



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

NOV 14 2016

The Honorable Lloyd S. Spillers
Chairman of the Board
Louisiana Housing Corporation
2415 Quail Drive
Baton Rouge, LA 70808

Dear Mr. Spillers:

Thank you for your letter of September 15, 2016, requesting that HUD grant a conflict of interest exception for the HOME Investment Partnerships Program related to the appointment of Mr. Charles Tate to be the Executive Director of the Louisiana Housing Corporation (LHC). HUD has considered the request, in close consultation with its legal counsel.

Background

As a HOME participating jurisdiction, LHC is subject to the HOME program conflict of interest regulations at 24 CFR 92.356. These regulations apply to “covered persons,” who are defined as “any employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction.” Specifically, the regulation at 24 CFR 92.356(b) prohibits a covered person who exercises any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities from obtaining a financial interest or benefit from a HOME-assisted activity. The regulations do permit HUD to provide exceptions to this prohibition, upon the written request of the participating jurisdiction, on a case-by-case basis when HUD determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction’s program or project.

On September 15, 2016, LHC’s submitted a request for an exception to the conflict of interest provision for Mr. Charles Tate, whom the LHC Board of Directors has proffered an offer of employment as Executive Director.

Nature of the Conflicts of Interest

- 1) Compensation owed to Mr. Tate for past work for Community Directions, Inc. and Jasmine Consulting, LLC: LHC’s Board of Directors appointed Mr. Tate as its Executive Director, subject to the result of a State Board of Ethics review and HUD conflict of interest review. Immediately prior to this appointment, Mr. Tate served as Chief Executive Officer (CEO) of Community Directions, Inc. (CDI), a nonprofit Community Housing Development Organization (CHDO) that receives HOME Program funds from LHC to develop affordable housing. Mr. Tate’s compensation arrangement with CDI is unusual for a nonprofit employee. According to information included in a March 24, 2015, LHC Board of Directors’ resolution, payment of Mr. Tate’s salary appears to depend upon CHDO operating expense funding

provided through LHC's HOME Program grants or upon developer's fees, and is paid when revenue becomes available from these or other sources. This same resolution indicates that Mr. Tate may also act and be compensated as CDI's attorney. Mr. Tate is owed a significant amount by CDI for projects which are receiving or may receive HOME funds through LHC.

The information submitted by LHC also indicates that Mr. Tate is also owed significant compensation for work he performed in his role with Jasmine Consulting Inc., LLC related to a number of projects that are receiving or may receive HOME funds through LHC.

- 2) Continued ownership of Jasmine Consulting, LLC: Mr. Tate serves as Principal and maintains a 90 percent ownership interest in Jasmine Consulting, LLC, a for-profit firm which provides affordable housing development services for nonprofit organizations, including nonprofit organizations that apply to LHC for funding. Jasmine Consulting provides project-specific development services for a fee.
- 3) Future volunteer activities: Mr. Tate intends to provide ongoing, unpaid assistance to CDI and other nonprofit developer organizations while serving as LHC Executive Director. He will not provide such assistance to an organization undertaking a project for which he has previously provided paid services as CEO of CDI or through Jasmine Consulting.

HUD Determinations

- 1) Compensation owed to Mr. Tate for past work for Community Directions, Inc. and Jasmine Consulting, LLC: HUD has examined the information LHC submitted, which includes letters, e-mails, LHC Board Resolutions, and the opinion of the Louisiana Ethics Board regarding Mr. Tate. While HUD is very concerned about the nature and extent of the conflict of interest Mr. Tate's appointment presents and whether an Executive Director's withdrawal from decision-making effectively mitigates or eliminates the conflict, LHC has not provided sufficient information to enable HUD to make a decision regarding the exception request.

Specifically, HUD requires information on each project for which compensation is owed to Mr. Tate and the nature of any remaining decisions that LHC may be required to make regarding these projects. LHC must provide the following for each project for which compensation is still owed:

- a) Project name, address, and IDIS activity number;
- b) Amount of HOME funds, and sources and amounts of other funding;
- c) The written agreement between LHC and project owner, including approved budget and construction schedule;
- d) Description of services rendered by Mr. Tate; amount paid to Mr. Tate for the project, amount of any compensation still owed and the expected source of the funds for such payments, and any agreements relating to payment to Mr. Tate;
- e) In case of projects involving Jasmine Consulting, the contract between Jasmine Consulting and the organization receiving consulting services; and
- f) Status of the project and a description of any pending actions, review or payments to the project owner by LHC.

In addition, LHC must provide:

- a) Employment contracts or other documents between CDI and Mr. Tate related to any services provided by Mr. Tate as CEO, attorney, or in another role; and
 - b) The written agreement and budgets for any CHDO operating expense contracts between LHC and CDI.
- 2) Continued Ownership of Jasmine Consulting, LLC: HUD has determined that Mr. Tate's continuing financial interest in Jasmine Consulting while serving as LHC's Executive Director creates a serious and pervasive conflict of interest under 24 CFR 92.356(b) of the HOME regulations. In addition, this conflict of interest extends to all other HUD programs administered by LHC, including but not limited to HOME, Housing Trust Fund (HTF), Community Development Block Grant – Disaster Recovery (CDBG-DR), Housing Opportunity for Persons with AIDS (HOPWA), Emergency Solutions Grants (ESG), and Continuum of Care (CoC) programs. Because Mr. Tate will serve as LHC's Executive Director with responsibility for all operations and activities of the agency and executive authority over all LHC employees, it is impossible to create recusal policies or other administrative mechanisms to effectively eliminate future conflicts.

HUD has concluded it would be inappropriate to provide an exception because doing so would further neither the purposes of the HOME Program and other HUD programs nor the effective and efficient administration of HUD programs under LHC's control. LHC has two options to eliminate this conflict with respect to its administration of HUD programs. If Mr. Tate and/or his immediate family can eliminate the conflict of interest by selling Jasmine Consulting or ceasing its operations.

If Mr. Tate and/or his immediate family choose to maintain a financial interest in Jasmine Consulting, then LHC will be prohibited from providing any HOME, HTF, CDBG-DR, HOPWA, ESG, or COC funding to any organization for a project on which Jasmine is compensated for services. Further, in the case of organizations that are CHDOs, no organization may receive CHDO operating expense assistance under 24 CFR 92.208 in any year in which it contracts with or provides compensation to Jasmine Consulting for services.

- 3) Future volunteer activities: HUD has determined that no actual conflict of interest is created by Mr. Tate providing unpaid assistance to CDI and other nonprofit developer organizations while serving as LHC Executive Director. However, HUD strongly cautions LHC that unpaid involvement of its Executive Director in assisting certain organizations that may apply to LHC for Federal or state funding creates, at a minimum, the appearance of a conflict of interest and may subject LHC's funding decisions to charges of favoritism by unsuccessful applicants for funding whenever organizations with which Mr. Tate works receive LHC funding.

CHDO Status of CDI

Based on its review of information related to CDI, HUD is concerned that the organization may not meet the definition of a CHDO at 24 CFR 92.2. Specifically, Mr. Tate's compensation arrangement may not meet the requirement for paid CHDO staff. Further, Mr. Tate's compensation

arrangement with CDI may not have complied with the requirement that no part of a CHDO's net earnings may inure to the benefit of any member, founder, contributor, or individual.

Further, HUD is concerned that CDI's involvement in projects funded with HOME CHDO set-aside funds may not meet the definition of "developer" in 24 CFR 92.300(a)(3). In its May 19, 2016, letter to the Louisiana Board of Ethics, LHC describes Mr. Tate's role in CDI projects as being "essentially finished" when a project closes and construction work begins and describes the oversight and management of the project development process as being handled by a Development Consultant, Architect and General Contractor.

To further review these concerns, HUD requests that LHC submit CDI's charter, articles of incorporation, by-laws, and organization chart, as well as LHC's documentation of CDI's CHDO status related to all projects to which funds were committed on or after August 23, 2013.

Please submit the requested documentation related to Mr. Tate's conflict of interest and the eligibility of CDI for CHDO funds as soon as possible. To avoid further delays in rendering a determination related to payments owed to Mr. Tate for previous work, HUD will conduct these reviews separately. Information pertaining to both CDI's status as a CHDO and the conflict of interest request may be sent to Ms. Cheryl Breaux in the New Orleans HUD Office.

If you have any questions, please contact me at 202-708-2111.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley Gimont". The signature is fluid and cursive, with the first name being more prominent.

Stanley Gimont
Deputy Assistant Secretary
for Grant Programs (Acting)