

Administrative, National, and Department Policy Requirements and Terms for HUD's Financial Assistance Programs

The requirements below only apply if they are listed in the Section VI.B., “Administrative, National and Departmental Policy Requirements and Terms for HUD Applicants and Recipients of Financial Assistance Awards” of the program NOFO. The legal agreement signed pursuant to an award with the recipient or subaward with a subrecipient must contain assurance of compliance with program requirements, including but not limited to nondiscrimination and equal opportunity requirements. 24 C.F.R. § 5.105(a).

1. The Fair Housing Act.

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, (42 U.S.C. §§ 3601 – 3619; implementing regulations at 24 CFR part 100 et seq.) prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, and disability. It also requires that all federal programs relating to housing and urban development be administered in a manner that affirmatively furthers fair housing.

Additionally, recipients of HUD funding and their prospective subrecipients, must comply with the fair housing law(s) of the state or locality in which their program or activity is conducted (e.g., if there is a law prohibiting discrimination in housing based on lawful source of income).

2. Title VI of the Civil Rights Act of 1964.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and HUD's implementing regulations (24 C.F.R. part 1) prohibit recipients of federal financial assistance from discriminating against any person on the basis of race, color, or national origin. Under Title VI, recipients may not exclude a person from participation, restrict access, treat differently, deny any benefit, provide any benefit differently, or otherwise discriminate against any person on the basis of race, color, or national origin. Recipients also may not utilize criteria or methods of administration that have the purpose or effect of subjecting individuals to discrimination because of their race, color, or national origin. Siting decisions by recipients may not have the purpose or effect of discriminating based on race, color, or national origin. Recipients also may not subject any person to segregation based on race, color, or national origin. In addition, recipients are obligated to take reasonable actions to remove or overcome the consequences of prior discriminatory practices regardless of whether the recipient engaged in discriminatory conduct. Title VI applies to actions taken directly and actions taken through contractual arrangements.

3. The Age Discrimination Act of 1975.

The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107) prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance. HUD's implementing regulations are at 24 C.F.R. part 146.

4. Section 504 of the Rehabilitation Act of 1973.

Section 504 (29 U.S.C. § 794) and HUD's implementing regulations (24 C.F.R. part 8) prohibits discrimination based on disability in any program or activity receiving federal financial assistance. Recipients of federal financial assistance may not deny a qualified individual with disabilities the opportunity to participate in or benefit from housing, or an aid, benefit, or service. Recipients must provide equal benefits to individuals with disabilities. Recipients may not provide different or

separate benefits to individuals with disabilities, unless necessary to provide such individuals with benefits that are equally effective to those provided others. Recipients must administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Section 504 applies to actions taken directly and actions taken through contractual arrangements.

Under Section 504, recipients must provide reasonable accommodations for persons with disabilities. A reasonable accommodation is a change, adaptation, or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job.

Recipients must also take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public, such as providing auxiliary aids and services, including American Sign Language interpreters and alternate format documents (e.g., Braille, large print, accessible electronic communications) for persons with disabilities.

5. The Americans with Disabilities Act.

Title II of the ADA (42 U.S.C. §§ 12131 – 12165) prohibits discrimination based on disability in programs and activities provided or made available by public entities. Title III of the ADA (42 U.S.C. §§ 12181 – 12189) prohibits discrimination based on disability in the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodations owned, leased, or operated by private entities.

6. Affirmatively Furthering Fair Housing requirements.

Section 808(e)(5) of the Fair Housing Act (42 U.S.C. 3608(e)(5)) requires HUD to administer its programs and activities in a manner to affirmatively further the purposes of the Fair Housing Act. HUD requires recipients of HUD funds, including those awarded and announced under HUD's FY 2023 NOFOs not specifically exempted, to take meaningful actions that affirmatively further fair housing.

7. Economic Opportunities for Low-and Very Low-income Persons (Section 3).

Section 3 of the Housing and Urban Development Act of 1968 (Section 3), (12 U.S.C. § 1701u), entitled "Economic Opportunities for Low- and Very Low-Income Persons," and the HUD regulations at 24 CFR part 75 require, 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.

HUD encourages recipients to search the national [Section 3 Business Registry](#) to find local businesses that prioritize hiring Section 3 workers.

8. Improving Access to Services for Persons with Limited English Proficiency.

Executive Order 13166 seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English Proficiency (LEP). Recipients and subrecipients of HUD funds shall take reasonable steps to ensure meaningful language access to their programs and activities to persons with LEP. As an aid to recipients and subrecipients, HUD published Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP

Guidance) in the Federal Register on January 22, 2007 (72 FR 2731). The LEP guidance and additional information is available here: [Federal Register](#).

9. Accessible Technology.

Section 508 of the Rehabilitation Act of 1973 requires HUD to ensure, when developing, procuring, maintaining, or using electronic and information technology (EIT), that the EIT allows persons with disabilities to access and use information and data comparably to those without disabilities unless an undue burden would result to the Federal agency. HUD encourages its recipients and subrecipients to adopt the goals and objectives of Section 508 by ensuring comparable access whenever EIT is used. In addition, the recipient and subrecipient(s) must assure their program and activities are carried out in compliance with applicable requirements in Section 504 of the Rehabilitation Act, HUD's implementing regulations in 24 CFR part 8, and, where applicable, the Americans with Disabilities Act. These statutes also require effective communication with individuals with disabilities and prohibit EIT-imposed barriers to access information, programs, and activities for persons with disabilities. For more information, see HUD's policy on Section 508 of the Rehabilitation Act and [Accessible Technology](#).

10. Equal Access to Housing Regardless of Sexual Orientation, Gender Identity, or Marital Status.

HUD's equal access requirements in 24 CFR 5.105(a)(2) and 5.106 apply as written. The Equal Access Rule at 24 CFR 5.105(a)(2) requires that a determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. Furthermore, under 24 CFR 5.106, any recipient, sub-recipient, owner, operator, manager, or service provider funded in whole or part by any Community Planning and Development (CPD) program must provide equal access to programs, activities, services, or facilities in accordance with a person's gender identity.

HUD's definitions of sexual orientation and gender identity under the Equal Access Rule are at 24 CFR 5.100.

In addition, the Fair Housing Act prohibits discrimination in housing and housing-related services because of sex, which includes discrimination because of sexual orientation or gender identity.

11. Ensuring the Participation of Small Disadvantaged Businesses, and Women-Owned Businesses.

HUD is committed to ensuring that small businesses; small, disadvantaged businesses; women-owned businesses; and Labor Surplus Area Firms participate fully in the direct contracting and contracting opportunities generated by HUD's financial assistance. Recipients 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.

12. Energy Efficient, Sustainable, Accessible, and Free from Discrimination by Design.

Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” directs HUD to deploy its full capacity to reduce pollution, increase resilience, and conserve water, as well as align its management of real property and financial programs to support robust climate action. In addition, the Presidential Memorandum “Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies” (86 FR 7487) directs HUD to ensure sufficient physically accessible housing, and secure equal access to housing opportunity for all.

Housing constructed, rehabilitated, and/or acquired with HUD funds should (following rehabilitation, if necessary) be well-designed, energy- and water-efficient, sustainable, accessible, and free from discrimination. Housing should, where practicable, prioritize location efficiency; be resistant to local disaster risks; have healthy indoor air quality; embrace the tenets of accessible design, including concepts of visitability and universal design; have access to affordable broadband internet for residents; and use native plant species in landscape design.

All new construction and/or feasible substantial rehabilitation should meet a Green and Resilient Building Standard and should adhere to Elevation Standards (**as described below**) for structures in a 100-year floodplain. When older or obsolete products are replaced as part of rehabilitation work, rehabilitation should use ENERGY STAR-labeled, Water Sense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.

a. Green and Resilient Building Standard means an industry-recognized standard that (1) has achieved certification under (i) Enterprise Green Communities, (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iii) ICC-700 National Green Building Standard Green+ Resilience; or the (iv) Living Building Challenge, or (v) any other equivalent comprehensive green building program acceptable to HUD, and (2) has achieved a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) DOE Zero Energy Ready Home; (iii) regional or local certifications such as Earth Craft House, Earth Craft Multifamily; Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); Earth Advantage New Homes; (iv) Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association.

b. Adhering to Elevation Standards means all structures, as defined at 44 CFR 59.1, designed principally for residential use, and located in the 1 percent annual chance (or 100-year) floodplain, that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the one percent annual chance floodplain elevation (base flood elevation). Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) and 60.3(c)(4)(i) or successor standard, up to at least two feet above base flood elevation. These elevation standards apply to new construction, repair of substantial damage, or substantial improvement of residential structures located in an area delineated as a special flood hazard area or equivalent in FEMA’s data sources identified in 24 CFR 55.2(b)(1). 24 CFR 55.2(b)(10)(ii)(B) excludes from the definition of substantial improvement “Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.”

13. Real Estate Acquisition and Relocation.

With certain exceptions, HUD-funded programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. §§ 4601 et seq.), and the government-wide implementing regulations issued by the Federal Highway Administration at 49 CFR part 24. The URA 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.

Generally, real property acquisition that receives Federal financial assistance for a program or project, as defined in 49 CFR 24.2, must comply with the acquisition requirements contained in 49 CFR part 24, subpart B. If real property acquisitions satisfy one of the acquisition requirements of 49 CFR 24.101(b)(1) through (5), then the real property acquisitions will not be subject to the requirements in 49 CFR part 24, subpart B.

The relocation requirements of the URA and its implementing regulations at 49 CFR part 24, cover any displaced 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. Individual NOFOs 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. 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.

14. Participation in a HUD-Sponsored Program Evaluation.

As a condition of the receipt of the award under a NOFO, the recipient is required to cooperate with all HUD staff, contractors, or designated grantees performing research or evaluation studies funded by HUD.

15. OMB Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 CFR part 200, apply, except as otherwise provided by the Program NOFO or applicable program regulations. However, where a program-specific regulation issued before 2020 incorporates a specific part 200 requirement that was renumbered or replaced as a result of [85 FR 49506](#) and [86 FR 10439](#), the part 200 requirement as replaced or renumbered by 85 FR 49506 and 86 FR 10439 will govern. The requirements of 2 CFR 200.337 apply to all records pertaining to HUD awards.

16. Drug-Free Workplace.

The following award term applies to all recipients: You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

17. Privacy Act Requirements Related to Safeguarding Resident/Client Files.

In maintaining resident and client files, funding recipients shall observe all applicable privacy laws, including state, local, and tribal laws concerning the disclosure of records that pertain to individuals and take reasonable measures to ensure that all such files are safeguarded, including when reviewing, printing, or copying client files. Federal requirements will apply where state, local, or tribal laws are inconsistent with Federal requirements, to the extent such Federal requirements preempt state, local, and tribal laws. When collecting or maintaining personally identifiable information for inclusion in a HUD system of records as defined by the Privacy Act, recipients shall comply with agency rules, regulations, or other requirements issued under the Privacy Act as applicable.

18. Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282) (Transparency Act), as amended.

To accomplish the purposes of 2 CFR part 170, the following award terms from [Appendix A to 2 CFR part 170](#) apply to all recipients:

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. ***What to report.*** You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. ***Applicability and what to report.*** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if -

i. The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in [2 CFR 170.320](#);

ii. in the preceding fiscal year, you received -

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\)](#), [78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if -

i. In the subrecipient's preceding fiscal year, the subrecipient received -

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\)](#), [78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient; and

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. **Exemptions.**

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. **Definitions.** For purposes of this award term:

1. Federal Agency means a Federal agency as defined at [5 U.S.C. 551\(1\)](#) and further clarified by [5 U.S.C. 552\(f\)](#).

2. Non-Federal *entity* means all of the following, as defined in [2 CFR part 25](#):

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization; and
- iv. A domestic or foreign for-profit organization

3. **Executive** means officers, managing partners, or any other employees in management positions.

4. **Subaward:**

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see [2 CFR 200.331](#)).
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. **Subrecipient** means a non-Federal entity or Federal agency that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see [17 CFR 229.402\(c\)\(2\)](#)).

19. Eminent Domain.

No Federal funds provided under the Federal award may be used 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.

20. 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. Recipients and subrecipients 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. All notices of and communications during training sessions and public meetings shall be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities or provide other means of accommodation for persons with disabilities consistent with section 504 of the Rehabilitation Act of 1973 and HUD's Section 504 regulations. Recipients and subrecipients must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, sign language interpreters, accessible websites, and other electronic communications. [See 24 CFR Section 8.6; 28 CFR 35.160, 36.303.](#)

21. Violence Against Women Act.

The Violence Against Women Act of 1994, as amended (VAWA), provides housing protections for victims of domestic violence, dating violence, sexual assault, and stalking in many of HUD's housing programs. HUD's regulations implementing VAWA, as amended by the Violence Against Women Reauthorization Act of 2013, 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 housing protections are listed in the "covered housing program" definition at 24 CFR 5.2003, and as may be identified by HUD through further regulations, notices, or any other means. 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, see 24 CFR Part 5, Subpart L, and the applicable program regulations. VAWA, as reauthorized by the Violence Against Women Act Reauthorization Act of 2022, further provides that no public housing agency or owner or manager or housing assisted under a covered housing program shall discriminate against any person because that person has opposed any act or practice made unlawful by the housing title of VAWA or because that person testified, assisted, or participated in any related matter. It also

provides that no public housing agency or owner or manager of housing assisted under a covered housing program shall coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under the housing title of VAWA. VAWA also protects the right to report crime and emergencies from housing. It establishes that landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing shall have the right to seek law enforcement or emergency assistance on their own behalf or on behalf of another person in need of assistance. It prohibits application of actual or threatened penalties based on requests for assistance or based on criminal activity of which an individual is a victim or otherwise not at fault under the laws or policies adopted or enforced by “covered governmental entities” meaning any municipal, county, or State government that receives funding under Section 106 of the Housing and Community Development Act of 1974.

22. 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 an 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 that HUD has received their Code of Conduct.

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.

All recipients and subrecipients must comply with the conflict-of-interest requirements in the applicable program regulations and grant agreements. If there are no program-specific regulations for the award, the following conflict-of-interest requirements apply:

i. *Conflicts Subject to Procurement Regulations.* In the procurement of property or services by recipients and subrecipients, the conflict-of-interest rules in 2 CFR 200.317 and 2 CFR 200.318(c) shall apply. In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318(c), recipients and subrecipients must follow the requirements contained in paragraphs ii-v below.

ii. *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 a financial 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), sibling(including a stepsibling), grandparent, grandchild, and in-laws of a covered person.

iii. *Exceptions.* HUD may grant an exception to the general prohibition in paragraph (ii) upon the recipient's written request and satisfaction of the threshold requirements in paragraph (iv), 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 (v).

iv. *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, local, or tribal law.

v. *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 (ii);
 - 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.
- vi. For purposes of the above requirements, once procured, contractors are considered agents of the recipient or subrecipient and are subject to the above conflict of interest rules in addition to the those for procurements at 2 CFR 200.317 or 2 CFR 200.318, as applicable.

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

23. Build America, Buy America.

A. Applicability.

The Build America, Buy America Act ("the BABA Act"), Public Law No. 117-58, §§ 70901-52, requires Federal agencies to ensure none of the funds made available for a Federal financial

assistance award for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. To this end, recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that starting May 14, 2022, any funds obligated are covered under the BABA Act. And, pursuant to the [General Applicability Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance](#), funds obligated on or after November 14, 2022 must comply with section 70914 of the BABA Act, which includes the incorporation of a Buy America Preference (BAP) in the terms and conditions of each award with infrastructure activities. As described in the [General Applicability Waiver of Build America, Buy American Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance](#), the BABA implementation deadline for federal financial assistance from a program for infrastructure provided to Tribes, tribally designated housing entities (TDHEs)) and other tribal entities (“Tribal Recipients”) are delayed until after tribal consultation has been conducted. Regardless of the program, funds obligated tribal recipients on or after May 14, 2023 must comply with Section 70914 of the BABA Act.

In addition, any Federal awards made on or after the applicable effective date must take appropriate steps to ensure financial assistance awards comply with the BABA Act requirements, which may include appropriate terms and conditions incorporating a BAP.

Renewal awards and amendments obligating additional funds to existing awards that are executed on or after November 14, 2022, must also include a Buy America Preference (BAP). Per Office of Management and Budget (OMB) Memorandum number M-22-11, inclusion of a BAP means that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. “All manufacturing processes” for construction materials includes the final manufacturing process and the immediately preceding manufacturing stage for the construction material.

A BAP only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. The Buy America preference does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment,

that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

B. Exceptions to Buy America Preference Requirements Must be Established with a Waiver.

When necessary, recipients may apply for, and HUD may grant, a waiver from the requirements listed above. HUD will notify the recipient of information on the process for requesting a waiver from these requirements.

(1) When HUD has decided that one of the following exceptions applies, the awarding official may waive the application of the BAP:

- a. applying the BAP would be inconsistent with the public interest;
- b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

(2) A request to waive the application of the BAP must be in writing. HUD will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at:

https://www.hud.gov/program_offices/general_counsel/BABA

C. Buy America Preference Definitions.

Construction materials – per M-22-11, includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

Further, the definition of “construction materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.

Domestic content procurement preference – has the same meaning provided in the BABA Act.

Infrastructure – has the same meaning provided in the BABA Act”.

Funds to for-profit organizations – per M-11-22, for purposes of the BABA Act implementation, for-profit organizations are not considered non-Federal entities. However, there may be independent statutory authorities that agencies may have to include domestic content requirements in awards of Federal financial assistance issued to for-profit organizations.

Project – means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Types of Construction Projects:

When determining if a particular construction project of a type not listed in the definition above constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project, for example (including single-unit homes and apartments in multi-unit residential facilities) would not constitute an infrastructure project, but such work in areas not limited exclusively to owners, residents, and their guests would unless otherwise excepted, constitute an infrastructure project.

24. System for Award Management and Universal Identifier Requirements.

Unless you are exempted from the requirements under 2 CFR 25.110, the requirements at [2 CFR part 25](#), including [Appendix A](#) of the same part, are incorporated into the award terms and conditions, and you as the recipient are required to comply. Additional guidance is available on [Sam.gov](#).

25. Trafficking in Persons.

Pursuant to 2 CFR part 175, the following award term and condition applies as written:

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

- ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.
- b. Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.
- c. Provisions applicable to any recipient.*
- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions.* For purposes of this award term:

1. “Employee” means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

26. Award Term and Condition for Recipient Integrity and Performance Matters.

If the total Federal share of the Federal award includes more than \$500,000 over the period of performance, [Appendix XII to 2 CFR part 200](#) applies and is incorporated into the award terms and conditions.

27. Suspension and Debarment.

The governmentwide debarment and suspension regulations in 2 CFR part 180 apply as incorporated and supplemented by HUD’s implementing regulations in 2 CFR part 2424. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

28. Environmental Justice Requirements.

Based on the NOFO under which you applied, you must comply with environmental justice requirements under Executive Orders [12898](#) and [14008](#). If your award is covered by OMB Memorandum [M-21-28](#), which implements the *Justice40 Initiative*, section 223 of Executive Order [14008](#), see the additional instructions in the program NOFO.

29. Eliminating Barriers That May Unnecessarily Prevent Individuals with Criminal Histories from Participation in HUD Programs

In accordance with HUD Secretary Fudge’s April 12, 2022, memorandum, [Eliminating Barriers That May Unnecessarily Prevent Individuals with Criminal Histories from Participating in HUD](#)

[Programs](#), you must prevent unfair and potentially discriminatory exclusions based on criminal history or activity. A person otherwise eligible cannot be excluded from participating in the grant program based on arrest record only. Any reliance on a person's criminal history or criminal activity must be based on accurate records and reliable evidence showing a current danger to persons or property. Before excluding an individual because of criminal history or activity, you must offer that individual the opportunity to provide evidence of mitigating circumstances and you must take such evidence into account. Evidence of mitigating circumstances can include type of crime, the severity of the offense, the length of time since the offense, and evidence of rehabilitation, or that the criminal record is inaccurate.

30. Equity Requirements.

EO 13985 requires federal agencies to develop a comprehensive approach to advancing equity for all, including Black and Brown people and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the government and requires a systemic approach to embed fairness in decision-making processes and recognize and redress inequities in policies and programs that serve as barriers to equal opportunity. Recipients of federal financial assistance from HUD are required to comply with any requirements to advance equity as HUD may prescribe in a Notice of Funding Opportunity.

Persons who are LGBTQ+ often are a historically underserved community. Recipients may consider the significant barriers and discrimination that persons who identify as LGBTQ+ face and consider ways to support underserved communities, such as LGBTQ+, with respect to their proposed NOFO activities.

31. Waste, Fraud, Abuse, and Whistleblower Protections.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of any HUD award must report such incidents to both the HUD official for the award and to HUD's Office of Inspector General (OIG). HUD's OIG is available to receive allegations of fraud, waste, and abuse related to HUD programs via its hotline number (1-800-347-3735) and its online [hotline form](#).

You must comply with [10 U.S.C. 2409](#), including the:

- a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and
- b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.

Under [41 U.S.C. 4712](#), employees of a Government contractor, subcontractor, grantee, and subgrantee—as well as a personal services contractor—who make a protected disclosure about a Federal grant or contract cannot be discharged, demoted, or otherwise discriminated against as long as they reasonably believe the information they disclose is evidence of:

Gross mismanagement of a Federal contract or grant.

1. Waste of Federal funds.
2. Abuse of authority relating to a Federal contract or grant.
3. Substantial and specific danger to public health and safety.

4. Violations of any law, rule, or regulation related to a Federal contract or grant.