

DISCLOSURE AND AUTHORIZATION OF CONTRACTUAL CONFLICTS

Definitions

Cooperative Official: Cooperative Board Member, Administrator or other person with the authority to enter into a contract or spend Cooperative money in an amount greater than five thousand dollars (\$5,000).

Related Person: the spouse of a Cooperative Official or any person with whom the Cooperative Official lives and commingles assets.

Direct Benefit or Interest in a Contract

No Cooperative Official may have an interest in a contract(s) nor receive a direct benefit from a contract(s), in an amount greater than five thousand dollars (\$5,000) with the same party within a 12-month period to which the Cooperative is a party, unless the interest is disclosed and Board authorizes the contract when necessary, as provided by this policy.

A Cooperative Official receives a **direct benefit** from a contract when the Cooperative Official or Related Person:

1. Is a party to or intended beneficiary of any contract with the Cooperative;
2. Has more than a five percent ownership interest in an entity that is party to any contract with the Cooperative;
3. Acquires property under the contract; or
4. Will receive compensation, commission, promotion, or any other monetary benefit directly attributable to any contract with the Cooperative.

A Cooperative Official has an **interest** in a contract when the Cooperative Official or Related Person:

1. Is employed by a party to any contract with the Cooperative; or
2. Receives more than nominal compensation or reimbursement for actual expenses for serving on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.

A Cooperative Official does **not** derive a direct benefit from, or have an interest in a contract:

1. Based solely on the value associated with the person's publically-traded investments or holdings, or the investments or holdings of any other person with whom the person lives or commingles assets;
2. By participating in a vote or decision in which the person's only interest arises from an act of general application;
3. Based on the person receiving income as an employee or independent contractor of a party with whom the Cooperative has a contract, unless the person receives an increase in compensation or a promotion directly attributable to the contract, or unless the person is employed by the party as a board member, executive officer or other person working for the party in an area related to the contract;
4. If the contract is for the sale of goods or services, or for maintenance or repair services, in the regular course of business, at a price at or below a price offered to all customers;
5. If the contract is subject to the public bidding process;
6. If the contract is with the official depository as set forth in SDCL 6-1-3;

7. Based solely on the person receiving nominal income or compensation, a per diem authorized by law, or for actual expenses incurred; or
8. If the contract or multiple contracts with the same party within a 12-month period is in an amount less than five thousand dollars (\$5,000).

Disclosure and Authorization Procedure

The Board shall place on its regular meeting agenda an inquiry for conflict disclosures prior to the consideration of any substantive matters.

A Cooperative Official who has an interest in a contract or who receives a direct benefit from a contract must disclose to the Cooperative Board the existence of said contract.

To the extent circumstances allow, disclosure must be given prior to entering into any contract that requires disclosure, and if circumstances do not permit disclosure prior to entering into the contract, then within forty-five days after entering into the contract, and if the contract extends into consecutive fiscal years, disclosure shall also be made at the annual meeting.

The disclosure and request for authorization or Cooperative Board action are public record.

1. **Interest in the contract:**
 - a. The disclosure must be in writing;
 - b. The disclosure shall include: (i) the existence of the contract; and (ii) the person's role in the contract.
2. **Direct benefit from a contract:**
 - a. The disclosure must be in writing;
 - b. The disclosure shall include: (i) all parties to the contract, (ii) the person's role in the contract, (iii) the purpose or objective of the contract, (iv) the consideration or benefit conferred or agreed to be conferred upon each party, and (v) the duration of the contract;

Board Action Upon Disclosure

1. **Interest in the contract:**
 - a. The Cooperative Board is not required to authorize a Cooperative Official's interest in a contract;
 - b. The interest disclosure must be included in the official minutes of the Cooperative Board (the official minutes are not required to be sent to the auditor-general and attorney general).
2. **Direct benefit from a contract:**
 - a. The Cooperative Board shall review the disclosure and decide if the terms of the contract are fair and reasonable, and if the contract is contrary to the public interest.
 - i. If the Cooperative Board determines the contract terms from which a direct benefit is derived are fair and reasonable, and that the contract is not contrary to the public interest, the Cooperative Board shall vote to authorize the Cooperative Official to derive a direct benefit from the contract.
 - ii. After the Cooperative Board authorizes a Cooperative Official to derive a direct benefit from a contract, no further disclosure or authorization related to the contract is required unless the contract extends into consecutive fiscal years. If

the contract extends into consecutive fiscal years, disclosure must be made at the annual meeting, but no new authorization is required.

- b. If the Cooperative Board determines the contract terms from which a direct benefit is derived are not fair and reasonable, or are contrary to the public interest, the Cooperative Board shall reject the request for authorization. If the Cooperative Board rejects the request for authorization, the contract is voidable and subject to disgorgement, or the person may choose to resign from the Cooperative.
- c. The official minutes of the Cooperative Board shall include any Board action on the request and shall be filed with the auditor-general and attorney general.
- d. No Cooperative Board member may participate in or vote upon a decision made by the Cooperative Board relating to a matter in which the member derives a direct benefit.

Policy Adopted: December 20, 2017