

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

Notice: CPD 98-9

All Secretary's Representatives Issued: July 14, 1998
All State/Area Coordinators Expires: July 14, 1999
All Regional Directors for CPD
All CPD Division Directors
All HOME Program Coordinators Cross References:
All HOME Participating Jurisdictions Supersedes CPD 93-06
All Historically Black Colleges & Universities

SUBJECT: HOME Program Conflict of Interest Provisions

I. PURPOSE

The purpose of this notice is to explain the conflict of interest requirements applicable to the HOME Program and provide guidance to HUD Field Offices and HOME participating jurisdictions (PJs) in the review of requests for exceptions to the conflict of interest rules.

II. BACKGROUND AND APPLICABILITY

There are two sets of conflict of interest provisions applicable to activities carried out with HOME funding. The first set, applicable to the procurement of goods and services by HOME PJs, State recipients and subrecipients is the procurement regulations located at 24 CFR parts 84 and 85. Part 84 is applicable to procurement actions undertaken by nonprofit organizations acting as subrecipients. Part 85 is applicable to procurement actions undertaken by State and local PJs and State recipients.

The second set of provisions is located at §92.356 of the HOME final rule. These provisions cover situations not covered by parts 84 and 85. Specifically, these provisions prohibit 1) employees and other representatives of PJs, State recipients and subrecipients from obtaining a financial interest or benefit from any HOME assisted activity; and 2) owners and developers of HOME-assisted housing and their employees and other representatives from occupying HOME-assisted units.

Under certain conditions, exceptions can be made to the second set of provisions. However, no exceptions may be made to the provisions of parts 84 and 85.

DGHP: Distribution: W-3-1

III. Procurement of Property and Services by PJs, State Recipients and Subrecipients

States - When procuring property or services with HOME funds, a State must follow the same policies and procedures that it uses for procurements from non-Federal funds. The State must ensure that every purchase order or other contract for property or services includes any clauses required by Federal statutes and executive orders and their implementing regulations.

Regulatory citation: 24 CFR 85.36(a)

Local Governments (PJs, State recipients and consortia members) - When procuring property or services with HOME funds, local governments must use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in _85.36(b). (see attachment)

Local governments administering HOME funds are required to maintain a written code of standards governing the performance of their employees engaged in the award and administration of contracts. At a minimum, these standards must:

- o Require that no employee, officer or agent of the PJ may participate in the selection, award or administration of a contract supported by HOME if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for award:
 - * employee, agent or officer of the PJ;
 - * any member of an employee's, agent's or officer's immediate family;
 - * an employee's, agent's or officer's partner; or
 - * an organization that employs or is about to employ any of the above.
- o Require that the employees, agents and officers of the PJ or subrecipient not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements. However, the local government may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value; and
- o Stipulate provisions for penalties, sanctions or other disciplinary actions for violations of such standards, to the extent permitted by State or local law.

Regulatory citation: 24 CFR 85.36(b)

Subrecipients - A nonprofit organization designated as subrecipient for the purposes of administering HOME funds (including a community housing development organization (CHDO) when acting as a subrecipient) must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. At a minimum, these standards must:

- o Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
 - * the employee, officer, or agent of the subrecipient;
 - * any member of an employee's, officer's or agent's immediate family;
 - * an employee's, agent's, or officer's partner; or
 - * an organization which employs or is about to employ any of the above.
- o Require that employees, agents, and officers of the subrecipient neither solicit nor accept gratuities, favors, or anything of value from contractors, or parties to subagreements. However, subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- o Provide for disciplinary actions to be applied for any violations of such standards by employees, agents or officers of the subrecipient.

Regulatory citation: 24 CFR 84.42

Scenario: A PJ wants to contract with a real estate appraisal firm to provide qualified appraisals of properties to be acquired with HOME funds. The selection will be made through a competitive bidding process. The husband of the PJ's Housing Division Manager is employed by a local appraisal firm which plans to bid on the contract. Can the Housing Division Manager participate in this procurement? Would the selection of this firm constitute a conflict of interest?

The Housing Division Manager may not participate in the procurement of a contract upon which her husband's firm plans to bid. However, selection of the husband's firm is permitted, if made in accordance with the requirements of 24 CFR Part 85 and the local government's procurement procedures.

IV. Financial Interest or Benefit from a HOME-Assisted Activity

Persons covered: Any person who is an employee, agent, consultant, officer or elected or appointed official of the PJ, State recipient or subrecipient which is receiving HOME funds.

Prohibited Conflict: No covered person who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who is in a position to participate in a decisionmaking 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 ties, during their tenure and for one year thereafter. Occupancy of a HOME-assisted unit by a covered person constitutes a financial interest or benefit and is a prohibited conflict.

Exceptions: A PJ may request from HUD an exception to these provisions in writing. The PJ's request must include:

- o 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;
- o An opinion of the PJ's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

The HUD Field Office may grant an exception to the provisions on a case-by-case basis when it determines that the exception will serve to further:

- o the purposes of the HOME Program; and
- o the effective and efficient administration of the PJ's program or project.

In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met these criteria, the HUD Field Office will consider the cumulative effect of the following factors, where applicable:

- o Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program which would otherwise not be available;
- o 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 interest or benefits as are being made available or provided to the group or class;

- o Whether the affected person has withdrawn from his or her function or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;
- o Whether the interest or benefit was present before the affected person was in a position constituting the conflict of interest.
- o Whether undue hardship will result either to the PJ or the person affected when weighed against the public interest served by avoiding the prohibited conflict.
- o Any other relevant considerations.

Regulatory citation: 24 CFR 92.356(a)-(e)

Scenario 1: A development firm is applying to the PJ for HOME funds to rehabilitate a property it owns. The mayor has a financial interest in the firm. Can HOME funds be awarded to this project?

No. Because the Mayor is in a position to make decisions with respect to the use of HOME funds, award of funds to a firm in which he has a financial interest would constitute a conflict of interest.

Scenario 2: A PJ operates a HOME-funded owner-occupied rehabilitation program. Can a secretary with the Housing and Community Development Department receive assistance under this program?

No. The secretary is a covered person under the regulations and would be prohibited from receiving assistance. However, in this instance, the PJ might consider requesting an exception to the conflict of interest provisions from HUD.

Scenario 3: A maintenance worker employed by the PJ applies to rent a unit in a HOME-assisted project. Can the employee be permitted to lease a HOME-assisted unit?

Yes. While the maintenance worker is a covered person under the regulations, he does not exercise any functions or responsibilities with respect to HOME funds.

V. Occupancy of HOME-Assisted Units

Persons Covered: Owner, developer or sponsor of a HOME-assisted project or an officer, employee, agent or elected or appointed official or consultant of the owner, developer or sponsor whether private, for profit or nonprofit (including a CHDO when acting as an owner, developer or sponsor of housing).

Prohibited Conflict: No covered person may occupy a HOME-assisted unit. 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.

Exceptions: An owner or developer may request an exception to these provisions in writing. The PJ may grant an exception to the provisions on a case-by-case basis when it determines that the exception will serve to further:

- o the purposes of the HOME Program; and
- o the effective and efficient administration of the HOME-assisted project.

In determining whether to grant an exception that meets the above criteria, the PJ must consider the cumulative effect of the following factors, where applicable:

- o 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 interest or benefits as are being made available or provided to the group or class;
- o Whether the affected person has withdrawn from his or her function or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;
- o Whether the tenant protection requirements of §92.253 are being observed;
- o Whether the affirmative marketing requirements of §92.351 are being observed and followed; and
- o Any other factor relevant to the PJ's determination, including the timing of the requested exception.

HUD strongly encourages PJs that grant an exception to the conflict of interest provisions to publicly disclose the exception.

Regulatory citation: 24 CFR 92.356(f)

Scenario: A CHDO develops a 6-unit rental project with HOME funds that it will own and manage. Can the employees of the CHDO rent units in this building?

No. The employees of the CHDO are covered persons under Section 92.356(f) of the regulations and, thus, are prohibited from occupying a HOME-assisted housing unit in the development owned by the CHDO. Further, these units must be affirmatively marketed. However, on a case-by-case basis, the PJ could consider granting an exception to the prohibition as permitted by the HOME regulations.