



U.S. Department of Housing and Urban Development

**Office of the Regional Counsel
Philadelphia Office
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Philadelphia, Pennsylvania 19107-3380**

NOV 21 2019

MEMORANDUM FOR: Nadab O. Bynum, Director, Office of Community Planning and Development, SAD

FROM: Sheryl L. Johnson, Regional Counsel, SAC

SUBJECT: Conflict of Interest Exception – Community Development Block Grant Program

We are writing to respond to your memorandum dated November 8, 2019, concerning a request for Community Development Block Grant (CDBG) Program conflict of interest determination for Ms. Britany Hall. It is the opinion of this office that a conflict of interest exists for which an exception is required under 24 CFR § 570.611(b) and that an exception to the conflict, pursuant to 24 CFR § 570.611(d), may be granted in this case.

Ms. Hall is employed as a Financial Specialist at the Philadelphia Housing Development Corporation (PHDC). A private non-profit corporation, PHDC administers the City of Philadelphia's (City) Adaptive Modifications Program (AMP) and Basic Systems Repair Program (BSRP) home improvement programs. The costs for these programs are supported with CDBG funds from the City's Department of Planning and Development, Division of Housing and Community Development (DHCD). Ms. Hall's husband, Mr. Rashann Hall, is a founding partner of a general contracting company called Brewerytown Construction, LLC. Brewerytown Construction recently applied to participate as a contractor in the BSRP and was determined qualified by PHDC. Because Ms. Hall is employed by PHDC, an entity that awards CDBG funds, and her husband has applied to receive CDBG funding through PHDC, a potential conflict arose.

For the reasons set forth below, this office concludes a conflict of interest likely exists under 24 CFR § 570.611. That is because Ms. Hall has an employment function or role with respect to the BSRP and her husband has applied to participate as a contractor in the Program, whereby he would receive a financial benefit. This office also concludes that Ms. Hall has met the "threshold requirements" for an exception under 24 CFR § 570.611(d)(1), and that the balance of factors set forth in 24 CFR §§ 570.611(d)(2)(i)-(vii) weigh in favor of granting a waiver to this conflict: Brewerytown Construction was determined qualified by PHDC to participate in the BSRP, and Ms. Hall holds no decision making authority with respect to the application at issue.

I. Background

Attached to the request submitted to this office, there are two letters that disclose the nature of the conflict. The first letter, dated October 23, 2019, sent by Ms. Hall to Melissa Long, Director of the DHCD, fully sets forth the conflict described above. The letter also provides that Ms. Hall's employment duties cover the processing of individual homeowners' BSRP applications, including "interviewing clients who have applied for home repairs to determine their eligibility for [BSRP and AMP]." The letter confirms Ms. Hall does not work in an oversight capacity with respect to CDBG funds, she is "not involved with any aspect of [Brewerytown Construction]," and she has "no involvement or influence in [her] husband's business application or the approval process for Brewerytown Construction"

The second letter, dated October 28, 2019, provides public disclosure of the conflict. This letter was written by Wayne E. Stokes, Director, DHCD Monitoring and Audit Division, to James P. Leonard, Esq., City of Philadelphia Records Commissioner. In pertinent part, the letter states:

Notice is hereby given that the Division of Housing and Community Development (DHCD) has submitted a request for an exception from the U.S. Department of Housing and Urban Development (HUD) with respect to the participation of Ms. Britany Hall's husband, Rashann Hall, in activities related to the City's federal Community Development Block Grant (CDBG) program.

The second letter likewise details the conflict of interest described above, and it affirms that the City of Philadelphia Law Department has concluded "the interest for which the exception is being sought does not violate State and local law[, and] DHCD has submitted a request for an exception from HUD to the CDBG conflict of interest regulations at 24 CFR § 570.611."

Finally, the request includes an opinion issued by Philip R. Jones, Assistant City Solicitor, City of Philadelphia Law Department, Housing and Community Development Division, dated October 25, 2019, opining that "no conflict of interest is found in this matter pursuant to the relevant State and local laws."

This office received a request from your office for a legal review and opinion regarding this matter on November 8, 2019.

II. Analysis

Whether a Conflict Exists for which an Exception is Required Under 24 CFR § 570.611(b)

A conflict of interest exists under 24 CFR § 570.611 if the conduct at issue is within the scope of HUD Regulations, the interested party is a "covered person," and the conflict of interest is prohibited. *See* 24 CFR § 570.611. This rule covers conflicts of interest in the "provision of assistance . . . to individuals, businesses, and other private entities under eligible activities . . . (e.g., rehabilitation, preservation, and other improvements . . . ; or grants, loans, and other assistance to businesses, individuals and other private entities . . .)." 24 CFR § 570.611(a)(2). A

covered person is “any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.” 24 CFR § 570.611(c). Finally, in pertinent part, 24 CFR § 570.611 provides:

(b) Conflicts prohibited. The general rule is that no [covered persons] who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

24 CFR § 570.611(b).

As such, HUD Regulations prohibit a covered person who, with respect to CDBG awards, has responsibility, works in an oversight capacity, may make decisions, or who may gain inside information about CDBG awards from having a financial interest in those awards. This rule further prohibits the immediate family of a covered person, or those with business connections to a covered person, from having a financial interest in a CDBG award.

HUD Regulations apply to this circumstance because CDBG funds would be disbursed from PHDC to Brewerytown Construction for the purpose of carrying out the BSRP, a home improvement program. Because PHDC’s activities are supported by CDBG funds, and Ms. Hall is an employee of PHDC, she is a “covered person” under 24 CFR § 570.611(c). A prohibited conflict also likely exists on these facts. By assisting in the determination as to which BSRP applicants are eligible for to participate in the program, Ms. Hall exercises a function or responsibility “with respect to CDBG activities” under HUD regulations—if only with respect to homeowners’ applications to receive BSRP benefits, not contractors hired to perform the work. Because Ms. Hall and Mr. Hall are married, a member of Ms. Hall’s immediate family would benefit financially if Brewerytown Construction were awarded the contractor position for which it applied. Thus, this is likely a conflict of interest for which an exception is required.

Whether an Exception is Warranted Under 24 CFR § 570.611(d)

When a prohibited conflict of interest exists, HUD regulations allow the Department to grant an exception to the rule against conflicts of interest on a case-by-case basis, upon written request of the recipient. 24 CFR § 570.611(d). HUD determines whether to grant an exception in a two-step process. Under 24 CFR § 570.611(d)(i)-(ii), the recipient must first provide the following documents:

(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 recipient's attorney that the interest for which the exception is sought would not violate state or local law.

Id. at § 570.611(d)(1).

Ms. Hall meets the “threshold requirements” in 24 CFR § 570.611(d)(1) because she has disclosed the conflict to HUD, provided evidence of public disclosure of the conflict, and submitted an opinion from an Assistant City Solicitor stating that Brewerytown Construction’s participation in the BSRP would not violate state or local law.

Because the request has met the threshold requirements for granting an exception, your office may consider granting an exception. In considering whether to grant the exception, your office must conclude that an exception would further the purposes of the Housing and Community Development Act and the effective and efficient administration of the recipient’s program or project, taking into account the cumulative effect of the factors listed below.

Whether the Factors to be Considered Favor Granting an Exception

Once a recipient has satisfied the threshold requirements, HUD Regulations provide that the Department shall weigh the “cumulative effect” of seven factors, as applicable, in determining whether to grant an exception under 24 CFR § 570.611(d). Those factors are as follows:

- (i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that 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 decisionmaking 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 (b) of this section;
- (vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (vii) Any other relevant considerations.

Id.

The cumulative effect of the applicable factors above appears to favor grant of an exception to HUD Regulations. Pursuant to item (ii), Brewerytown Contracting was determined qualified to participate in the BSRP program by PHDC. This fact works to reduce the risk that Mr. Hall would be awarded a benefit merely as a result of his relationship to Ms. Hall. In addition, pursuant to item (iv), Ms. Hall has no decisionmaking authority with respect to Mr. Hall's application. This fact reinforces the independence of her employer's decision to grant Brewerytown Construction's application. Although, per item (v), this conflict was not present before Ms. Hall began her current employment position, this is counterbalanced by item (vii), allowing consideration of the facts that Ms. Hall fully disclosed the conflict at issue and has been employed at PHDC approximately 17 years. In this way, the cumulative effect of the above factors appears to favor grant of an exception to HUD Regulations in this case.

III. Conclusion

This office was asked to review a request by the City of Philadelphia's Office of Housing and Community Development for an exception from HUD Regulations that cover the distribution of awards under the CDBG Program. For the reasons set forth above, this office concludes a conflict of interest likely exists under 24 CFR § 570.611 because Ms. Hall has an employment function or role with respect to the BSRP and her husband has applied to participate as a contractor in the program, whereby he would receive a financial benefit. This office also concludes that Ms. Hall has met the "threshold requirements" for an exception under 24 CFR § 570.611(d)(1), and that the balance of factors in 24 CFR §§ 570.611(d)(2)(i)-(vii) weigh in favor of granting a waiver to this conflict for the reasons discussed above.

If you have any questions, please contact Jared Fink at (215) 430-6660 or by email at jared.h.fink3@hud.gov.