

Florida Developmental Disabilities Council

Conflicts of Interest Policy

March 2009

This document was prepared under contract to the University of Miami Ethics Programs, and is the result of research, interviews and interactions with the members, leadership and constituents of the Florida Developmental Disabilities Council.

The Policy begins on page 1; a Policy Guide begins on page 6.

**For more information, please contact the University of Miami Ethics Programs:
ethics@miami.edu**

Florida Developmental Disabilities Council Conflicts of Interest Policy

Section 1 Purpose

The Florida DDC members include representatives of agencies, service providers, advocates, and interested persons. The membership composition in conjunction with the relative smallness of the developmental disabilities services community may lead to situations in which members have dual agency and unavoidable conflicts of interest or commitment. The Council establishes this policy to give guidance to Council members and Task Force members in managing such conflicts in order to prevent erosion of the public trust and to safeguard the integrity of the Council's efforts to serve the developmentally disabled community.

The decisions and actions of the FDDC must not only serve the developmentally disabled community but must also appear to be fair. Thus any appearance that Council members and/or their families and/or associates have an advantage in securing contracts must be avoided. Members are expected to safeguard their ability to make objective, fair and impartial decisions. To that end, all affected individuals shall disclose conflicts as outlined below in connection with Council activities and recuse themselves from deliberations and decisions in which the outcome bears on their interests.

This policy also hereby establishes an external "Conflicts of Interest Advisory Committee" to be available to review, assess and otherwise offer opinions regarding questions of the existence of conflict, scope of conflict, resolution of conflict, actions to be taken in the case of conflict and other matters as appropriate.

Section 2 What is a Conflict of Interest or Conflict of Commitment?

- 2.1 A conflict of interest exists when personal or financial interests influence a member's judgment or dispose that member to prefer a certain outcome.
- 2.2 A financial conflict of interest occurs when a member or relative or associate benefits or could benefit financially, directly or indirectly, from membership on the DD Council or a Task Force, including but not limited to compensation from contracts and grants, gifts, gratuities, discounts, consultancies, etc.
- 2.3 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, is a party to a legal action in which the applicant organization is also a party, etc.

Section 3 Mandatory Disclosure

Disclosure of circumstances which present or could lead to a conflicts of interest or commitment does not create a presumption that any person has violated this policy or state law. 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. Reporting such conflicts at the earliest opportunity is the expected and responsible action of each and every individual.

In order to fulfill FDDC's commitment to eliminating or managing conflicts of interest, upon appointment, each member should file a general disclosure 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. Upon implementation of this policy, all current members will be required to file the same form. The disclosure will be updated annually.

The Conflicts of Interest Advisory Committee established under this policy is tasked to review the general disclosure submission and future declarations of specific conflicts and to make recommendations to the Council regarding exceptions and related issues.

- 3.1. No one with a disclosed conflict of interest may participate in the screening and/or selection of grants/contracts or vote on relevant funding decisions. However, an individual with a disclosed conflict of interest may participate in the development of the details and specifications of RFP's only with the approval of the Council on the recommendation of the Conflicts of Interest Advisory Committee and only if it is determined and documented that the services rendered are of such benefit to so warrant an exception. However, an individual with a disclosed conflict of interest may not vote on funding decisions in which they have such an interest.
- 3.2. A member may not benefit by failing to disclose a conflict in a timely manner. The Conflict of Interest Advisory Committee will review late disclosures/failed disclosures and make recommendations to the Council regarding participation and sanctions.
- 3.3. Members or employees who have a developmental disability or have a relationship with someone with a developmental disability shall not be construed as having a conflict of interest or commitment solely because of that disability or relationship.
- 3.4. Agencies and other entities with which members are associated are not prohibited from making presentations to the Council or receiving grants so long as Council members do not share in the profits or receive compensation under those grants or activities. Some examples: A Florida agency employee who receives fixed salary or wages only, an uncompensated Board member or volunteer for a community non-profit, etc.
- 3.5. No one with a conflict of interest should serve as Chair of a Task Force since the Chair cannot both abstain and function effectively. Therefore, anyone who accepts the position of Chair of a Task

Force must be willing to refrain from applying for funds or responding to RFPs under the purview of that Task Force for the period of appointment as Chair. Chairs may however apply/respond to RFP's from other Task Forces, subject to all other applicable procedures and rules.

- 3.6. Whenever any current Council member, member of a Task Force, 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. When such a conflict has been declared, the matter at issue must be referred to the Conflict of Interest Committee for review and recommendation.

Section 4 Specific Provisions

- 4.1 A member may not accept anything that would improperly influence his/her decision, vote or action. No member or relative of a member shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the member would be influenced thereby or, with the exercise of reasonable care, that the recipient should know was given to influence a vote or other action.
- 4.2 No member shall use or attempt to use his or her Council position or any property or resource which may be within his or her trust, or perform his or her official duties, in order to secure a special privilege, benefit or exemption for himself, herself, or others.
- 4.3 A member, relative or associate may not directly or indirectly accept, take, seek or solicit anything of economic value (such as a gift, gratuity or favor) that is intended to influence his/her decision, vote or action in matters relating to the activities of the Council.
- 4.4 No member, acting in a private capacity, 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 year following the conclusion of the member's Council service.
- 4.5 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.
- 4.6 No member shall use a portion of his or her salary as a match for a grant or a contract.
- 4.7 Members shall disclose in writing opportunities for employment, income or honoraria that result from a relationship with an 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.

Section 5 Authority

All policy decisions are to be 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. Each member must respect the rights of the Council as a whole and represent the policies and procedures of the Council when appearing in public as a representative of the Council. 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 a Council position.

Section 6 Individuals to Whom this Policy Applies with respect to Disclosures

- DD Council members, Task Force members and staff
- Relatives of DD Council members, Task Force members and staff
- Business partners and associates of DD Council members, Task Force members and staff

Generally, DD Council members, Task Force members and staff must identify interests and associations (of theirs, their relatives and their business partners) which may be seen by reasonable persons as presenting a conflict of commitment or conflict of interest with respect to work for and on behalf of the FDDC. These include but are not limited to individuals who or organizations which might seek contracts in which DD staff, Council or Task Force member/family member or associate is an employee or is seeking employment; or is an officer or director; or for whom they serve as consultants or serve on Boards, or in which they have any financial interest. In addition, legal actions, personal indebtedness and other significant social relationships with contractors or potential contractors should be disclosed.

Section 7 Definitions

7.1 “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 natural person having the same legal residence as the member.

7.2 “Gift”

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:

- Real property
- The use of real property
- Tangible or intangible personal property
- The use of tangible or intangible personal property
- A preferential rate or terms on a debt, loan, goods, or services
- Forgiveness of an indebtedness
- Transportation, lodging, or parking
- Food or beverage
- Membership dues
- Entrance fees, admission fees, or tickets to events, performances, or facilities
- Plants, flowers, or floral arrangements
- Personal services for which a fee is normally charged by the person providing the services

Section 8 Creation of a Conflicts of Interest Advisory Committee

Decisions regarding conflicts of interest or commitment are not algorithmic, but require judgment and due consideration of some or many factors. The Florida Developmental Disabilities Council therefore hereby and at arm's length establishes an external, independent Conflicts of Interest Advisory Committee.

This committee shall comprise people who will review, assess and otherwise offer opinions regarding questions of the existence of conflict, scope of conflict, resolution of conflict, actions to be taken in the case of conflict and other matters as appropriate. The Committee will adopt standards of practice to govern such matters as who may request a review or opinion, rules for internal operations, practices for communicating with the Council, etc. and as needed.

In case of requests regarding specific cases of putative conflict, the opinion of the Committee shall be binding and final, except as may be required for judicial or other official review.

The Council's Executive Director shall serve as an *ex officio* member of this Committee; and the Council shall provide staff support as needed. The Committee shall comprise no fewer than three individuals with appropriate areas of expertise, who shall at the outset develop policies and procedures to govern their deliberations, reports and other activities. The Council shall set aside such funds as may be necessary for the Committee's operations.

Robin N. Fiore, Ph.D., rfiore@fau.edu
 Kenneth W. Goodman, Ph.D., kgoodman@miami.edu

March 2009

Policy Guide – Florida Developmental Disabilities Council Conflicts of Interest

The Florida DDC members include representatives of agencies, service providers, advocates, and interested persons. The membership composition in conjunction with the relative smallness of the developmental disabilities services community may lead to situations in which members have dual agency and unavoidable conflicts of interest or commitment. The Council establishes this policy to give guidance to Council members and Task Force members in managing such conflicts in order to prevent erosion of the public trust and to safeguard the integrity of the Council's efforts to serve the developmentally disabled community.

The decisions and actions of the FDDC must not only serve the developmentally disabled community but must also appear to be fair. Thus any appearance that Council members and their families and associates have an advantage in securing contracts must be avoided. Members are expected to safeguard their ability to make objective fair and impartial decisions. To that end, every individual shall disclose conflicts as outlined below in connection with Council activities and recuse themselves from deliberations and decisions in which the outcome bears on their interests.

1. Who is Covered By the Conflict of Interest Policy

- FDD Council members, Task Force members and staff
- Relatives of FDD Council Members. "Relative" means:
 - (a) an individual who is a legal relation by blood or marriage,
 - (b) 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 natural person having the same legal residence as the member.
- Partners and business associates of FDD Council Members
- Organizations in which of FDD 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.

2. What is a Conflict of Interest or 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 or relative or associate benefits or could benefit financially, directly or indirectly, from membership on the FDD Council or a Task

Force, 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.

Q. My spouse was in a car accident and is suing the driver of the other car, who happens to be the CFO 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 conflicts of interest or commitment does not create a presumption that any person has violated this policy or state law. 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. Reporting such conflicts at the earliest opportunity is the expected and responsible action of each and every individual.

In order to fulfill FDDC's commitment to eliminating or managing conflicts of interest, upon appointment, each member should file a general disclosure 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.

- 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, except that an individual with a disclosed conflict of interest may participate in the development of the details and specifications of the RFP's but not vote only with the approval of the Council and only if it is determined and documented that the services rendered are of such benefit to so warrant an exception.
- A member may 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 or employees who have a develop-mental 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 to 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, it's not wrong to lobby for my county, is it?

A. As a Council Member you are acting as a fiduciary. Contracts should be awarded according to independent criteria.

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

Yes and no. 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. However, your role in the state agency may preclude you from activities that do not comport with that agencies' policies.

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 my self from voting on the contract. What's the problem?

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

6. A member shall not monitor a project where he or she has a direct or indirect financial interest.

Q. I am an FDDC 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 fro me and my spouse. I have been told I cannot monitor even though I receive no wages?

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.

7. Whenever any current Council member, member of a task force, 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 or 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.
2. The use of real property.
3. Tangible or intangible personal property.
4. The use of tangible or intangible personal property.
5. A preferential rate or terms on a debt, loan, goods, or services,
6. Forgiveness of an indebtedness.
7. Transportation, lodging, or parking.
8. Food or beverage.
9. Membership dues.
10. Entrance fees, admission fees, or tickets to events, performances, or facilities.
11. Plants, flowers, or floral arrangements.
12. Personal services for which a fee is normally charged by the person providing the services.

Q. I am planning to attend a professional conference on developmental disabilities advocacy. A provider with an FDDC contract is flying his personal airplane to the conference city and offers me a ride. I will actually be saving FDDC the cost of the travel. Is this a problem?

A. Accepting the “gift” (of travel) 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.”

9. Use of Council Resources

No member shall use or attempt to use his or her Council position or any property or resource which may be within his or her trust, or perform his or her official duties, in order to secure a special privilege, benefit, or exemption for himself, herself, or others.

10. Compensation for Services to FDDC in a Private Capacity

No member, acting in a private capacity, 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.

11. Knowledge Gained from FDDC

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 and 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.

12. Salary Match for Grant

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

13. Employment Opportunities

Members shall disclose in writing opportunities for employment, income or honoraria that result from a relationship with an 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. 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.

14. 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. 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 FDD Council but I and 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.