

3. Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.
- b. *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.
- c. *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

### § 92.355 Lead-based paint

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

[64 FR 50224, Sept. 15, 1999]

### § 92.356 Conflict of Interest

- a. *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.
- b. *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-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.
- 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 participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.
- d. *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this

section on a case-by-case basis when it 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. An exception may be considered only after the participating jurisdiction has provided the following:

1. 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
  2. An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.
- e. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
1. 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;
  2. Whether the person affected is a member of a group or class of low-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;
  3. 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;
  4. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
  5. Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  6. Any other relevant considerations.
- f. *Owners and Developers.*
1. No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

Website: [www.atlashall.com](http://www.atlashall.com)

**ATLAS & HALL, L.L.P.**

ATTORNEYS AT LAW

P.O. BOX 3725 (78502-3725)

818 W. PECAN BLVD.

MCALLEN, TEXAS 78501

TEL. (956) 682-5501 FAX (956) 686-8109

STARR COUNTY OFFICE

200 N. BRITTON AVE.

RIO GRANDE CITY, TEXAS 78582

TEL. (956) 488-1896

FAX (956) 488-6482

June 2, 2011

Hidalgo County Urban County Program  
Attn: Diana R. Serna, Director  
1916 Tesoro Blvd.  
Pharr, Texas 78577

Via Email  
& United States Regular Mail

RE: Request by Hidalgo County's Urban County Program for Exception to Conflict of Interest Regulation 24 C.F.R. re: Hortencia R. Cuellar

Ladies and Gentlemen:

This opinion is being rendered pursuant to 24 C.F.R. § 92.356(d)(2) and at the request of the Hidalgo County Urban County Program ("UCP") relating to its request of the Department of Housing and Urban Development of the United States to grant UCP an exception to the provisions of paragraph (b) of 24 C.F.R. § 92.536 for the application of Hortencia R. Cuellar the aunt of Hidalgo County Urban County Disaster Recovery Program Inspector, Lupe Rivera, Jr.

In connection with the foregoing we have reviewed Chapters 171 and 176 of the Texas Local Government Code, copies of the conflict of interest provisions of the HOME Program Conflict of Interest policy, have verified with Mr. Valde Guerra, Chief Executive Officer of Hidalgo County, that Hidalgo County has no conflict of interest policies other than Chapters 171 and 176 of the Texas Local Government Code and have examined such other instruments and documents which we have deemed necessary or advisable to examine for the purpose of this opinion. With respect to such examination, we have assumed that the statements of fact made in all such documents and instruments are true, accurate and complete.

Based on the foregoing, and having due regard for such legal considerations as we deem relevant, and subject to the limitations and assumptions set forth herein, including without limitation the matters set forth in the last two (2) paragraphs hereof, we are of the opinion that:

1. To the best of our knowledge, the approval of the application of Hortencia R. Cuellar, aunt of Hidalgo County Urban County Disaster Recovery Program Inspector, Lupe Rivera, Jr., would not violate Texas state or local laws,

assuming the following conditions or actions are met and taken in connection with same before application approval by the Court:

- a. Receipt by the UCP of the exception to 24 C.F.R. § 92.356 (d) by the Department of Housing and Urban Development (the "Exception");
- b. Upon receipt of the Exception, Mr. Lupe Rivera, Jr. shall file with the official record keeper of both the UCP and the Hidalgo County Commissioners Court (the "Court"), before the vote or decision on the approval of Hortencia R. Cuellar's application by the UCP and Court, an affidavit stating the nature and extent of his interest in the real property owned by Hortencia R. Cuellar in accordance with Section 171.004 of the Texas Local Government Code, as amended and shall abstain from further participation in connection with this matter; and
- c. Hortencia R. Cuellar files (or has filed) an updated conflict of interest affidavit stating their relation to Hidalgo County Urban County Program Disaster Recovery Program Inspector, Lupe Rivera, Jr., not later than the seventh business day from the date Hortencia R. Cuellar receives or received notification by the UCP to file an updated conflict of interest affidavit in accordance with Section 176.006 (d) of the Texas Local Government Code, as amended.

In rendering the opinion, we have assumed (i) the due authorization, execution and delivery by all parties of all documents that we have examined, (ii) the genuineness of all signatures on conformed copies, (iii) the legal capacity of natural persons, (iv) the conformity to authentic original documents for all documents submitted to us as copies and (v) the enforceability of all documents against all parties thereto other than the County of Hidalgo.

The opinions expressed herein are subject to the following limitations, qualifications, assumptions and exceptions.

We are furnishing this letter solely for your benefit at the request of the UCP. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose, nor is it to be upon by any other person or entity or by you in any other context without our express written consent.

This opinion is based on and is limited to the laws of the State of Texas, and the federal laws of the United States of America. Insofar as the foregoing opinion relates to matters of law other than the foregoing, no opinion is hereby given.

This opinion is as of the date hereof, and we undertake no obligation to supplement the opinions set forth herein as facts and circumstances come to our attention or changes in the law occur which could affect such opinions.

Very truly yours,

*Atlas & Hall, LLP*

ATLAS & HALL, LLP



**AFFIDAVIT**

**STATE OF TEXAS §**


**COUNTY OF HIDALGO §**

I, Guadalupe Rivera, Jr., certify that my aunt, Hortencia R. Cuellar, has applied for housing rehabilitation services with the County of Hidalgo Urban County Program (UCP), where I am employed as the Disaster Recovery Program Inspector. As such, I also certify that I have no interest in her property and will abstain from any participation in connection with this matter.

I understand that the UCP Owner-Occupied Rehabilitation Program is federally funded by the US Department of Housing and Urban Development. Furthermore, I certify, that all information provided to the UCP staff is true and correct and that *any false information given may result in the termination of Mrs. Hortencia R. Cuellar Owner-Occupied Rehabilitation Contract including re-payment in full* of the funds granted for the rehabilitation of the home at Lot Six (6), Block 3 Esplanada, Hidalgo County, Texas.

**WARNING: SECTION 1001 OF TITLE 18, UNITED STATES CODE PROVIDES: "WHOEVER, IN ANY MATTER WITHIN THE JURISDICTION OF ANY DEPARTMENT OR AGENCY OF THE UNITED STATES KNOWINGLY AND WILLFULLY FALSIFIES, CONCEALS OR COVERS UP. A MATERIAL FACT, OR MAKES ANY FALSE, FICTITIOUS OR FRAUDULENT STATEMENTS OR REPRESENTATIONS, OR MAKES OR USES ANY FALSE WRITING OR DOCUMENT KNOWING THE SAME TO CONTAIN ANY FALSE, FICTITIOUS OR FRAUDULENT STATEMENT OR ENTRY, SHALL BE FINED NOT MORE THAN \$250,000 OR IMPRISONED NOT MORE THAN 5 YEARS, OR BOTH."**

**CERTIFICATION:** I/We certify that the information provided to Urban County Program staff is true and correct and acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information submitted to Urban County Program may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. and liability for monetary damages to Urban County Program staff, its agents, successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this agreement and Contract.

  
Guadalupe Rivera, Jr.

6/7/2011  
Date

This instrument was acknowledged before me on the 7<sup>th</sup> day of June, 2011 by Guadalupe Rivera Jr.

  
Notary Public, State of Texas

Irene Montoya  
Notary's Name (Printed)

June 27, 2013  
Notary's Commission Expires

