

**Conflict of Interest of  
Arizona Water Infrastructure Finance Authority**

**WIFA Policy #: 1.13**

**Purpose:**

The purpose of this policy is to set the minimum standards expected of public officers and employees of the Water Infrastructure Finance Authority of Arizona (the “WIFA”) who, in their official capacities, are faced with a decision or contract that might affect their pecuniary or proprietary interests or those of a relative and ensure compliance therewith. The Policy below is largely reiterative of Chapter 8 of the Agency Handbook prepared by the Arizona Attorney General’s Office. Further, this Policy is supplemented by the guidelines, prohibitions, restrictions, and requirements set forth in WIFA’s Gifts Policy and Ethics Policy.

**Policy:**

This policy establishes the general policy guidelines for the following:

- General Conflict of Interest Policy;
- Assessing a Conflict of Interest;
- Conflict of Interest Compliance;
- Procedures for Reporting a Suspected Violation; and
- Sanctions for Violations of Conflict of Interest Laws.

**Responsibility:** Executive Director

**Statutory References:** A.R.S. § 13-2311; A.R.S. § 38-101; A.R.S. § 38-444, A.R.S. § 38-501, *et seq.*, A.R.S. § 38-502, *et seq.*, A.R.S. § 38-503(A) and (B), A.R.S. § 38-504(B) and (C), A.R.S. § 38-505(A), A.R.S. § 38-510, A.R.S. § 38-511, A.R.S. § 43-1001.


**Policy Cross-Reference:** WIFA Policy No. I.14 (Procurement Policy), WIFA Policy No. I.18 (Gifts Policy), and WIFA Policy No. I.17 (Ethics Policy)

**Original Issue Date:** December 17, 2003

**Previous Amendment Date(s):** August 17, 2011

**Most Recent Amendment Date:** November 10, 2022

**Approval:**

  
\_\_\_\_\_  
Executive Director

10/10/2022  
\_\_\_\_\_  
Date

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**Section 1: Definitions**

*Employee* means all persons who are not Public Officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision of the state or any of its departments, commissions, agencies, bodies or boards for remuneration (A.R.S. Section 38-502(2)). For the purposes of the conflict of interest laws, an employee may be on a full-time, part-time, or contract basis.

*Public officer* means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute (A.R.S. Section 38-502(8)). This definition includes members of advisory commissions, boards, councils, and committees.

*Relative* means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse (A.R.S. Section 38-502(9)).

*Remote Interest* (A.R.S. Section 38-502(10)) means:

- a. That of a non-salaried officer of a nonprofit corporation.
- b. That of a landlord or tenant of the contracting party.
- c. That of an attorney of a contracting party.
- d. That of a member of a nonprofit cooperative marketing association.
- e. The ownership of less than three percent (3%) of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five percent (5%) of the total annual income of such officer or employee and any other payments made to her or him by the corporation do not exceed five percent (5%) of his or her total annual income.
- f. That of a public officer or employee in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.
- g. That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he or she is a public officer or employee, on the same terms and conditions as if he or she were not a public officer or employee.
- h. That of a public school board member when the relative involved is not a dependent, as defined in A.R.S. Section 43-1001, or a spouse.
- i. That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit of detriment on the officer, the employee or his or her relative, of any of the following:
  1. Another political subdivision.
  2. A public agency of another political subdivision.
  3. A public agency except if it is the same governmental entity.

4. That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.
5. That of a relative who is an employee of any business entity or governmental entity that employs at least twenty-five (25) employees within this state and who, in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.
6. The ownership of any publicly traded investments that are held in an account or fund, including a mutual fund, that is managed by one or more qualified investment professionals who are not employed or controlled by the officer or employee and that the officer or employee owns shares or interest together with other investors.

*Stakeholder* means a public officer or employee, as defined in A.R.S. Section 38-101(3). Without limiting the previous sentence, all members of the WIFA Board of Directors, all members of the Federal Water Programs Committee, all members of the Water Conservation Grant Committee, the Executive Director, and all employees of WIFA shall be included as Stakeholders.

*Substantial interest* (A.R.S. Section 38-502(11)) means any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

## **Section 2: General Ethics Policy**

### **Section 2.1: Disclosure of Conflicts of Interest**

Every public officer or employee of WIFA who has or may have a conflict of interest, at present or foreseeably in the future, must disclose it promptly. Disclosure shall be made to the WIFA Executive Director or, in his/her absence, to the appointed designee. Disclosure shall be made on a WIFA "Conflict of Interest Disclosure Memorandum" (the form attached hereto as **Exhibit A**), or if a WIFA "Conflict of Interest Disclosure Memorandum" is not readily available, then in writing in sufficient detail to explain all the facts and circumstances surrounding the conflict and kept in the official records of WIFA. The foregoing requirements shall hereinafter be referred to as "**Disclosure.**"

### **Section 2.2: Disqualification**

A public officer or employee who has or may have a conflict of interest, at present or foreseeably in the future, must refrain from voting upon or otherwise participating in any manner in any WIFA decision or decision-making process relating to the interest that gives rise to the conflict. This includes refraining from communicating about the decision-making process with anyone involved in the process. Such disqualification is mandatory even if the public officer or employee is confident that he or she can be objective in the matter and that the public interest would not be harmed by his or her participation. The foregoing requirements shall hereinafter be referred to as "**Disqualification.**"

### Section 2.3: Representing Others Before WIFA

During the time a public officer or employee is a stakeholder, and for twelve (12) months after leaving WIFA, the public officer or employee may not represent another person or entity for compensation before WIFA on a matter if: (1) the public officer or employee was directly concerned with the matter while a stakeholder; (2) the public officer or employee personally participated in the matter while a stakeholder; and (3) the matter involved a substantial and material exercise of administrative discretion by the public officer or employee (A.R.S. Section 38-504(A)).

### Section 2.4: Avoiding the Appearance of a Conflict of Interest

Even when a public officer or employee or public officer's or employee's relative does not have an actual conflict of interest, the mere appearance of a conflict can be harmful to WIFA. Accordingly, whenever practicable a public officer or employee must avoid activities that have the appearance of a conflict. When a public officer or employee appears to have a conflict of interest but does not, the public officer or employee shall discuss the appearance of the conflict with the Executive Director to determine whether any steps should be taken to mitigate the effect of the appearance.

### Section 2.5: Public Officer or Employee Uncertainty

If a public officer or employee has questions about whether he or she has or may have a conflict of interest, or about any other provision of this Policy, it is the public officer's or employee's duty, as soon as those questions arise, to consult with the Executive Director on the public officer's or employee's questions before proceeding with any action that may result in a violation of this Policy. At the public officer's or employee's election, WIFA will obtain the opinion of WIFA's attorney as to whether the public officer or employee has a conflict of interest. If the opinion is that a conflict of interest does not exist, WIFA will direct its attorney to prepare a written opinion to that effect for the benefit of the public officer or employee.

## **Section 3: Assessing a Conflict of Interest**

### Section 3.1: Assessing Substantial Interests

When assessing whether a public officer or employee has a conflict of interest, the starting point is to evaluate whether the public officer or employee or the public officer's or employee's relative has a "substantial interest" in the matter under consideration. An interest is "substantial" if it is nonspeculative and pecuniary in nature or proprietary in nature, whether directly or indirectly, and not defined by statute as a "remote interest" (see definition above) (A.R.S. Section 38-502(11)). **The term "interest" does not mean a mere abstract interest in the general subject or a contingent interest but is a "pecuniary or proprietary interest, by which a person will gain or lose something, as**

**contrasted with a general sympathy, feeling, or bias.”** (emphasis added) *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

### Section 3.2: Assessing Remote Interests

The Legislature has determined that certain economic interests are so remote that they do not impermissibly influence a person’s decisions or actions. These “remote interests” are listed in A.R.S. Section 38-502(10) (also see definition above). Unless the interest at issue falls within one of the statutorily specified situations declared by the Legislature to be remote, the interest is substantial and creates a conflict of interest.

### Section 3.3: Determining a Substantial Interest

To determine whether a substantial interest exists, the public officer or employee should ask the following questions:

1. Will the decision affect, either positively or negatively, an interest of the public officer or employee or the public officer’s or employee’s relative?
2. Is the interest a pecuniary or proprietary interest?
3. Is the interest other than one statutorily designated as a remote interest?

If the answer to each of these questions is “yes,” then a substantial interest exists.

## **Section 4: Conflict of Interest Compliance**

Arizona’s conflict of interest statutes are broadly construed by the courts in favor of the public, and the Legislature has provided substantial civil and criminal penalties for failure to comply with the statutory mandates.

### Section 4.1: Annual Compliance

Annually, public officers and employees will review this policy and submit a completed copy of the form attached hereto as **Exhibit B** “Water Infrastructure Finance Authority of Arizona Annual Disclosure Statement.”

The Executive Director of WIFA will review the Annual Disclosure Statements completed by WIFA board members.

The Executive Director of WIFA will review their employees’ annual disclosure forms to manage and monitor any potential conflict of interest and work with the public officer or employee to ensure that conflicts will not interfere with the performance of the respective individual’s responsibilities.

### Section 4.2: Day-to-Day Compliance

When a public officer or employee determines that a substantial interest exists, the public officer or employee must disclose the interest and withdraw from participation in the decision, sale, purchase, service or contract. (A.R.S. Section 38-503(A) and (B)). This is achieved by:

- i. In the case of the WIFA Board of Directors, verbally recusing oneself and/or abstaining from discussion and voting during meetings of the WIFA board, and
- ii. The public officer or employee must complete a “Conflict of Interest Disclosure Memorandum” in substantially the form attached hereto as **Exhibit A**.

Verbal recusals and abstentions of WIFA board members will be recorded in the minutes of each meeting and be available for public inspection as required by A.R.S. Section 38-509. All Conflict of Interest Disclosure Memoranda, once reviewed by the Executive Director of WIFA, will be maintained in a special file managed by the Executive Director of WIFA with all documents necessary to memorialize all disclosures of substantial interest and be made available for public inspection as is required of public agencies pursuant to A.R.S. Section 38-509. Supervisors/management of public officers and employees should consult with WIFA counsel concerning conflicts of interest not specifically addressed in this Policy or the Attorney General’s Handbook.

#### Section 4.3: Dissemination of this Policy

The Policy will be distributed to every WIFA public officer or employee upon its implementation and thereafter to each new public officer or employee who joins WIFA.

Every public officer or employee must indicate that he or she has received and read this Policy by signing the most current WIFA acknowledgement and returning it to the Executive Director (or designee). The acknowledgement shall also require each public officer or employee to confirm that he or she has not previously and is not currently engaging in any activity that would constitute a violation of this Policy, or to immediately disclose any such activity in writing to the Executive Director.

Periodically and at least annually, this Policy will be redistributed to every WIFA public officer or employee. WIFA will provide prompt written notice to all public officers and employees of any modifications of or additions to this Policy. The Policy will be prominently placed on WIFA’s website and/or intranet system.

#### Section 4.4: Non-disclosure of Confidential Information

During the course of employment and for two (2) years thereafter, public officers and employees are prohibited from disclosing or using, without appropriate authorization, any information acquired in the course of their official duties designated as confidential or information made confidential by statute or rule (A.R.S. Section 38-504(B)). Public officers and employees are also prohibited from disclosing or using for profit, information that is designated confidential, other than by statute or rule, and which they obtained from their agency as a result of their employment or services with WIFA (A.R.S. Section 38-504(B)). This prohibition exists during the course of employment and for two (2) years after employment has terminated unless prior written authorization from WIFA has been obtained (A.R.S. 38-504(B)).

#### Section 4.5: No Compensation Other Than Provided by Law

Public officers and employees are prohibited from agreeing to receive or receiving, either directly or indirectly, compensation other than as provided by law for services they render in any case, proceeding, application, or other matter pending before WIFA for which the officer or employee serves (A.R.S. Section 38-505(A)).

## **Section 5: Procedures for Reporting and Investigating Suspected Violations**

### **Section 5.1: Reporting**

Public officers, employees, and stakeholders are expected to report promptly any information they have regarding an actual or potential violation of this Policy to the Executive Director, or in his or her absence, to the appointed designee. Failure to report such information may itself constitute a violation of this Policy. Non-stakeholders are also encouraged to report alleged violations of this Policy.

### **Section 5.2: Investigation**

Reports of suspected violations will be investigated under supervision of the Executive Director. If the Executive Director is suspected of possible violations, the Board of Directors will appoint an investigator, who may either be another public officer or employee or an outside investigator. When a violation is established, WIFA will respond promptly and appropriately to deal with the particular individual(s) involved as well as to prevent similar offenses from occurring again. WIFA's response may include, when necessary, making changes to this Policy in order to better deter and detect the particular type of offense which has occurred.

### **Section 5.3: Confidentiality**

To the extent practical and appropriate under the circumstances to protect the privacy of the individual(s) involved, WIFA will endeavor to not voluntarily disclose the identity of anyone who reports a suspected violation or participates in its investigation. However, stakeholders should be aware that the Executive Director and those assisting the Executive Director, the Board of Directors or retained outside investigators are obligated to act in the best interests of WIFA.

### **Section 5.4: Protection Against Retaliation**

Retaliation in any form against an individual who reports a violation of this Policy, or who assists in the investigation of a reported violation, is itself a serious violation of this Policy. Acts of retaliation should be reported immediately and will be disciplined appropriately.

## **Section 6: Sanctions for Violations of Conflict of Interest Laws**

Public officers and employees are prohibited from using or attempting to use their official position to secure valuable things or benefits for themselves that would not be part of their normal compensation for performing their duties (A.R.S. Section 38-504(C)). A criminal violation of A.R.S. Section 38-504(C) requires an action by the public officer or employee related to the public officer's or employee's official duties.

### Section 6.1: Criminal Penalties

It is a class 4 felony for a public servant to solicit, accept, or agree to accept any benefit upon an understanding that his or her vote, opinion, judgment, or other official action may thereby be influenced (A.R.S. Section 13-2602).

It is a class 6 felony for a public officer to ask for, or to receive, any unauthorized gratuity or reward or promise of a gratuity or reward for doing an official act (A.R.S. Section 38-444).

Knowingly or intentionally violating any provision of the conflict of interest laws is a class 6 felony (A.R.S. Section 38-510)(A)(1)).

Negligent or reckless violations of the conflict of interest laws is a class 1 misdemeanor. This means that public officers or employees may be prosecuted if they fail to disclose a conflict of interest even those of which they only should have known (A.R.S. Section 38-510(A)(1)).

Knowingly falsifying, concealing, or covering up a material fact as part of a scheme to defraud in any matter related to the business conducted by WIFA is a class 5 felony (A.R.S. Section 13-2311).

### Section 6.2: Forfeiture of Public Office

Upon conviction of a violation of the conflict of interest laws, a public officer or employee forfeits the public office or employment (A.R.S. Section 38-510(B)).

### Section 6.3: Contract Cancellation

Any contract made by WIFA is subject to cancellation by the Governor if anyone significantly involved in the contract process on behalf of the state was or is also employed by or acted as a consultant to any other party to the contract while the contract or contract extension is in effect (A.R.S. Section 38-511(A)).





**Arizona Water Infrastructure Finance Authority**  
**Annual Disclosure Statement**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Please Check One:     Employee     Public Officer

The Arizona Revised Statutes (A.R.S.) and State Personnel Rules place some restrictions with which you must comply regarding business interests, secondary employment, and employment of relatives. To determine that you are in compliance with these provisions, you are required to provide the following information annually. This document will become part of your WIFA Personnel File or WIFA Board Member File, and WIFA's Conflict of Interest Disclosure File.

**Business Interests**

Are you involved in any ownership, employment, public or private affiliations, or special arrangements which may have a substantial interest in any contract, sale, purchase, service, or decision involving the State of Arizona or the Arizona Water Infrastructure Finance Authority?

No, I am not.

Yes, I am.

If yes, please describe your involvement:

Are any of your relatives involved in such activity? Relative means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse (A.R.S. Section 38-502(9)).

No

Yes

If yes, please list their names, relationship to you, and their involvement:

**REMAINDER OF QUESTIONNAIRE TO BE COMPLETED ONLY IF YOU CHECKED  
“EMPLOYEE” ABOVE:**

**Employment Outside of the Arizona Water Infrastructure Finance Authority (for  
employees, secondary employment)**

\_\_\_\_\_ I am not engaged in any outside employment

\_\_\_\_\_ I have a/another job at:

Employer Name: \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Work Schedule: \_\_\_\_\_

Average Hours Per Week: \_\_\_\_\_

Please describe your duties:

**Relative(s) at State of Arizona**

Do any of your relatives currently work for the State of Arizona? (Relative means the spouse, child, child’s child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse (A.R.S. Section 38-502(9)).

\_\_\_\_\_ No

\_\_\_\_\_ Yes

If yes, please list their names, relationship to you, and the agency in which they work: