

GUIDANCE ON THE CONFLICT OF INTEREST PROHIBITION

The Department of Community Affairs (DCA) interprets this regulation in its broadest sense. DCA applies the ordinary meaning of the term "family or business ties" as follows:

- **Family:** "A group of people related by ancestry or marriage; relatives."
- **Business:** "The buying and selling of commodities and services; commerce, trade."
- **Ties:** "Something that connects, binds or joins; bond; link."

In any situation arguably falling within the conflicts prohibited by 24 CFR Part 570.489(h)(2), as interpreted by DCA, the CDBG or HOME/CHIP Applicant or Recipient should immediately contact DCA for guidance.

Applicants must include information about any possible conflict of interest situations in their Applications and explain how the regulation will be met. Exceptions will be considered if such applications are funded.

DCA will make every effort to grant exceptions to the general conflict of interest prohibition, within the authority of 24 CFR Part 489(h)(4) and (h)(5), where prior public disclosure has occurred.

In accordance with 24 CFR Part 489(h)(5), DCA must consider the cumulative effect of the following factors, where applicable, in determining whether to grant an exception:

- i. 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;
- 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 Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;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 (h)(3) of this section;
- vi. Whether the undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- vii. Any other relevant considerations.

However, it should be noted that exceptions are not always granted. To avoid the risk of having to make reimbursements to DCA, CDBG and HOME/CHIP, recipients are advised that requests for exceptions should be submitted and considered by DCA before federal funds are expended.

To seek such an exception, a written request for an exception must be submitted by the unit of local government which:

- Fully discloses the conflict or potential conflict of interest, prior to the unit of government undertaking any action which results or may result in a conflict of interest, real or apparent; and
- A description as to how the conflict of interest was publicly disclosed and a written opinion of the local government's attorney that the interest for which the exception is sought would not violate state or local law must accompany the request.