

Office of the Secretary, HUD**§4.26**

sanction the person who received information improperly by, among other things, denying assistance to that person.

§ 4.22 Definitions.

Application means a written request for assistance regardless of whether the request is in proper form or format.

Assistance does not include any contract (e.g., a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR ch. 1).

Disclose means providing information directly or indirectly to a person through any means of communication.

Employee includes persons employed on a full-time, part-time, or temporary basis, and special government employees as defined in 18 U.S.C. 202. The term applies whether or not the employee is denoted as an officer of the Department. "Employee" is to be construed broadly to include persons who are retained on a contractual or consultative basis under an Office of Human Resources appointment. However, "employee" does not include an independent contractor, e.g., a firm or individual working under the authority of a procurement contract.

Material or materially means in some influential or substantial respect or having to do more with substance than with form.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

Selection process means the period with respect to a selection for assistance that begins when the HUD official responsible for awarding the assistance involved, or his or her designee, makes a written request (which includes the selection criteria to be used in providing the assistance) to the Office of General Counsel (OGC) to prepare the NOFA, solicitation, or request for applications for assistance for publication in the FEDERAL REGISTER. The period includes the evaluation of applications, and concludes with the announcement of the selection of recipients of assistance.

§ 4.24 Scope.

(a) *Coverage.* The prohibitions against improper disclosure of covered selection information apply to any person who is an employee of the Department. In addition, the Department will require any other person who participates at the invitation of the Department in the selection process to sign a certification that he or she will be bound by the provisions of this part.

(b) *Applicability.* The prohibitions contained in this part apply to conduct occurring on or after June 12, 1991.

§ 4.26 Permissible and impermissible disclosures.

(a) Notwithstanding the provisions of Section 103, an employee is permitted to disclose information during the selection process with respect to:

(1) The requirements of a HUD program or programs, including unpublished policy statements and the provision of technical assistance concerning program requirements, provided that the requirements or statements are disclosed on a uniform basis to any applicant or potential applicant. For purposes of this part, the term "technical assistance" includes such activities as explaining and responding to questions about program regulations, defining terms in an application package, and providing other forms of technical guidance that may be described in a NOFA. The term "technical assistance" also includes identification of those parts of an application that need substantive improvement, but this term does not include advising the applicant how to make those improvements.

(2) The dates by which particular decisions in the selection process will be made;

(3) Any information which has been published in the FEDERAL REGISTER in a NOFA or otherwise;

(4) Any information which has been made public through means other than the FEDERAL REGISTER;

(5) An official audit, inquiry or investigation, if the disclosure is made to an auditor or investigator authorized by the HUD Inspector General to conduct the audit or investigation;

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(6) Legal activities, including litigation, if the disclosure is made to an attorney who is representing or is otherwise responsible to the Department in connection with the activities; or

(7) Procedures that are required to be performed to process an application, e.g., environmental or budget reviews, and technical assistance from experts in fields who are regularly employed by other government agencies, provided that the agency with which the expert is employed or associated is not an applicant for HUD assistance during the pending funding cycle.

(b) An authorized employee, during the selection process, may contact an applicant for the purpose of:

(1) Communication of the applicant's failure to qualify, after a preliminary review for eligibility and completeness with respect to his or her application, and the reasons for the failure to qualify, or the fact of the applicant's failure to be determined to be technically acceptable after a full review; or

(2) Clarification of the terms of the applicant's application. A clarification, for the purpose of this paragraph (b), may include a request for additional information consistent with regulatory requirements.

(c) Prohibition of advance disclosure of funding decisions. During the selection process an employee shall not knowingly disclose any covered selection information regarding the selection process to any person other than an employee authorized to receive that information.

(1) The following disclosures of information are, at any time during the selection process, a violation of Section 103:

(i) Information regarding any applicant's relative standing;

(ii) The amount of assistance requested by any applicant;

(iii) Any information contained in an application;

(2) The following disclosures of information, before the deadline for the submission of applications, shall be a violation of Section 103:

(i) The identity of any applicant; and

(ii) The number of applicants.

24 CFR Subtitle A (4-1-10 Edition)

§ 4.28 Civil penalties.

Whenever any employee knowingly and materially violates the prohibition in Section 103, the Department may impose a civil money penalty on the employee in accordance with the provisions of 24 CFR part 30.

§ 4.30 Procedure upon discovery of a violation.

(a) *In general.* When an alleged violation of Section 103 or this subpart B comes to the attention of any person, including an employee, he or she may either:

(1) Contact the HUD Ethics Law Division to provide information about the alleged violation; or

(2) Contact the HUD Office of Inspector General to request an inquiry or investigation into the matter.

(b) *Ethics Law Division.* When the Ethics Law Division receives information concerning an alleged violation of Section 103, it shall refer the matter to the Inspector General stating the facts of the alleged violation and requesting that the Inspector General make an inquiry or investigation into the matter.

(c) *Inspector General.* When the Inspector General receives information concerning an alleged violation of Section 103 or this subpart B, he or she shall notify the Ethics Law Division when the Inspector General begins an inquiry or investigation into the matter.

(d) *Protection of employee complainants.* (1) No official of the Ethics Law Division, after receipt of information from an employee stating the facts of an alleged violation of this part, shall disclose the identity of the employee without the consent of that employee. The Inspector General, after receipt of information stating the facts of an alleged violation of this part, shall not disclose the identity of the employee who provided the information without the consent of that employee, unless the Inspector General determines that disclosure of the employee's identity is unavoidable during the course of an investigation. However, any employee who knowingly reports a false alleged violation of this part is not so protected and may be subject to disciplinary action.