

Section D: Clearance

Since the majority of HUD directives are communications to HUD constituents or the public generally, these communications are publicly posted and therefore publicly available documents. As such, they not only reflect the views or policy positions of the individual HUD Principal who authorized the issuance, but will be seen by the public and other branches of the government as reflecting the views and position of the Secretary and Deputy Secretary of HUD, respectively. Departmental clearance is necessary and important to ensure requisite agreement by applicable HUD leadership on the subject matter and content of the directive; review by HUD offices with expertise, policy or legal, with the subject matter of the directive; and no conflict with other HUD policy or Administration policy.

Departmental clearance also must be undertaken for directives that are intended to be issued or posted in draft for public comment before issuance in final form. Posting in draft form for public comment will indicate to the public that, although in draft, the policy and legal positions in the draft form are accurate and reflect the direction that the Department is interested in pursuing. However, the public cannot be assured that draft directives will indeed be pursued, unless, the draft is approved through departmental clearance.

OCHCO has lead responsibility for ensuring compliance with the directives management system. The OGC Office of Legislation and Regulations manages departmental clearance for Federal Register publications. The difference between a directive and FR publication is presented in the introduction.

NOFAs offer competitive funds to constituent applicants. Each year, a comprehensive set of requirements, known as the General Section, are developed presenting administration policy requirements applicable to all NOFAs. Each program office, in turn, adds its unique requirements within individual NOFAs, which, in turn, are cleared through the Department. This clearance process is managed by the Office of Departmental Grants Management and Oversight (ODGMO), including the scheduling of NOFA transmittals to OMB and the subsequent public posting on grants.gov, and a FR announcement. Clearance of NOFAs starts with the program office preparing an original and redlined revision of their prior year's NOFA, if applicable, for clearance distribution.

D-1 Originating HUD Office – Initial Responsibilities: The originating HUD office is the HUD office charged with creating and implementing a specific directive, places a directive into departmental clearance by satisfying the following four steps:

1. Intra-office agreement: Clearance of directives through the various divisions of the originating office is at the discretion of the HUD Principal. If such preclearance or intra-agency clearance is undertaken, it is in accordance with established and consistent procedures set by the respective HUD Principal. The DMO for each office oversees both the intra-office and departmental clearance processes and ensures adherence to deadlines and documented approvals. Before departmental clearance begins, the originating office ensures basic intra-office agreement.
2. Execute HUD-22: Ensure that each section of the Departmental Clearance and Approval Record is completed, including the sections pertaining to: type of clearance, proposed distribution, and the appropriate compliance sections pertaining to front-end risk assessments, information collection, environmental impact, impact to small entities, and unfunded federal mandates. The form HUD-22 is signed by the originating HUD Principal or Principal's designee, thereby authorizing placement of the directive into departmental clearance. An Assistant Secretary may delegate clearance authority to, but not below, an office director within HUD Headquarters.
3. Launch clearance: Submit to appropriate and mandatory reviewing offices by email to DMOs with the HUD-22 and directive attached. Clear the entire proposed text of the directive, including applicable forms, appendices, or other materials to be issued with the directive. Advise the originating office of the directive, the contact person, and the comment deadline in both the HUD-22 and the body of the email presenting the departmental clearance. Where forms are being substantially revised, but not necessarily relate to a directive, the program office should use the directive process to announce substantive changes to forms. Forms often contain substantive instructions to program participants or contain policy guidance and, therefore, they should undergo the vetting process applicable to directives.
4. Manage clearance: Ensure access to the directive by all appropriate reviewing offices. If clearance cannot be completed electronically, allow access to the directive and the opportunity to review and respond without encountering technical problems. If clearance is conducted electronically through email or another computer-based system, but the originating office requires an original signed form HUD-22 from reviewing offices, the originating office must inform reviewing offices of this requirement. Otherwise, scanned copies of the HUD-22 with the signature of the reviewing office's HUD Principal in a PDF format is an acceptable response.

Each HUD Principal establishes appropriate procedures for an internal clearance process to review directives from other program offices. Authority for clearance may be redelegated to a subordinate Principal. It is the responsibility of the respective DMO for each office to ensure that a single response is returned to the originating office by the deadline clearly identifying the response selected among the options provided on the HUD-22, and in accordance with Section D-3.3.

Each DMO ensures the single response is clear and coherent without conflicting views or comments from multiple internal divisions within the reviewing office. Multiple offices and divisions within a reviewing office submit clearance comments to their respective DMO and not to the DMO of the originating HUD office. The requirement for intra-office coordination ensures that reviews by more than one division within a reviewing office are privy to potential impacts contained in directives in clearance.

HUD Principals are to ensure understanding by managers and directive reviewers regarding the time constraints within clearance, and to support discussions between reviewing and originating offices before a nonconcur is submitted to the originating office. If nonconcurrences are registered, appropriate staff are to be made available for resolution.

Such resolution may include a meeting assembled by the originating office with the office or offices that have nonconcurred to discuss and strive to reach acceptable resolution to the nonconcurring comments without triggering nonconcurrency concerns by the offices that have concurred, however. This meeting is often referred to as a “drop-dead meeting.” If nonconcurrency comments (and/or significant comments under a technical concur-with-comment) are not resolved at the appropriate staff level, the conflict is elevated to the Assistant Secretary level. Should resolution fail at this level, the matter is elevated to HUD’s Deputy Secretary.

Both the originating and reviewing offices are responsible for meeting the clearance deadline set by the originating office and identified on the HUD-22.

D-2 Originating HUD Office – Additional Responsibilities: In addition to the four steps (to secure intra-office agreement, execute HUD-22, launch clearance and manage clearance), the office originating a directive holds responsibility to:

1. Secure preclearance agreements: In addition to securing intra-office agreement, originating offices endeavor to secure basic legal and policy agreements during the development of a directive. Assigned counsel for each program office reviews a proposed directive for basic legal sufficiency. Review by program counsel includes coordination with OGC’s Office of Legislation and Regulations to ensure that a proposed directive does not require rulemaking or other form of FR publication. Both the originating office and OGC share responsibility to ascertain potential cross-program impacts within a proposed directive, and to invite cross-cutting program reviews before clearance.

The need for early legal and policy reviews is paramount for major new initiatives. Clearance should not be used as the first process to vet new policy initiatives; otherwise, the process is overburdened with offices nonconcurring on cross-program impacts. Instead, originating offices are encouraged to use the option to establish

policy vetting teams (PVTs) to meet once or regularly in order to review a proposed directive. PVTs may also be created for rulemaking and/or the development of other FR publications. To the extent that time permits, basic agreements from program counsel and other prospective reviewers is obtained on major new initiatives, program areas, or procedures during the drafting of a proposed directive.

Preclearance agreement is equally important for directives impacting field operations. Field office managers and staff hold direct experience in implementing policy through local constituents. Headquarters program offices pre-clear policy initiatives and/or changes through field offices in order to garner operational input. Methods for preclearance may include, but are not limited to, conference calls; email or SharePoint transmittals of draft directives; and direct requests for field staff to draft specific sections of directives, when appropriate.

2. Present revisions: If a particular directive was previously cleared and/or publicly distributed, but subsequently changed or revised, the use of redlines facilitates the clearance process. A redlined version shows changes from the original directive; hence, new language appears underlined in red ink and deleted language appears in strikeouts in red ink. This redlined version facilitates clearance reviews and is commonly used for the annual clearance of program NOFAs.
3. Set clearance response deadline: Review periods of at least 10 workdays are used for clearance, unless the directive is new or complex; if the directive is new and complex, then at least 20 workdays are provided. The deadline is entered by the appropriate DMO in block #4 of the HUD-22. Shorter deadlines may be imposed for emergencies, provided justification for the emergency clearance is presented in the clearance request to reviewing offices. Offices with authority for mandatory reviews hold the option to nonconcur in order to stop an emergency clearance from proceeding.
4. Confirm mandatory transmittals: All directives must be cleared, at a minimum, by the following six offices within Headquarters: OCHCO, OGC, OIG, OCFO, CIO, and PD&R.

Originating offices are to confirm receipt by reviewing offices. If a directive is launched by email, the originating office engages the electronic return receipt request. If a directive is sent by hard copies, reviewing offices sign a hard copy receipt. Originating offices undertake appropriate follow-up to ensure that reviewing office received a directive's transmittal.

In addition to the six mandatory reviewing offices cited above, directives are cleared with appropriate offices with cross-cutting competencies.

5. Review responses: Originating offices respond to clearance comments accompanied by a HUD-22 signed by the HUD Principal or designee with authority to sign the HUD-22 form on behalf of the reviewing office. If authority for HUD-22 exists, confirmation of such authority is available through the DDMO.

An originating office does not assume an official response by a reviewing office lacking an executed HUD-22. Individual program counsel does not hold authority to sign a HUD-22 on behalf of OGC. OGC's Office of Legislation and Regulations presents the official/final OGC clearance response to directives.

6. Re-clear substantive changes: If a directive is revised significantly in terms of policy or legal premises following its placement in departmental clearance, the originating office must resubmit the draft directive for reclearance to mandatory reviewers with reset deadlines for a second review.
7. Secure final approvals: The originating office prepares the final text for issuance, executes a transmittal (form HUD-23), and transmits package to the DMO for the originating office for final processing. The DMO and/or other official with authority reviews the clearance record, directive and related documents to ensure that all required clearances are secured, that nonconcurrences are lifted, as appropriate, and that failures to respond are sufficiently reviewed.
8. Distribute to public: Electronic postings on HUDclips are requested by the appropriate DMO to the DDMO.

D-3 Reviewing Office Responsibilities: Offices reviewing a directive hold responsibility to:

1. Commence review upon receipt: In addition to distributing an incoming directive through appropriate internal offices and divisions, the DMO for a reviewing office contacts the DMO for the originating office in a timely manner when a reviewing office anticipates a delay. Requests for additional time may be asked by a reviewing office and may be granted by the originating office. Follow-up contacts are made when the delayed review is completed.

If a reviewing office determines a clearance deadline cannot be met, the reviewing office notifies the originating office. Under extreme time constraints, the originating office may issue a directive without securing and/or resolving clearance comments after inquiring from the overdue office the reason(s) for the delay and after notifying the overdue organization in writing before proceeding. Originating offices may not issue a directive without concurrence from OGC.

2. Manage intra-office clearances: The DMO for the reviewing office coordinates the intra-office responses and ensures that a single clearance response is submitted to the originating office. Reviewing offices are to preclude nonconcurrences to the extent possible by immediately contacting the originating office to present and resolve concerns. However, a reviewing office should not contact an originating office about a nonconcurrency without assurance that a nonconcurrency is the position that the head of the reviewing office intends to take. If an originating office agrees to resolve a concern informally presented by a reviewing office, the subsequent HUD-22 from the reviewing office should provide a concurrence with comment subject to the agreed-to resolution.
3. Execute HUD-22: Unresolved nonconcurrences are signed by the HUD Principal or a designee with redelegated authority. The redelegated authority to execute clearance records is issued in writing and transmitted to the DDMO prior to action on a specific directive. The options for executing a HUD-22 are no position (NP) on the clearance item; no need to review (NR) the clearance item, concur without comment on the clearance item, concur with comment on the clearance item, or nonconcur on the clearance item. A concurrence or nonconcurrency position taken by a reviewing office is subject to the following provisions:
 - a. Concur-with-no-comment: Means the office, and all divisions or branches thereof, has reviewed the directive sufficiently to determine that no impacts or conflicts exist to programs, operations, or authorities of the respective reviewing HUD Principal.
 - b. Concur-with-comments: Requires clearly stated recommended changes, additions, or omissions to the directive, stating the basis for such recommendations and indicating the level of importance in terms of incorporating the recommendation. For example, an incorrect legal citation or an incorrect phone number/website link may be a typographical error, but the necessity to make the change is crucial to the directive's end user. The reviewing office may opt to non-concur or concur-with-comment with respect to a technical error. The latter option identifies the importance, but avoids the need for formally lifting a nonconcurrency. Reviewing offices need to respect time constraints associated with a non-concurrency. Additionally, as provided in Section D-3.3.c below, a nonconcurrency comment may only be made if a reviewing office has the requisite authority to non-concur. Apart from recommendations on technical errors submitted as a concur-with-comment, reviewing office acknowledge that a concur-with-comment means the changes are recommended, but not mandatory.

- c. Non-concur: The reviewing office must hold program or policy authority over the conflicting issue within a directive, meaning if there is an impact to operations or delegated areas of authority. The reviewing comment clearly justifies the basis for the non-concur, explains how the conflict impacts the reviewing office's operations or area of delegated authority, and contains a recommendation, including substitute language, where applicable, on how the non-concurrence may be resolved. Execution of a nonconcurrence on a directive in clearance may only be made by a HUD Principal or the Principal's designee to which such authority has been delegated.
- d. No position or no need to review: Reviewing offices may indicate that it is taking no position (NP) on the clearance item or that it has no need to review (NR) the clearance item. These two options are added to the HUD-22 with the 2011 version of the HUD Directives Handbook.
- e. Invalid comments: Reviewing offices must identify a specific conflict to uphold a nonconcurrence and the conflict must be unique to the directive in clearance. This means that a reviewing office does not have the authority to not nonconcur on a proposed revision to a handbook when chapter 2 is in clearance, when the conflict occurs in chapter 3. However, the reviewing office must nonconcur if the conflict in chapter 3 links to the revision in chapter 2 in terms of invalidating the guidance or failure to revise causes the entire handbook to be legally deficient as a matter of policy or law.