

## **FY19 Administrative Requirements and Terms for HUD Financial Assistance Awards**

### **1. Compliance with Non-discrimination and Other Requirements**

Unless otherwise specified, the following non-discrimination provisions and other requirements apply to all Program NOFAs. Please read the corresponding requirements in each Program NOFA carefully as there are some variations in requirements among HUD's programs.

#### **a. Compliance with Fair Housing and Civil Rights Laws, Which Encompass the Fair Housing Act and Related Authorities.**

With some exceptions for federally recognized Indian tribes and their instrumentalities, recipients and their prospective subrecipients must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a), including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 and 508 of the Rehabilitation Act of 1973; Title II and Title III of the Americans with Disabilities Act of 1990. Section 109 of the Housing and Community Development Act of 1974, Age Discrimination Act, Architectural Barriers Act, Title IX of the Civil Rights Act of 1964, Executive Orders 11063, 12892, 12898, and 13166) may also apply.

Federally recognized Indian tribes and their instrumentalities must comply with non-discrimination requirements listed at 24 CFR 1000.12.

#### **b. Affirmatively Furthering Fair Housing.**

Section 808(e)(5) of the Fair Housing Act requires HUD to affirmatively further the purposes of the Fair Housing Act in its housing and urban development programs. HUD requires recipients of funds, including those awarded and announced under HUD's FY 2019 NOFAs not specifically exempted, to comply with this requirement.

Federally recognized Indian tribes are not subject to the requirement to affirmatively further fair housing in their use of certain HUD funds. Other tribal entities may also be exempt.

#### **c. Economic Opportunities for Low-and Very Low-income Persons (Section 3).**

Certain programs require recipients of assistance to comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 CFR part 135. The regulations at 24 CFR part 135 implementing Section 3 ensure, to the greatest extent feasible, that training, employment, contracting and other economic opportunities be directed to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low-and very low-income persons where a proposed project is located.

As covered by 24 CFR Part 135, program NOFAs for programs that are subject to Section 3 must include information regarding how Section 3 activities will be considered in rating the application, the evaluation criteria utilized, and the rating points assigned. (See 24 CFR 135.9) Applicants subject to this requirement must describe in their applications their plans to train and employ Section 3 residents and contract with Section 3 businesses. By submission of an

application for programs covered by Section 3, applicants certify compliance with Section 3 requirements.

HUD encourages recipients to search the national Section 3 Business Registry to find local businesses that prioritize hiring Section 3 residents.

**d. Improving Access to Services for Persons with Limited English Proficiency (LEP).**

Executive Order (E.O.) 13166 seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have LEP. Recipients of HUD funds shall take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. As an aid to recipients, HUD published Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) in the Federal Register on January 22, 2007 (72 FR 2732). LEP guidance and LEP information is available [here](#).

**e. Accessible Technology.**

Recipients must also comply with Section 504 of the Rehabilitation Act and, where applicable, the ADA. HUD encourages its recipients to adopt the goals and objectives of Section 508 by ensuring comparable access whenever electronic and information technology is used.

**2. Equal Access.**

A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD must comply with the equal access regulations found in 24 CFR 5.105(a)(2) (*See also* 77 FR 5662 (Feb. 3, 2012)). Further, any recipient, sub-recipient, owner, operator, manager or service provider funded in whole or part by any Community Planning and Development (CPD) grant must comply with the equal access regulations found in 24 CFR 5.106.

HUD's Native American and Native Hawaiian programs are covered by the rule Equal Access to Housing in HUD's Native American and Native Hawaiian Programs – Regardless of Sexual Orientation or Gender Identity, 81 Fed. Reg. 80989 (Nov. 17, 2016).

**3. Ensuring the Participation of Small Disadvantaged Businesses, and Women-Owned Business.**

HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses, and Labor Surplus Area Firms as identified by the Department of Labor, participate fully in the direct contracting and contracting opportunities generated by HUD's financial assistance. Recipients (except States) and subrecipients are required by 2 CFR 200.321 to take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and Labor Surplus Area Firms are used whenever possible.

**4. Equal Participation of Faith-based Organizations in HUD Programs and Activities.**

HUD's regulations on the equal participation of faith-based organizations are at 24 CFR 5.109. On April 4, 2016, HUD amended 24 CFR 5.109 consistent with E.O. 13559, entitled Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other

Neighborhood Organizations (75 Fed. Reg. 71319 (Nov. 22, 2010)). (See 81 FR 19355). These regulations apply to all HUD programs and activities, including all of HUD's Native American Programs, except as may be otherwise provided in the respective program regulations, or unless inconsistent with the respective program authorizing statute. These regulations provide, among other things, that a faith-based organization that participates in a HUD-funded program or activity retains its independence, and may continue to carry out its mission provided that it does not use direct Federal financial assistance to support or engage in any explicitly religious activities; an organization that engages in explicitly religious activities must separate those activities, in time or location, from activities supported by direct Federal financial assistance and participation must be voluntary; and an organization that receives direct Federal financial assistance under a HUD program or activity may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. (See 24 CFR 5.109).

HUD's actions are also guided by the principles laid out in the Attorney General's October 6, 2017 Memorandum for All Executive Departments and Agencies on [Federal Law Protections for Religious Liberty](#), including on the applicability of the Religious Freedom Restoration Act (RFRA) of 1993. See [here](#) for more on the equal participation of faith-based organizations in HUD programs and activities. This covers how parties may obtain a RFRA exemption from rules or regulations that substantially burden their exercise of religion, such as restrictions on religious hiring practices.

## **5. Real Property Acquisition and Relocation.**

HUD-funded programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. 4601-4655), and the government-wide implementing regulations issued by the Federal Highway Administration at 49 CFR part 24, unless the Uniform Act or other Federal law provides that it does not apply. The Uniform Act applies to acquisitions of real property and relocation occurring as a direct result of the acquisition, rehabilitation, or demolition of real property for Federal or federally-funded programs or projects. With certain limited exceptions, real property acquisition for a program or project that receives federal financial assistance from HUD must comply with 49 CFR part 24, subpart B.

To be exempt from the URA's acquisition requirements, real property acquisitions must satisfy the applicable requirements of 49 CFR 24.101(b)(1) through (5), commonly referred to as "voluntary acquisitions," which generally are those conducted without the threat or use of eminent domain. Records demonstrating compliance with these requirements must be maintained by the recipient.

The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR part 24, cover any person who moves from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no URA statutory provisions for "temporary relocation", the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time.

Appendix A of the URA regulation (49 CFR 24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA permanent relocation assistance. Some HUD program regulations provide additional protections for temporarily relocated tenants. Before planning their project, applicants must review the regulations for the programs to which they are applying. Generally, the URA does not apply to displacements resulting from the demolition or disposition of public housing covered by Section 18 of the United States Housing Act of 1937. Individual NOFAs may have additional relocation guidance and requirements.

Additional resources and guidance pertaining to real property acquisition and relocation for 5 HUD-funded programs and projects are available on HUD's Real Estate Acquisition and Relocation website at [www.hud.gov/relocation](http://www.hud.gov/relocation). Applicable laws and regulations, policy and guidance, publications, training resources, and a listing of HUD contacts are also available for applicants who have questions or need assistance.

#### **6. Participation in a HUD-Sponsored Program Evaluation.**

As a condition of the receipt of financial assistance under a NOFA, all successful applicants will be required to cooperate with all HUD staff, contractors, or designated grantees performing research or evaluation studies funded by HUD.

#### **7. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.**

All HUD awards, including awards HUD makes directly to pass-through entities and all subawards under those awards, are subject to 2 CFR part 200 (Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards), unless otherwise provided in title 24 of the Code of the Federal Regulations. Applicants should be aware that if the total Federal share of your Federal award may include more than \$500,000 over the period of performance, you may be subject to post award reporting requirements reflected in Appendix XII to Part 200 Award Terms and Condition for Recipient Integrity and Performance.

#### **8. Drug-Free Workplace.**

Recipients and subrecipients receiving funds from HUD are subject to [292 CFR Part 24](#), which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et seq.), as amended, and required to provide a drug-free workplace. Compliance with this requirement means that the applicant will:

- a. Publish a statement notifying employees that it is unlawful to manufacture, distribute, dispense, possess, or use a controlled substance in the applicant's workplace and such activities are prohibited. The statement must specify the actions that will be taken against employees for violation of this prohibition. The statement must also notify employees that, as a condition of employment under the federal award, they are required to abide by the terms of the statement and that each employee must agree to notify the employer in writing if the employee is convicted for a violation of a criminal drug statute occurring in the workplace, no later than 5 calendar days after such conviction.
- b. Establish an ongoing drug-free awareness program to inform employees about:

- 1) The dangers of drug abuse in the workplace;
- 2) The applicant's policy of maintaining a drug-free workplace;
- 3) Available drug counseling, rehabilitation, or employee assistance programs; and
- 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Notify HUD and other federal agencies providing funding in writing within 10 calendar days after receiving notice from an employee of a drug abuse conviction or otherwise receiving actual notice of a drug abuse conviction. The notification must be provided in writing to HUD's Office of Strategic Planning and Management, Grants Management Division, Department of Housing and Urban Development, 451 7th Street, SW, Room 3156, Washington DC 20410-3000, along with the following information:

- 1) The program title and award number for each HUD award covered;
- 2) The HUD staff contact name, telephone and fax numbers;
- 3) A grantee contact name, telephone and fax numbers; and
- 4) The convicted employee's position and title.

d. Require that each employee engaged in the performance of the federally funded award be given a copy of the drug-free workplace statement required in item (a) above and notify the employee that one of the following actions will be taken against the employee within 30 calendar days of receiving notice of any drug abuse conviction:

- 1) Institution of a personnel action against the employee, up to and including termination consistent with requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or
- 2) Imposition of a requirement that the employee participates satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

e. Identify to the agency making the award all known workplaces under the award. The workplace identification must include the actual address of buildings or other sites where work under the award will take place. The applicant must also inform the agency of any workplace changes during the performance of the award. The identification of the workplaces must occur either:

- 1) At the time of application or upon award; or
- 2) In documents the applicant keeps on file in its offices during performance of the award, in which case the applicant must make the information available for inspection upon request by the agency.

## **9. Safeguarding Resident/Client Files.**

In maintaining resident and client files, funding recipients shall comply with the Privacy Act of 1974 (Privacy Act), the agency rules and regulations issued under the Privacy Act and observe state and local laws concerning the disclosure of records that pertain to individuals. Recipients must comply with the Privacy Act in the design, development, or operation of any system of

records on individuals and take reasonable measures to ensure that resident and client files are safeguarded, including when reviewing, printing, or copying client files.

#### **10. Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L.109-282) (Transparency Act), as amended.**

Prime Grant Awardee Reporting. Prime recipients of HUD's financial assistance are required to report certain subawards in the [Federal Funding Accountability and Transparency Act Subaward System \(FSRS\)](#) or its successor system for all prime awards listed on the FSRS website. Prime financial assistance awardees receiving funds directly from HUD are required to report subawards and executive compensation information both for the prime award and subaward recipients, including awards made as pass-through awards or awards to vendors. For reportable subawards, if executive compensation reporting is required and subaward recipients' executive compensation is reported through the SAM system, the prime recipient is not required to report this information. The reporting of subaward and executive compensation information shall be in accordance with the requirements of the Transparency Act, as amended, and Appendix A to 2 CFR part 170. Information on requirements under the Transparency Act and OMB guidance is available at [www.fsrs.gov](http://www.fsrs.gov).

#### **11. Eminent Domain.**

Section 407 of Div. L, Title III of the Consolidated Appropriations Act, 2018 (Public Law 115-141) prohibits the use of appropriated funds to support any Federal, state, or local project that seeks to use the power of eminent domain, unless eminent domain is employed only for a public use. Public use shall not be construed to include economic development that primarily benefits private entities. Use of funds for mass transit, railroad, airport, seaport, or highway projects, and utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and waste water-related infrastructure), other structures designated for use by the general public or with other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields, as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118), will be a public use for Section 407 purposes. Applicants for FY assistance may be subject to this restriction if it is incorporated in HUD's FY appropriation. A notice will be published if this provision no longer applies following passage of HUD's FY appropriation.

#### **12. Accessibility for Persons with Disabilities.**

For all HUD-funded activities:

- a. All meetings must be held, and services provided in facilities that are physically accessible to persons with disabilities unless an exception exists. Where physical accessibility is not achievable, successful applicants must give priority to alternative methods of product or information delivery that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate in accordance with HUD's implementing regulations for section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) at 24 CFR part 8, subpart C; and,
- b. The recipient shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public. The recipient shall furnish appropriate auxiliary aids

where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance. If an action would result in a fundamental alteration in the nature of a program or in undue financial and administrative burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance. See 24 CFR Section 8.6

### **13. Violence Against Women Act.**

The Violence Against Women Reauthorization Act of 2013 amended the Violence Against Women Act of 1994 (VAWA) to provide housing protections for victims of domestic violence, dating violence, sexual assault, and stalking in many of HUD's housing programs. HUD's implementing regulations for VAWA are found in the applicable program regulations and 24 CFR Part 5, Subpart L, Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (collectively, the VAWA rule). The specific HUD programs that are subject to the VAWA rule are listed in the "covered housing program" definition at 24 CFR 5.2003. In general, the VAWA rule provides that an applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy. The VAWA rule also requires the establishment of emergency transfer plans for facilitating the emergency relocation of certain tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. For the specific requirements of the VAWA rule, please refer to 24 CFR Part 5, Subpart L, and the applicable program regulations.

### **14. Conducting Business in Accordance with Ethical Standards.**

**a. Code of Conduct for Procuring Property and Services.** All Federal award recipients, except states, and all subrecipients under Federal awards must have a code of conduct (or written standards of conduct) for procurements that meets all requirements in 2 CFR 200.318(c). Before entering into an agreement with HUD, each applicant selected for award (other than a state) must ensure an up-to-date copy of the organization's code of conduct, dated and signed by the Executive Director, Chair, or equivalent official, of the governing body of the organization, is available in Code of Conduct e-library. Applicants can check the [Code of Conduct List](#) to confirm HUD has determined their Code of Conduct complies with 2 CFR 200.318(c).

HUD does not collect or review state codes of conduct for compliance with 2 CFR 200.318(c). Instead, each state must follow the same policies and procedures for procurements under Federal awards that the state uses for procurements from its non-Federal funds, as provided in 2 CFR 200.317.

#### **b. Other Conflicts of Interest**

In all cases not governed by 2 CFR 200.317 and 200.318(c), all recipients and subrecipients must comply with the conflict of interest requirements in the applicable program regulations. If there

are no program-specific regulations for the award, the following conflict of interest requirements apply in all cases not governed by 2 CFR 200.317 and 200.318(c):

i. *General prohibition.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or subrecipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is 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 the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

ii. *Exceptions.* HUD may grant an exception to the general prohibition in paragraph (i) upon the recipient's written request and satisfaction of the threshold requirements in paragraph (iii), if HUD determines the exception will further the Federal purpose of the award and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effects of the factors in paragraph (iv).

iii. *Threshold requirements for exceptions.* HUD will consider an exception only after the recipient has provided the following documentation:

- a. 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
- b. An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

iv. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements in paragraph (iii), HUD will consider the cumulative effect of the following factors, where applicable:

- a. 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;
- b. Whether an opportunity was provided for open competitive bidding or negotiation;
- c. 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;
- d. 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;
- e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (i);
- f. 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
- g. Any other relevant considerations.

Recipients must disclose in writing any potential conflict of interest to HUD