

Waiver of Conflict of Interest

September 22, 1994

Honorable Robert S. Walker
House of Representatives
Washington, DC 20515-3816

Dear Mr. Walker:

On behalf of Secretary Cisneros, thank you for your letter of August 5, 1994, in which you request reconsideration of an exception to the conflict of interest provisions of the Community Development Block Grant (CDBG) and HOME programs granted by the Philadelphia Office of the Department of Housing and Urban Development (HUD) to the City of Lancaster, Pennsylvania. The conflict involved Mr. Edmund Ruoff, a newly elected member of the Lancaster City Council.

The exception was granted to the City of Lancaster on June 22, 1994, to permit the Housing Development Corporation (HDC), of which Mr. Edmund Ruoff is an officer, to receive both CDBG and HOME funds for a housing rehabilitation project, the East King Street project. You have questioned HUD's approval of the exception request because Mr. Ruoff, in addition to being a newly elected member of City Council, is the President and Chief Executive Officer of the HDC, a non-profit corporation; Vice President of HDC Investments, Inc., a for-profit organization; and a member of the Board of both organizations. The Philadelphia Office granted the exception on the basis that it "would provide a significant cost benefit or an essential degree of expertise to the project, which otherwise would not be available," and because "an undue hardship may result to the ultimate beneficiaries, the low- and moderate-income persons for whom the project is intended to serve, should this project fail due to the denial of participation by Mr. Ruoff and HDC."

The conflict of interest regulations at 24 CFR 570.611 and 24 CFR 92.356 are intended to protect the reputation of both the CDBG and HOME programs from even the appearance of providing special treatment or serving a special interest by prohibiting conflicts where a person who is covered by the regulations might obtain a financial interest or benefit from a CDBG- or HOME-assisted activity. However, these regulations do provide that exceptions may be granted on a case-by-case basis when it is determined that such action will further the purposes of the Act, and the effective and efficient administration of the recipient's program or project.

One of the relevant factors considered by the Philadelphia Office in its approval of this exception was the fact that the City approved the use of CDBG and HOME funds for the East King Street project in September 1993, before Mr. Ruoff was elected to the City Council in November 1993. He subsequently took office in January 1994. While this was not mentioned in the letter granting the exception, it was one of the considerations that the Philadelphia Office considered in determining whether to authorize this exception.

In your letter, you have taken issue with the decision made by the Philadelphia Office on two points: that the City's need to request an exception each time Mr. Ruoff's company is awarded HUD monies is a "potentially expensive proposition for the city government," and whether HDC is the only entity that could provide the expertise as stated in the letter from the Philadelphia Office granting this exception.

With regard to your first concern, because Mr. Ruoff is covered by the conflict of interest provisions, it is correct that the City must request an exception each time the City wants to provide CDBG and/or HOME funds to HDC and/or HDCI to undertake an activity for which an exception has not already been granted. This is also necessary when the City wants to provide additional assistance for an activity for which an exception was granted and the circumstances under which the exception was granted have changed. The Department is aware that a community must generally incur some expense to meet the threshold requirements to request an exception since it must make a public disclosure of the nature of the conflict. However, whether or not to pursue such a course of action is solely the decision of the community. Although grantees are expected to exercise prudent financial and fiscal management in the administration of their CDBG and HOME programs, HUD does not and cannot limit a community's ability to make a request for an exception because of the potential or actual cost it may incur.

Your letter also questions the validity of HUD's determination that HDC and Mr. Ruoff bring a level of expertise to this project that would not otherwise be available, and you suggest some other entities that could perform this function, specifically, the Lancaster City Housing Authority, the Spanish American Community Association (SACA), and the Community Action Program (CAP). It is noted that the City did contact CAP and held extensive discussions with it about participating in the East King Street project, but CAP determined that this was not the type of project in which it wanted to participate. However, the City has worked with SACA and CAP, and has provided funding to both entities for other projects. Therefore, HUD believes that the City should be in a position to accurately assess the area(s) of expertise of these organizations, as well as other organizations in the community such as the Housing Authority that participate in the housing arena.

Since it appears that the HUD Philadelphia Office properly administered its authority in considering the City's request for an exception, and that the decision reached by that Office was in accordance with the regulations, the Department does not find a basis upon which to overrule the decision to grant an exception to the City of Lancaster for Mr. Ruoff and the Housing Development Corporation for the East King Street project.

Thank you for your interest in the Department's programs.

Sincerely,

William J. Gilmartin
Assistant Secretary