

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5700-N-01-C1]

**Technical Correction to HUD's Fiscal Year (FY) 2013 Notice of Funding Availability
(NOFA) Policy Requirements and General Section to HUD's FY2013 NOFAs for
Discretionary Programs**

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Technical Correction to HUD's Fiscal Year (FY) 2013 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY2013 NOFAs for Discretionary Programs.

SUMMARY: On **August 8, 2012**, HUD posted its Fiscal Year (FY) 2013 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY2013 NOFAs for Discretionary Programs to Grants.gov. This Notice provides a technical correction to HUD's Fiscal Year (FY) 2013 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY2013 NOFAs for Discretionary Programs, hereafter referred to as the General Section, to correct language on Page 9, regarding Threshold Requirements and the timing of when they would be applied during HUD's application review process. This technical correction also corrects the title of the Threshold Requirement in Section III.C. .2. d.; and adds a new Threshold Requirement entitled K. Do Not Pay.gov Review. In addition, Section III.C.4 is renumbered to read Section 3. "Compliance with non-discrimination and Other Requirements" and the subsequent paragraphs modified from lettered paragraphs to numbered paragraphs. HUD is also correcting the letter order in Section III.C.3. For the ease of the reader, HUD is republishing the affected sections in their entirety in this Technical Correction.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in each program NOFA. Questions regarding the FY2012 General Section should be directed to the Office of Strategic Planning and Management, Grants Management Office 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. CORRECTIONS TO SECTION III. ELIGIBILITY INFORMATION, SUBSECTION C. 2. THRESHOLD REQUIREMENTS AND C.3. COMPLIANCE WITH NONDISCRIMINATION AND OTHER REQUIREMENTS.

Section III. C.2. is corrected to read as follows:

2. Threshold Requirements.

a. Ineligible Applicants. HUD will not evaluate an application from an ineligible applicant.

b. D&B Data Universal Numbering System (DUNS) Number Requirement. All applicants seeking funding directly from HUD must have a DUNS number and include the number in their Application for Federal Assistance. The DUNS number must reflect the applicant organization that is to receive funding from HUD and correspond to the legal name that is entered into Box 8a of Standard Form 424 (SF424). The legal name entered into Box 8a of the SF424 must correspond to the information provided to D&B and CCR/SAM. Failure to provide a DUNS number and Taxpayer Identification Number (TIN) that is registered at CCR/SAM.gov will prevent an applicant from obtaining an award, regardless of whether it is a new award or renewal of an existing one. This policy is pursuant to the OMB policy issued in the Federal Register on June 27, 2003 (68 FR 38402). HUD published its regulation implementing the DUNS number requirement on November 9, 2004 (69 FR 65024).

c. Active Registration at CCR/www.SAM.gov. All applicants must have an active registration in the Central Contractor Registration. As of July 2012, the General Services Administration (GSA), which operates CCR.gov, is consolidating a number of its systems to a single platform called the “System for Award Management” (SAM) found at www.SAM.gov. For registrants with active registrations in the Central Contractor Registration, this transition will be seamless as registrations will automatically migrate to the new SAM platform. However, anyone that did not have an active registration in SAM as of July 2012 will have to update/renew their registration in SAM. Please check with www.SAM.gov and www.Grants.gov for updates on this transition. HUD will not make an award of funds to an applicant organization listed in Box 8a of the SF424 that does not have an active registration in CCR/SAM.gov. HUD will not make an award of funds to an applicant where the DUNS number, Tax Identification Number (TIN), name or address of the applicant organization does not match CCR/SAM data files. Registrations in CCR/SAM are active for one year. HUD will not make a payment to an awardee whose CCR/SAM Registration has expired. See Interim Rule published July 15, 2010 (75 FR 41087) and Final Rule published December 8, 2010 (75 FR 76260).

d. Resolution of Outstanding Civil Rights Matters Must Be Completed Prior to the Application Deadline.

(1) If you, the applicant, have one of the following charges, cause determinations, lawsuits, or letters of findings referenced in subparagraphs (a), (b), (c), (d), or (e) that has not been resolved to HUD’s satisfaction before the application deadline, then you, the applicant, are ineligible for funding.

(a) You have received a charge from HUD concerning a systemic violation of the Fair Housing Act or received a cause determination from a substantially-equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair

housing law proscribing discrimination because of race, color, religion, sex, national origin, disability or familial status;

(b) You are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. 3614(a);

(c) You have received a letter of findings identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974;

(d) You have received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation or gender identity; or

(e) You have received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a state or local law proscribing discrimination in housing based on lawful source of income.

(2) HUD will determine if actions to resolve the charge, cause determination, lawsuit, or letter of findings taken before the deadline are sufficient to resolve the matter. Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(a) Current compliance with a voluntary compliance agreement signed by all the parties;

(b) Current compliance with a HUD-approved conciliation agreement signed by all the parties;

(c) Current compliance with a conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;

(d) Current compliance with a consent order or consent decree; or

(e) Current compliance with a final judicial ruling or administrative ruling or decision.

e. No Debarments and/or Suspensions. In accordance with 2 CFR part 2424, no award of federal funds may be made to an applicant that is debarred or suspended, or proposed to be debarred or suspended from doing business with the Federal Government.

f. Consistency with the Consolidated Plan and Analysis of Impediments to Fair Housing Choice.

Certain competitive programs require that the application for HUD funds contain a certification of consistency with a HUD-approved Consolidated Plan. This certification of consistency means the jurisdiction's plan shows need, the proposed activities are consistent with the jurisdiction's strategic plan, and the location of the proposed activities is consistent with the geographic areas specified in the consolidated plan. The Consolidated Plan also includes the jurisdiction's certification to affirmatively further fair housing, which means the jurisdiction will conduct an Analysis of Impediments to Fair Housing Choice (AI). In making consistency determinations, the jurisdiction should consider information contained in the AI relevant to the Consolidated Plan. If a program NOFA requires a certification of consistency with the Consolidated Plan and the applicant fails to provide a certification, and such failure is not cured as a technical deficiency, HUD will not fund the application. If a program NOFA requires a certification of consistency with the Consolidated Plan and HUD finds that one or more activities are not consistent with the Consolidated Plan, HUD will not fund the inconsistent activities or will deny funding the application if a majority of the activities are not consistent with the approved Consolidated Plan. The determination not to fund an activity or to deny funding may be determined by a number of factors, including the number of activities being proposed, the impact of the elimination of the activities on the proposal, or the percent of the budget allocated to the proposed activities.

g. Outstanding Delinquent Federal Debts. It is HUD policy, consistent with the purposes and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), that applicants with an outstanding federal debt will not be eligible to receive an award of funds from the Department unless:

- (1) A negotiated repayment schedule was established and the repayment schedule is not delinquent, or
- (2) Other arrangements satisfactory to HUD are made prior to the award of funds by HUD. If arrangements satisfactory to HUD cannot be completed within 90 days of notification of selection, HUD will not make an award of funds to the applicant, but offer the award to the next eligible applicant. Applicants selected for funding, or awarded funds, must report to HUD changes in status of current agreements covering federal debt. HUD may withhold funding, terminate an award, or seek other remedies from a grantee if a previously agreed-upon payment schedule has not been adhered to or a new agreement with the federal agency to which the debt is owed has not been signed.

h. Pre-Award Accounting System Survey. HUD will not award or disburse funds to any applicant that does not have a financial management system that meets federal standards. HUD may arrange for a pre-award survey of the applicant's financial management system if the recommended applicant has no prior federal support, if HUD's program officials have reason to question whether the applicant's financial management system meets federal financial management standards, or if the applicant is considered a high risk based upon past performance or financial management findings. Please see 24 CFR 84.21 if you are an institution of higher education, hospital, or other nonprofit organization. See 24 CFR 85.20 if you are a state, local government, or federally recognized Indian tribe.

i. Name Check Review. Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, including if any key individual has been convicted or is presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant or any key individual, HUD reserves the right to:

- (1) Deny funding, or in the case of a renewal or continuing award, consider suspension or termination of an award immediately for cause,
- (2) Require the removal of any key individual from association with management or implementation of the award, and
- (3) Make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

j. False Statements. A false statement in an application is grounds for denial or termination of an award and possible punishment, as provided in 18 U.S.C. 1001.

k. Do Not Pay.gov Review. In making funding determinations, HUD will look up applicant information on the Federal website “Do Not Pay.gov”. The Do Not Pay website consolidates several federal websites into a single portal. The Do Not Pay Portal is intended to prevent improper payments and can be used by HUD to ensure that applicants that receive funding do not owe funds to the federal government; are not on the Excluded Parties List System (EPLS); the List of Excluded Individuals/Entities List (LEIE); the SSA Death Master File (DMF); or other federal databases that would provide adverse information regarding the applicant. HUD reserves the right to:

- (1) Deny funding, or in the case of a renewal or continuing award, consider suspension or termination of an award immediately for cause,
- (2) Require the removal of any key individual from association with management or implementation of the award, and
- (3) Make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

l. Each individual program NOFA may have additional threshold requirements in addition to those listed in this General Section.

II. TECHNICAL CORECTION TO SECTION III.C.3. COMPLIANCE WITH NONDISCRIMINATION AND OTHER REQUIREMENTS.

Section III.C.4 is renumbered to be Section III.c.3. Compliance with Nondiscrimination and Other Requirements. In addition, lettering in the section subparagraphs has been corrected. No changes have been made to the content of the requirements.

3. Compliance with Nondiscrimination and Other Requirements.

The following requirements apply to all individual program NOFAs. Because there are some variations in requirements between the programs, please read the corresponding requirements in the individual program notices carefully.

a. Compliance with Fair Housing and Civil Rights Laws.

- (1) 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 American With Disabilities Act of 1990; and Section 109 of the Housing and Community Development Act of 1974.
- (2) If the applicant is conducting programs or activities with funds received under a HUD program NOFA in a state or local jurisdiction that has passed a law or laws proscribing discrimination in housing based upon sexual orientation or gender identity, or a law or laws proscribing discrimination in housing based on lawful source of income, the applicant and its subrecipients must comply with those laws of the states or localities in which the programs or activities are conducted;
- (3) If you are a federally recognized Indian tribe or Tribally Designated Housing Entity (TDHE), you must comply with the nondiscrimination provisions enumerated in the regulations

applicable to the HUD assistance programs that you administer. Each program NOFA shall specify the applicable civil rights requirements for Indian Tribes or tribally designated entities when they are listed as eligible applicants under the program NOFA.

b. Affirmatively Furthering Fair Housing (AFFH).

Section 808(e)(5) of the Fair Housing Act imposes a duty on HUD to affirmatively further the purposes of the Fair Housing Act in its housing and urban development programs. Accordingly, HUD requires recipients of HUD funds, including those awarded and announced under HUD's FY2013 program NOFAs that are not specifically exempted, to take affirmative steps to further fair housing.

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 individual program NOFAs for more information on exemptions.

Unless otherwise specified in the individual program NOFAs, your application must discuss how you are going to carry out your proposed activities in a manner that affirmatively furthers fair housing.

To affirmatively further fair housing, your proposed activities must help overcome any impediments to fair housing choice that are identified in the "Analysis of Impediments to Fair Housing Choice" (AI) produced by the state and/or local government(s) in which your program activities occur, the effects of those impediments, and any other impediments in housing or urban development activities you may identify. State and local governments produce an AI as a condition of receipt of certain HUD funds, and a copy must be made available for inspection by the public. (See, for example, HUD's rule at 24 CFR §§ 91.225(a)(1); 91.5.) In addition, the proposed activities must address at least one of the following objectives: (1) help overcome any impediments to fair housing choice related to the assisted program or activity itself; (2) promote racially, ethnically, and socioeconomically diverse communities; or (3) promote housing-related opportunities that overcome the effects of past discrimination because of race, color, national origin, religion, sex, disability, and familial status. Eligible activities and means for fulfilling this requirement to will be more specifically identified in the individual program NOFAs. Alternative or additional requirements to Affirmatively Furthering Fair Housing will be identified in the individual program NOFAs. The following are examples of how to meet the AFFH requirements. These examples are not intended as exclusive alternatives; grantees are encouraged to select activities and outcomes that best meet their specific context.

(1) For programs that focus on planning, activities that affirmatively further fair housing include those that promote racially, ethnically, and economically diverse communities and integrated living patterns and avoid patterns where persons are forced to live in high poverty areas, or in areas suffering from a lack of accessible services, or a lack of integration in terms of income, race, or ethnicity, or disability status.

(2) For programs that focus on redevelopment of existing neighborhoods, activities that affirmatively further fair housing include those that:

(a) Integrate housing development with access to effective schools, job training, child care,

financial services, health care services, social services, or public transportation;

(b) Increase economic and racial and ethnic diversity within the neighborhood; and

(c) To the extent permitted by program and relocation assistance requirements, provide existing residents with the choice to remain in their current neighborhood or pursue housing choices in areas of greater racial, ethnic and income or diversity and in areas that provide improved housing opportunities, effective schools, access to jobs or job training, financial services, medical and social services, health care facilities, and transportation.

(3) For programs that focus on rehabilitation or new construction of housing, activities that affirmatively further fair housing include those that:

(a) Ensure that housing is sited in a manner to enhance racial or ethnic diversity;

(b) Ensure that housing units are affordable to persons of low, very low, and moderate income;

(c) To the extent permitted by program requirements, ensure that buildings and housing units are accessible beyond federal accessibility requirements and visitable by persons with disabilities;

(d) To the extent permitted by program and relocation assistance requirements, ensure that any existing residents relocated to facilitate construction are afforded preference or first right of refusal, and first right of return for the new units; and

(e) Ensure that the units are placed in an area of opportunity, which includes factors such as access to employment, retail and cultural centers, effective schools, health care facilities, social services, and public transportation. New construction activities must refrain from geographically concentrating housing for persons with physical, mental or developmental disabilities. Such housing are encouraged to be placed in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(4) For programs that include or require marketing, affirmative marketing activities include:

(a) Making the availability of the affordable housing units or other new development widely known throughout the market area, including to persons who are not likely to be aware of the housing opportunity, such as persons with impaired vision or hearing and persons with Limited English proficiency and

(b) Affirmative marketing of the redevelopment to landlords, real estate professionals, and developers. (See 54 FR 3232 and 3235, January 23, 1989.)

(5) For programs that provide counselling, social services, technical assistance, or fair housing services, activities that affirmatively further fair housing include:

(a) Providing clients with training and information on rights and remedies available under the federal, state and local fair housing and civil rights laws;

(b) Where there are instances suggesting that violations of such laws have occurred or are occurring, provide information to HUD to investigate such potential violations; and are affirmatively marketed, as described above.

(6) For programs that involve community-based education, and/or outreach, examples of activities that affirmatively further fair housing include:

(a) Where appropriate, designing and implementing education, and outreach and marketing initiatives that maximize communication with, and dissemination of information to, persons

unlikely to have access to information or benefits, including persons of different ethnic and racial backgrounds, and persons with disabilities;

(b) Conducting activities in a manner that provides meaningful access to persons with Limited English Proficiency (LEP); and underserved or hard-to-house populations, including large families, persons with disabilities, single parents with children, persons residing in institutions, and racial or ethnic minorities.

(7) For programs involving community-based or academic research, examples of activities that affirmatively further fair housing include:

(a) Where appropriate engaging with minorities, persons with disabilities, and vulnerable populations in the research program either as participants, interviewees within the research, or as beneficiaries of the HUD programs that are being examined for effectiveness or improvements under the research program;

(b) Making persons with LEP, vulnerable populations, minorities, and persons of different ethnic and racial backgrounds aware of opportunities to participate in research being conducted through information dissemination and solicitation of input into the research study; (3) disseminating the results of the research to persons with LEP in languages they understand, to vulnerable populations, to diversity of racial and ethnic groups, and to minority-serving academic and other institutions; and (4) ensuring that community-based research reflects diverse racial and ethnic populations, including persons with LEP and vulnerable populations.

c. 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 HUD 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). For assistance and information regarding LEP obligations, go to: http://www.justice.gov/crt/lep/guidance/HUD_guidance_Jan07.pdf . For more information on LEP, please visit <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>.

d. 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. 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. 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. Also, the program NOFAs for which Section 3 is applicable will include information regarding how Section 3 activities will be considered in rating the application. Applicants subject to this requirement will 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. 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: <http://www.hud.gov/offices/fheo/section3/section3.cfm>.

e. Ensuring the Participation of Small Disadvantaged Businesses, and Women-Owned Businesses. HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD 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) and nonprofits recipients of assistance (grantees and subgrantees) by 24 CFR 84.44(b) 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 individual program NOFAs.

f. Accessible Technology. Section 508 of the Rehabilitation Act (Section 508) requires HUD and other federal departments and agencies to ensure, when developing, procuring, maintaining, or using electronic and information technology (EIT), that the EIT allow, regardless of the type of medium, 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's coverage includes, but is not limited to, computers (hardware, software, word processing, email, and Internet sites), facsimile machines, copiers, and telephones. Among other things, Section 508 requires that, EIT must 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 who are not disabled 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 a disabled individual 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. HUD encourages its funding recipients to adopt the goals and objectives of Section 508 by ensuring, whenever EIT is used, procured, or developed, 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 should go to: <http://www.section508.gov/>.

g. Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity. As the Nation’s housing agency, HUD policy is to ensure that its programs do not involve arbitrary discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, and that its policies and programs serve as models for equal housing opportunity. Toward this goal, HUD revised its program regulations on February 3, 2012 (77 FR 5662) to ensure that its core programs are open to all eligible individuals and families without regard to sexual orientation, gender identity, or marital status in housing assisted with HUD funds or subject to FHA insurance. Applicants are encouraged to become familiar with HUD’s February 3, 2012 final rule, which requires equal access to HUD-assisted and insured housing without regard to sexual orientation, gender identity, or marital status and prohibits inquiries on sexual orientation or gender identity for the purpose of determining eligibility for HUD-assisted or -insured housing or otherwise making such housing available.

h. Executive Order 13279, “Equal Protection of the Laws for Faith-Based and Community Organizations” and Executive Order 13559. In accordance with Executive Order 13279, faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD’s programs and activities. HUD-funded programs are subject to 24 CFR 5.109, which implements Executive Order 13279 and prescribes Departmental policies and requirements governing the equal participation of faith-based organizations. HUD’s rule at section 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 HUD funds 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 amends Executive Order 13279 to require agencies to:

- Administer or award Federal financial assistance for social service programs to implement protections for the beneficiaries or prospective beneficiaries of such programs by providing referrals to alternative providers if the beneficiary objects to the religious character of the organization providing services, as well as written notice of these protections to beneficiaries before enrolling in or receiving services;
- State that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference, and must be made on the basis of merit, not on the basis of the religious affiliation, or lack of affiliation, of the recipient organization;
- State that the Federal government has an obligation to monitor and enforce all standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities;
- Clarify the principle that organizations engaging in explicitly religious activity must separate these activities in time or location from programs supported with direct Federal financial assistance and that participation in such activities must be voluntary for the beneficiaries of the social service program supported with Federal financial assistance;
- Emphasize that religious providers are welcome to compete for government social service funding and maintain a religious identity as described in the order;

- Require agencies that provide Federal financial assistance for social service programs to post online regulations, guidance documents, and policies that have implications for faith-based and neighborhood organizations and to post online a list of entities receiving such assistance; and
- Clarify that church-state standards and other standards apply to subawards as well as prime awards.

HUD's NOFAs providing social services shall include provisions consistent with the amendments to the Executive Order.

i. 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.

PLEASE NOTE: 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.

j. Conducting Business in Accordance with Core Values and Ethical Standards/Code of Conduct. Applicants subject to 24 CFR parts 84 or 85 (most nonprofit organizations and state,

local, and Indian tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b) (3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. Before entering into an agreement with HUD, an applicant awarded assistance under a HUD program NOFA issued in FY2013 will be required to submit a copy of its code of conduct and describe the methods it will use to ensure that all officers, employees, and agents of its organization are aware of its code of conduct. The code of conduct must be dated and signed by the Executive Director, or Chair of the governing body of the organization.

An applicant is prohibited from receiving an award of funds from HUD if it fails to meet this requirement for a code of conduct. An applicant that previously submitted an application and included a copy of its code of conduct will not be required to submit another copy if the applicant is listed on HUD's website at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/conduct and if the information is still accurate. An applicant not listed on the website must submit a copy of its code of conduct with its application or if the information listed on the above website has changed (e.g., the person who submitted the previous application is no longer the authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed.).

k. Prohibition Against Lobbying Activities. Applicants are subject to the provisions of Section 319 of Public Law 101-121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. In addition, applicants must disclose, using Standard Form LLL (SFLLL), "Disclosure of Lobbying Activities," any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, Members of Congress, or congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribal entities established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but state-recognized Indian tribes and TDHEs established only under state law must comply with this requirement. Applicants must submit the SFLLL if they have used or intend to use federal funds for lobbying activities. (See 24 CFR part 87 subpart A, including Appendix A)

l. Procurement of Recovered Materials. State agencies and agencies of a political subdivision of a state that are using assistance under a HUD 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.

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

n. Salary Limitation for Consultants. Fiscal Year 2013 funds may not be used to pay or provide reimbursement for payment of the salary of a consultant at a rate more than the equivalent of Executive Schedule level IV (currently \$155,500) which is in accord with the Office of Personnel Management. The FY2012 tables are found at:
<http://www.opm.gov/oca/12tables/html/ex.asp>.

o. Environmental Requirements. If you become a recipient under a HUD program that assists in physical development activities or property acquisition, you are generally prohibited from acquiring, rehabilitating, converting, demolishing, leasing, repairing, or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

- (1) HUD has completed an environmental review in accordance with 24 CFR part 50; or
- (2) For programs subject to 24 CFR part 58, HUD has approved a recipient's Request for Release of Funds (form HUD7015.15) following a responsible entity's completion of an environmental review.

You, the applicant, should consult the individual program NOFA for any program for which you are interested in applying to determine the procedures for, timing of, and any modifications or exclusions from environmental review under a particular program.

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

Certain OMB Circulars found in title 2 of the Code of Federal Regulations, and HUD'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, acceptance, and use of assistance under the individual program NOFAs, except when inconsistent with the provisions of applicable federal statutes or regulations, the provisions of this notice or as may be modified by the individual program NOFAs.

- (1) *OMB Circular A-102* (24 CFR part 85) (Administrative Requirements For Grants and Cooperative Agreements To State, Local And Federally Recognized Indian Tribal Governments).

(2) 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)

(3) OMB Circular A-87 (2 CFR part 225) (Cost Principles for State, Local, and Indian Tribal Governments)

(4) OMB Circular A-21 (2 CFR part 220) (Cost Principles for Education Institutions)

(5) OMB Circular A-122 (2 CFR part 230) (*Cost Principles for Non-Profit Organizations*)

(6) OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations)

Copies of the OMB circulars may be obtained from the following site:

http://www.whitehouse.gov/omb/circulars_default, or 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 dialling 800-877-8339 (toll-free TTY Federal Relay Service).

q. Drug-Free Workplace. Applicants awarded funds from HUD are required to provide a drug-free workplace. Compliance with this requirement means that the applicant will:

(1) 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 that 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;

(2) Establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) The applicant’s policy of maintaining a drug-free workplace;

(c) Any available drug counselling, rehabilitation, or employee assistance programs;

And

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Notify HUD, and every federal agency on whose award the convicted employee was working, 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 and Oversight, Department of Housing and Urban Development, 451 7th Street, SW, Room 3156, Washington DC 20410-3000, along with the following information:

(a) The program title and award number for each HUD award covered;

(b) The HUD staff contact name, telephone and fax numbers;

(c) A grantee contact name, telephone and fax numbers;

(d) The convicted employee's position and title; and

(4) 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 (1) 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:

(a) 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

(b) 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; and

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

(a) At the time of application or upon award; or

(b) In documents that you keep on file in your offices during performance of the award, in which case you must make the information available for inspection upon request by the agency.

r. Conflicts of Interest. If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under HUD FY2013 program NOFAs published, you are subject to 18 U.S.C. 208, the federal criminal conflict-of-interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for FY2013 program NOFAs, you may not serve on a selection panel and you may not serve as a technical advisor to HUD. Persons involved in rating and ranking HUD FY2013 program NOFAs, including HUD staff, experts and consultants, must avoid conflicts of interest or the appearance of such conflicts. Persons involved in rating and ranking applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information, if applicable; how the selection or non-selection of any applicant under FY2013 program NOFAs will affect the individual's financial interests, as provided in 18 U.S.C. 208, or how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The person must disclose this information before participating in any matter regarding an FY2013 program NOFA. If you have questions regarding these provisions or concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at 202-708-3815 (this is not a toll-free number).

s. Safeguarding Resident/Client Files. In maintaining resident and client files, HUD funding recipients shall comply with the Privacy Act of 1974 (the Act), the agency rules and regulations issued under the Act, and observe state and local laws concerning the disclosure of records that pertain to individuals. Further, recipients are required to comply with the 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. This includes when reviewing, printing, or copying client files.

t. Executive Order 12372, “Intergovernmental Review of Federal Programs”. Executive Order 12372, “Intergovernmental Review of Federal Programs,” was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct development. HUD implementing regulations are published at 24 CFR part 52. The Executive Order allows each state to designate an entity to perform a state review function. To determine if your state has designated a State Point of Contact (SPOC), please go to http://www.whitehouse.gov/omb/grants_spoc/. States not listed on the website have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact the SPOC to see if it is interested in reviewing your application before you submit it to HUD.

Please make sure that you allow ample time for this review when developing and submitting your application. If your state does not have a SPOC, you can submit your application directly to HUD using Grants.gov. Not all programs require this review.

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

(1) Prime Grant Awardee Reporting. Prime recipients of HUD financial assistance are required to report certain subawards in the Federal Government-wide website www.fsrs.gov or its successor system.

Starting with awards made October 1, 2010, prime financial assistance awardees receiving funds directly from HUD 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 (1) 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 (2) 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 Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110-252, hereafter referred to as the “Transparency Act” and OMB Guidance issued to the Federal agencies on September 14, 2010 (75 FR 55669) and in OMB Policy guidance. The prime awardee will have until the end of the month plus one additional month after a subaward or pass-through award is obligated to fulfill the reporting requirement. Prime recipients are required to report the following information for applicable subawards:

- (a) Name of entity receiving award;
- (b) Amount of award;
- (c) Funding agency;
- (d) North American Industry Classification System (NAICS) code for contracts/CFDA program for financial assistance awards;
- (e) Program source;
- (f) Award title descriptive of the purpose of the funding action;
- (g) Location of the entity (including Congressional district);

- (h) Place of Performance (including Congressional district);
- (i) Unique identifier of the entity and its parent; and
- (j) Total compensation and names of top five executives.

For the purposes of reporting into the FFATA Subaward Reporting System (FSRS) reporting site, the unique identifier is the DUNS number the entity has obtained from Dun and Bradstreet and, for prime awardees, the DUNS number registered in SAM as required by HUD regulation 24 CFR 5.1004. This information will be displayed on a public government website pursuant to the Transparency Act.

(a) Prime Grant Awardee Executive Compensation Reporting. Prime awardees must also report in the government-wide website the total compensation and names of the top five executives in the prime awardee organization if:

- (i) More than 80 percent of the annual gross revenues are from the Federal Government, and those revenues are greater than \$25 million annually; and
- (ii) Compensation information is not readily available through reporting to the Securities Exchange Commission (SEC).

(b) Subaward Executive Compensation Reporting. Prime grant awardees must also report in the government-wide website the total compensation and names of the top five executives in the subawardees if:

- (i) More than 80 percent of the annual gross revenues are from the Federal Government, and those revenues are greater than \$25 million annually; and

(ii) This required compensation information is not readily available through reporting to the SEC. For applicable 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.

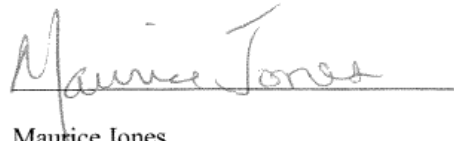
(c) Transparency Act Reporting Exemptions. The Transparency Act exempts any subawards less than \$25,000 made to individuals and any subawards less than \$25,000 made to an entity whose annual expenditures are less than \$300,000. Subawards with a cumulative total of \$25,000 or greater are subject to subaward reporting beginning the date the subaward total award amount reaches \$25,000. The Transparency Act also prohibits reporting of any classified information. Any other exemptions to the requirements must be approved by the Office of Management and Budget.

v. Compliance with Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), hereafter referred to as "Section 872". Section 872 requires the establishment of a government-wide data system – the Federal Awardee Performance and Integrity Information System (FAPIIS) - to contain information related to the integrity and performance of entities awarded federal financial assistance and making use of the information by federal officials 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.

w. Eminent Domain. Section 409 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2012 (Pub L. 111-117), 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 409 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 409. Applicants for FY2013 assistance under the programs governed by this General Section may be subject to this restriction if it is incorporated in HUD's FY2013 appropriation. Subsequent to the passage of HUD's FY2013 appropriation HUD will publish a notice indicating if this provision applies.

Dated: October 13, 2012

A handwritten signature in cursive script, reading "Maurice Jones", is written over a horizontal line.

Maurice Jones

Deputy Secretary

[FR-5700-N-01- C1]