

TCAP Question and Answer:

24 CFR Part 87 – Restrictions on Lobbying



The following questions and answers are intended to assist TCAP grantees to understand and comply with the lobbying requirements of [24 CFR Part 87](#), “New Restrictions on Lobbying.” These questions and answers are not a substitute for reading and understanding the regulations. For further information, please consult the regulations at [24 CFR Part 87](#).

1. CPD Notice 09-03 states that 24 CFR Part 87, New Restriction on Lobbying applies to TCAP. What does this part cover?

Answer: 24 CFR Part 87 requires a recipient of Federal contracts, grants, loans or cooperative agreements to certify that it will not use *appropriated funds* to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a “covered Federal action.” A covered Federal action means any of the following:

- The awarding of any Federal contract,
- The making of any Federal grant,
- The making of any Federal loan
- The entering into of any cooperative agreement, and
- The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

24 CFR Part 87 also states that any person who requests or receives a Federal contract, grant, loan or cooperative agreement from a Federal agency, and *uses non-appropriated funds* to pay an individual to influence or attempt to influence an officer or member of any Federal agency, a Member of Congress, or an employee of a Member of Congress in connection with a covered Federal action, must submit a disclosure form (SF-LLL) in accordance with 24 CFR Part 87. A “person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government.

HUD’s award of TCAP grant funds to the state housing credit agency is considered a covered Federal action in accordance with 24 CFR Part 87.

2. Does 24 CFR Part 87 only apply to the state housing credit agencies receiving TCAP funds?

Answer: No, the restrictions on lobbying set forth in 24 CFR Part 87 apply to the state housing credit agency (i.e., the TCAP grantee) and flow down to all contractors, subcontractors at any tier, and sub-grantees at any tier that receive TCAP funds. Each

of these parties is considered a recipient of Federal funds and subject to the requirements of 24 CFR Part 87.

3. What must TCAP recipients do to comply with the requirement that no appropriated funds can be used for lobbying purposes?

In accordance with 24 CFR Part 87, TCAP funds (i.e. appropriated funds) may not be used to pay any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any covered Federal action.

To comply with this requirement, all TCAP grantees must submit the following certification to HUD:

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.*
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.*
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.*

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title

31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Any person who requests or receives more than \$100,000 of TCAP funds, whether as a grantee, a sub-grantee, a contractor, or subcontractor at any tier, is required to submit this certification to the next tier above (e.g., a subcontractor must submit this certification to the contractor).

4. Are all TCAP recipients required to file SF-LLL Disclosure of Lobbying Activities?

Answer: No, not all TCAP recipients are required to file the [SF-LLL](#). A TCAP grantee must submit a lobbying disclosure form (SF- LLL) to HUD *if* that grantee has made or has agreed to make a payment using any funds other than Federally appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with TCAP funds.

Any person who requests or receives more than \$100,000 of TCAP funds, whether as a grantee, a sub-grantee, a contractor, or a sub-contractor at any tier, must submit a lobbying disclosure form (SF- LLL) to the next tier above, *if* that person has made or has agreed to make a payment using non-Federally appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with TCAP funds. All disclosure forms must be forwarded from tier to tier until received by the TCAP grantee, and the TCAP grantee must forward all disclosure forms to HUD.

5. When should recipients file the certification and, if required, the SF-LLL Disclosure of Lobbying Activities?

Answer: Each TCAP grantee must file a certification, and a [SF-LLL Disclosure of Lobbying Activities](#) form (if required), with the TCAP submission materials. Each person who requests or receives from a TCAP grantee a subgrant, contract, or subcontract exceeding \$100,000 at any tier under a TCAP grant must submit a certification, and a SF-LLL Disclosure of Lobbying Activities form (if required), at the time that person requests or receives TCAP funds.

In addition, each TCAP grantee must file a new SF-LLL Disclosure of Lobbying Activities form at the end of each calendar quarter in which any event occurs that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by that grantee. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

6. Where should recipients file the certification and SF-LLL Disclosure of Lobbying Activities form?

Answer: TCAP grantees must submit their certifications and, if required, their disclosure forms to HUD. For all other TCAP recipients, the [SF-LLL Disclosure of Lobbying Activities](#) forms, but not certifications, should be forwarded from tier to tier until received by the TCAP grantee. The TCAP grantee is then responsible for forwarding all SF-LLL forms it receives to HUD. The certifications should be submitted only to the next higher tier, where they should be kept on file. For example, a subcontractor must file its certification and SF-LLL with the contractor and the contractor is required to file the certification but forward the SF-LLL to the TCAP grantee. The TCAP grantee is then required to file the SF-LLL with HUD.