

Conflict of Interest Exceptions

June 16, 1986

MEMORANDUM FOR: Kenneth J. Finlayson, Regional Administrator - Regional Housing Commissioner, 3S

ATTENTION: John E. Pisano, Manager
Pittsburgh Field Office, 3.3S

FROM: Alfred C. Moran, Assistant Secretary for
Community Planning and Development, C

SUBJECT: Conflict of Interest Exceptions

This is in response to the April 2, 1986, memorandum from John Bates, Chief Counsel, Pittsburgh Field Office regarding a request for clarification of 24 CFR 570.611 of the Community Development Block Grant (CDBG) regulations.

That memorandum requests an interpretation of the opening phrase of paragraph (b) of the above conflict of interest provision. That phrase reads "Except for approved eligible administrative or personnel cost," As Attorney-Advisor Elton Lester explained by telephone, that phrase intended to make clear that the receipt of a CDBG-funded salary for the performance of eligible activities is not to be considered, in itself, a prohibited benefit under the provision. The phrase is not intended to serve as a loophole to exempt the hiring process from the conflict of interest provision.

In regard to your concern about the lack of Headquarters guidance on the subject, we believe that the conflict of interest provision should be interpreted broadly to apply to virtually all apparent conflicts of interest. The integrity of the CDBG program is diminished where it appears that persons in a position of authority are using the program for personal gain.

Field Offices have the authority to grant exceptions to the conflict of interest provision. Such exceptions can only be granted where the threshold requirements at § 570.611(d) are met and after consideration of the factors listed at § 570.611(e).

Exceptions are most likely to be appropriate when granted in cases involving the intended beneficiaries of the CDBG program: low and moderate income persons. For example, HUD does not intend that all low and moderate income persons serving on grantee advisory committees be prohibited from receiving program benefits.

In certain instances the Field Office may determine that, before it will grant an exception, resignation from the position of authority is required. In virtually all instances, the exception should not be granted if the person did not remove himself/herself from all deliberations surrounding the decision which resulted in personal gain.

In many instances, an exception would not be appropriate. The regulations do not provide anyone with a right to an exception. Each case is unique, varying in such respects as the amount of personal gain, the degree to which a public purpose is achieved, the actual or apparent involvement in the decision resulting in the gain and the degree to which public purpose achieved outweighs the personal gain. Decisions on exceptions are expected to be on a case by case basis by the Field Office.

I hope you find this guidance useful in your implementation of the CDBG conflict of interest provision. If you have further questions about this issue, please let us know.