

TO: Housing and Community Development
FROM: Edward W. Lowery, Director
SUBJECT: Waiver of Prohibited Relationship
PPM#: HC – P – 004

<u>ISSUE DATE</u>	<u>REVISION DATE</u>	<u>EFFECTIVE DATE</u>
09/23/2011	n/a	09/23/2011

PURPOSE: The purpose of this PPM is to provide for:

- A) Conflict of interest exception from the U.S. Department of Housing and Urban Development (HUD);
- B) Waiver of a prohibited relationship in conjunction with the provision of financial assistance to Palm Beach County employees and persons covered as defined by HUD regulations from funds Administered by the Department of Housing and Community Development.

POLICY: Housing and Community Development (HCD) Director requests a conflict of interest exception from the United States Department of Housing and Urban Development for Palm Beach County employees and persons covered as defined by HUD regulations to allow the provision of financial assistance by (HCD) or its designees, assigns, grantees, sub-grantees or sub-recipients.

RESPONSIBLE STAFF: The Mortgage and Housing Assistance Manager, and the Capital, Real Estate, and Inspection Services Manager is responsible for implementing this PPM. The Manager will identify the clients and refer their cases to the HCD Director and the County Attorney's office.

COMPLIANCE WITH FEDERAL REGULATIONS: A conflict of interest is prohibited unless a conflict of interest exception and waiver is obtained in compliance with subpart k – other program requirements: 570.611 conflict of interest, and also in compliance with 24CFR Part 92.356 of the HOME regulations as provided below:

(a) Applicability.

- (1)** In the procurement of supplies, equipment, construction, and services by recipients and by sub-recipients, the conflict of interest provisions in 24 CFR 85.36 and 84.42, respectively, shall apply.
- (2)** In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its sub-recipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to **570.202**; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to **570.203**, **570.204**, 570.455,* or **570.703(i)**).

* (The published regulation inadvertently refers to 570.455 which was removed when streamlined regulations were published on March 20, 1996.)

(b) Conflicts prohibited. The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) **Persons covered.** The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of sub-recipients that are receiving funds under this part.

(d) **Exceptions.** Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) **Threshold requirements.** HUD will consider an exception only after the recipient has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) **Factors to be considered for exceptions.** In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 57 FR 27120, June 17, 1992; 60 FR56916, Nov. 9, 1995]; and

92.356 Conflict of interest.

(a) **Applicability.** In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) **Conflicts prohibited.** No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) **Persons covered.** The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) **Exceptions: Threshold requirements.** Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships

Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations

(f) *Owners and Developers.* (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing

unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence

or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997]

QUALIFYING CRITERIA:

- a. The individual is an employee, agent, consultant, officer or elected official or appointed official of Palm Beach County, or of any designated public agencies, or of subrecipients that are receiving funds under Palm Beach County, except that the individual may not be

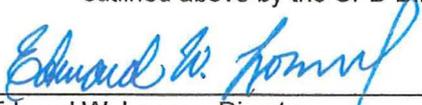
an employee of the Palm Beach County Department of Housing and Community Development.

- b. The individual is an applicant for funding assistance made available through HCD or its designees, assigns, grantees, sub-grantees or sub-recipients.
- c. The Individual has been determined to be eligible to receive financial assistance from the funding source in all other respects according to all program guidelines, policies and procedures in effect at the time of the individual's application related to the provision of financial assistance under the funding source, and the individual would be fully eligible to receive financial assistance
- d. from the funding source in the absence of a prohibited relationship.
- e. The individual exercises no influence whatsoever over the selection of persons who are determined eligible to receive financial assistance from the funding source as determined by HCD staff.

PROCEDURES:

1. Once Eligibility has been determined, HCD shall seek a conflict of interest exception and waiver of a prohibited relationship in order to receive financial assistance from funds administered by HCD include all Palm Beach County Employees, and persons as listed in item (a) above.
2. MHA or CREIS staff has determined a potential conflict of interest, and/or the individual has disclosed this relationship and is requesting a waiver pursuant to Section 2-443(d) of the Code of Ethics.
3. MHA or CREIS Manager refers the client conflict case to the HCD Director. HCD Director will research the case and will prepare a public disclosure of the conflict.
4. MHA or CREIS Manager will submit the case to the County Attorney Office and will request a letter pursuant to 24 CFR 570.611(d)(1)(ii), and applicable section of the HOME regulations. Once the County Attorney's Office responds, the MHA or CREIS Manager will submit a request to HUD asking them to grant an exception to the conflict of interest regulation as set forth under 24 CFR 570.611(b), and 92.356(d). This letter will include a description of the potential conflict; analysis of the factors to be considered for exceptions per 570.611(d)(2); copy of the public disclosure; the employee's job title; supervisor's name and title; job description; relationship to covered persons (where applicable); and letter from the County Attorney's Office. This request will be made in writing with a County Attorney opinion as to whether it violates State or Local Laws and a job description that includes individual's Supervisors name and title, and position location. If the County considers the matter to be a conflict, a disclosure must be included.
5. HUD will review the request and issue a determination. Should HUD deny the request for an exception, the funding assistance to the client cannot proceed.
6. MHA or CREIS Manager will submit an agenda item to the Palm Beach County Board of Commissioners requesting that the Board approve a waiver of a prohibited relationship pursuant to article XIII the Palm Beach County Code of Ethics to allow the individual to receive financial assistance from funds administered by HCD or its designees, assigns, grantees, sub-grantees or sub-recipients conditioned upon the determination that a conflict of interest does not exist, or upon approval of an exception as outlined above by the CPD Director in Miami.

7. The individual shall be determined eligible to receive financial assistance upon approval of a waiver of prohibited relationship by the Palm Beach County Board of Commissioners, and upon determination that a conflict of interest does not exist, or upon approval of an exception as outlined above by the CPD Director in Miami.



Edward W. Lowery, Director
Housing and Community Development