Appendix F

CDBG Conflict of Interest Regulations and Guidance

Conflict of Interest Regulations and DCA Guidance for the CDBG Program

Excerpt from 24 CFR Part 85, Section 85.36(b)(3), "Code of Conduct":

Grantees and sub-grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or sub-grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent;
(ii) Any member of his immediate family;
(iii) His or her partner; or
(iv) An organization which employees, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements. Grantee and sub-grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub-grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent or potential conflicts of interest.

HUD Regulations, 24 CFR Part 570.489(h), "Conflict of Interest"

(1) Applicability -

(i) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients, the conflict of interest provisions of .... [24 CFR, Part 85, Section 85.36(b)(3) (above provisions)] shall apply.

(ii) In all cases not governed by .... [24 CFR, Part 85, Section 85.36(b)(3)], the provisions of this paragraph (section) ... shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) Conflicts prohibited -

Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart 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 the activity, or have an interest or benefit from the 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.

(3) Persons covered -

The conflict of interest provisions of paragraph (h)(2) of this section apply to any person

who is an employee, agent, consultant, officer, or elected official or appointed official of the State or of a unit of general local government or of any designated public agencies or subrecipients which are receiving CDBG funds.

(4) Exceptions: threshold requirements -

Upon the written request by the State an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the unit of general local government provided the State shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the State's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or unit of general local government as appropriate. An exception may be considered only after the State or unit of general local government, as appropriate, has provided the following:

(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 attorney for the State or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate State or local law.

(5) Factors to be considered for exceptions -

In determining whether to grant a requested exception after the requirements of (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(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 resect 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 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.

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.