

# NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

## CONFLICT OF INTEREST POLICY FOR EMPLOYEES

June 2023

All Authority Employees shall be provided with this Conflict of Interest Policy as well as the relevant sections of Public Officers Law upon their employment with NYSERDA and are required to acknowledge that they have read, understand and are in compliance with the terms of the Policy and the relevant sections of the Public Officers Law on an annual basis. Employees should review on an ongoing basis circumstances that constitute a conflict of interest or the appearance of a conflict of interest and should abide by this Policy and seek guidance when necessary and appropriate.

This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to Authority employees. Legal guidance and direction are available through NYSERDA's Ethics Officer, who is an attorney in Counsel's Office. Questions about a specific situation should be directed to your supervisor, the Director of Internal Audit, the Director of Human Resources, Counsel's Office or NYSERDA Officers. Additionally, you may contact the New York State Commission on Ethics and Lobbying in Government (Ethics Commission) directly about any ethics question or issue.

### **DEFINITIONS**

**"Financial Interest"** means any note or other evidence of indebtedness, stock, stock option, bond, security, wage, salary, income or other compensation or right to compensation, or other financial interest or arrangement, including but not limited to trusts. The term "financial interest" does **not** include for example: (a) an interest in a personal checking, savings, or similar account; (b) an interest in a money market fund, mutual fund, unit bond trust, regulated investment company, or similar entity the portfolio of which is widely diversified; (c) an interest in a bona fide pension or retirement plan or life, health or accident insurance plan; or (d) government bonds.

**"Gift"** means anything that has a fair market value of more than \$15.00 including, but not limited to, money, services, loans, discounts, travel, lodging, meals, refreshments, entertainment, forbearance or a promise having a monetary value.

**"Inside Information"** means information which is obtained by NYSERDA for its public, corporate purposes only, and which, if used for non-public purposes by an employee or another person or organization to whom the information is conveyed, would give that person or organization an unfair advantage in a particular matter because that information is not available to members of the general public.

**"Interested Source"** means a person or entity that: (a) has contracts with, or seeks contracts with you or NYSERDA; (b) is a registered lobbyist or client of a lobbyist that lobbies NYSERDA; (c) is the spouse or the minor child of a registered lobbyist or client of a lobbyist that lobbies NYSERDA; (d) is involved in ongoing litigation that is adverse to you or NYSERDA; (e) has received or applied for funds from NYSERDA at any time during the previous year up to and including the date of the proposed or actual receipt of the gift; or, (f) attempts to influence you or NYSERDA in an official action.

**“Participate or be involved in the decision making process”** means: (a) serving as a project manager or member of a technical review committee, or having other assigned duties or responsibilities for providing scientific, technical, policy, financial, or legal review or analysis or for contracting or other procurement action; (b) serving as a program manager or program director or otherwise having assigned supervisory duties or responsibilities; (c) serving as a member of the Greenlight Review Committee; and (d) otherwise having any authority or assigned duty or responsibility to provide any approval or disapproval.

## **RULES**

**Conflicts of Interest:** A conflict of interest is a situation in which the financial, familial, or personal interests of an employee come into actual or perceived conflict with the duties and responsibilities as an employee of the Authority. Perceived conflicts of interest are situations where there is the appearance that an employee can personally benefit from actions or decisions made in their official capacity, or where an employee may be influenced to act in a manner that does not represent the best interests of the Authority. The perception of a conflict of interest may occur if circumstances would suggest to a reasonable person that an employee may have a conflict. The appearance of a conflict and an actual conflict should be treated in the same manner for the purposes of this Policy.

Employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of the public trust. While it is not possible to describe or anticipate all of the circumstances that might involve a conflict of interest, a conflict of interest typically arises whenever an employee has or will have:

- A financial or personal interest in any person, firm, corporation or association which has or will have a transaction, agreement or any other arrangement in which the Authority participates;
- The ability to use their position, confidential information or the assets of the Authority, to their personal advantage;
- Solicited or accepted a gift of any amount under circumstances in which it could reasonably be inferred that the gift was intended to influence them, or could reasonably be expected to influence them, in the performance of their official duties or was intended as a reward for any action on their part; or
- Any other circumstance that may or appear to make it difficult for the employee to exercise independent judgment and properly exercise their official duties.

**Financial Interests:** No employee may participate or be involved in the decision-making process or take any official action with respect to any matter requiring the exercise of discretion, when they know or has reason to know that the action could confer a direct or indirect financial or material benefit on them, a relative, or any organization in which they are deemed to have an interest. An employee should not retain or obtain a financial interest in any person or organization that does business with NYSERDA if the employee is, or is likely to be, participating in the decision-making process at NYSERDA in a matter involving that person or organization.

**Gifts:** No gift of any value may be accepted if it would constitute a substantial conflict with the proper discharge of your duties. Additionally, Public Officers Law prohibits you from directly or indirectly soliciting, accepting, or receiving any gift that has a fair market value of more than \$15.00 where the circumstances would reasonably permit the inference that the gift was (a) intended to influence you, or

could reasonably be expected to influence you, in the performance of your duties; or (b) was intended as a tip, reward, or sign of appreciation for your official duties. If you receive or are offered a gift, contact the Ethics Officer so they can decide whether you may accept it.

**Political Activity:** Employees are under no obligation to contribute to any political fund or perform any political service. Employees may not use job-related influence to force political activity on the part of others nor may others make the demand on them. You may not require employees or potential employees and contractors or potential contractors to reveal information on party affiliation or campaign contributions. Additionally, state offices may not be used for soliciting or collecting any political contributions. Should you intend to run for political office, you should obtain your supervisor's and Counsel's Office concurrence that the public office to be sought will not interfere with your official NYSERDA duties and is allowed under State and Federal law. Policymakers seeking public office for which more than nominal compensation will be paid must first obtain Ethics Commission approval.

**Outside Activities:** You may not engage in outside activities that would conflict with scheduled work hours or that would impair your judgment or compromise or interfere with your ability to properly perform your duties. You should consult with the Ethics Officer prior to engaging in any outside activity relating to the energy field or involving a NYSERDA contractor or potential contractor. You should consult with the Ethics Officer if you have any questions concerning potential conflicts of interest arising from other outside activities. You may not use NYSERDA time, materials, equipment or other assets in connection with outside activities.

NYSERDA employees who are designated policymakers must obtain approval before engaging in any outside activity if the amount to be earned exceeds \$1,000 annually. If the amount to be earned exceeds \$5,000 annually, Ethics Commission approval is also required. Designated policymakers must also obtain NYSERDA and Ethics Commission approval prior to serving as a director or officer of a for-profit entity, regardless of compensation. Additionally, designated policymakers must notify the Ethics Officer prior to serving as a director or officer of a not-for-profit entity if annual compensation will be between \$0 - \$999.

**Reverse Two Year Bar:** For the first two years you work at NYSERDA, you should not participate or be involved in the decision-making process for NYSERDA in relation to any matter involving a person or business in the private sector by whom you were employed during the two years preceding NYSERDA service or employment.

**Use of Inside Information and Confidential Information:** You should not use inside information or information designated as confidential, proprietary or trade-secret to benefit yourself or another person or organization. You should not provide such information to any other person or organization, except in carrying out NYSERDA's corporate purposes. You should not give advice or make recommendations or suggestions to another person or organization based upon such information. Confidential, proprietary and trade-secret information acquired by you in the course of your official duties may not be disclosed to further your or another's personal interests, including financial interests. If NYSERDA executes a non-disclosure agreement (NDA) with an outside entity or individual, you, as an employee of NYSERDA, are required to comply with its terms. Records in the possession of NYSERDA that are labeled confidential, proprietary or trade-secret shall be treated as such by all NYSERDA employees. Any unauthorized disclosure of such information will result in disciplinary action and may result in termination.

**Endorsements:** No employee, in their capacity as an employee of NYSERDA, should endorse any product or process of a specific manufacturer or the service of any specific firm. This limitation does not preclude NYSERDA, as an institution, from making such an endorsement in carrying out its corporate purposes. (Use of materials, products or services by NYSERDA or an employee does not constitute an endorsement.) No employee should engage in any outside employment or outside activity which results or gives the appearance of the identification of NYSERDA with any product, process, or service for advertising, publicity, or sales purposes.

**Solicitation of Future Employment:** Employees are prohibited from discussing possible future employment with any entity that has had a specific matter pending before them unless 30 days or more has passed since the matter closed or since the employee was recused from the matter. Employees are required to notify their supervisor or the Ethics Officer if they intend to solicit a job offer, or if they receive an unsolicited job offer, from an entity or individual that has a specific matter pending before them.

**Post -Employment Restrictions:**

**Two-Year Bar Restriction:** Applies for two years after you leave the Authority for a non-governmental job and contains two different types of prohibitions:

**(1) Appearance/Practice Prohibition**

- a. Prohibits a former State employee from interacting (in person, on the phone, or via written or electronic correspondence) in their new job with any employee in their former agency in an attempt to influence an agency decision.
- b. Examples of prohibited work: (i) negotiating a contract with a former agency; (ii) submitting a response to a Request for Proposal from a former agency; (iii) requesting that the former agency take any action on a current or proposed project; (iv) submitting reports or filings to a former agency; (v) seeking information from a former agency that is not available to the public.
- c. Applies to both paid and unpaid (*pro bono*) work.

**(2) Backroom Services Prohibition**

- a. Prohibits a former State employee from working “behind the scenes” on a matter that is before their former agency.
- b. Examples of prohibited work: (i) helping to prepare a Request for Proposal in response to a former agency; (ii) working on any reports or other submissions to a former agency; (iii) helping to prepare another person for a meeting with, or presentation to, a former agency.
- c. Applies to paid work only. (In other words, unpaid backroom services work is permissible.)

**Lifetime Bar Restriction:** Applies for your lifetime after you leave the Authority for a non-governmental job.

- (1) Prohibits a former State employee from providing services in relation to any case, matter, proceeding, project, application, or transaction with which they were personally involved.
- (2) If the matter is before a New York State agency, you are prohibited from providing any type of services.
- (3) If the matter is before any other entity, you may only provide services if you receive no compensation.

## **PROCEDURES**

**Duty to Disclose:** All material facts related to the Rules listed above shall be disclosed in good faith to the Ethics Officer as soon as an employee becomes aware of them so that an ethics opinion can be rendered. Actual or potential conflicts of interest with individuals or entities doing business with NYSERDA should be disclosed to supervisory personnel immediately (*See Personnel Handbook Whistleblower Policy*).

**Determining Whether a Conflict of Interest Exists:** The Ethics Officer shall advise individuals who appear to have a conflict of interest on how to proceed. The Ethics Officer should seek guidance from the Ethics Commission when dealing with cases where they are unsure of what to do.

**Reporting of Violations:** You should remain alert to possible violations of law, policy, or public trust everywhere in NYSERDA. Section 55 of Article 4-A of the Executive Law requires all state officers and employees to promptly report to the State Inspector General any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by both another state officer or employee relating to their employment or by a person having business dealings with a covered agency relating to those dealings. You must also report such violations to the Internal Controls Officer, the Director of Human Resources, the Director of Internal Audit, the Fraud and Abuse Hotline, or a member of Counsel's Office. You must cooperate in any official investigation of a violation. Retaliation against any employee who in good faith reports a violation of law, policy, or public trust is prohibited. (*See Personnel Handbook Summary of Employee Responsibilities.*)

**Interpretation or Clarification:** An employee may submit a written request to the Ethics Officer for an interpretation or clarification of the provisions of this Policy.

**Penalties:** Any employee that fails to comply with this Policy may be penalized in the manner provided for in law, rules or regulations. This can include fines, suspension or removal from employment for knowing and intentional violations.

### **Resources Available:**

#### Internal

Director of Internal Audit

Internal Controls Officer

General Counsel (and all other Counsel's Office Staff)

#### External

Fraud and Abuse Hotline 1-866-219-1122

NYS Commission on Ethics and Lobbying in Government

518-408-3976

NYS Office of the Inspector General 1-800-367-4448

Authorities Budget Office (518) 474-1932 (Albany and Capital District); 1-800-560-1770 (For use outside the 518 area code only)