Conflict of Interest
for the Kentucky NSP Program

Nothing is more detrimental to a successful project, or individual unit, than to have the relationship between the grantee, the subrecipient, the homebuyer or renter, or the contractor brought into question due to real or perceived conflicts of interest. Conflict-of-interest issues deal with the relationship of the parties and financial gain. Those that could be judged to have conflicts include local officials, employees, consultants, employees of consultants, family members, and business partners. For NSP, this can expand to agencies that provide homebuyer counseling who may also have mortgage financing available, those that directly undertake development activities and those that contract out much of the rehab or new construction work. Because NSP deals with all aspects of housing, from acquisition to closing and/or certificate of occupancy, NSP administrators must be particularly cautions regarding real or perceived conflicts of interest.

Requirements

Conflict-of-interest issues must be brought to the attention of DLG immediately. The sooner a real or apparent conflict of interest is identified the better. If a potential conflict is known at the time of application, it should be brought to the attention of DLG staff.

KRS 45A.455

Conflict of Interest (24 CFR 570.611) can have two forms under the NSP program:

- Supplies
  - Equipment
  - Construction
  - Services

- Non-Procurement conflict of interest
  - All other conflicts of interest

No person who is an employee, agent, consultant, officer, or elected or appointed official of the Commonwealth of Kentucky or the Subrecipient and who exercises or has exercised any functions or responsibilities with respect to Activities assisted with NSP funds obtained under the NSP Program or who is in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a NSP assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereof, either for themselves or those with whom they have family or business ties, during their employment or for one year thereafter.

No officer, employee, agent, elected or appointed official, or consultant of the Subrecipient may occupy a unit developed by the Subrecipient and assisted with funds from the Program. HUD may grant an exception to this limitation in accordance with the provisions of 24 CFR 570.611(d). Requests for exceptions must be directed to the Department for Local Government (DLG) for review and submittal to HUD for its consideration and approval.

Subrecipients must evaluate conflicts and potential conflicts involving, but not limited to, its public officers, any employee, or agent, any member of his/her immediate family, his/her partner, or any organization which employs, or is about to employ, any of the above, among others.

Subrecipients requesting exceptions to federal conflict of interest regulations must provide DLG with:

- An opinion of the Subrecipient's attorney stating that the interest for which an exception is sought would not violate state or local law, federal laws and regulations, or falls under an "exception".
- A description of the nature of the conflict. The description must include sufficient detail, such as the relationship that results in the conflict, how long the person has been in the position (if applicable), whether the person is in a position to gain inside information, whether the person participates or participated in any part of the grant decision making process (such as voting to submit the application to NSP, approving individual applications), whether the interest or benefit was present before the person was in their current position, etc.
- Evidence that there has been a public disclosure of the conflict (i.e., copy of council minutes, copy of meeting announcement with conflict on the agenda)
- Any correspondence and supporting documentation must be retained by the Subrecipient in a separate file, and copies submitted to DLG. DLG staff will review this information and make a written determination on whether the situation would warrant granting an exception to federal conflict of interest provisions. If DLG determines an exception is appropriate, it will forward a recommendation to HUD for final determination.

DLG will enforce all provisions of the NSP Program and refer any evidence of fraud, misrepresentation or other misconduct by a Subrecipient, in connection with program operation, to the appropriate state or federal authority for appropriate legal action. Federal regulations require DLG to take appropriate action to correct any deficiencies in Subrecipient performance, including, but not limited to, suspending or terminating the NSP Activities being carried out by the Subrecipient (24 CFR 570.501(b)).

Excerpt from 24 CFR Part 85, Section 85.36(b)(3), "Code of Conduct":
Grantees and sub-grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or sub-grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent;
(ii) Any member of his immediate family;
(iii) His or her partner; or
(iv) An organization which employees, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements. Grantee and sub-grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub-grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent or potential conflicts of interest.

HUD Regulations, 24 CFR Part 570.489(h), "Conflict of Interest" (NSP is based on the CDBG regulations)

(1) Applicability -

(i) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients, the conflict of interest provisions of .... [24 CFR, Part 85, Section 85.36(b)(3) (above provisions)] shall apply.

(ii) In all cases not governed by .... [24 CFR, Part 85, Section 85.36(b)(3)], the provisions of this paragraph (section) ... shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) Conflicts prohibited -

Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart 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 financial interest or benefit from the activity, or have an interest or benefit from the 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.

(3) Persons covered -

The conflict of interest provisions of paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State or of a unit of general local government or of any designated public agencies or subrecipients which are receiving CDBG funds.

(4) Exceptions: threshold requirements -

Upon the written request by the State an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the unit of general local government provided the State shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the State's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or unit of general local government as appropriate. An exception may be considered only after the Subrecipient has provided the following:

(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 attorney for the State or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate State or local law.

To seek such an exception, a written request for an exception must be submitted by the Subrecipient which:

- Fully discloses the conflict or potential conflict of interest, prior to the unit of government undertaking any action which results or may result in a conflict of interest, real or apparent; and

- A description as to how the conflict of interest was publicly disclosed and a written opinion of the local government's attorney that the interest for which the exception is sought would not violate state or local law must accompany the request.

(5) Factors to be considered for exceptions -
In determining whether to grant a requested exception after the requirements of (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise 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 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 decision making 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 (h)(3) of this section;
(vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
(vii) Any other relevant considerations.

GUIDANCE ON CONFLICT OF INTEREST PROHIBITION

The Department for Local Government (DLG) interprets this regulation in its broadest sense. DLG applies the ordinary meaning of the term "family or business ties" as follows:

• **Family:** "A group of people related by ancestry or marriage; relatives."

• **Business:** "The buying and selling of commodities and services; commerce, trade."

• **Ties:** "Something that connects, binds or joins; bond; link."

In any situation arguably falling within the conflicts prohibited by 24 CFR Part 570.489(h)(2), as interpreted by DLG, the NSP Subrecipient should immediately contact DLG for guidance.

DLG will consider requests for exceptions to the general conflict of interest prohibition, within the authority of 24 CFR Part 489(h)(4) and (h)(5), where prior public disclosure has occurred.

In accordance with 24 CFR Part 489(h)(5), DLG must consider the cumulative effect of the following factors, where applicable, in determining whether to grant an exception:

i. Whether the exception would provide a significant cost benefit or an essential degree of expertise 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 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 decision-making 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 (h)(3) of this section;

vi. Whether the undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

vii. Any other relevant considerations.

Exceptions are not always granted. To avoid the risk of having to make reimbursements to DLG, NSP Subrecipients are advised that requests for exceptions should be submitted and considered by DLG **before** federal funds are expended. To seek such an exception, a written request for an exception must be submitted by the unit of local government which:

- Fully discloses the conflict or potential conflict of interest, prior to the unit of government undertaking any action which results or may result in a conflict of interest, real or apparent; and

- A description as to how the conflict of interest was publicly disclosed and a written opinion of the local government's attorney that the interest for which the exception is sought would not violate state or local law must accompany the request.