



Digging Into Conflicts of Interest

Read Time: 20-25 min.

Introduction

ETHICO IS ON A MISSION

Ethico is on a mission to make the world a better workplace by giving leaders who care actionable insights, tools, and services to mitigate risks, engage employees, and build strong cultures. This is why we created our flexible Disclosures Forms to round out the ECOsystem (Ethics & Compliance Optimization System), Ethico's platform of GRC solutions.

Because the road to cultural deterioration is so often paved with conflicts of interest (in one form or another), we crafted this eBook to dive into conflicts of interest and boost understanding. Read on to learn more about the different types of conflicts, the related laws and regulations, and how best to address these issues.

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Section One

The Basics: What are Conflicts of Interest?

A conflict of interest occurs when an individual or entity has competing interests that could compromise their ability to act in an unbiased, objective, or fair manner. It arises when personal, financial, or other external factors influence decision-making processes, potentially leading to a deviation from the best interests of the organization, stakeholders, or the public. Conflicts of interest can arise in various contexts, including business, governance, academia, healthcare, and public service.

Conflicts of interest lie at the root of many challenges faced by organizations today. They serve as the breeding ground for a wide range of issues, such as bribery, corruption, self-dealing, nepotism, cronyism, and groupthink. When individuals are driven by personal gain or vested interests, it erodes trust, compromises integrity, and undermines the fairness and transparency necessary for effective decision-making. These conflicts can create an environment conducive to unethical behavior, hinder organizational growth, damage reputation, and even result in legal and financial consequences.

Ethics and compliance professionals will need to understand the dynamics of conflicts of interest. This begins with recognizing the three main designations for conflicts: actual, potential, and perceived.

[→ THREE MAIN DESIGNATIONS ON FOLLOWING PAGE](#)

Section One

The Basics: What are Conflicts of Interest?

Actual Conflict of Interest

A situation where an individual's personal interests conflict with their professional obligations or responsibilities. In this case, there is a clear clash between their personal interests and their duty to act in the best interests of others, such as clients, employers, or the public.

Potential Conflict of Interest

A situation where there is a risk or possibility that a conflict of interest could arise in the future. Although the conflict has not yet materialized, the circumstances or relationships involved have the potential to create a conflict

Perceived Conflict of Interest

A situation where the circumstances or relationships involved give rise to a perception or suspicion that a conflict of interest exists, whether or not an actual conflict exists. These conflicts can inadvertently cause a loss of public trust.

Distinguishing between these types of conflicts enables a more nuanced and comprehensive approach to conflict management. By recognizing actual conflicts of interest, actions can be taken to minimize their impact and ensure ethical decision-making. Identifying potential conflicts of interest helps to proactively anticipate and prevent conflicts from arising in the future, promoting transparency and integrity. Moreover, acknowledging perceived conflicts of interest is crucial as it allows organizations to address concerns or perceptions that could erode trust.

Section Two

Conflicts of Interest: Its Many Names & Faces

There are several different types of conflicts of interest and the five listed here are the primary groupings. It is important to note an organization's industry will often determine the types of conflicts are most likely to arise. While most industries will encounter financial and personal conflicts of interests, only industries with research and development departments often see intellectual property conflicts of interest.

Financial Conflict of Interest

A financial conflict of interest occurs when an individual's personal financial interests or obligations have the potential to influence their professional judgment or decision-making. It arises when there is a possibility of personal financial gain or loss that could compromise objectivity, integrity, or fairness.

Affiliative Conflict of Interest

An affiliative conflict of interest arises when an individual's existing or prior relationships or associations with organizations, individuals, or groups create a potential bias or influence on their professional responsibilities. These relationships may include employment, board memberships, advisory roles, or any other significant affiliation that could impact impartiality or objectivity.

Section Two

Conflicts of Interest: Its Many Names & Faces

Intellectual Property Conflict of Interest

An intellectual property conflict of interest occurs when an individual's ownership, control, or rights over intellectual property (such as patents, copyrights, or trademarks) could potentially interfere with their professional duties or decision-making. This conflict arises when there is a clash between an individual's personal intellectual property interests and their professional obligations.

Personal Conflict of Interest

A personal conflict of interest arises when an individual's personal or familial relationships, interests, or activities create a potential bias or influence on their professional duties or decisions. It can involve personal relationships, financial interests, personal beliefs, or any other factor that could compromise objectivity or fairness.

Ideological Conflict of Interest

An ideological conflict of interest occurs when an individual's strongly held beliefs, values, or ideologies potentially influence their professional responsibilities or decisions in a way that compromises impartiality or fairness. This conflict arises when personal ideologies conflict with the objective requirements or standards of a particular profession, organization, or situation.

Section Two

Conflicts of Interest: Its Many Names & Faces

Be mindful that conflicts of interest are often presented using terms such as "nepotism", "corruption," "bias," etc. Also keep in mind terms related to transfers of value which are often tools of leverage with conflicts of interest such as "gift," bribe," or "favor." Here is a list of terms to look out for:

Conflicts of Interest

Bias	Pre-existing relationships
Corruption	Secondary employment
Cronyism	Self-dealing
Favoritism	Undue influence
Insider Trading	
Nepotism	

Transfers of Value

Advisory Fees	Kickbacks
Bribery	Speaker Fees
Commissions	Sponsorships
Entertainment	Travel
Gift	
Hospitality	

Section Three

Examples of COI in Different Industries



Construction Firms

- Accepting bribes or kickbacks from subcontractors or suppliers.
- Having financial interests in companies that compete with the construction firm.
- Hiring family members or close associates without proper qualifications.



Defense Contractors

- Accepting gifts or financial incentives from suppliers or vendors.
- Hiring former government officials involved in contract decision-making processes.
- Engaging in insider trading based on classified information.



Financial Institutions (Banks, Credit Unions, etc.):

- Investing clients' funds in products or companies where the employees or their close associates have personal financial interests.
- Misusing client information for personal gain.

Section Three

Examples of COI in Different Industries



Healthcare

- Accepting payments or gifts from pharmaceutical companies in exchange for prescribing specific drugs.
- Engaging in relationships that compromise patient confidentiality or privacy.



Insurance

- Receiving commissions or incentives for recommending specific insurance policies without disclosing potential conflicts.
- Having financial interests in companies that benefit from denying coverage or minimizing claims.



Legal Firms

- Representing clients with conflicting interests without proper disclosure or consent.
- Accepting referral fees or kickbacks from other professionals or service providers.
- Providing legal advice or services to friends, family members, or business partners without impartiality.

Section Three

Examples of COI in Different Industries



Pharmaceutical Companies

- Providing incentives or gifts to healthcare professionals in exchange for prescribing or promoting their products.
- Concealing negative research findings or potential risks associated with their medications.
- Influencing clinical trials or research studies to achieve desired outcomes.



Real Estate

- Representing both the buyer and the seller in a transaction without proper disclosure.
- Accepting undisclosed referral fees or kickbacks from other parties involved in the real estate transaction.



Research Firms (Research Universities/Medical Schools)

- Failing to disclose conflicts of interest in research funding or collaborations.
- Publishing biased or manipulated research findings to benefit sponsors or personal interests.
- Exploiting research data for personal gain or filing claims without proper authorization.

Section Three

Examples of COI in Different Industries



Government

- Awarding contracts or making policy decisions based on personal relationships or financial interests.
- Engaging in nepotism by hiring or promoting family members or close associates.
- Accepting gifts, favors, or bribes from individuals or companies seeking government contracts or favorable treatment.

Section Four

COI Laws & Regulations in the U.S.

Anti-Kickback Statute

The Anti-Kickback Statute (AKS) prohibits the exchange of anything of value, directly or indirectly, to induce or reward the referral of federal healthcare program business. It aims to prevent conflicts of interest in healthcare by prohibiting kickbacks, bribes, or other forms of remuneration that can influence medical decisions or services. The AKS helps ensure that medical decisions are based on the best interests of patients rather than personal gain.

False Claims Act (FCA)

The False Claims Act (FCA) imposes liability on individuals and companies that defraud the federal government by knowingly submitting false claims for government payment. The FCA is designed to combat conflicts of interest by holding accountable those who seek to profit unlawfully from government contracts, grants, or programs. It encourages individuals with knowledge of fraudulent activities to come forward and report them.

Foreign Corrupt Practices Act (FCPA)

The Foreign Corrupt Practices Act (FCPA) is an anti-corruption law that prohibits U.S. companies and individuals from bribing foreign government officials to obtain or retain business. The FCPA addresses conflicts of interest by prohibiting the use of improper payments, gifts, or other forms of corruption that can create an unfair advantage or compromise ethical standards in international business transactions.

Section Four

COI Laws & Regulations in the U.S.

Procurement Integrity Act

The Procurement Integrity Act (PIA) establishes rules and standards for the procurement process of federal contracts. It aims to prevent conflicts of interest in government procurement by regulating the interaction between government officials, contractors, and bidders. The PIA prohibits individuals with access to non-public procurement information from improperly using that information for personal gain or providing it to others for unfair advantage.

Stark Law

The Stark Law, also known as the Physician Self-Referral Law, prohibits physicians from referring Medicare or Medicaid patients for designated health services to entities with which they have a financial relationship unless certain exceptions apply. The law addresses conflicts of interest in healthcare by preventing financial incentives that may influence referrals and ensure that medical decisions are based on patient needs rather than financial considerations.

Sunshine Act

The Sunshine Act, officially known as the Open Payments Program, requires manufacturers of drugs, devices, biologicals, or medical supplies covered by Medicare, Medicaid, or the Children's Health Insurance Program (CHIP) to report payments or transfers of value made to physicians and teaching hospitals. The act aims to increase transparency and reduce conflicts of interest by disclosing financial relationships between healthcare providers and industry, thereby minimizing potential biases in medical decision-making.

Section Five

Which Rules for Which Industry



Construction Firms

- False Claims Act (FCA): Applies to cases of fraud involving government contracts in the construction industry.
- Federal Acquisition Regulation (FAR): Governs the acquisition process for federal government contracts, including those in the construction sector, and includes provisions to prevent conflicts of interest.



Defense Contractors

- False Claims Act (FCA): Applicable to cases of fraud involving defense contracts and procurement.
- Federal Acquisition Regulation (FAR): Contains specific provisions for defense contracts to ensure fair competition, transparency, and integrity.



Financial Institutions (Banks, Credit Unions, etc.)

- Securities and Exchange Commission (SEC) Regulations: Regulates the conduct of financial institutions to prevent conflicts of interest in areas such as securities trading, investment advice, and disclosures.
- Dodd-Frank Wall Street Reform and Consumer Protection Act: Addresses various aspects of financial regulation, including conflict of interest issues within the financial industry.

Section Five

Which Rules for Which Industry



Healthcare

- Anti-Kickback Statute: Prohibits kickbacks and other forms of remuneration that can influence referrals or medical decisions, applying to healthcare providers, pharmaceutical companies, and others.
- False Claims Act (FCA): Applicable to cases of healthcare fraud, including false billing, improper coding, or submitting false claims to government healthcare programs like Medicare and Medicaid.
- Stark Law: Regulates physician self-referrals and financial relationships between healthcare providers, including hospitals and other entities.



Pharmaceutical Companies

- False Claims Act (FCA): Applicable to cases of fraud involving pharmaceutical companies and government healthcare programs.
- Food, Drug, and Cosmetic Act: Regulates the marketing, safety, and distribution of pharmaceutical products, including provisions addressing conflicts of interest and promotional practices.
- Sunshine Act: Requires firms to document payments, gifts, or other transfers of value made to physicians and teaching hospitals.



Research Firms (Research Universities/Medical Schools)

- Public Health Service (PHS) Financial Conflict of Interest (FCOI) Regulations: Apply to research funded by the PHS, including the National Institutes of Health, requiring institutions to establish policies to identify, manage, and disclose financial conflicts of interest that could potentially bias research.
- Federal Acquisition Regulation (FAR): Regulations which aim to prevent conflicts that could compromise the fair and impartial evaluation of contract proposals.

Section Six

COI Rules Throughout the World

Canada



Corruption of Foreign Public Officials Act

Addresses bribery of foreign public officials, including provisions related to gifts, entertainment, or hospitality that could influence decisions. This law applies to individuals and companies, including private businesses.

Canada Business Corporations Act (CBCA)

The CBCA governs federal corporations in Canada. It includes provisions related to conflicts of interest and requires directors and officers to disclose any material interest they have in a proposed contract or transaction with the corporation.

France



French Public Procurement Code (Code de la commande publique)

The code includes provisions that address conflicts of interest in public procurement. It requires bidders to disclose any conflicts of interest that may arise during the procurement process. Failure to do so can result in disqualification or termination of the contract.

Section Six

COI Rules Throughout the World

France



Sapin II Law

Introduced in 2016, this law focuses on transparency, anti-corruption measures, and the prevention of conflicts of interest. It includes requirements for companies to implement anti-corruption programs and establish mechanisms for reporting irregularities.

Loi Bertrand: French Sunshine Act (FSA)

Requires pharmaceutical companies to publicly disclose financial benefits provided to healthcare professionals and organizations. The law aims to prevent conflicts of interest and enhance transparency in the relationships between the pharmaceutical industry and healthcare stakeholders.

Germany



German Criminal Code (Strafgesetzbuch)

Section 266 criminalizes breach of duty (Untreue) and applies to individuals, including those in the private sector, who misuse their position or powers for personal gain or to benefit others, resulting in a conflict of interest.

Section Six

COI Rules Throughout the World

Germany



Corporate Governance Code (Deutscher Corporate Governance Kodex)

Provides guidelines for corporate governance, including recommendations to prevent conflicts of interest and promote transparency in private businesses.

Spain



Spanish Competition Law (Ley de Defensa de la Competencia)

This law focuses on promoting fair competition and preventing anti-competitive practices. It prohibits actions that distort competition, including those that involve conflicts of interest and abuse of a dominant position in the market.

Section Six

COI Rules Throughout the World

Italy



Italian Code of Public Contracts (Codice dei contratti pubblici)

The code includes provisions on conflicts of interest in public procurement. It requires bidders to disclose any actual or potential conflicts of interest that may arise during the procurement process.

Legislative Decree No. 231/2001

Introduces the administrative liability of companies for certain offenses, including bribery, corruption, and conflicts of interest. It requires companies to adopt internal compliance programs to prevent such violations.

U.K.



Bribery Act 2010

Prohibits bribery, including offering or accepting gifts, entertainment, or hospitality to gain an improper advantage or influence decisions. This law applies to individuals and companies, including private businesses.

Section Six

COI Rules Throughout the World

U.K.



Financial Services and Markets Act 2000

The Financial Services and Markets Act regulates the financial services industry in the UK. It includes provisions related to conflicts of interest and requires firms to establish and maintain systems and controls to manage and mitigate conflicts of interest effectively.

Israel



Public Sector Employees Ethics Law (2000)

The Public Sector Employees Ethics Law applies to public sector employees and sets forth ethical standards and rules of conduct. It addresses conflicts of interest, including restrictions on receiving gifts, bribes, or benefits that could compromise integrity and impartiality.

Companies Law (1999)

The Companies Law in Israel includes provisions related to conflicts of interest involving company directors and officers. It requires directors to disclose any personal interest in a transaction and abstain from participating in decision-making processes in which they have a conflict of interest.

Section Six

COI Rules Throughout the World

Japan



JPMA Transparency Guidelines

The Japan Pharmaceutical Manufacturers Association enacted (in an effort to self-regulate) guidelines requiring pharmaceutical companies to disclose financial relationships with healthcare professionals and patient organizations.

Financial Instruments and Exchange Act

Requires companies in Japan which are listed on stock exchanges to disclose material information that could impact investment decisions. This may include the disclosure of conflicts of interest that could influence business operations or financial performance.

S. Korea



Improper Solicitation & Graft Act (Kim Young-ran Act)

Certain thresholds and limitations are set on the value and nature of gifts, entertainment, and hospitality that can be given or received. The act imposes strict regulations on relationships between public officials and private entities, aiming to curb corruption and conflicts of interest.

Section Six

COI Rules Throughout the World

S. Korea



Act on the Prevention of Corruption & Civil Rights Commission

The Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission prohibits bribery, including the provision of gifts, entertainment, or hospitality, to public officials to influence decisions. This law applies to individuals and corporations, including private businesses.

Australia



Criminal Code Act 1995

Contains provisions related to bribery of public officials and includes regulations on gifts, benefits, and hospitality that could be deemed corrupt. This law applies to individuals and corporations, including private businesses.

Medicines Australia Code of Conduct

Requires pharmaceutical companies to disclose certain payments and transfers of value made to healthcare professionals and organizations. It promotes transparency and ethical conduct in the interactions between the pharmaceutical industry and healthcare providers.

Section Six

COI Rules Throughout the World

Singapore



Prevention of Corruption Act

Criminalizes bribery, including the offering or accepting of gifts, entertainment, or hospitality to obtain favors or influence decisions. This law applies to individuals and companies, including private businesses.

Brazil



Anti-Corruption Law (Law No. 12,846/2013)

Establishes corporate liability for acts of corruption and imposes strict penalties on companies involved in corrupt practices. It includes provisions related to conflicts of interest, bribery, and other corrupt activities in both the public and private sectors.

Public Procurement Law (Law No. 8,666/1993)

Includes provisions that promote transparency, fair competition, and prevent conflicts of interest in the procurement process. Bidders are required to disclose any conflicts of interest, and public officials are prohibited from participating in procurement procedures if a conflict exists.

Section Six

COI Rules Throughout the World

New Zealand



Crimes Act 1961

Prohibits bribery, including the offering or receiving of gifts, entertainment, or hospitality to improperly influence decisions or gain an

Section Seven

How To Go About It? Addressing & Correcting COI

Now that you can see how conflicts of interest are often the subject of laws and regulations throughout the world, you will understand the how crucial it is to outline the procedures for resolving these issues. By following a structured approach, you can mitigate the risks associated with conflicts of interest and maintain transparency and integrity in decision-making processes. Here are the four major steps to guide you through the process:

01

Identify

- Identify all conflicts of interest including actual, potential, and perceived.
- Be vigilant in areas of high risk: procurement, senior leadership, or staff who interact with public officials.
- Establish the means to identify conflicts of interest with your organization: policies, training, reporting channels.

02

Disclose

- Develop a clear and transparent process for disclosure, including specific forms or procedures to capture relevant information.
- Encourage individuals to disclose any financial or personal interests that could potentially influence their decision-making. It is essential to maintain confidentiality and establish safeguards to protect the privacy of those involved.

Section Seven

How To Go About It? Addressing & Correcting COI

03

Manage

- Assess disclosures and choose a resolution strategy: register, restrict, recruit, remove, relinquish, and resign.
- Depending on the type of conflict, independent review panels or third party oversight might need to be arranged.
- Ensure there is transparent decision-making and every step of the resolution process is recorded.

04

Monitor

- Regularly assess the effectiveness of your conflict of interest policies and procedures.
- Determine if a conflict of interest resolution has been effective or if a new resolution strategy should be put in place.
- Assess any cultural damage done by the conflict of interest and attempt to reverse its effects.

Section Eight

Going Toe-to-Toe with COI: Resolution Strategies

Easily remembered as the "Six R's," the resolution strategies listed here are the most commonly applied. These resolution strategies provide organizations with a range of options to address conflicts of interest effectively and maintain ethical standards. The appropriate strategy will depend on the specific circumstances and the severity of the conflict. Organizations should carefully consider each approach and apply them in a manner that promotes transparency, fairness, and the best interests of all stakeholders involved.

Register

- Create a centralized register or database to track and document conflicts of interest.
- Require Individuals to disclose their conflicting interests, providing supporting information.

Helps monitor, manage, and maintain transparency regarding conflicts of interest.

Restrict

- Implement guidelines to limit the involvement of individuals with conflicts of interest.
- Define specific actions or responsibilities that individuals with conflicts can or cannot engage in.

Prevents undue influence, bias, and ensures transparency in decision-making.

Section Eight

Going Toe-to-Toe with COI: Resolution Strategies

Recruit

- Engage external individuals or experts without conflicts of interest in decision-making processes.
- Obtain independent viewpoints and fresh perspectives for unbiased assessment.

Ensures fairness, objectivity, and mitigates the influence of conflicting interests.

Remove

- Reassign responsibilities or change reporting lines to minimize the impact of conflicts of interest.
- Take appropriate actions to prevent conflicts from compromising the organization's integrity.

Ensures transparency, ethical conduct, and prevents potential breaches.

Relinquish

- Encourage individuals to divest or give up conflicting interests.
- Sell shares, terminate relationships, or step down from external positions.

Demonstrates commitment to upholding ethical standards and avoiding bias.

Resign

- Individuals voluntarily choose to resign from positions or roles affected by conflicts of interest.
- Complete separation from conflicting interests to maintain integrity.

Avoids perception of impropriety and uphold ethical conduct.

Section Nine

Proactive Disclosure Practices

There are several ways a few ways to learn about conflicts of interest in addition to learning about them from law enforcement, such as ensuring channels are open for stakeholders to report anonymous concerns about another party's interests. But the most proactive practice is the use of disclosure forms for employees, vendors, suppliers, senior leadership, etc. to fill out on a routine basis or to fill out when there is a change of circumstance (such as a promotion or a lateral move into a high-risk department).

- 1. Provide Clear Guidelines & Policies** Develop comprehensive and easily understandable guidelines and policies on disclosures.
- 2. Regularly Remind & Reinforce** Reinforce your message with reminders through internal communications, such as newsletters, emails, or posters.
- 3. Lead by Example Leadership** should set an example by actively disclosing their own conflicts of interest and demonstrating their commitment to ethical conduct.
- 4. Simplify the Disclosure Forms** Use plain language and avoid jargon. Also, provide examples of common conflicts of interest in an FAQ attached to your forms.
- 5. Offer Multiple Submission Channels** Allow employees, vendors, suppliers, etc. to choose between using an online form, a disclosure hotline, or other in-person options.
- 6. Conduct User Testing & Feedback** Prioritize user testing to identify potential pain points on your submission systems. Is there one stage in the process where people seem to drop off the most?
- 7. Proactively Monitor & Follow Up** Monitor and follow up on any actual, perceived, or potential conflicts of interest. Reply even if you're just acknowledging receipt of the disclosure.

The Right Tool for the Right Job

Thank you for reading this eBook on conflicts of interest and the importance of proactive disclosure practices. We hope that the information provided has been valuable in helping you recognize the risks associated with conflicts of interest and the significance of documenting them appropriately.

At Ethico, we understand the challenges faced by ethics and compliance professionals in managing conflicts of interest effectively. That's why we have developed a comprehensive disclosure forms software and disclosure case management tool to assist you in streamlining your processes without compromising integrity. Our disclosure tool offers a range of features designed to enhance your disclosure management experience. Here are some key features of Ethico's disclosure solution:

- Customizable Disclosure Questions: Tailor the disclosure form questions to align with your organization's specific needs.
- Dynamic Questioning: Questions can adapt based on user input, such as department or seniority, ensuring a more personalized and relevant disclosure experience.
- Custom Disclaimers and Acknowledgments: Include disclaimers and acknowledgments that align with your organization's policies and legal requirements.
- Integrated Policy Attestations: Seamlessly integrate policy attestations within the disclosure process to ensure compliance.
- Accessibility and Convenience: Access the disclosure forms through our user-friendly online platform, providing ease of use for all staff members.
- Efficient Case Management: Reduce manual steps and enhance automation with our smart filters, allowing you to identify red flags and efficiently manage disclosure cases.
- Enhanced Review Capabilities: Mark forms for special review and set, track, and assign action plans to ensure prompt resolution.
- Automatic Escalation: Utilize triggers to automatically escalate severities based on predefined criteria, ensuring a timely and appropriate response.
- Robust Reporting: Generate comprehensive reports to verify completion of disclosure forms and gain insights into trends and patterns using our data analytics capabilities.
- Annual Change Tracking: Leverage our case management tool's data analytics to track and assess annual changes in disclosure data, allowing for better compliance monitoring.

Ethico is committed to providing you with a reliable, user-friendly, and efficient solution for managing conflicts of interest and promoting transparency within your organization. We strive to be your trusted partner in upholding ethical standards and ensuring compliance. For more information about Ethico and how our disclosure tool can support your organization, please visit our website at www.ethico.com. We are always here to assist you and answer any questions you may have.