

§ 75.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: Including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 and 2 CFR part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2324 and 2409, and 41 U.S.C. 4304, 4310, and 4712.

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the administration of HHS programs, activities, projects, assistance, and services, to the extent doing so is prohibited by Federal statute.

(d) HHS will follow all applicable Supreme Court decisions in administering its award programs.

(e) In the statutes listed in paragraphs (e)(1) through (13) of this section that HHS administers which prohibit discrimination on the basis of sex, the Department interprets those provisions to include a prohibition against discrimination on the basis of sexual orientation and gender identity, consistent with the Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), and other Federal court precedent applying *Bostock's* reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity. This provision is interpretive and does not impose any substantive obligations on entities outside the Department. This paragraph (e) interprets the following HHS authorities that prohibit discrimination on the basis of sex:

(1) 8 U.S.C. 1522. Authorization for programs for domestic resettlement of and assistance to refugees.

(2) 42 U.S.C. 290cc-33. Projects for Assistance in Transition from Homelessness.

(3) 42 U.S.C. 290ff-1. Children with Serious Emotional Disturbances.

(4) 42 U.S.C. 295m. Title VII Health Workforce Programs.

(5) 42 U.S.C. 296g. Nursing Workforce Development.

(6) 42 U.S.C. 300w-7. Preventive Health Services Block Grant.

(7) 42 U.S.C. 300x-57. Substance Use Prevention, Treatment, and Recovery Services Block Grant; Community Mental Health Services Block Grant.

(8) 42 U.S.C. 708. Maternal and Child Health Block Grant.

(9) 42 U.S.C. 5151. Disaster relief.

(10) 42 U.S.C. 8625. Low Income Home Energy Assistance Program.

(11) 42 U.S.C. 9849. Head Start.

(12) 42 U.S.C. 9918. Community Services Block Grant Program.

(13) 42 U.S.C. 10406. Family Violence Prevention and Services.

(f)(1) A grant applicant or recipient may rely on applicable Federal protections for religious freedom and conscience, and application of a particular provision(s) of this section to specific contexts, procedures, or services shall not be required where such protections apply.

(2) A grant applicant or recipient that seeks assurance consistent with paragraph (f)(1) of this section regarding the application of particular provision(s) of this part to specific contexts, procedures, or services may do so by submitting a notification in writing to the HHS awarding agency, the Office of the Assistant Secretary for Financial Resources (ASFR), or the Office for Civil Rights (OCR). Notification may be provided by the grant applicant or recipient at any time, including before an investigation is initiated or during the pendency of an investigation. The notification must include:

(i) The particular provision(s) of this section from which the applicant or recipient asserts they are exempt under Federal religious freedom or conscience protections;

(ii) The legal basis supporting the applicant's or recipient's exemption should include the standards governing the applicable Federal religious freedom and conscience protections, such as the provisions in the relevant statute from which the applicant or recipient is requesting an exemption; the Church, Coats-Snowe, and Weldon Amendments; the generally applicable requirements of the Religious Freedom Restoration Act (RFRA); and

(iii) The factual basis supporting the applicant's or recipient's exemption, including identification of the conflict between the applicant's or recipient's religious or conscience beliefs and the requirements of this section, which may include the specific contexts, procedures, or services that the applicant or recipient asserts will violate their religious or conscience beliefs overall or based on an individual matter related to a particular grant.

(3) A temporary exemption from administrative investigation and enforcement will take effect upon the applicant's or recipient's submission of the notification—regardless of whether the assurance is sought before or during an investigation. The temporary exemption is limited to the application of the particular provision(s) of the relevant statute as applied to the specific contexts, procedures, or services identified in the notification to the HHS awarding agency, ASFR, or OCR.

(i) If the notification is received before an investigation is initiated, within 30 days of receiving the notification, OCR, ASFR, or the HHS awarding agency must provide the applicant or recipient with email confirmation acknowledging receipt of the notification. The HHS awarding

agency, working jointly with ASFR and OCR, will then work expeditiously to reach a determination of applicant's or recipient's notification request.

(ii) If the notification is received during the pendency of an investigation, the temporary exemption will exempt conduct as applied to the specific contexts, procedures, or services identified in the notification during the pendency of the HHS awarding agency's review and determination, working jointly with ASFR and OCR, regarding the notification request. The notification shall further serve as a defense to the relevant investigation or enforcement activity regarding the applicant or recipient until the final determination of the applicant's or recipient's exemption assurance request or the conclusion of the investigation.

(4) If the HHS awarding agency, working jointly with ASFR and OCR, makes a determination to provide assurance of the applicant's or recipient's exemption from the application of the relevant statutory provision(s) or that modified application of certain provision(s) is required, the HHS awarding agency, ASFR, or OCR, will provide the applicant or recipient the determination in writing, and if granted, the applicant or recipient will be considered exempt from OCR's administrative investigation and enforcement with regard to the application of that provision(s) as applied to the specific contexts, procedures, or services provided. The determination does not otherwise limit the application of any other provision of the relevant statute to the applicant or recipient or to other contexts, procedures, or services.

(5) An applicant or recipient subject to an adverse determination of its request for an exemption assurance may appeal the Department's determination under the administrative procedures set forth at 45 CFR part 81. The temporary exemption provided for in paragraph (f)(3) of this section will expire upon a final decision under 45 CFR part 81.

(6) A determination under paragraph (f) of this section is not final for purposes of judicial review until after a final decision under 45 CFR part 81.

(g) Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be severable from this section and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

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