

CHAPTER 13 – WAIVERS, EXCEPTIONS, ENFORCEMENT DISCRETION & DISASTER

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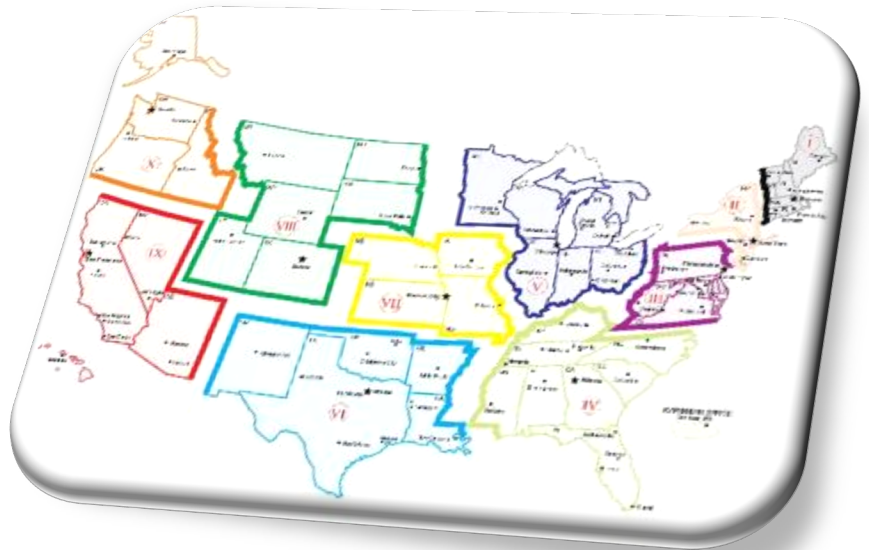
13.1 GENERAL

There are circumstances in which PHAs may be granted exceptions from portions of the Office of Management and Budget's (OMB) procurement regulations of 2 CFR 200.317-327. Pursuant to 2 CFR 200.102(b), HUD may grant exceptions to 2 CFR Part 200 procurement requirements on a case-by-case basis (i.e., contract by contract) for individual PHAs, except as otherwise required by law. For example, HUD cannot grant a waiver or exceptions to audit requirements.

If a PHA requests an exception to a 2 CFR Part 200 rule, HUD processes an "exception." If a PHA requests an exception to another rule, e.g., 24 CFR 905.316 or 905.604(h), then HUD processes a "waiver." HUD processes 2 CFR Part 200 exception requests in the same manner as regulatory waiver requests. Certain procurement regulatory requirements have already been waived through rulemaking (see 24 CFR 905.316 and 905.604(h)). Granting a waiver or an exception to procurement requirements necessitates that the PHA acted in good faith and has a "good cause" reason for requesting the exception or waiver.

Waiver or exemption requests are submitted before a noncompliant action occurs. If the noncompliant action has already occurred, HUD retains all discretion to determine the extent to which it will take additional enforcement action (including nonenforcement) against noncompliant procurement practices.

This chapter discusses the process for submitting waiver or exception requests as well as the process for issuance of a nonenforcement letter and, when applicable, protocols to close out inspector general (IG) audit findings.



13.2 PROCESS FOR SUBMITTING A HUD REGULATORY WAIVER OR A 2 CFR PART 200 EXCEPTION REQUEST BEFORE A NONCOMPLIANT ACTION OCCURS

When a PHA is going to take an action noncompliant with procurement regulations and wishes to be granted a waiver of a HUD regulation or an exception of a 2 CFR Part 200 regulation, they must submit a waiver or exception request. PHAs should follow the process below to request a waiver or an exception to the procurement regulations:

- A. The PHA Contracting Officer determines which procurement regulation to which the PHA will not be able to comply.
- B. The PHA Contracting Officer completes a waiver or exception request on PHA letterhead, signed by the PHA official, and submits the request and backup documentation to the HUD field office. It is recommended that PHAs contact their local HUD field office for their preferred method of communication.
 - 1) The following information must be included in the waiver or exception request:
 - a. The section of the regulation the PHA wishes to be waived or excepted. HUD will not accept requests for blanket or complete exceptions from 2 CFR Part 200 or complete waivers from HUD regulations;
 - b. The timeline of procurement actions;
 - c. Description of the "good cause" justification to validate reason for request; and
 - d. Supporting documentation and contact information.
- C. The HUD field office determines whether the information provided meets the regulatory authority to waive or except the PHA from the requested provision of HUD regulations or 2 CFR Part 200.
- D. The HUD field office processes the request accordingly and sends the request memo and backup documentation to the PIH Office of Field Operations or the appropriate office in PIH headquarters.
- E. The OGC and any other HUD appropriate office reviews the request memo and documentation and sends the request package to the PIH Assistant Secretary or to the appropriate official that has the delegated authority to approve or deny requests.
- F. The PIH Assistant Secretary or the official with delegated authority either approves or denies the request and informs the HUD field office that received the request of the decision. The HUD field office then informs the PHA of the decision in writing.
- G. Not less than quarterly, the Secretary must notify the public of all waivers and exceptions of regulations that HUD has approved, by publishing a notice in the Federal Register. These notices (each covering the period since the most recent previous notification) shall:
 - 1) Identify the project, activity, or undertaking involved;
 - 2) Describe the nature of the provision waived and the designation of the provision;
 - 3) Indicate the name and title of the person who granted the waiver or exception request;

- 4) Describe briefly the grounds for approval of the request; and
- 5) State how additional information about a particular waiver or exception may be obtained.

13.3 PROCESS FOR ISSUANCE OF A NONENFORCEMENT LETTER & AUDIT CLOSEOUT RELATED TO NONCOMPLIANT PROCUREMENT ACTIVITY

A nonenforcement letter could be issued in response to any activity noncompliant with procurement regulations. HUD has flexibility in determining whether and when to initiate an enforcement action against a regulated third party, such as a PHA, for violations of a regulation the agency is charged with administering. This type of enforcement discretion gives HUD the freedom to set enforcement priorities, allocate resources, and make specific strategic enforcement decisions. Discretionary enforcement activities might include any range of actions, including, but not limited to, the imposition of penalties or the initiation of an agency investigation, lawsuit, or audit.

HUD retains the discretion to not take enforcement actions in response to non-compliant procurement activity when the non-compliance is not material or substantial to the award. The purpose of nonenforcement is to ensure that the enforcement action taken is appropriate for the level of non-compliant procurement activity. If HUD determines that it does not wish to take enforcement actions for a non-compliant procurement activity, HUD will follow the steps below:

HUD drafts a letter of nonenforcement containing the following information:

- A. The decision to not take additional enforcement actions against the PHA.
 - 1) The audit findings or non-compliant procurement activity conducted by the PHA and the associated regulatory language in 2 CFR Part 200.
 - 2) The timeline and brief description of procurement actions taken by the PHA.
 - 3) If applicable, the actions taken to correct the procurement misstep.
 - 4) A description of how the noncompliant procurement activity is not material or substantial to the award.
 - 5) An explanation of any differences between HUD's findings and other findings by third parties (e.g., auditors, Office of Inspector General (OIG), or Office of Public Housing's findings).
- B. The HUD official who has been delegated authority concurs with the letter and it is sent to the PHA.
- C. If applicable, the appropriate HUD office will work with OIG to close out audit findings by the action deadline noted by the auditor.