



**U.S. Department of Housing and Urban Development  
Office of General Counsel  
Policy on *Pro Bono* Legal Services**

**1. HUD policy regarding the provision of *pro bono* legal services by HUD employees.**

a. General. Given the significant unmet need for legal services across the nation, it is the policy of the Department of Housing and Urban Development to encourage HUD attorneys to provide *pro bono* legal services within their communities consistent with applicable Federal statutes and regulations. While service as a Federal employee is itself a high form of public service, HUD also recognizes that *pro bono* legal assistance strengthens America's communities by ensuring that all persons, regardless of financial circumstances, can have access to basic legal aid.

b. Scope. HUD encourages all of its employees to participate in outside volunteer activities consistent with their individual skills and interests. HUD's policy on *pro bono* legal services ("Policy Statement") specifically applies to all HUD attorneys who are members in good standing of the bar of any state, territory, or the District of Columbia, as well as to not-yet-licensed Legal Honors Interns and other qualified legal professionals (e.g. paralegals).

c. Goal. HUD encourages each of its attorneys to set a personal goal of at least fifty hours per year of *pro bono* legal assistance or other community volunteer service. The fifty-hour goal for *pro bono* legal assistance follows the American Bar Association's Model Rule 6.1, and falls within the target range commonly adopted by state and other bar associations. While HUD attorneys may also satisfy this goal by providing other forms of community service, all are encouraged to provide *pro bono* legal services to some degree in order to provide the community the benefit of their unique legal knowledge and experience. However, HUD employees are not mandated to provide any *pro bono* legal services to the community as part of their official duties. Furthermore, whether a HUD employee participates in *pro bono* legal services shall not be considered in any performance appraisals.

**2. Definition of *pro bono* legal assistance.**

*Pro bono* legal assistance consists of those legal services performed without compensation for the benefit of the community or the public good. Such services may include:

a. Legal services to disadvantaged members of the community, including persons of limited means;

b. Legal services to charitable, religious, civic, community, governmental, health, and educational organizations in connection with matters that are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further the organizational purpose of such organizations;

c. Legal services to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; and

d. Other activities to improve the law, the legal system, the legal profession, or public understanding and support for any of these.

(Note: “Performed without compensation” means that the attorney volunteering his or her services will not be compensated for those services and that no other person or organization may seek a fee or other compensation for the legal services performed by a HUD employee.)

### **3. Procedural policies for *pro bono* legal services.**

a. Prior Approval – Pro Bono Activities Not Involving Client Representation. Where a HUD employee’s contemplated *pro bono* activities will not involve client representation (i.e. activities that require minimal follow-up, such as providing information or advice at a walk-in legal clinic, screening individuals for legal referrals), the employee needs only to obtain prior written approval from a HUD ethics official. Such prior review is required by HUD’s Supplemental Standards of Ethical Conduct regulation at 5 C.F.R. § 7501.105(c) and is necessary to ensure that the employee’s contemplated *pro bono* activities will not violate any applicable law, regulation, or other authority, interfere with the proper performance of the employee’s official duties, or create an actual or apparent conflict of interest for the employee given the employee’s actual duties.

(1) Once obtained, the prior written approval from a HUD ethics official for an employee to engage in *pro bono* legal activities remains in effect for two years for *pro bono* activities that do not include actual representations of a client and have been reviewed by a HUD ethics official. (For activities that involve client representation, see 3.b. below.)

(2) Approval will ordinarily be granted unless one or more of the following apply:

(a) The contemplated *pro bono* work would violate any Federal statute, rule or regulation, including (but not limited to) 18 U.S.C. § 205 (representation in claims or other matters affecting the United States), the Government-wide Standards of Ethical Conduct regulation at 5 C.F.R. § 2635, and HUD’s Supplemental Standards of Ethical Conduct regulation at 5 C.F.R. § 7501;

(b) The *pro bono* work would interfere with the proper and effective performance of the employee’s official duties, including the time and availability requirements of his or her position, *see* 5 C.F.R. § 2635.705;

(c) The *pro bono* work would create, or appear to create, a conflict of interest; or

(d) The *pro bono* work would cause a reasonable person to question the integrity and objectivity with which HUD pursues its mission and carries out its activities.

b. Representational Activities – Additional Approvals Required.

(1) Where an employee's *pro bono* legal activity will involve client representation in connection with any proceeding before any court, commission, court martial, administrative board, mediation, or similar forum, for *each* such case the employee must obtain prior written approval from a HUD ethics official *and* written permission from the employee's supervisory Associate General Counsel/Regional Counsel. Any activities that require more than minimal follow-up, such as those described in 3.a., are considered representational activities and require the additional approvals as set forth above. The purpose of this case-specific approval is to ensure that the specific case that the employee wishes to accept does not present any conflict of interest or any other problematic issue that would preclude representation. General approval for non-representational *pro bono* legal activities as described in 3.a. above does not satisfy this requirement for case-specific approval for representational cases.

(2) Employees seeking prior written approval to take on a representational case shall submit a written request to the Ethics Law Division and to their appropriate supervisory Associate General Counsel/Regional Counsel. Each such request shall describe the known and anticipated parties to the case, the general facts of the case, the employee's anticipated role in the case (including estimated time burden, approximate number and venue(s) of representational appearances, and names and firms of any other attorneys associated with the case), and whether either the employee him/herself or any legal services program under which the representation is being undertaken has professional malpractice insurance. Any subsequent work (e.g., appeal of a decision, etc.) on a representational case for the same client requires a new request for written approval from the Ethics Law Division.

**4. Prohibited activities and conflicts of interest.**

a. General. Department employees may not engage in *pro bono* legal services that create or appear to create a conflict of interest with their official duties. Under the Government-wide Standards of Ethical Conduct regulation at 5 C.F.R. § 2635 and the Department's Supplemental Standards of Ethical Conduct regulation at 5 C.F.R. § 7501, a conflict of interest generally exists where the services would:

(1) Require the recusal of the employee from significant aspects of the employee's official duties (*see* 5 C.F.R. § 2635.802(b));

(2) Create an inappropriate appearance of official sanction or endorsement (*see* 5 C.F.R. § 2635.702(b));

(3) Involve advice to or representation of any person, organization, or state or local government that is a "prohibited source" within the meaning of 5 C.F.R. § 2635.203(d).

b. Representation Prohibited by 18 U.S.C. § 205. With limited exceptions, *pro bono* legal services may not include acting as agent or attorney for anyone before any department, agency, court, court martial, officer, or civil or military commission or similar forum in connection with any matter in which the United States is a party or in which it has a direct and substantial interest. HUD

employees should not represent someone in any Federal court, or in connection with any matter involving a Federal department or agency (e.g. immigration matters, small business claims, tax matters, etc.), without prior approval from an agency ethics official.

c. Matters Involving HUD. HUD employees are prohibited from participating in any *pro bono* activity that is pending at HUD or involves any particular matter in which HUD is a party or in which it has a direct and substantial interest. A HUD employee also may not represent a *pro bono* client if the client's interests may be substantially affected by the performance or nonperformance of the employee's official duties.

d. Responsibility for Avoiding Conflicts of Interest. Notwithstanding the prior approval requirements set forth in 3. above, every HUD employee who provides *pro bono* legal services is ultimately responsible for ensuring that his or her services do not present an actual or apparent conflict of interest and do not otherwise violate any applicable statute or regulation. Examples of *pro bono* activities that must be avoided to guard against any actual or apparent conflicts of interest involve matters including, but not limited to: public housing authorities, the Section 8 program, fair housing complaints, and landlord-tenant issues. Even where appropriate prior approval has been given, employees should remain vigilant to ensure that no conflict of interest develops based on unforeseen facts or circumstances. Should an employee identify a potential conflict of interest during the course of his or her participation in any *pro bono* activity, the employee should immediately cease all participation in the activity and seek advice from a HUD ethics official.

## **5. Additional considerations.**

a. Retainer Agreement. HUD attorneys who undertake *pro bono* representational cases shall prepare and execute retainer agreements setting out the agreed scope of work. Such agreements shall specify that the HUD attorney is acting in his or her own individual capacity and not on behalf of HUD or the Federal Government. The client must countersign a retainer letter in acknowledgment of this fact.

b. Change in Employment of Volunteer Attorney. HUD attorneys enter an attorney-client relationship with their *pro bono* clients. As a result, if a HUD attorney leaves the Department or otherwise undergoes a significant change in work status that would impair representation of his or her *pro bono* client, the attorney must either take the *pro bono* case with him or her, or make alternative arrangements for continuity of representation. Attorneys in this situation are reminded that they are bound by all relevant legal ethics rules, local practice rules, and their retainer agreement when terminating or transferring representation of a client. In the event that a case is transferred, the attorney must discuss the transfer with the client, file any necessary petitions seeking leave to withdraw with the court, and provide all relevant case files and other materials to the new attorney(s) taking up the case.

c. Malpractice Coverage. Before agreeing to meet with or accept a *pro bono* legal client, a HUD attorney should determine whether the referring *pro bono* program or organization (if any) has a malpractice insurance policy that covers volunteer attorneys. Neither HUD nor the Federal Government provides malpractice coverage for *pro bono* work. Immunities that may be granted to Government attorneys in the performance of their official duties do not extend to *pro bono* work.

The Department therefore strongly encourages HUD attorneys to work with a legal services provider that carries malpractice insurance. (Generally, *pro bono* programs organized by the local bar or well-established non-profit legal assistance programs provide malpractice coverage.) Attorneys who choose to provide legal services without malpractice insurance coverage are acting at their own risk.

d. Restrictions on the Unauthorized Practice of Law. HUD attorneys who are not licensed in the District of Columbia may provide *pro bono* assistance in the District subject to the constraints of the District of Columbia's local rule regarding the unauthorized practice of law.<sup>1</sup> HUD attorneys in other jurisdictions are advised to consult their local bar rules and regulations concerning any professional fees and practice restrictions that may apply.

## **6. Use of official position or public office.**

a. HUD employees who provide *pro bono* legal services may not indicate or represent in any way that they are acting on behalf of the Department of Housing and Urban Development or in their official capacity. The incidental identification of a HUD attorney's position or office – such as, for example, when an office number and street address are not sufficient to ensure mail delivery, or when receiving a telephone call or using e-mail – is not prohibited.

b. HUD employees engaging in *pro bono* legal activities may not use official letterhead, office business cards, fax cover sheets, or other materials that identify themselves as HUD employees in any communication, correspondence, or pleading connected with *pro bono* legal activities. When using external e-mail, the employee should indicate that the e-mail is being sent in his or her personal capacity and not in his or her official capacity as a HUD employee.

c. A HUD attorney is responsible for ensuring that there is no misunderstanding by the client, any opposing parties, or others involved in any *pro bono* undertaking regarding the fact that the attorney is acting solely in his or her individual capacity as a *pro bono* volunteer, and is not acting as a representative of, or on behalf of, the Department of Housing and Urban Development or the Federal Government.

## **7. Use of agency resources.**

a. Hours of Work. HUD employees are encouraged to seek *pro bono* legal opportunities

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<sup>1</sup> The District of Columbia's Rule 49 permits U.S. Government attorneys who are not members of the D.C. Bar to handle *pro bono* cases in the District of Columbia provided that the attorney must: (1) be an officer or employee of the United States; (2) be a member in good standing of the highest court of a state or territory; (3) provide legal counsel without a fee in any matter that is handled; (4) be assigned or referred to the matter by an organization that provides legal services to the public without a fee; (5) be supervised by an enrolled, active member of the D.C. Bar; and (6) if the matter requires a court appearance, file with the court having jurisdiction over the matter, and with the D.C. Court of Appeals' Committee on the Unauthorized Practice, a certificate that the attorney is providing representation in that particular case without compensation.

that can be accomplished outside their scheduled duty hours. However, *pro bono* legal activities may sometimes involve obligations that can only be dealt with during work hours. Supervisors are urged to be flexible and to accommodate, where feasible, the efforts of their employees to engage in *pro bono* legal activities. Employees seeking to participate in *pro bono* legal activities during work hours may also be granted leave without pay, annual leave, or administrative leave in appropriate limited circumstances.<sup>2</sup> When considering employee requests for leave to engage in *pro bono* legal activities, supervisors should give due attention to the effect of the employee's absence on office operations. A supervisor's personal views regarding the merits or substance of the *pro bono* activity shall not influence the decision to grant an employee's request to engage in *pro bono* legal activities during official duty hours. *Pro bono* legal work is not an official duty and may not be assigned to or otherwise required from HUD staff.

b. Use of Office Equipment and Information Technology. As a general rule, HUD employees may only use HUD property and equipment for official business or as authorized by the Department. See 5 C.F.R. §§ 2635.101(b)(9) & 704(a).

(1) HUD's "limited personal use" policy permits Department employees to use Government office equipment for limited non-Government purposes when such use does not interfere with the mission or operations of the Department and involves minimal additional expense to the Government. This applies to such equipment as desktop computers, personal digital assistants (PDA), photocopiers, fax machines, printers, scanners, and telephones. Employees should consult their supervisor if there is any question whether a particular use of office equipment or information technology is permitted.

(2) E-mail. Consistent with HUD's policy regarding use of Government e-mail, HUD attorneys may use Department e-mail and Internet services for limited *pro bono* purposes. This includes internal e-mail (e.g. consultation with HUD attorney colleagues about matters related to a *pro bono* question) and limited external e-mail provided that the employee indicates that the e-mail, although originating within HUD, is being sent in a personal capacity.

(3) Research Resources. HUD employees may reasonably use electronic databases (e.g. Westlaw and Lexis/Nexis) for *pro bono* activities and may use other HUD resources (books, publications, etc.) as necessary. HUD employees cannot use or permit the use of any non-public information that the employee gains by reason of Federal employment that has not been made available to the general public. See 5 C.F.R. § 2635.703.

## **8. Administration of HUD's *pro bono* program.**

HUD's *pro bono* program shall be administered by a *Pro Bono* Advisory Committee (PBAC), consisting of an attorney from each office and at least one Regional Counsel, and shall be chaired by an attorney designated by the General Counsel. The PBAC shall be responsible for promoting HUD *pro bono* activities (including the conduct of occasional *pro bono* training) and recommending such additional policies or procedures as may be necessary to ensure the HUD *pro*

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<sup>2</sup> See Deputy Secretary's August 29, 2005, memorandum, "Volunteerism," for guidance concerning granting of administrative leave for volunteer service activities.

*bono* program functions smoothly and effectively.

## **9. Disclaimer.**

This Policy Statement is intended only to encourage increased *pro bono* legal and volunteer activities by HUD employees. It is not intended to create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, its officers, or any person.

The United States and the Department of Housing and Urban Development will not be responsible in any manner or to any extent for any negligent or otherwise tortious acts or omissions on the part of any HUD employee engaged in any *pro bono* or other volunteer activity. While HUD encourages *pro bono* and volunteer activities by its employees, HUD exercises no control over the services and activities of employees engaged in *pro bono* activities, nor does it control the time or location of any *pro bono* or volunteer activity. Each employee is acting outside the scope of his or her employment whenever he or she participates, supports, or joins in any *pro bono* activity.