

Conflict of Interest Disclosure and Attestation for Certified Application Counselor Designated Organizations (CDOs)

This form should be filled out by the Senior Official¹ of the organization below:

Name:

Application or CDO ID:

Title:

Organization:

Email Address

Phone Number:

Date:

Pursuant to 45 C.F.R. § 155.225(g)(2) and the agreement between the Centers for Medicare & Medicaid Services (CMS) and the Certified Application Counselor Designated Organization (CDO) designated as such by CMS in a state in which a Federally-Facilitated Exchange (FFE) is operating (“CMS-CDO Agreement”),² any CDO and applicable staff member or volunteer³ of a CDO who is certified to serve as a Certified Application Counselor (CAC) must not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individuals in a Qualified Health Plan (QHP)⁴ or non-QHP⁵. Such consideration will be considered a prohibited conflict of Interest.

Direct consideration means receiving anything of value (monetary and in-kind) from a health insurance or stop-loss insurance issuer without an intermediary.

Indirect consideration means receiving anything of value (monetary and in-kind) from a health insurance or stop-loss insurance issuer in an indirect way. An example of this can be receiving funding from a foundation or subsidiary of a health insurance issuer. This funding may result in steering individuals to particular plans and is prohibited.⁶

¹ A senior official is generally an officer of the organization or corporation with the power to bind the organization to a contract.

² <https://marketplace.cms.gov/technical-assistance-resources/cms-cdo-agreement.pdf>

³ See section below on CDO staff members and volunteers subject to conflict of interest disclosure and attestation requirements.

⁴ Section II(2)(b)(xv) on page 4 and Section II(14) on page 6 of the CMS-CDO Agreement. See also 45 CFR 155.225(g)(2). Note that 45 CFR 155.225(g)(2) also provides that in an FFE, no health care provider shall be ineligible to operate as a CAC or CDO solely because it receives consideration from a health insurance issuer for health care services provided.

⁵ A “non-QHP” is a health insurance policy that is not certified to be sold on the Exchange. The non-QHP prohibition does not apply to homeowners’, life, or auto policies. See footnote 24 on page 8 of “Tip Sheet: FFM Assister Conflict of Interest Requirements” accessed at <https://marketplace.cms.gov/technical-assistance-resources/conflict-of-interest-requirements.pdf>.

⁶ See discussion of 45 CFR 155.210(d)(4) at 77 FR 18333. This was later applied to CACs by CMS finalizing 45 CFR 155.225(g)(2).

To ensure that CDOs comply with this prohibition, certain CDO staff members and volunteers must attest that they are not receiving prohibited consideration, and must disclose certain other financial relationships (Conflict of Interest Disclosure and Attestation Requirement).

Staff members and volunteers subject to the conflict of interest disclosure and attestation requirements must disclose to CMS, the CDO, and assisted consumers any relationship with QHPs, Insurance Affordability Programs⁷, as well as any other potential conflicts of interest⁸.

Potential conflicts of interest can exist in situations where there is no current conflict of interest, but one could develop in the future. Insurance Affordability Programs include: Medicaid, the Children’s Health Insurance Program (CHIP), and programs that make available to qualified individuals coverage in a QHP through the Exchange with advance payments of the premium tax credit (APTCs) or cost-sharing reductions (CSRs).

Potential conflicts of interest may be non-prohibited but must still be disclosed by certain CDO staff and volunteers to the CDO. Some examples include⁹:

- A CDO that is a health care provider must disclose to every consumer assisted that it contracts with a Medicaid managed care organization to receive payment for health care services it provides.
- A CAC who works part-time as an administrative assistant for a health insurance issuer must disclose this relationship to the CDO and to every consumer assisted. This employment relationship is not prohibited because the employee is not receiving consideration from the health insurance issuer in connection with the enrollment of consumers in a QHP or non-QHP.

CDO staff members and volunteers subject to the conflict of interest disclosure and attestation requirements include¹⁰:

- All staff members and volunteers certified by a CDO to perform CAC services including those staff members and volunteers engaged in outreach and education activities.
- Anyone who performs work related to CAC program activities on a CDO’s behalf, even if they are not performing on-the-ground application and enrollment assistance. This includes anyone supervising a CDO’s program activities on behalf of the organization.

Staff members and volunteers working for a CDO who are in no way involved with the CAC program would not be subject to the conflict of interest disclosure and attestation requirements.¹¹

⁷ See 45 CFR 155.300 and 45 CFR 435.4 for the definition of Insurance Affordability Programs.

⁸ Section II(7) on page 5 of the CMS-CDO Agreement. See also 45 CFR 155.225(d)(2).

⁹ See page 9 of “Tip Sheet: FFM Assister Conflict of Interest Requirements” accessed at <https://marketplace.cms.gov/technical-assistance-resources/conflict-of-interest-requirements.pdf> for more guidance.

¹⁰ See page 6 of “Tip Sheet: FFM Assister Conflict of Interest Requirements” accessed at <https://marketplace.cms.gov/technical-assistance-resources/conflict-of-interest-requirements.pdf>.

¹¹ See pages 2, 3, and 7 of “Tip Sheet: FFM Assister Conflict of Interest Requirements” accessed at <https://marketplace.cms.gov/technical-assistance-resources/conflict-of-interest-requirements.pdf> for more guidance.

To implement the CMS regulations prohibiting certain relationships, I, as the Senior Official of the above-mentioned organization, agree or attest to the following for myself and on behalf of the organization I represent (*please sign your initials on each line*):

- I. I attest that to the best of my knowledge I and my organization, do not receive any consideration, directly or indirectly, from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individual(s) in a QHP or non-QHP¹². ***Consideration received from a health insurance issuer for health care services provided is not prohibited.***
- II. I attest that to the best of my knowledge the staff and volunteers of my organization subject to the conflict of interest requirements¹³ do not receive any consideration, directly or indirectly, from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individual(s) in a QHP or non-QHP¹⁴. ***Consideration received from a health insurance issuer for health care services provided is not prohibited.***
- III. My organization agrees to set up a process to determine the individual potential and actual conflicts of interest of applicable staff members or volunteers subject to the COI and attestation requirements¹⁵. _____
- IV. My organization and I agree to disclose to CMS, the CDO, and to consumers who we assist any actual or potential conflicts of interest including relationships we have with QHPs and Insurance Affordability Programs¹⁶. _____
- V. My organization and I agree to establish procedures for the CDO's CACs to disclose all potential conflicts of interest of the CDO or the individual CAC prior to assisting consumers.¹⁷. _____
- VI. My organization and applicable staff members or volunteers subject to the COI and attestation requirements agree to act in the best interest of the consumer in all matters¹⁸. _____

¹² See footnote 3.

¹³ See page 6 of “Tip Sheet: FFM Assister Conflict of Interest Requirements” accessed at <https://marketplace.cms.gov/technical-assistance-resources/conflict-of-interest-requirements.pdf>.

¹⁴ See footnote 3.

¹⁵ See footnote 3.

¹⁶ See footnote 2.

¹⁷ See footnote 2.

¹⁸ Section II(8) on page 5 of the CMS-CDO Agreement. See also 45 CFR 155.225(d)(4).

My organization, any applicable staff members or volunteers subject to the COI and attestation requirements, and I disclose the following actual or potential conflicts of interest¹⁹:

Company	Type of Relationship	Content Area

I have carefully read and completed this form myself and provided current and accurate information to the best of my ability. I understand that typing my name below serves as an electronic signature for purposes of this form.

Type Senior Official's Name (Electronic Signature)

Date

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¹⁹ See footnote 2.