



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Tina Brooks, Undersecretary

**Massachusetts Community Development Block Grant (CDBG)
Informational Memorandum [08-03]
September 10, 2008**

Topic: Conflict of Interest requirements for municipal employees and local officials seeking housing or commercial rehabilitation assistance.

Issue: Federal regulations at 24 CFR 570.489(h) prohibit “covered” persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities, or who may have inside information regarding the activities, from obtaining a financial interest or benefit from the activity for themselves or for those with whom they have family or business ties during their tenure or for one year thereafter. The regulation defines the persons covered under this prohibition. If a conflict does exist, the regulations specify the basis upon which the state may grant an exception to the prohibition against conflicts.

Guidance:

The Department has developed the following multiple step process to determine whether a conflict of interest exists when applications for housing or commercial rehabilitation assistance are received from town employees and local officials associated with CDBG-funded activities. The rehabilitation case file should document the determination made in each step of the process. Further, the Department has identified key questions that grantees administering rehabilitation assistance programs must ask at the time of application and steps the grantee will take to publicize the availability of the funded assistance program (see below).

Step 1 - Determine whether the person applying for assistance meets the definition of “Persons covered.” in the federal regulations. All employees and local officials of communities that receive grant assistance directly will meet this definition. It is important to note that the federal conflict provisions define “Covered persons” as “any person who is an employee, agent, consultant, officer, or elected or appointed official... of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds”. This guidance highlights municipal employees and local officials but the provisions apply to the array of consultants and other public and quasi-public agencies that typically administer or deliver CDBG activities in Massachusetts communities.

If the applicant is not a covered person, this determination should be documented by the responsible CDBG administrator in the application file and no further action is required in the CDBG program to address conflict of interest. If the applicant is a covered person, proceed to Step 2.

Step 2 - Determine whether the applicant is subject to the “Conflicts prohibited” clause of the regulations at 24 CFR 570.489(h)(2). This determination will generally hinge on three questions. Does the employee

or local official exercise functions or responsibilities with respect to CDBG activities? Are they in a position to participate in decision-making? Are they in a position to gain inside information regarding the activities?

The typical municipal employee or local official is unlikely to be in the first two situations unless they work for the local community development department or process financial transactions for the program in another department. The question of whether municipal employees or local officials may have access to inside information that gives them an unfair advantage in gaining access to the CDBG activities can be addressed through the marketing efforts of the community and through a fair process for the selection of participants.

Upon receipt of an award for housing rehabilitation assistance, for example, communities should widely market and advertise the receipt of the funds, eligibility requirements, possible uses and the process for selection of participants. Flyers, brochures and marketing materials should be widely distributed in a variety of public places and information sources – newspapers, newsletters, local cable, etc.

If the applicant is a covered person subject to the “Conflicts prohibited” clause of the regulations, does not exercise functions or responsibilities with respect to CDBG activities or participate in decision-making regarding the activities, and the community has widely publicized and marketed the program to avoid situations of inside information and has a fair process for participant selection, then a determination may be made that no conflict exists under the federal regulation. This determination should be documented by the responsible CDBG administrator in the application file and no further action is required in the CDBG program to address conflict of interest.

If the applicant is a “Covered person” and subject to the “Conflicts prohibited” clause because the applicant exercises functions or responsibilities with respect to CDBG activities or participates in decision-making regarding the activities, proceed to Step 3.

Step 3 – Federal regulations provide a process to request exceptions to the “Conflicts prohibited” clause. Local units of government may document and request of the state (DHCD) an exception to the provisions to allow the participation of covered persons. The steps that must be followed by local government and the findings necessary to allow the exception are spelled out in the regulations at 24 CFR 570.489 (4) and (5). As a practical matter, it is unlikely that such exceptions would be granted by DHCD. Employees of departments directly administering CDBG activities and local officials responsible for those functions are unlikely to make the case that the benefits to them would outweigh the conflicts present. If a grantee feels that the case can and should be made, they should contact the community’s CDBG program representative at DHCD for further information on how to proceed.

It is also important to note that the Massachusetts Conflict of Interest law (c. 268A) has an exception for municipal employees participating in a rehabilitation program for his residence – G.L. c. 268A, sec. 20(e). This exception does not exist for commercial rehabilitation programs. The state law prohibits both actual conflict of interest and the appearance of conflict of interest. Municipal employees and local officials should review the provisions of state law carefully to determine whether the statute applies to them and

whether an actual conflict or the appearance of conflict exists. DHCD strongly urges potential municipal participants to consult with your town counsel or city solicitor pursuant to c. 268A, §22 in order to determine the steps necessary to avoid violation of the state conflicts of interest law.

Key Questions and Actions:

Communities that are administering housing or commercial rehabilitation programs should include the following in their application procedures and in the marketing of their programs. Including these steps will greatly improve a community's ability to identify potential conflicts of interest and in some cases, to avoid them.

Application materials for rehabilitation assistance should ask the following questions:

1. Are you a municipal employee or locally appointed official? Do you work as a consultant or agent to the community? Do you work for another agency that administers CDBG for the community?
2. If so, your position title:
3. Department:
4. How did you hear about the rehabilitation program?

The rehabilitation file must document this information and any determination made by the local CDBG administrator regarding conflicts.

Upon receipt of an award for housing rehabilitation assistance, communities should widely market and advertise the receipt of the funds, eligibility requirements, possible uses and the process for selection of participants. Flyers, brochures and marketing materials should be widely distributed in a variety of public places and information sources – newspapers, newsletters, local cable television, etc. These actions will create a climate that dispels the concern that municipal employees and local officials have inside information regarding the availability of rehabilitation assistance that was not generally available to the public.

If you have further questions regarding this guidance, please contact your community's CDBG program representative at DHCD or DHCD's Office of Chief Counsel.