

§ 570.611

A-128² (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at § 570.502.

[60 FR 56916, Nov. 9, 1995]

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to § 570.203, 570.204, 570.455, or 570.703(i)).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section 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. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

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(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to 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.

(d) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(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.

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(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

² See footnote 1 at § 570.200(a)(5).

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.

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§ 570.612 Executive Order 12372.

(a) *General.* Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

§ 570.613 Eligibility restrictions for certain resident aliens.

(a) *Restriction.* Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in paragraph (e) of this section. "Benefits" under this section means financial assistance, public serv-

ices, jobs and access to new or rehabilitated housing and other facilities made available under covered activities funded by programs listed in paragraph (e) of this section. "Benefits" do not include relocation services and payments to which displacees are entitled by law.

(b) *Covered activities.* "Covered activities" under this section means activities meeting the requirements of § 570.208(a) that either:

(1) Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or

(2) Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

(c) *Limitation on coverage.* The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.

(d) *Compliance.* Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.

(e) *Programs affected.* (1) The Community Development Block Grant program for small cities, administered under subpart F of part 570 of this title until closeout of the recipient's grant.

(2) The Community Development Block Grant program for entitlement grants, administered under subpart D of part 570 of this title.

(3) The Community Development Block Grant program for States, administered under subpart I of part 570 of this title until closeout of the unit of general local government's grant by the State.

(4) The Urban Development Action Grants program, administered under subpart G of part 570 of this title until closeout of the recipient's grant.

[55 FR 18494, May 2, 1990]

§ 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded