

STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS

SUBJECT: Drug Free Workplace Act of 1988

NUMBER: 2.10.16

EFFECTIVE: June 2013

SANDY CDBG-DR

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APPROVAL: 
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PURPOSE:

To outline the policies and procedures for the Department of Community Affairs to document compliance with The Drug-Free Workplace Act of 1988 (the “Act”) and HUD’s implementing regulations found at 2 CFR Part 2429.

POLICY:

The Drug-Free Workplace Act of 1988 (the “Act”) was enacted on November 18, 1988, as part of the 1988 Omnibus Drug Act. The Act requires that recipients of federal grants and parties to cooperative agreements provide a drug-free workplace. In June 2009, OMB issued final guidance for drug-free workplace requirements at 2 CFR Part 182, which directed each federal agency to replace the existing drug-free workplace common rule with a brief regulation in 2 CFR adopting the governmentwide drug-free workplace policies and procedures. In July 2011, HUD replaced the existing drug-free workplace common rule at 24 CFR Part 21 with the new regulations at 2 CFR Part 2429. In doing so, HUD supplemented and adopted the governmentwide policies and procedures on drug-free workplaces at 2 CFR Part 182.

In some cases certain CPD programs contain waivers and alternative requirements, relevant statutory provisions for grants provided under the Federal Notice issued for that program. In order to meet the requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) Program (Robert T. Stafford Disaster Relief and Emergency Assistance act of 1974 commonly referred to the “Stafford Act”) as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternate requirements for this crosscutting element. Note that wherever a conflict occurs between the crosscutting requirements and the special requirements as noted in the Stafford Act and the Disaster Relief Appropriations Act of 2013, the latter shall take precedence.

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DISASTER RECOVERY WAIVERS OR ALTERNATE REQUIREMENTS:

None.

I. DRUG FREE WORK PLACE OVERVIEW

The Drug-Free Workplace Act of 1988 (the “Act”) was enacted on November 18, 1988, as part of the 1988 Omnibus Drug Act. The Act requires that recipients of federal grants and parties to cooperative agreements provide a drug-free workplace. Federal agencies issued the first final common rule on May 25, 1990 implementing the Act’s provisions. In January 2002, federal agencies proposed substantive changes to the drug-free workplace common rule, and on November 26, 2003, HUD supplemented and codified the updated drug-free workplace common rule at 24 CFR Part 21.

In May 2004, the Office of Management and Budget (OMB) established Title 2 of the Code of Federal Regulations (CFR) as the new, central location for OMB guidance and agency implementing regulations concerning grants and cooperative agreements, including the drug-free workplace common rule. In June 2009, OMB issued final guidance for drug-free workplace requirements at 2 CFR Part 182, which directed each federal agency to replace the existing drug-free workplace common rule with a brief regulation in 2 CFR adopting the government wide drug-free workplace policies and procedures.

In July 2011, HUD replaced the existing drug-free workplace common rule at 24 CFR Part 21 with the new regulations at 2 CFR Part 2429. In doing so, HUD supplemented and adopted the government wide policies and procedures on drug-free workplaces at 2 CFR Part 182. HUD’s regulations at 2 CFR Part 2429 fully adopt OMB’s regulations at 2 CFR Part 182, except for the following four (4) sections where HUD provides supplemental regulations:

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Section of Part 182 Guidance	Supplemented Section in Part 2429	What the Supplementation Clarifies
2 CFR 182.225(a) (Subpart B)	2 CFR 2429.225	A recipient other than an individual who is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each HUD office with which it currently has an award.
2 CFR 182.300(b) (Subpart C)	2 CFR 2429.300	A recipient who is an individual and is required fewer than 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each HUD office with which he or she currently has an award.
2 CFR 182.500 (Subpart E)	2 CFR 2429.500	The Secretary or designee is the official authorized to make the determination under 2 CFR 182.500.
2 CFR 182.505 (Subpart E)	2 CFR 2429.505	The Secretary or designee is the official authorized to make the determination under 2 CFR 182.505.

II. APPLICABILITY

The regulations at 2 CFR Part 182 and Part 2429 apply to federal agencies (including HUD) and recipients of federal awards (i.e. the State). The following subparts are contained in 2 CFR 182 and supplemented by 2 CFR 2429:

- Subpart A – Purpose and Coverage
- Subpart B – Requirements for Recipients Other Than Individuals (i.e. the State)
- Subpart C – Requirements for Recipients Who Are Individuals
- Subpart D – Responsibilities of Agency Awarding Officials (i.e. HUD)
- Subpart E – Violations of This Part and Consequences
- Subpart F – Definitions

As a recipient of a federal award, the State must comply with the regulations passed down by HUD and contained in 2 CRF Part 182 and Part 2429 Subparts A, B, and E.

III. IMPLEMENTATION PROCEDURES: COMPLYING WITH THE ACT

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In order for the State to comply with Act and its implementing regulations, the State must:

- Make a good faith effort, on a continuing basis, to maintain a drug-free workplace, by:
 - Agreeing to do so as a condition for receiving any covered federal award;
 - Publishing a drug-free workplace statement and establishing a drug-free awareness program for the State's employees; and
 - Taking actions concerning employees who are convicted of violating drug statutes in the workplace.
- Identify all known workplaces covered by the State's federal award(s).

The policy statement and program must in place within 30 days after HUD awards the grant. If the State believes there are extraordinary circumstances that will require more than 30 days for the State to publish the policy statement and establish the awareness program, the State may ask HUD to grant the State more time to comply with the requirements. The amount of additional time, if any, to be given is at the discretion of HUD.

IV. DRUG FREE WORKPLACE POLICY STATEMENT

The State must publish a statement that:

- Informs the State's employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the State's workplace;
 - Specifies the actions the State will take against employees for violating the prohibition; and
 - Informs each employee that, as a condition of employment under any award, he or she:
 - Will abide by the terms of the statement; and
 - Must notify the State in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.
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This statement must be given to each employee who will be engaged in the performance of any Federal award. All employees are required to sign a form acknowledging that they have received and reviewed a copy of the policy. (See Acknowledgment Form at the end of this policy.)

V. DRUG FREE AWARENESS PROGRAM

The State must establish an ongoing drug free awareness program to inform employees about:

- The dangers of drug abuse in the workplace;
 - The State's policy of maintaining a drug-free workplace;
 - Any available drug counseling, rehabilitation, and employee assistance programs; and
 - The penalties that the State may impose upon them for drug abuse violations occurring in the workplace.
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VI. EMPLOYEES CONVICTED OF A DRUG VIOLATION

There are two actions the State must take if an employee is convicted of a drug violation in the workplace:

- The State must notify HUD if an employee who is engaged in the performance of an award informs the State about a conviction, or if the State otherwise learns of the conviction. The notification to HUD must:
 - Be in writing;
 - Include the employee's position title;
 - Include the identification number(s) of each affected award;
 - Be sent within ten calendar days after the State learns of the conviction; and
 - Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.
- Within 30 calendar days of learning about an employee's conviction, the State must:
 - Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or
 - Require the employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

VII. KNOWN WORKPLACES

The State must identify all known workplaces under each agency award. A failure to do so is a violation of the State's drug-free workplace requirements. The State may identify the workplaces:

- To the agency official that is making the award, either at the time of application or upon award; or
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- In documents that the State keeps on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by agency officials or their designated representatives.

The workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, etc.).

If the State identified workplaces to the agency awarding official at the time of application or award, and any workplace that you identified changes during the performance of the award, the State must inform the agency awarding official.

VIII. VIOLATIONS

The State can be found in violation of the requirements of 24 CFR Part 182 and Part 2429 if HUD determines, in writing, that:

- The State has violated the requirements of Subpart B (described in the Implementation Procedures above); or
- The number of convictions of the State's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

If the State is determined to have violated 24 CFR Part 182 and Part 2429, HUD may take one or more of the following actions:

- Suspension of payments under the award;
- Suspension or termination of the award; and/or
- Suspension or debarment of the State under HUD's regulation implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180), for a period not to exceed five years.

HUD may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of the State if HUD determines that such a waiver would be in the public interest.
