

CITY OF NIAGARA FALLS, NEW YORK

TO: City Council
FROM: Mayor Paul A. Dyster
DATE: September 5, 2018
RE: **Informational Item to be Received and Filed [Does Not Require Council Vote]**
Public Disclosure of Exception Request

The purpose of this notification is to comply with section 24 CFR 576.404 (b) of the Code of Federal Regulations, which limits the ability of grantee employees to obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

The intent of these regulations is not to uniformly prohibit situations wherein relatives of a grant recipient organization are employed by a subrecipient organization, but to establish a procedure by which HUD can review such situations. The regulations provide for an exception for persons who fall under the Conflict of Interest regulations. The procedure requires a determination by the Corporation Counsel concerning the potential for a violation of state or local law, and requires public notice of the conflict.

The retirement of Community Development's (NF CD) staff attorney in April of 2018 initiated an internal review of Community Development's subrecipient contract language. NF CD's finance manager, Ryan Undercoffer, has undertaken an effort to update the Department's contract templates to mirror the Department of Housing and Urban Development's language more precisely on a number of issues. This includes the conflict of interest provision that is included in all CD contracts.

Upon researching HUD's conflict of interest policy for the purpose of better implementing this regulation in NF CD's subrecipient agreements, Mr. Undercoffer identified a potential conflict with regard to himself, and reached out to the HUD Buffalo Field Office for assistance. Mr. Undercoffer has worked with both the HUD Buffalo Field Office and the City's Legal Department to ensure complete compliance with HUD regulations.

The Corporation Counsel has indicated that the employment of Mr. Undercoffer by NF CD, and the continued funding of YWCA Carolyn's House do not violate state or local law.

Factors which were considered as part of this process to request a Conflict of Interest exception under 24 CFR 576.404 (b)(3) include:

- YWCA of the Niagara Frontier, an ESG applicant subject to Conflict of Interest provisions, is qualified to receive ESG funding under program guidelines and 24 CFR 576(E).

- YWCA of the Niagara Frontier employs the spouse of a Niagara Falls Community Development employee in a non-policy-making position. The Community Development employee has no participation in the determination or administration of the YWCA's request for assistance.
- The City of Niagara Falls Corporation Counsel has determined that a grant of ESG funds to the applicant for would not violate any State law or local ordinance as documented in a letter to the US Department of Housing & Urban Development Buffalo Field Office Director which will be sent following the public disclosure of this communication.
- Granting the Conflict of Interest waiver will allow the applicant to receive the same benefits as any other qualified applicant to the ESG program.
- The city's annual ESG funding is allocated based on an open, competitive application process.
- NF CD employee is entirely recused from the process of allocating ESG funds.
- The ESG applicant has received ESG funding from the City of Niagara Falls for 12 years, pre-dating both employee's employment at the City and employee's spouse's employment at the YWCA.
- In the time since the NF CD employee became employed by NF CD, the Department has invited the local continuum of care, the Homeless Alliance of WNY (HAWNY), to provide a formal opinion on the city's annual ESG funding allocations.

This communication is intended to satisfy the public disclosure requirement. **No action by City Council is required.**

PUBLIC NOTICE is hereby provided on September 5, 2018 that Niagara Falls Community Development will request an exception to the regulation for the following:

Employee	Program	Nature of the Conflict
Ryan Undercoffer, Finance Manager, Niagara Falls Community Development	Emergency Solutions Grant.	Employee's spouse, Lauren Undercoffer, is employed by Young Women's Christian Association of the Niagara Frontier, Inc., an ESG applicant and sub-recipient.

Respectfully submitted,



Seth A. Piccirillo, Director of Community Development