
INQ 16-103 Winston

From: Diaz-Greco, Gilma M. (COE)
Sent: Friday, June 10, 2016 3:54 PM
To: 'Ason, Maria' <Mason@miamigov.com>
Cc: Centorino, Joseph (COE) <CENTORI@miamidade.gov>
Subject: Mary Winston, Waste Collector, City of Miami Solid Waste Department (Limitations on transacting business with the City) INQ 16-103

Ms. Ason:

Attached please find the conflict of interest letter regarding Ms. Mary Winston.

Please do not hesitate to contact me if you have any questions.

Best regards,

Gilma (Mimi) Diaz-Greco
Staff Attorney



Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Tel: (305) 579-2594
Fax: (305) 579-0273
gdiazgr@miamidade.gov
www.facebook.com/MiamiDadeEthics

From: Ason, Maria [<mailto:Mason@miamigov.com>]
Sent: Wednesday, June 08, 2016 12:22 PM
To: Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>
Cc: Duran, Alfredo <aduran@miamigov.com>; Mensah, George <GMensah@miamigov.com>
Subject: RE: Mary Winston - Conflict of Interest

Hi,

As discussed, the City of Miami invested CDBG funds in the major rehabilitation of a rental project known as St John Island Apartments.

PROJECT

The St John Island project, consists of six (6) two-story, garden style residential buildings containing 48 units located in the Overtown neighborhood. Located at: 140 NW 17 St; 1613 NW 1 Pl; 1621 NW 1 Pl.; 156 NW 17 St; 1629 NW 1 Pl; and 1637 NW 1 Pl.

BORROWER:

St. John Villages 17th & 1st LLC, a Florida limited liability company created for the development of the project. The parent company, St. John Community Development Corporation ("SJCDC"), a Florida not-for-profit Community Housing Development Organization ("CHDO"). SJCDC's focus is in the creation and rehabilitation of affordable housing in the Overtown neighborhood with experience in homeownership and rental projects.

The City acts as a bank by lending the funds in the form of a forgivable loan. The loan does not require any payments, except that the owner meets the affordability requirements set on the Rent Regulatory Agreement (attached) for a period of 30 years.

Please notice that this is not public housing, but affordable housing. See attached, CDBG Regulation 24 CFR 570.611(c) and (d).

Please let me know if you have any other questions.

Thank you.

From: Diaz, Yariel

Sent: Thursday, June 02, 2016 4:15 PM

To: 'gdiazgr@miamidade.gov' <gdiazgr@miamidade.gov>

Cc: Ason, Maria <Mason@miamigov.com>; Turner, Jill <JTurner@miamigov.com>; Prendes, Zimri <ZPrendes@miamigov.com>; Acosta, Vanessa <vacosta@miamigov.com>; Kinchens, vonCarol <vkinchens@miamigov.com>

Subject: Mary Winston - Conflict of Interest

Good afternoon,

I hope this email finds you doing well.

I write today on behalf of Ms. Mary Winston, a City of Miami employee who does not have access to a computer or email to submit a request for approval in connection with a conflict of interest in reference to CDBG Regulation 24 CFR 570.611.

Ms. Winston resides at a federal funded City project known as St John Island at 1613 NW 1 Place, #5. Her job title is Waste Collector – Garbage Class Code 3017. Ms. Winston's duties includes the collection of garbage and rubbish, and/or the performance of semi-skilled tasks. Her work normally requires the carrying of heavy garbage and the dumping of the contents into the truck. Employees in this class may also work as back-up members of regular crews or for emergency work, such as collecting dead animals, or picking up from selected homes that were bypassed. Employees are often in daily contact with the public and have constant exposure to objectionable materials, odors, or undesirable working conditions.

The City of Miami needs your opinion in an official letter so it can then be submitted along with the City Attorney's opinion to the local HUD Office requesting an exemption to the aforementioned regulation.

Please submit the letter to:

Mr. George Mensah, Director
City of Miami Community & Economic Development
444 SW 2 Ave, 2nd Floor
Miami, Florida 33130

Please include in all correspondence to Ms. Maria T. Ason, Contract Compliance Analyst. She handles the City Contract in connection with the St. John Island project on behalf of the City.

If you have any questions regarding Ms. Winston's job, please contact me. If any other questions, please email Ms. Ason at mason@miamigov.com

Thanks,

Yariel Diaz

Special Projects Coordinator
City Of Miami Liaison to
the Arts & Entertainment Council and
the Community Relations Board
151 Northwest 27th Avenue
Phone: (305) 960-5190

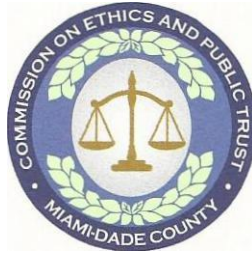


Tell us how we are doing [HERE](#)

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Judge Lawrence Schwartz, CHAIR
H. Jeffrey Cutler VICE-CHAIR
Nelson Bellido,
Judith Bernier
Marcia Narine



EXECUTIVE STAFF

Joseph M. Centorino
EXECUTIVE DIRECTOR
General Counsel
Michael P. Murawski
ADVOCATE

Via first class mail and email at:
mason@miamigov.com

June 10, 2016

Maria T. Ason, Contract Compliance Analyst
City of Miami Department of Community Development
444 SW 2nd Ave., 2nd Floor
Miami, FL 33130

Re: INQ 16-103 Winston

Dear Ms. Ason:

In correspondence to our office on June 8, 2016, you asked about possible ethics conflicts that would prevent Mary Winston, an employee of the City of Miami Solid Waste Department, from renting a housing unit at the St. John Island project, an affordable housing rental project funded by a Community Development Block Grant ("CDBG"), which is administered by the City Department of Community Development.

In brief, no conflicts exist under the Miami-Dade County Conflict of Interest & Code of Ethics Ordinance at Section 2-11.1 and the City of Miami Code at Section 2-612(a) to prevent Mary Winston from renting a housing unit at an affordable housing rental project financed by CDBG funds administered by the City.

The facts as we understand them are as follows:

1. Mary Winston is employed as a Waste Collector-Garbage Class Code 3017, by the City of Miami Solid Waste Department.
2. The City of Miami invested federal CDBG funds in the major rehabilitation of a rental project known as St John Island Apartments ("St. John Project"). The St John Project, consists of six (6) two-story, garden style residential buildings containing 48 units located in the Overtown neighborhood.
3. In order to satisfy federal regulations under 24 CFR 570.611(c), an ethics opinion must be provided stating that Ms. Winston has no conflicts of interest based on her employment status with the City, to rent a housing unit in the St. John Project funded by CDBG funds administered by the City.
4. Maria T. Ason, Contract Analyst for the program, has confirmed that Ms. Winston as a City Waste Collector, plays no role and has no responsibilities whatsoever with respect to City activities associated with administering or awarding contracts under any CDBG funded program.

Although Section 2-11.1(c)(1) of the County Ethics Ordinance generally prohibits local government employees from transacting business with their respective governments, certain exceptions are allowed under Subsection 2-11.1(c)(2):

[City] employees' limited exclusion from prohibition on contracting with the [City]. Notwithstanding any provision to the contrary herein, Subsections (c) and (d) shall not be construed to prevent any employee ... or his or her immediate family ... from entering into any contract ... with [the City] or any person or agency acting for [the City], as long as 1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the [City], 2) the employee has not participated in determining the subject contract requirements or awarding the contract, and 3) the employee's job responsibilities and job description will not require him or her to be involved in the contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance. However, this limited exclusion shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with [the City] or any person or agency acting for [the City] if the employee works in the [City] department which will enforce, oversee or administer the subject contract. (Emphasis added.)

Additionally, the City of Miami Code at Section 2-612(a) allows an employee to participate in federal economic development programs administered by the City "provided that the employee meets all criteria of the program and provided that the city manager approves the participation of the employee and that the employee is identified as being an employee of the city in applicable documents."

It is the opinion of the Ethics Commission staff that Ms. Winston's employment status with the City does not prevent her from renting a housing unit at the St. John Island project funded by CDBG funds administered by the City. Based on her responsibilities as a Waste Collector, we understand that she will not participate in determining any of the contract requirements of the St. John Project nor in awarding any contract related to the project. Additionally, her job responsibilities and job descriptions will not require her to be involved in the project in any way including, but not limited to its enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, Ms. Winston does not work in the City department that will enforce, oversee, or administer the contract.

Similarly, City law allows Ms. Winston to participate in the program provided that she meets all criteria of the program and that the city manager approves her participation.

If you have further questions, please do not hesitate to contact me at (305) 350-0638.

Sincerely,



Gilma Diaz-Greco
Staff Attorney

INQ 16-103 Winston
June 10, 2016
Page 2



CFN 2013R0617625
 DR Bk 28759 Pgs 1469 - 1476 (8pgs)
 RECORDED 08/06/2013 11:18:22
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

This Instrument Prepared By
 and Return To:

Ninoshka A. Reyes, Esq.
 City of Miami
 Office of the City Attorney
 444 S.W. 2nd Avenue
 Miami, Florida 33130

RENT REGULATORY AGREEMENT

THIS RENT REGULATORY AGREEMENT (the "Agreement") is entered into this 26 day of June, 2013, between St. John Villages 17th & 1, LLC, a , a Florida limited liability company ("Borrower"), and the City of Miami, a municipal corporation of the State of Florida, (the "City" or "Lender").

The execution of this Agreement by the Borrower is in connection with that certain loan of Community Development Block Grant ("CDBG") made by the City to the Borrower, in the original principal amount of \$796,083.00 (the "Loan"), secured by that certain Mortgage and Security Agreement dated of even date herewith and also secured by certain other loan documents ("Loan Documents") executed in connection therewith, for the repairs of a forty-eight (48) unit rental property, known as the John Villages project (the "Project"), to provide rental housing to Affordable to Low-Income families, located at the property legally described in Exhibit "A", attached hereto (the "Property").

Borrower hereby agrees to the following terms, conditions and covenants for a period of twenty (20) years from the completion of the repairs to the Project:

(1). Occupancy Requirements. The Project shall be made available to tenants who qualify under the occupancy requirements of 24 CFR Part 570 (hereinafter referred to as the "Regulation"). The Project is subject to the restrictions provided therein and herein, including, but not limited to, the following:

The Project will be affordable to Low-Income persons/households (as defined in the Regulation, Low-Income persons/families are those whose annual income does not exceed eighty percent (80%) of the area median income adjusted for family size).

(2). Maximum Rent Levels. The Project will be made available to tenants, at a gross monthly rental charge as published by HUD.

#Bedrooms	High HOME Rent
1 bdrm/1 bth	\$819
2 bdrm/1 bth	\$984

The foregoing maximum rents include tenant paid utilities. Maximum rents will be reduced for the amount of the applicable U.S. HUD Utility Allowance for any utilities paid by

the tenant. In no event will the monthly rent of a unit exceed thirty percent (30%) of the applicable percentage of area media income set forth in Paragraph (1) above. Rents shall not be adjusted for changes in income or HUD published maximums until lease renewal.

(3) Income Re-certification. Tenant income for the forty-eight (48) rental units shall be certified by the Borrower annually on the anniversary of each tenant's lease and maintained in the tenant file, subject to inspection by the City, in accordance with Paragraph 8 of this Agreement.

(4) Deposits and Pre-payments. Borrower shall not require, as a condition of occupancy or leasing of any rental unit, any other consideration or deposit from the tenant, except for the prepayment of one month's rent and plus a security deposit not to exceed one additional month's rent.

(5) Prohibited Lease Provisions. The Borrower's leases for rental units shall not contain any of the following provisions:

a. Agreement to be sued. A tenant lease may not contain a provision whereby the tenant agrees to be sued, admits guilt or consents to judgment in favor of the landlord in a lawsuit brought in connection with the lease.

b. Agreement regarding treatment of property. A tenant lease may not contain a provision whereby the tenant agrees that the landlord may take, hold or sell personal property of the tenant household without notice and a court decision. This prohibition does not apply to personal property remaining in the unit after the tenant has moved out.

c. Waiver of notice. A tenant lease may not contain a provision whereby the tenant agrees that the landlord may institute a lawsuit without notice to the tenant.

d. Waiver of legal proceedings. A tenant lease may not contain a provision whereby the tenant agrees that the landlord may evict the tenant or a household member without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.

e. Waiver of a jury trial. A tenant lease may not contain a provision whereby the tenant agrees to waive any right to a jury trial.

f. Waiver of right to appeal a court decision. A tenant lease may not contain a provision whereby the tenant agrees to waive the tenant's right to appeal or otherwise challenge in court a court decision in connection with the lease.

g. Agreement to pay legal costs, regardless of outcome. A tenant lease may not contain a provision whereby the tenant agrees to pay attorney's fees or other legal costs even if the tenant wins the court proceeding brought by the landlord

against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

h. Excusing owner from responsibility. A tenant lease may not contain a provision whereby the tenant agrees not to hold the landlord or the landlord's agents legally responsible for any action or failure to act, whether intentional or negligent.

(6) Annual Reporting. Each year, on the anniversary of the issuance of the certificate of occupancy/certificate of completion for the Project, and at other times at the request of the City, the Borrower shall furnish occupancy reports in a form approved by the City, and shall provide the City with such other information as may be requested by the City relative to income, expenses, assets, liabilities, contracts, operations, and condition of the Project and/or the rental units.

(7) Inspections. The Borrower agrees to submit the rental units to an annual re-inspection to insure continuing compliance with all applicable housing codes, federal and local housing quality standards and regulatory requirements. The Borrower will be furnished a copy of the results of each inspection within thirty (30) days of completion, and will be given thirty (30) days thereafter to correct any deficiencies or violations.

At any time other than an annual inspection, the City may, in its discretion, inspect any rental unit. The Borrower and the tenant will be provided with the results of the inspection and the time and the method of compliance and corrective action that must be taken.

(8) Record-keeping. The Property, including the rental units, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the City. Borrower shall keep copies of all written contracts and other instruments which affect the rental units, all or any of which may be subject to inspection and examination by the City. Specifically, the foregoing includes all records, calculations and information necessary to support tenant occupancy eligibility and monthly rental charges in addition to all leases and written notices to tenants with respect to the terms of this Agreement, as required by Paragraph 11 of this Agreement.

(9) Default. Upon the occurrence of a violation of any provision of this Agreement, the Lender or the City shall give written notice thereof to the Borrower, by registered or certified mail, addressed to the Borrower's address as stated in this Agreement, or to such other address(es) as may subsequently, upon appropriate written notice thereof to the Lender and the City, be designated by the Borrower. In the case of a Borrower which is a corporation or partnership, such notices may also be sent by the Lender or the City to the address of the corporation's chief executive officer or to all general partners, as applicable, at the Lender's and/or the City's discretion. If such violation is not corrected to the City's satisfaction, within thirty (30) days after the date such notice is mailed, or within such further time as the City reasonably determines is necessary to correct the violation, without further notice the Lender or the City may declare a default under this Agreement and under the Agreement and the Loan

Documents executed in connection therewith, and may proceed to initiate any or all remedies at law or in equity provided for in the event of a default under such agreements and Loan Documents.

All notices under this Agreement shall be in writing and addressed as follows:

To: Borrower: St. John Community Development Corp.
1324 NW 3rd Avenue
Miami, FL 33136

To City: City of Miami
444 SW 2nd Avenue, Suite 200
Miami, Florida 33130
Attention: Community Development Director

(10) Fines. Upon the occurrence of a violation of any provision of this Agreement, and regardless of the nature of the violation, the Lender will assess a flat monthly fine in the amount of Fifty Dollars and no/cents (\$50.00) per unit up to a maximum of Five Thousand Dollars and no/cents (\$5,000.00) per month, for each month the violation is not corrected, and pay same over to the City. The remedy for violation provided in this section of this Agreement is cumulative with any and all remedies at law or in equity provided in the event of a default under this Agreement and/or the Loan Documents.

(11) Tenant Notice. Borrower agrees during the term of this Agreement to furnish each tenant of a rental unit, at the execution or renewal of any lease or upon initial occupancy if there is no lease, with a written notice in the following form:

The rents charged tenants in this building are subject to a Rent Regulatory Agreement between the landlord and the City of Miami for a period of twenty (20) years from completion of the repairs. A copy of the Rent Regulatory Agreement will be made available to each tenant by landlord upon request.

The inclusion of the foregoing language in any lease, prominently displayed shall be conclusive evidence of its receipt by the tenant. If there is no lease, Borrower shall maintain file copy of each such notice delivered to each tenant, with a signed acknowledgement of receipt by the tenant.

If there is no lease for a rental unit, Borrower shall maintain a file copy of such notice delivered to the tenant, with a signed acknowledgement of receipt by the tenant. All such notices to tenants will be made available for inspection upon request by the City.

(12) No Conflict with Loan Documents. The provisions of this Agreement are in addition to, and do not amend, alter, modify, or supersede in any respect, the provisions of the mortgage and/or any of the other Loan Documents executed in connection with the Loan.

(13) Partial Invalidity. The invalidity of any paragraph or provision of this Agreement shall not affect the validity of the remaining paragraphs and provisions hereof.

(14) Term. This Agreement shall be effective until July 31, 2032.

(15) Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings provided in the Regulation and/or in the Loan Documents. The foregoing monthly rental will include the following utilities or other facilities or services for all tenants, members of their families who regularly reside with such tenants, and guests thereof as permitted by the terms of the lease (if any), except as otherwise specified below.

THIS AGREEMENT has been executed and delivered as of the day and year first above written.

[Signature Page Follows]

Witnesses:

Beverly Beecham Smith
Signature

Beverly Beecham Smith
Print name

[Signature]
Signature

Mrs B. Weinstein
Print name

PROJECT SPONSOR:

St. John Villages 17th & 1st, LLC

By: St. John Community Development Corporation, Inc., its ~~sole~~ ^{managing} member

By: [Signature] Ola Aluko

Its: President

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

THE FOREGOING INSTRUMENT was signed and acknowledged before me on this 26 day of June July 2013 by Ola Aluko the President of St. John Community Development Corporation, Inc., the ~~sole~~ ^{managing} member of St. John Villages 17th & 1st LLC, on behalf of the company, who is personally known to me or who produced a driver's license as identification.

My Commission Expires:

[Signature]
Signature of Notary Public, State of Florida

John Little
Print name

NOTARY PUBLIC-STATE OF FLORIDA
John M. Little
Commission # DD955237
EXPIRES: JAN. 25, 2014
BONDED THRU ATLANTIC BONDING CO., INC.

ATTEST

Todd B. Hannon
Todd B. Hannon, City Clerk

7/23/13

Approved as to Insurance
Requirements

Calvin Ellis
Risk Management Administrator

CITY OF MIAMI, a municipal corporation of
the
State of Florida

By: Danny Alfonso for
Johnny Martinez, City Manager

Approved As to Form
and Correctness:

Julie O. Bru City Attorney

12-2436

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

THE FOREGOING INSTRUMENT was signed and acknowledged before me on this 22 day
of July July 2013 by Danny Alfonso, City Manager of The City of Miami, on
behalf of the City, who is personally known to me or who produced a driver's license as
identification.

My Commission Expires:

Sandra Rivera
Signature of Notary Public, State of Florida

Sandra Rivera

Print name

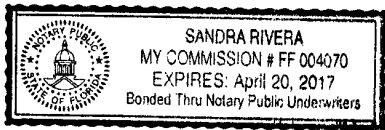


EXHIBIT A
Legal Description of the Property

PARCEL 1:

Lots 1 and 4, Block 34, of WADDELL'S RESUBDIVISION OF BLOCKS 34, 36, 38 AND 44, OF JOHNSON & WADDELL'S ADDITION TO THE CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book 1, Page 169, of the Public Records of Miami-Dade County, Florida.

PARCEL 2:

Lots 6 and 7, less the South 5 feet of Lot 7, Block 34, of WADDELL'S RESUBDIVISION OF BLOCKS 34, 36, 38 AND 44, OF JOHNSON & WADDELL'S ADDITION TO THE CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book 1, Page 169, of the Public Records of Miami-Dade County, Florida.

PARCEL 3:

Lots 2 and 3, Block 34, of WADDELL'S RESUBDIVISION OF BLOCKS 34, 36, 38 AND 44, OF JOHNSON & WADDELL'S ADDITION TO THE CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book 1, Page 169, of the Public Records of Miami-Dade County, Florida.

PARCEL 4:

Lot 18 and the South 25 feet of Lot 15, Block 34, of WADDELL'S RESUBDIVISION OF BLOCKS 34, 36, 38 AND 44, OF JOHNSON & WADDELL'S ADDITION TO THE CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book 1, Page 169, of the Public Records of Miami-Dade County, Florida.

PARCEL 5:

Lot 10 and the South 5 feet of Lot 7 and Lot 11, less the South 15 feet thereof, Block 34, of WADDELL'S RESUBDI VISION OF BLOCKS 34, 36, 38 AND 44, OF JOHNSON & WADDELL'S ADDITION TO THE CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book 1, Page 169, of the Public Records of Miami-Dade County, Florida.

PARCEL 6:

Lot 14 and the South 15 feet of Lot 11 and Lot 15, less the South 25 feet thereof, Block 34, of WADDELL'S RESUBDIVISION OF BLOCKS 34, 36, 38 AND 44, OF JOHNSON & WADDELL'S ADDITION TO THE CITY OF MIAMI, according to the Plat thereof, as recorded in Plat Book 1, Page 169, of the Public Records of Miami-Dade County, Florida.

§ 570.611

24 CFR Ch. V (4-1-04 Edition)

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.

(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.

[60 FR 56916, Nov. 9, 1995]

§ 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