

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5800-N-01-C1]

Technical Correction to HUD's Notice

General Section to the Department's Fiscal Year 2014 NOFAs for Discretionary Programs

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Technical Correction to HUD's General Section to the Department's Fiscal Year 2014 NOFAs for Discretionary Programs.

SUMMARY: On **February 19, 2014**, HUD posted its General Section to the Department's FY2014 NOFAs for Discretionary Programs ("General Section"), to Grants.gov. This Notice provides a technical correction to the General Section, to relocate three paragraphs to Section III.C.3. Compliance with non-discrimination and Other Requirements, c. Economic Opportunities for Low- and Very Low-income Persons (Section 3), d. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)," and e. Accessible Technology. The correction inserts the three paragraphs into Section III.C.3, and removes the corresponding paragraphs Section VI.B.1, 2, and 4.

In addition, paragraphs VI.B.3 – 16 are renumbered to reflect removal of the paragraphs above. For the ease of the reader, HUD is republishing the affected sections in their entirety in this Technical Correction.

Finally, this technical correction updates the restrictions on eminent domain in paragraph VI.B.13 to reflect the Consolidated Appropriations Act, 2014.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in each program NOFA. Questions regarding the FY2014 General Section should be directed to the Office of Strategic Planning and Management, Grants Management and Oversight Division at 202-708-0667 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

SUPPLEMENTAL INFORMATION

I. Correction to Section III. Eligibility Information, Subsection C.3. Compliance with Nondiscrimination and Other Requirements.

Section III.C.3 is corrected to read as follows:

3. Compliance with Nondiscrimination and Other Requirements. The following nondiscrimination 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 the Department's programs.

a. Compliance with Fair Housing and Civil Rights Laws. With the exception of federally recognized Indian tribes and their instrumentalities, applicants and their 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 of the Rehabilitation Act of 1973; Title II and Title III of the Americans with Disabilities Act of 1990; and Section 109 of the Housing and Community Development Act of 1974.

(1) If the applicant is conducting programs or activities with funds received under a Program NOFA in a state or local jurisdiction that has passed a law prohibiting discrimination in housing based upon sexual orientation or gender identity, or a law prohibiting discrimination in housing based on lawful source of income, the applicant and its subrecipients must comply with the law(s) of the state or locality in which the program activities are conducted.

(2) If the applicant is a federally recognized Indian tribe or Tribally Designated Housing Entity (TDHE), the applicant must comply with the nondiscrimination provisions enumerated in the regulations applicable to the program the applicant administers. Each Program NOFA shall specify the applicable civil rights requirements for Indian Tribes or TDHEs when they are listed as eligible applicants under the Program NOFA.

b. Affirmatively Furthering Fair Housing. Section 808(e)(5) of the Fair Housing Act requires the Department to affirmatively further the purposes of the Fair Housing Act in its housing and urban development Programs. Accordingly, the Department requires recipients of funds, including those awarded and announced under the Department's FY 2014 Program NOFAs that are not specifically exempted, to take affirmative steps to further fair housing.

PLEASE NOTE: Federally recognized Indian tribes are not subject to the requirement to affirmatively further fair housing. Other tribal entities may also be exempt. Refer to the Program NOFAs for more information on exemptions.

Unless otherwise specified in the Program NOFA, an applicant must discuss how it is going to carry out the proposed activities in a manner that affirmatively furthers fair housing in complete compliance with Section 808(e)(5) of the Fair Housing Act.

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. Section 3 requires recipients to ensure, to the greatest extent feasible, that training, employment, contracting and other economic opportunities will be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons in the area in which the project is located.

To implement 24 CFR 135.9(a) of the Department's Section 3 rules, applicants for funding under programs covered by Section 3 shall, by signing the application, certify compliance. Applicants subject to this requirement shall also describe in their applications their plans to train and employ Section 3 residents and contract with Section 3 business concerns in furtherance of the proposed activities. The program NOFAs for which Section 3 is applicable will include information regarding how Section 3 activities will be considered in rating the application.

Recipients of covered funding are required to comply with the requirements of 24 CFR part 135, particularly subpart B-Economic Opportunities for Section 3 residents and Section 3 Business Concerns, and Subpart E-Reporting and Recordkeeping. Additional information on the requirements can be found at: www.hud.gov/offices/fheo/section3/section3.cfm. Applicants are advised to carefully review the individual program NOFAs to determine if Section 3 applies to the program for which you are seeking funding.

d. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)." Executive Order 13166 seeks to improve access to federally assisted programs and activities for individuals who, as a result of national origin, are limited in their English proficiency. Applicants obtaining federal financial assistance from the Department shall take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. As an aid to recipients, the Department 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). For assistance and information regarding LEP obligations, go to www.justice.gov/crt/lep/guidance/HUD_guidance_Jan07.pdf. For more information on LEP, please visit www.hud.gov/offices/fheo/lep.xml.

e. Accessible Technology. Section 508 of the Rehabilitation Act (Section 508) requires the Department to ensure, when developing, procuring, maintaining, or using electronic and information technology (EIT), that the EIT allow persons with disabilities to access and use information and data on a comparable basis as is made available to and used by persons without disabilities. Section 508 covers, but is not limited to, computers (hardware, software, word processing, email, and Internet sites), fax machines, copiers and telephones. Among other things, Section 508 requires that EIT allow individuals with disabilities who are federal employees or members of the public seeking information or services to have access to and use of information and data on a comparable basis as that made available to employees and members of the public without disabilities unless an undue burden would result to the federal department or agency. Where an undue burden exists to the federal department or agency, alternative means may be used to allow an individual with disabilities use of the information and data. Section 508 does not require that information services be provided at any location other than a location at which the information services are generally provided. The Department encourages applicants for its funding to adopt the goals and objectives of Section 508 by ensuring, whenever EIT is used, that persons with disabilities have access to and use of the information and data made available through the EIT on a basis comparable as is made available to and used by persons without disabilities. This does not affect recipients' required compliance with Section 504 of the Rehabilitation Act and, where applicable, the Americans with Disabilities Act. Applicants and

recipients seeking further information on accessible technology are directed to www.section508.gov.

II. Technical Correction to Section VI.B.

Section VI.B is corrected and renumbered to read as follows:

B. Administrative and National Policy Requirements.

1. Ensuring the Participation of Small Disadvantaged Businesses, and Women-Owned Businesses. The Department is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in the Department's direct contracting and in contracting opportunities generated by the Department's financial assistance. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. State, local, and Indian tribal governments are required by 24 CFR 85.36(e) to take all necessary affirmative steps in contracting for the purchase of goods or services to assure that minority firms, women-owned business enterprises, and labor surplus area firms are used whenever possible or as specified in the Program NOFAs. Nonprofit recipients of assistance (grantees and subgrantees) are required by 24 CFR 84.44(b) to make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible.

2. Equal Access to HUD-assisted or HUD-insured Housing. The Department is committed to ensuring that its programs are open to all eligible individuals and families regardless of sexual orientation, gender identity or marital status. HUD funding recipients and subrecipients must comply with 24 CFR 5.105(a)(2) in connection with determining eligibility for housing assisted with HUD funds or subject to an FHA-insured mortgage, and in connection with making such housing available. This includes making eligibility determinations and making housing available regardless of actual or perceived sexual orientation, gender identity, or marital status, and prohibiting inquiries about sexual orientation or gender identity for the purpose of making eligibility determinations or making housing available. Applicants are encouraged to become familiar with these requirements, HUD's definitions of sexual orientation and gender identity at 24 CFR 5.100, clarifications to HUD's definition of family at 24 CFR 5.403, and other regulatory changes made through HUD's Equal Access Rule, published in the Federal Register at 77 FR 5662 (Feb. 3, 2012).

3. Executive Order 13279, "Equal Protection of the Laws for Faith-based and Community Organizations," and Executive Order 13559, "Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Partnerships." Faith-based organizations are eligible to participate in the Department's programs and activities on the same basis as any other organization. HUD's regulation on the equal participation of faith-based organizations, consistent with Executive Order 13279, is at 24 CFR 5.109. Additionally, several HUD programs, particularly programs administered by the Office of Community Planning and Development, are subject to program-specific rules. The rule at 24 CFR 5.109 provides, among other things, that religious organizations may not engage in inherently religious activities as part of a HUD-funded program or activity; a religious organization that participates in a HUD-funded

program or activity may retain its independence and continue to carry out its mission; and an organization that receives direct federal funds from the Department is not permitted to discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief in providing program assistance. Executive Order 13559 amended Executive Order 13279 to require additional protections for program beneficiaries. HUD is currently participating in an Interagency Working Group that will develop a plan for implementation of the new provisions and intends to await final issuance of that plan before making changes, if any, to 24 CFR 5.109. However, some program-specific rules have been amended to reflect the new provisions of E.O. 13559. Recipients and subrecipients of funds subject to those amended rules must comply with the new regulatory provisions.

4. Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted 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. The Uniform Act applies to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for Federal or federally-assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR part 24, subpart B.

To be exempt from the URA's acquisition requirements, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as "voluntary acquisitions," must satisfy the applicable requirements of 49 CFR 24.101(b)(1) through (5). Records demonstrating compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR 24.101(b) (1) through (5).

The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR part 24, cover any person who moves permanently 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 relocation assistance. Some HUD program regulations provide additional protections for temporarily relocated tenants. Before planning their project, applicants should review the regulations for the programs for 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 Program NOFAs may have additional relocation guidance and requirements.

Additional resources and guidance pertaining to real property acquisition and relocation for HUD-funded programs and projects are available on HUD's Real Estate Acquisition and Relocation website at www.hud.gov/relocation. You will find applicable laws and regulations,

policy and guidance, publications, training resources, and a listing of HUD contacts if you have questions or need assistance.

5. Procurement of Recovered Materials. State agencies and agencies of a political subdivision of a state that are using assistance under a Program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Please refer to www.epa.gov/osw/consERVE/tools/cpg/pdf/rcra-6002.pdf for complete text and requirements of Section 6002.

6. Participation in a HUD-Sponsored Program Evaluation. As a condition of the receipt of financial assistance under a Program NOFA, all successful applicants will be required to cooperate with all Department staff, contractors, or designated grantees performing Department-funded research or evaluation studies.

7. Environmental Requirements. Recipients and participants, including public or private nonprofit or for-profit entities, or any of their contractors, under a HUD-funded program that assists in physical development activities or property acquisition are generally prohibited from acquiring, rehabilitating, converting, demolishing, leasing, repairing, or constructing property, or committing or expending HUD or other funds for these types of program activities, until one of the following has occurred:

- a. The Department has completed an environmental review in accordance with 24 CFR part 50; or
- b. For programs subject to 24 CFR part 58, the Department has approved a recipient's Request for Release of Funds (form HUD7015.15) following a responsible entity's completion of an environmental review. The applicant must consult the Program NOFA to determine the procedures for, timing of, and any modifications or exclusions from environmental review under a particular program.

8. OMB Administrative Requirements and Cost Principles. The following OMB Circulars apply to the awards under the Program NOFAs and are based on the type of grantee. The requirements of the applicable Circular may be modified by a Program NOFA. Particular attention should be given to the provisions concerning the use of federal funds for matching requirements.

Certain OMB Circulars found in title 2 CFR and the Department's implementing regulations at 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and

other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments) may apply to the award, except when inconsistent with the provisions of applicable federal statutes or regulations, the provisions of this notice or as may be modified by a Program NOFA.

- a. OMB Circular A-102 (24 CFR part 85) (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments).
- b. OMB Circular A-110 (24 CFR part 84) (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).
- c. OMB Circular A-87 (2 CFR part 225) (Cost Principles for State, Local, and Indian Tribal Governments).
- d. OMB Circular A-21 (2 CFR part 220) (Cost Principles for Education Institutions).
- e. OMB Circular A-122 (2 CFR part 230) (Cost Principles for Non-Profit Organizations).
- f. OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

OMB recently published recently published Guidance for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards which would supersede the Circulars listed here. HUD is implementing regulations in accordance with the guidance and expects the new regulations will become effective December 26, 2014. FY 2014 grantees will be required to comply with the HUD implementing regulations when they become effective, but shall not use them before the effective date. Electronic copies of the OMB circulars are located at www.whitehouse.gov/omb/circulars_default. Printed copies may also be obtained from the Executive Office of the President Publications, New Executive Office Building, Room 2200, Washington, DC 20503; telephone number (202) 395-3080 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number by dialing (800) 877-8339 (toll-free TTY Federal Relay Service).

9. Drug-Free Workplace. Applicants awarded funds from the Department are subject to 2 CFR part 2429, 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 the Department 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 the Department'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 departmental award covered;

(2) The Department's 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 participate 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.

10. 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. Further, recipients are required to 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.

11. 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 the Department's financial assistance are required to report certain subawards in the Federal Funding Accountability and Transparency Act Subaward System (FSRS) website located at <https://www.fsr.gov/> or its successor system for all prime awards listed on the FSRS website. Starting with awards made October 1, 2010, prime financial assistance awardees receiving funds directly from the Department were 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, if the initial prime grant award is \$25,000 or greater, or the cumulative prime grant award will be \$25,000 or greater if funded incrementally as directed by HUD in accordance with OMB guidance; and the subaward is \$25,000 or greater, or the cumulative subaward will be \$25,000 or greater. 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 award and subaward information is in accordance with the requirements of the Transparency Act, as amended by section 6202 of Public Law 110-252, and OMB Guidance issued to the Federal agencies on September 14, 2010 (75 FR 55669) and in OMB Policy guidance. Please refer to www.fsr.gov for complete information on requirements under the Transparency Act and OMB guidance.

12. Compliance with Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), (Section 872). Section 872 requires the establishment of a government-wide data system – the Federal Awardee Performance and Integrity Information System - to contain information related to the integrity and performance of entities awarded federal financial assistance federal officials will make use of this information in making awards. OMB is in the process of issuing regulations regarding federal agency implementation of Section 872 requirements. A technical correction to this General Section may be issued when such regulations are promulgated.

13. Eminent Domain. Section 407 of Division L, Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2014 (P.L. 113-76), prohibits the use of 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. Section 407 provides that 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, as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and wastewater-related infrastructure), other structures designated for use by the general public or which have 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), shall be considered a public use for purposes of Section 407.

Date: May 6, 2014


Helen R. Kanovsky
Acting Deputy Secretary

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