




Planning & Economic Development Department

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August 22, 2024

TO: President Randorf and Duluth City Councilors

FROM: Suzanne Kelley, Senior Planner

RE: Brett Crecelius - Request for Waivers to HUD Conflict of Interest Rules

The City of Duluth is asking that HUD waive conflict of interest rules related to a city employee, Brett Crecelius, to participate in receiving Community Development Block Grant (CDBG) funds to convert his fuel oil furnace to another energy source. The conflict involves the financial benefit accrued by an employee of the Grantee; the City of Duluth is the Grantee for CDBG funds.

Attached to this memo you will find a copy of an email from Brett Crecelius requesting the waiver. Also attached is a memo from Amanda M. Mangan, Assistant City Attorney. As part of the waiver process, the City Attorney's Office must provide an opinion that the HUD conflicts of interest do not violate State or local law. According to her opinion, this employee did not receive preferential treatment nor was he involved in the application decision process. As a result this is not a violation of state or local.

By providing this information to the City Council, and by having it included as correspondence on the Council's agenda for the September 23, 2024, meeting, the conflict is being made public.

To: Duluth City Council,

From Brett Crecelius

Subject: Request for CDBG Wavier

To Duluth City Council,

I, Brett Crecelius, am writing to provide notice of a waiver of the conflict of interest regulations for CDBG funds in relation to the Duluth HRA's Homeowner rehabilitation funds. Our family of four lives in a home that is still receiving delivered fuel as our main heating source. The waiver of the conflict of interest is being provided in order to pursue funds to convert our fuel oil furnace to another energy source. This will help us reduce the energy burden in our household that comes with the cost and market volatility of fuel oil.

We appreciate your time and consideration as these funds will assist us in improving our house, reducing our energy cost, and creating a safer and cleaner environment for our children.

Sincerely,

A handwritten signature in black ink that reads "Brett A. Crecelius". The signature is written in a cursive style with a large, stylized initial 'B'.

Brett Crecelius



City Attorney's Office

Room 440
411 West First Street
Duluth, Minnesota 55802



218-730-5490



attorney@duluthmn.gov

DATE: August 8, 2024
TO: Manager of Planning and Community Development
FROM: Amanda M. Mangan, Assistant City Attorney
RE: Conflict of Interest

Dear Manager of Planning and Community Development:

This opinion is in response to your request for guidance regarding a possible conflict of interest issue. The City of Duluth is requesting a waiver from the U.S. Department of Housing and Urban Development (“HUD”) concerning conflict of interest regulations. As part of the HUD waiver request process, the City Attorney’s Office must provide an opinion that the interest for which the exception is sought would not violate State of Minnesota or local laws pursuant to 24 CFR 570.611 (d)(1)(ii).

Issue

You inquired whether City of Duluth employee Brett Crecelius’s interest in participating in the Single Family Rehab Program through the Duluth Housing & Redevelopment Authority (“HRA”) would violate state or local law.

Conclusion

In response to your inquiry, I have reviewed the relevant HUD regulation, state and local law. As detailed below, this serves as a written opinion that Mr. Crecelius interest in participating in the Single Family Rehab Program through the HRA is not a violation of state or local law.

Analysis

City of Duluth employee, Brett Crecelius, has applied for the Single Family Rehab Program through the Duluth Housing & Redevelopment Authority. However, since the program is funded by HUD’s Community Development Block Grant (“CDGB”), funds for which the City of Duluth is the Grantee and the HRA is sub-Grantee. For this reason, exception from the conflict of interest policy is required.

It has been the opinion of the City Attorney’s Office that when this issue arises—whether City employees could apply for and receive benefits under various HUD programs sponsored by or funded by the City—there is no conflict with state and local laws with the employee benefiting in the same manner as other members of the public so long as (1) the program or benefit is made available to the general public on the same terms and conditions as it would be to the City employee, (2) the number of potential beneficiaries is not significantly limited so that any grant to

the employee clearly deprived a member of the public of the opportunity to participate in the program, and (3) there is no possibility of the employee receiving preferential treatment.

Mr. Crecelius works for the Sustainability Office as a Project Coordinator. Senior Planner Suzanne Kelley represents to me that Mr. Crecelius meets the income qualifications for this program, that this program has been made available to the public on the same terms and conditions as it would be to the City employee, that the public is not clearly deprived of an opportunity if Mr. Crecelius is to participate in the program, , and that he has no involvement in this program or any other HUD CDBG program. The City employee has had no participation in the application process nor received preferential treatment.

Based upon the examination of the facts set forth in this opinion, I am of the opinion that there is no violation of the conflict of interest laws of the State of Minnesota or the City of Duluth.

Sincerely,

/s/ Amanda M. Mangan

Amanda M. Mangan

Assistant City Attorney

City of Duluth – City Attorney’s Office

cc. Jessica J. Fralich, City Attorney
Suzanne Kelley, Senior Planner



CITY OF DULUTH

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Community Planning Division
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Updated: August 22, 2016

CONFLICT OF INTEREST POLICY CITY OF DULUTH HUD-FUNDED COMMUNITY DEVELOPMENT PROGRAM

POLICY

This policy shall apply to the City of Duluth's Community Development Program. The program covers all activities funded by the Department of Housing & Urban Development, which includes; Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME) and the Emergency Solutions Grants (ESG).

HUD REQUIREMENTS

HUD Conflict of Interest requirements are set forth in 24 CFR 92.356 and 24 CFR 570.611 of the Federal program regulations.

Persons Covered

Any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Recipient or Participating Jurisdiction, or subrecipient which are receiving CDBG, HOME, or ESG funds.

Conflicts Prohibited

No person described in the paragraph above who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG, HOME, or ESG funds or who are in a position to participate in decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG, HOME, or ESG 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.

Community Development (CD) Committee

Any CD Committee member with conflict of interest questions should bring their situation to the attention of City Community Development staff for appropriate action and/or determination. If it is determined that a member has a HUD conflict of interest, they must resign from the CD



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Committee. It should be noted that there are also provisions for HUD granting waivers under certain circumstances.

CHDO (Community Development Housing Organization) Requirements

No employee, agent, or consultant of a CHDO may obtain a financial interest or unit benefits for a HOME-assisted activity, either for themselves or those who they have family or business ties, during their tenure or for one year thereafter. Including: Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by the CHDO; or Any unit benefits or financial assistance associated with HOME projects or programs administered by the CHDO. Unit benefits include:

- Occupancy of a rental housing unit in a HOME funded project
- Receipt of HOME tenant-based rental assistance
- Purchase or occupancy of a HOME funded homebuyer unit
- Receipt of HOME homebuyer acquisition assistance
- Receipt of HOME owner-occupied rehabilitation assistance

This does not include any HOME unit occupied by a CHDO employee or agent as an on-site manager or maintenance worker.

VIOLATIONS

If it has been determined that a CD Committee member is in violation of the above Conflict of Interest policy, the situation shall be reviewed for appropriate disciplinary action by the Manager of the Community Planning Division and the City Administrative Officer. The member shall be notified in writing and given two weeks (10 working days) to respond. A determination on whether a violation will result in removal of the member or other disciplinary action shall then be made by the Manager and Administrative Officer of the City of Duluth within the following two weeks (10 working days). Any appeals of this decision shall be directed to the City Council for their action, via an appropriate formal City Council Resolution.

570.611 Conflict of interest.

(a) Applicability.

(1) In the procurement of supplies, equipment, construction, and services by [recipients](#) and by sub [recipients](#), the conflict of interest provisions in [2 CFR 200.317](#) and [200.318](#) shall apply.

(2) In all cases not governed by [2 CFR 200.317](#) and [200.318](#), 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 decision making 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 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 \(b\)](#) 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, as amended at [80 FR 75938](#), Dec. 7, 2015]