



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Arely Garcia, Mortgage Service Clerk  
Miami-Dade Public Housing and Community Development Department

**FROM:** Nolen Andrew Bunker, Staff Attorney  
Miami-Dade Commission on Ethics and Public Trust

**SUBJECT:** INQ 2024-126; Section 2-11.1(c), Prohibition on transacting business with the County.

**DATE:** July 8, 2024

**CC:** COE Legal Staff; Gerald Farr, Assistant Director 2, Miami-Dade Public Housing and Community Development Division; Shawn Topps, Supervisor, PHCD; John Vanegas, Controller, PHCD; Simona Marlow, Chief of HR Division, PHCD; William “Bill” Diggs, Executive Director, Miami-Dade Economic Advocacy Trust (“MDEAT”); Shandra Daniels, Deputy Director, MDEAT; Roshawn Harris, Human Resources Manager, MDEAT; Edwin Miller, Housing Administrator, MDEAT

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) to request our guidance regarding your ability to participate in two programs administered by the Miami-Dade Public Housing and Community Development Department (“PHCD”) and one program administered by the Miami-Dade Economic Advocacy Trust (“MDEAT”).

#### Facts

You are employed by PHCD as a Mortgage Service Clerk. You advised that your job duties generally include guiding PHCD clients through the application processes for various programs administered by PHCD. You further stated that you are involved in the request of funds from the Finance Department regarding client participation in programs administered by PHCD, as well as the drafting of commitment letters. You acknowledged that two of the programs that you help

PHCD clients navigate are the Homebuyer Loan Program (“HLP”)<sup>1</sup> and the Homebuyer Down Payment Assistance Program (“HDPAP”).<sup>2</sup>

You are seeking to participate in the HLP and the HDPAP, which are administered by PHCD. Your PHCD job duties, as described above, include administration of the HLP and the HDPAP. You are also seeking to participate in the Homeownership Assistance Program (“HAP”),<sup>3</sup> which is administered by MDEAT. Your PHCD job duties do not include administration, oversight, or enforcement of the HAP.

### Issue

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would prevent you from contracting or otherwise doing business with PHCD and/or MDEAT to participate in housing assistance programs.

### Discussion

Generally, sections 2-11.1(c) and (d) of the County Ethics Code permit County employees and their immediate family members to transact business with the County, so long as the contract does not interfere with the full and faithful discharge of the County employee’s duties, the County employee does not participate in negotiating or awarding the contract, and the County employee’s job duties will not require him or her to be involved with enforcing or overseeing the contract. *See, e.g.*, RQO 00-13 (an employee of the Public Health Trust/Jackson Health System could contract with the then-extant Miami-Dade Housing Agency to provide Section 8 housing without giving rise to a prohibited conflict of interest).

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<sup>1</sup> The HLP is a homebuyer assistance program that provides mortgage loan assistance to qualified low- and moderate-income individuals and families for the purchase of a primary residence as first-time homeowners. *See Homebuyer Loan Program Guidelines – The Homebuyer Second Mortgage Program, AFFORDABLE HOUSING HOMEBUYER LOAN PROGRAM AND SINGLE-FAMILY REHABILITATION PROGRAM GUIDELINES*, <https://www.miamidade.gov/housing/library/guidelines/affordable-housing-and-homeownership-program-guidelines.pdf> (last visited July 3, 2024).

<sup>2</sup> The HDPAP is a homebuyer assistance program that provides down payment assistance to qualified very-low-, low-, and moderate-income individuals and families for the purchase of a primary residence as first-time homeowners, providing up to \$35,000.00 as a no-interest loan for use as a down payment. *See Homebuyer Down Payment Assistance Program Guidelines, AFFORDABLE HOUSING HOMEBUYER LOAN PROGRAM AND SINGLE-FAMILY REHABILITATION PROGRAM GUIDELINES*, available at <https://www.miamidade.gov/housing/library/guidelines/affordable-housing-and-homeownership-program-guidelines.pdf> (last visited July 3, 2024).

<sup>3</sup> The HAP is a homebuyer assistance program that uses Documentary Stamps Surtax money to provide zero-interest deferred loans to low-to-moderate income County residents to assist them with making a down payment and covering closing costs for the purchase of a primary residence in Miami Dade County. HAP loans may be forgiven. *See Buyers and Realtors, MDEAT HOUSING DIVISION*, available at [https://www.miamidade.gov/global/service.page?Mduid\\_service=ser1532378258174440](https://www.miamidade.gov/global/service.page?Mduid_service=ser1532378258174440) (last visited July 5, 2024).

However, the County Ethics Code generally prohibits a County employee and his or her immediate family members from transacting business with the County department for which the County employee works. *See* County Ethics Code § 2-11.1(c)(2). Specifically,

except as provided in subsection (c)(6) below, . . . [the limited exclusion from the general prohibition on County employees contracting with the County] shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

*Id.*

Nevertheless, section 2-11.1(c)(5)(5) of the County Ethics Code provides that County employees and their immediate family members who are otherwise eligible for assistance through PHCD should be permitted to seek such assistance, so long as they do not administer the program, except as provided for in the ordinance. Similarly, section 2-11.1(c)(5)(7) of the County Ethics Code provides that County employees and their immediate family members who are otherwise eligible for assistance with costs associated with housing, childcare, utilities, public transit, healthcare, or other basic or essential human or social services through any County department or agency should be permitted to seek such assistance, so long as they do not administer the program, except as provided for in the ordinance.

Section 2-11.1(c)(6) of the County Ethics Code provides that, when a County employee administers a housing or other assistance program to which he or she wishes to apply, then appropriate mitigation measures by the employing County department must be delineated and implemented before said employee can receive the benefit of the program. Employees in this situation may proceed with an application for assistance **only after** the Ethics Commission has found the employing County department’s mitigation plan “sufficient to abate the potential conflict of interest” and said plan must include the removal of the employee “from participation in the administration of the program as regards his or her application.” County Ethics Code § 2-11.1(c)(6).

PHCD has crafted and implemented a Memorandum dated June 3, 2024, whose subject is “Mitigation Measures for Employees and Family Members Accessing Department Housing Programs Policy,” that establishes specific mitigation measures to abate potential conflicts of interest related to eligible PHCD staff and their family members applying to participate in a program administered by PHCD. Specifically, PHCD’s policy provides that:

(4) Employees and immediate family members shall inform PHCD of their employee or immediate family member status at the time of applying for a housing program. . . .

(5) When an employee or immediate family member applicant is selected for review, the application must first be reviewed by a PHCD Assistant Director. The Assistant Director shall make an initial review of the application along with any related Ethics Commission advice, opinion, or decision, and then submit it to the appropriate program staff member within three days for processing of the application.

(6) Once program staff has determined eligibility, an Assistant Director must review the determination and concur with the decision in writing.

(7) Final approval of the decision is to be made in writing by the Director or the Director's designee.

Your employment as a Mortgage Service Clerk with PHCD involves your participation in the administration of the HLP and the HDPAP. However, PHCD had delineated and implemented a conflict of interest mitigation policy to screen you from participation in the administration of your own application for assistance. Furthermore, in discussion with your supervisor, Mr. Shawn Topps, he advised that applications for the HLP and HDPAP typically come in and are assigned on a rotating basis to a PHCD homeownership specialist, with each application reviewed by a lead worker. He further stated that the applications are processed through the use of a physical file. Mr. Topps stated that he can keep custody of your application file, providing it to the assigned lead worker or homeownership specialist only when they are actively working on it. He further advised that, per PHCD policy, he will ensure that the file is first delivered to a PHCD Assistant Director, then processed according to PHCD policy before it is then ultimately returned to a PHCD Assistant Director for review and written approval, and then finally transmitted for written approval by the PHCD Director or the Director's designee. Mr. Topps further advised that he could ensure that you are screened from this process such that you will not have any involvement in the processing and review of your application to participate in the HLP or the HDPAP.

Accordingly, in light of PHCD's policy screening employees from participating in the processing and administration of their own applications for assistance, and the explanation of Mr. Topps regarding how that policy will be implemented in your specific case, **we find that the mitigation plan is sufficient to abate the potential conflict of interest.** *See* County Ethics Code § 2-11.1(c)(6); INQ 24-118 (finding PHCD's mitigation plan sufficient to abate the potential conflict of interest of an immediate family member of a PHCD Real Estate Officer who was applying to participate in the HLP, a program that the PHCD employee helped to administer); INQ 24-86 (finding the Miami-Dade Community Action and Human Services Department's mitigation plan sufficient to abate the potential conflict of interest of a Social Worker 1 applying to participate in the same program he administered).

Furthermore, insofar as you are a County employee seeking to participate in the HAP administered by MDEAT, your job duties as a Mortgage Service Clerk for PHCD do not require you to be involved in evaluating, approving, or awarding your application for participation in the HAP. Accordingly, your position with PHCD would not give rise to a prohibited conflict of interest that

would prevent you from applying for or otherwise participating in the HAP. *See* County Ethics Code § 2-11.1(c)(5)(7).

### Opinion

After reviewing the facts presented to us, for the reasons discussed above we conclude that **you, Ms. Arely Garcia, may apply for and contract, or otherwise do business, with PHCD to participate in the Homebuyer Loan Program and the Homebuyer Down Payment Assistance Program**, provided that: (1) both you and PHCD abide by the conflict mitigation plan adopted by PHCD, (2) you are otherwise removed from participation in the administration of the programs as to your own application, including Mr. Topps retaining custody of your application file as described above, and (3) you are otherwise eligible to participate in the programs. *See* County Ethics Code § 2-11.1(c)(6); INQ 24-118; INQ 24-86. We further conclude that **you may apply for and contract, or otherwise do business, with MDEAT to participate in the Homeownership Assistance Program** because your employment with PHCD does not involve administration of this program, nor do you have any immediate family members involved in the administration of this program. *See* County Ethics Code § 2-11.1(c)(5)(7).

Additionally, the County Ethics Code prohibits County employees from the exploitation of their official position. This means that you may not use your County position to secure special privileges or exemptions with respect to your participation in the HLP, HDPAP, HAP, or any other County program to which you are applying. *See* County Ethics Code § 2-11.1(g).

This opinion is limited to the facts as you presented them to the Commission on Ethics regarding conflicts under Sections 2-11.1(c) and (d) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from the department that employs you or under state law, other conflicts may apply. If you have additional questions regarding possible conflicts based on your County department directives, contact your department supervisor or the Mayor's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

***You must submit this opinion to the Miami-Dade Public Housing and Community Development Department and the Miami-Dade Economic Advocacy Trust for inclusion in your respective application files. The Commission on Ethics does not submit this memorandum on your behalf.***

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.