



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention:

Public Housing Agencies (PHA)
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

NOTICE
PIH-2017-04 (HA)

Issued: March 3, 2017

Expires: Effective until amended, superseded, or rescinded

Cross References:
24 CFR Part 87, 2 CFR Part 200.450

Subject: Limitations on Payments to Influence Federal Transactions for PIH Programs and PHA Anti-Lobbying Certification and Disclosure Requirements

1. BACKGROUND AND PURPOSE

This Notice provides guidance for PHAs that receive federally appropriated funds exceeding \$100,000. If a PHA has received over \$100,000 in federally appropriated funds, in any PHA fiscal year, the PHA must submit Form HUD-50071 Certification of Payments to Influence Federal Transactions (Form HUD-50071), certifying that the PHA has not and will not make any prohibited payments from federal appropriated funds. Additionally, HUD requires these PHAs to submit Standard Form-LLL Disclosure of Lobbying Activities (SF-LLL), only if they have used non-federally appropriated funds for influencing or attempting to influence executive or legislative branch personnel in connection with new or renewal funding or regarding the formulation, modification, or adoption of policy or legislation.

This Notice clarifies the previous guidance provided in Notice PIH 98-59 regarding the limitations on the payment of funds to influence Federal transactions for the Public and Indian Housing Programs. It also clarifies the submission requirements for the Form HUD-50071 and SF-LLL.

2. APPLICABILITY

The certification and disclosure requirements apply to all PHAs (including MTW PHAs) established under State law receiving federal appropriations, if the amount of federally appropriated funds exceed \$100,000, in any PHA fiscal year. In the event a PHA's grant amounts are not large enough (i.e., \$100,000 or less) to trigger the certification and disclosure requirements, the prohibition against the use of federally appropriated funds for lobbying activities still applies.

In accordance with the Lobbying Disclosure Act of 1995 (the Act), lobbying activities are defined as: lobbying contacts and efforts in support of such contacts, including preparation and planning activities; research and other background work that was intended, at the time it was performed, for use in contacts; and coordination with the lobbying activities of others. Under the Act, any oral, written, or electronic communication with covered officials regarding new or renewal funding or the formulation, modification, or adoption of policy or legislation constitutes a lobbying contact. Communications with covered officials relating to the administration or execution of a Federal program or policy are also included. Covered officials include, among others, members of Congress and executive officials, such as agency heads and deputies and assistant and deputy assistant secretaries.

PHAs are not prohibited from engaging in lobbying activities if the activities are funded with non-federally appropriated funds. However, disclosure requirements still apply.

PHAs' contributions to trade associations do not constitute lobbying activities under this Notice. Any lobbying activities conducted by a trade association shall be registered by that trade association's lobbyist. The certification and disclosure requirements in this Notice do not apply to PHA contributions to trade associations.

3. PROHIBITION ON PAYMENTS OF FEDERALLY APPROPRIATED FUNDS FOR LOBBYING ACTIVITIES

24 CFR Part 87 and 2 CFR Part 200.450 prohibit the use of any federally appropriated funds to influence or attempt to influence Federal officials in connection with any Federal contracts, grant, loan, or cooperative agreement. Collectively known as the Byrd Amendment, these requirements apply to Federal contracts, grants, and cooperative agreements exceeding \$100,000 and Federal loan guarantees and loan insurance exceeding \$150,000. Byrd Amendment requirements for PHAs are two-fold:

1. A PHA is required to certify that no federally appropriated funds will be or have been used to influence Federal employees, Members of Congress, and Congressional staff regarding specific grants or contracts (Form HUD-50071); and
2. If a PHA uses non-federally appropriated funds for lobbying on behalf of specific projects or proposals, the PHA is required to submit disclosure documentation (SF-LLL).

4. CERTIFICATION AND DISCLOSURE SUBMISSION REQUIREMENTS

If a PHA receives federally appropriated funds exceeding \$100,000 in any PHA fiscal year, the PHA must submit Form HUD-50071 certifying that the PHA has not and will not make any prohibited payment from federally appropriated funds.

These PHAs are also required to submit the SF-LLL if the PHA has used any non-federally appropriated funds to make a payment for lobbying activities or has agreed to make such payments.

HUD requires PHAs to submit lobbying certifications and disclosures to the offices from which they receive funds as a condition of the receipt of such funds.

5. RESPONSIBILITIES OF THE PHA

- A. **Record Retention Requirements.** The PHA shall retain the original of Form HUD-50071 and a copy of SF-LLL, if applicable, in its files for a minimum of three years. The PHA shall forward a copy of the Form HUD-50071 and the original SF-LLL to the Field Office in accordance with PIH Lobbying Handbook 7570.1.
- B. **Contractors.** Contractors shall submit to the PHA Form HUD-50071 and the SF-LLL, if applicable, for each contract exceeding \$100,000. The PHA's contractor is responsible for ensuring that any of its subcontractors or other sub-recipients submit to the Contractor Form HUD-50071 and the SF-LLL for each subcontract or sub-grant exceeding \$100,000. The Contractor shall provide subcontractor disclosure and certification forms to the PHA when applicable.
- C. **Submission Responsibility.** It is the responsibility of the PHA to determine whether it is required to submit the Form HUD-50071 and SF-LLL to HUD in accordance with this Notice. The PHA is responsible for ensuring that its contractors, including architects, engineers, and other consultants which are contractors, comply with all certification and disclosure requirements.
- D. **Submission Timing.** HUD requires PHAs to submit lobbying certifications and disclosures to the offices from which they receive funds as a condition of the receipt of such funds. For example:
 - a. PHAs that receive Capital Fund awards are required to submit Form HUD-50071 and SF- LLL, if applicable, to the respective field office annually by the date identified and posted by HUD.
 - b. PHAs must submit Form HUD-50071 and SF- LLL, if applicable, to the respective field office before a determination can be made about eligibility under the Operating Fund formula.
- E. **MTW Agencies.** HUD requires MTW agencies to submit Form HUD-50071 and, if applicable, SF-LLL with their Annual MTW Plan. Notwithstanding, these Annual MTW

Plan submissions do not preempt the PHA's requirement to submit Form HUD-50071 and SF-LLL, if applicable, in accordance with this Notice, including Capital Fund awards, Operating Fund formula, or any other federal funding source for which these forms are required.

6. RESPONSIBILITIES OF HUD FIELD OFFICES

- A. **Certification and Disclosure Review.** On an annual basis, when PHAs submit HUD Forms 52722 and 52723 to request operating funds, field office staff will: 1) verify receipt of the required certification (Form HUD-50071) and 2) check that the certification is complete and accurate. This review will take place before PHAs' operating subsidy eligibility determination is made. If a PHA is required to submit SF-LLL, the Field Office will also review the SF-LLL disclosure upon submission by PHAs.

When PHAs submit the Annual Capital Fund Formula Grant Submission, field office staff will: 1) verify receipt of the required certification (Form HUD-50071) and 2) check that the certification is complete and accurate. If a PHA is required to submit SF-LLL, the Field Office will also review disclosure SF-LLL upon submission by PHAs.

- B. **File Documentation.** The Field Office shall retain copies of Form HUD-50071 certification and SF-LLL, if applicable, in the appropriate application or program file for a minimum of three years.
- C. **Suspected Violations.** Field Offices shall be alert to possible violations including PHAs using federally appropriated funds for lobbying activities, submitting false information to HUD, and/or failing to submit the required forms.

If the suspected violation involves a violation of the lobbying prohibition or the submission of false statements, the Field Office shall refer violations to the Office of the Inspector General (OIG) for further investigation and to pursue administrative sanctions against responsible agency officials in accordance with 24 CFR §87.400. In the case of false statements, the Field Office shall also concurrently require the PHA to resubmit the statements with accurate information.

If the suspected violation involves a failure to file any required forms, the Field Office shall refer the violation to OIG after providing the PHA with a deadline for correcting the violation. If the PHA does not meet the deadline, the matter shall be referred to OIG. If the PHA files the required forms within the correction deadline provided, the Field Office may nevertheless refer the matter to OIG if it believes the violation was intentional or the result of such gross negligence that would warrant sanctions.

After reviewing a suspected violation, OIG will determine if criminal sanctions might be appropriate or, if not, may ask OGC to pursue an action under the False Claims Act Program Fraud Civil Remedies Act or to seek civil money penalties. In the event that further investigation or action is required, the issue will be escalated to the Departmental Enforcement Center (DEC).

7. CONTACT INFORMATION

For further information about this notice, PHAs may send an email to publichousingpolicyquestions@hud.gov.

8. PAPERWORK REDUCTION ACT

The information collections referenced in this Notice have been approved by OMB pursuant to the Paperwork Reduction Act under, OMB# 2577-0220 and OMB# 2577-0226.

/s/

Jemine A. Bryon
General Deputy Assistant Secretary for
Public and Indian Housing