA counsel for review. AHA counsel shall determine whether there is any actual or potential conflict or violation of the laws, ACC, or Conflict of Interest Policy and recommend action by the Board of Housing Commissioners or executive director to resolve any conflict of interest or violation of law, ACC or policy.

Interpretation

Actions subject to the Conflict of Interest Policy shall be opined on by the counsel to the AHA based on the known facts and issues and reported to the Board of Housing Commissioners and executive director with recommended resolution of a conflict or violation of the law or general rules.

Enforcement

The AHA Board of Housing Commissioners shall recommend to any commissioner appropriate action to remediate or resolve any conflict or violation. Recommended action for a commissioner could include (but is not limited to) a recommendation to abstain from participating in all discussion of an item in a Board meeting and all voting on an item of business that has come before the Board for consideration.

A commissioner may refer to the Mayor of the City of Albuquerque the facts and issues regarding any unresolved conflict or violation by a commissioner that could constitute inefficiency, neglect of duty, or misconduct in office that might justify removal of the commissioner from office. The Board of Housing Commissioners shall direct the executive director to remediate or resolve any conflict or violation involving the executive director or other employee. The executive director may take appropriate action to remedy or resolve an employee conflict or violation, including disciplinary action under the Personnel Policy (Employee Manual).

Severability Clause

If any section, paragraph, clause, word or phrase of this Policy is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Policy. The AHA Board of Housing Commissioners hereby declares that it would have adopted this policy and each section, paragraph, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

AHA certifies that use and implementation this AHA Conflict of Interest Policy was approved by adoption of a policy Resolution by the AHA Board of Housing Commissioners.

PASSED and ADOPTED this 16 day of July, 2014
BY A VOTE OF 4 FOR AND 0 AGAINST.

Members absent from meeting: Clarke
Members abstaining from voting: 0
Members voting against: 0

s/Janet McHard
Janet M. McHard, Chairperson
Board of Housing Commissioners

ATTEST:

s/Linda Bridge
Linda Bridge, Secretary to the Board
Executive Director