

§ 1003.606 Conflict of interest.

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

(2) In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section shall apply. Such cases include the provision of assistance by the grantee or by its subrecipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under §1003.202; or grants, loans, and other assistance to businesses, individuals, and other private entities under §1003.203 or §1003.204.).

(b) *Conflicts prohibited.* Except for the use of ICDBG funds to pay salaries and other related administrative or personnel costs, 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 ICDBG activities assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an ICDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(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 or appointed official of the grantee, or of any designated public agencies, or CBDOs under §1003.204, receiving funds under this part.

(d) *Exceptions requiring HUD approval—(1) Threshold requirements.* Upon the written request of a grantee, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and

the effective and efficient administration of the grantee's program or project. An exception may be considered only after the grantee has provided the following:

(i) A disclosure of the nature of the possible 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 grantee's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the grantee or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying

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the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply. However, if the assistance to be provided is housing rehabilitation (or repair) or new housing, a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the proposed beneficiaries must be made prior to the submission of an application to HUD. Evidence of this disclosure must be provided as a component of the application.

(f) *Record retention.* All records pertaining to the grantee's decision under this section shall be maintained for HUD review upon request.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 1003.607 Lead-based paint.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations part 35, subparts A, B, J, K, and R of this title apply to activities conducted under this program.

[64 FR 50230, Sept. 15, 1999]

§ 1003.608 Debarment and suspension.

The requirements in 2 CFR part 2424 are applicable. ICDBG funds cannot be provided to excluded or disqualified persons.

[72 FR 73497, Dec. 27, 2007]

Subpart H—Program Performance

§ 1003.700 Review of grantee's performance.

(a) *Objective.* HUD will review each grantee's performance to determine whether the grantee has:

(1) Complied with the requirements of the Act, this part, the grant agreement and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review.* In reviewing each grantee's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the grantee;

(3) Records maintained by the grantee;

(4) Results of HUD's monitoring of the grantee's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 1003.701 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the grantee has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the grantee to submit progress schedules for completing approved activities or for complying with the requirements of this part;