

# NEPOTISM POLICY

## CHAPTER 1. GENERAL PROVISIONS

1-1 **Purpose:** This document provides the Department of Housing and Urban Development's (HUD) policy and guidance to Public Officials concerning the employment and other personnel-related activity of relatives.

1-2 **References:**

- Title 5, U.S.C., Section 3110 - Employment of Relatives; Restrictions
- Title 5, U.S.C., Section 2302 (b)(7) – Prohibited Personnel Practices
- 5 CFR, Part 310 - Employment of Relatives
- 5 CFR part 630, subparts B, H, I, J, and K, definitions as modified June 14, 2010, by OPM final regulations (75 FR 33491)
- 18 U.S.C. 208
- 5 CFR 2635.502
- HUD's Office of General Counsel (OGC) Memo, Guidance on Avoiding Nepotism, dated May 19, 2011

1-3 **Definitions:**

1. **Public Official** - anyone authorized to appoint, employ, promote or advance individuals, or to recommend them for appointment, employment, promotion or advancement. This includes leads, supervisors and managers at all levels throughout the Department.

In addition to the above and for the purpose of this policy, specific members within the Office of the Chief Human Capital Officer (OCHCO) are considered to be Public Officials who have appointment authority for all organizations that they service, and are therefore precluded from involvement in any personnel activity relating to the employment of relatives within any organizations they service.

These offices are the:

- a. Human Capital Services
- b. Recruitment and Staffing Division
- c. Executive Personnel Management Division
- d. Employee and Labor Relations Division
- e. Personnel Security Division
- f. Personnel Benefits, Retirement and Processing Division

Examples of appointment and employment authorities exercised by Public Officials include initial hires from a certificate or other source, reinstatements, reassignments, and transfers, or recommendations for such actions for all positions within the Department, regardless of appointing authority. Promotion and advancement authorities of Public Officials include recommendation or approval of personnel actions

that increase an employee's grade, pay, or standing in the organizational structure. Public Official responsibilities also include authority to recommend or approve actions to direct, assign, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees.

2. **Relative** - For the purpose of employment, a relative is an individual who is related to an employee as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandchild, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or legal guardian.
  - This policy does not specifically cover individuals who may be members of an employee's household who are not included under the definition of "relative." However, 5 CFR 2635.502 precludes an employee from taking actions in his/her Government capacity that are likely to have a direct and predictable affect on the financial interest of a member of his/her household. Public Officials should also avoid circumstances that would cause a reasonable person to question an employee's impartiality in an official matter that would create the "appearance" of a conflict of interest. Title 18, section 208 of the United States Code (18 USC 208) prohibits employees from participating in a particular matter in their Government capacity in which they have a direct or indirect financial interest, including interests of a spouse, minor child, general partner, an organization in which he/she is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment.
3. **Nepotism** - Using power or influence to grant favoritism to relatives regardless of merit.
4. **Advocate** - is to, either orally or in writing:
  - a. recommend or select a relative for appointment, employment, promotion, or advancement; or
  - b. refer a relative for consideration for appointment, employment, promotion, or advancement. Forwarding or distributing resumes or applications on behalf of a relative is prohibited under this definition. For the purposes of this section, a Public Official who has referred a relative for consideration to a Public Official standing lower in the chain of command is deemed to have advocated the appointment, promotion, or advancement of the relative.

## CHAPTER 2. COVERAGE AND GENERAL POLICY

- 2-1 **Coverage:** This policy applies to appointment, employment, promotion, or advancement in the competitive service; and the excepted service. This policy applies to all HUD positions, regardless of type of appointment. If a situation arises where a HUD employee becomes a supervisor of a relative as a result of reorganization, marriage, or other circumstance, corrective action shall be taken to resolve the conflict as soon as possible. Most of these cases will be resolved through reassignment. Every effort will be made by HUD management to minimize personal hardship (such as changes in commuting areas and loss of career opportunities) to the affected individuals. If a more severe alternative is needed, e.g., transfer to another program office, the OCHCO, Human Capital Services Director will be consulted.
- 2-2 **General Policy:** HUD makes every effort to fill positions with the best-qualified candidates available. In making hiring and other personnel-related decisions, HUD strives to preserve the highest standards of integrity by avoiding any real or perceived conflict of interest situations resulting from the employment of relatives.

*An individual appointed, employed, promoted, or advanced in violation of 5 U.S.C. 3110 is not entitled to the pay of the position where unlawfully placed. He/she must refund any money unlawfully received, and the personnel action must be canceled.*

## CHAPTER 3. PROHIBITIONS AND ALLOWANCES

- 3-1 **Prohibition on the Supervision of Relatives:** HUD's policy on the employment of relatives prohibits a HUD Public Official from appointing, employing, promoting, advancing, or advocating the advancement of, a relative in an organization over which the Public Official exercises jurisdiction or control (i.e., line of supervision), except for the emergency exception described in Section 4-1. A HUD Public Official is also prohibited from appointing, employing, promoting, or advancing the relative of another HUD Public Official if that Public Official has advocated the appointment, employment, promotion, or advancement of his/her relative.
- 3-2 **Treatment of Preference Eligibles:** This policy does not prohibit the appointment in the competitive service of a preference eligible if: (1) his/her name is within reach for selection from an appropriate certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible. This applies only to the initial appointment action. Subsequent actions on the part of the Public Official affecting the relative's employment (e.g., recommendation for promotion) are prohibited.
- 3-3 **Relatives Working within the Same Organization:** Nothing in this policy precludes HUD relatives from working within the same HUD organization (even at lower levels in the same section or unit), so long as one relative is not in a supervisory position over the other relative, is not in a position to influence the promotion or advancement of that relative, and did not advocate the HUD organization. Such situations may be disruptive to the work environment, and managers/supervisors should carefully consider all alternatives prior to making hiring decisions involving relatives.
- 3-4 **Employees of OCHCO:** It is the OCHCO employee's responsibility to immediately notify his or her supervisor of any situation that involves a relative, as described herein. These employees:
- a. May not be involved in discretionary personnel actions involving a relative. They may however, provide services to organizations in which one or more of their relatives are employed.
  - b. May not audit or perform subsequent classification actions on positions held by his/her relative. (The initial classification of a position, **prior** to the position being advertised is acceptable).
  - c. May not work any recruitment or placement case in which a relative is under consideration.
- 3-5 **Volunteers and Contractor Employees:** Although this policy primarily addresses the hiring of personnel into HUD positions, the same provisions apply to HUD volunteers and contractors. HUD employees shall not oversee relatives who are serving as employees working under a HUD contract, employees working for an organization under a HUD cooperative agreement or grant, or HUD volunteers. To be consistent with 18 USC 208, HUD employees shall avoid any other situations in which their actions in their HUD capacity could affect the financial interests of relatives, even if the relatives work for organizations outside of HUD (such as a University with whom HUD has a cooperative agreement). To remain consistent with 5 CFR 2635.502, employees should avoid circumstances which would cause a reasonable person to question an employee's impartiality in the

matter, and which would create even the “appearance” of a conflict of interest. Note: The Federal Acquisition Regulations (FAR) prohibit contracting with a Government employee or a business substantially owned or controlled by the employee, his/her spouse or child (See SM 401.6).

3-6 **Office of Departmental Equal Employment Opportunity and the Office of General Counsel:** Cases involving (but not limited to), the discrimination (in any form), ethics, informal or formal settlement agreements, alternative dispute resolution, etc., may not be handled by a relative. It is incumbent upon case workers to recuse themselves from any activities involving the relative and to immediately notify their manager of a possible conflict.

3-7 **Additional Restrictions:**

- a. **Advocacy:** A HUD employee may not advocate (orally or in writing) a relative's appointment, employment, promotion, or advancement anywhere within his/her own organization, or other HUD organizations over which the employee has jurisdiction, influence, or control.
- b. **Personnel Actions:**
  - i. A HUD employee may not hire, supervise, promote, or advance his/her own relative.
  - ii. A HUD employee may not participate on a rating panel for a position for which a relative has applied.
  - iii. A HUD employee may not rate a relative's job performance.
  - iv. A HUD employee may not recommend or grant a relative a step or salary increase or monetary or time-off award.
- c. **Interference:** Relatives, especially parents should exercise caution and restraint in contacting their child or relative’s superiors. In most cases, this is considered inappropriate. If it is perceived that a law or regulation is being violated, or the supervisor is acting inappropriately, then the concerned parent/relative should contact the Office of the Chief Human Capital Officer for guidance. Employees, even those that are not in the same program office, should not advocate on behalf of a child or relative: promotions, work hours, working conditions, performance appraisals, etc, without guidance from the OCHCO.

## CHAPTER 4. EXCEPTIONS & DISCIPLINARY MEASURES

### 4-1 Exceptions to the Policy:

**1. Emergency Exception:** A request for an exception may be submitted to permit a HUD Public Official to employ a relative in an emergency situation for one month. This timeframe may be extended for a second month if the emergency need still exists. Emergency requests may be submitted to meet urgent needs posing an immediate threat to life or property or national emergencies, such as forest fires, floods, earthquakes, etc. (See 5 CFR 230.402).

**2. Exception Procedures:** Requests for an exception to this policy will be submitted in writing through the supervisory chain to the General Deputy Assistant Secretary (GDAS), or equivalent, for approval. If the request is directly related to the GDAS (or the equivalent), the request must be approved at the next higher level, as appropriate. The request is then forwarded to the CHCO for Departmental approval. Requests for exceptions should clearly state the reasons for the exception and why a hardship will be placed on HUD if an exception is not granted. Advice from the servicing HR Specialist is available to assist Public Officials in determining whether a particular situation meets the criteria for an exception. If any approved exception results in a situation where an employee supervises a relative in an organization under which he/she exercises authority or control, another individual at a higher level in the supervisory chain than the supervisor will be appointed to serve as the Official who will make recommendations and decisions for promotions, reassignments, performance evaluations, training, travel, transfers, or other actions that may affect the grade, pay, rank, or advancement of the relative.

4-2 **Discipline.** A violation of any of the provisions of this policy will be cause for disciplinary action against the employee who takes or advocates an unlawful personnel action. *An individual appointed, employed, promoted, or advanced in violation of 5 U.S.C. 3110 is not entitled to the pay of the position where unlawfully placed. He/she must refund any money unlawfully received, and the personnel action must be canceled.*

## CHAPTER 5. INTERNAL CONTROLS AND REPORTING REQUIREMENTS

5-1 **Accountability and Oversight Internal Controls:** As deemed necessary, the Strategic Planning and Accountability Branch will conduct reviews/audits of activities within OCHCO.

1. The OCHCO, HCS will develop and implement operating procedures (to include an internal Quality Control Program), within 60 days of issuance of this policy to ensure adherence to this policy. The review/audit will determine compliance by:
  - a. HR Specialists in performing their duties and responsibilities, relating to nepotism.
  - b. New employees in identifying HUD relatives on OF 306.
  - c. Supervisor/managers are made aware of selections/placement restrictions of relatives.
2. Copies of the procedures will be provided to the OCHCO, Strategic Planning and Accountability Branch (Accountability Program Manager) who will ensure that the review of employment of relatives is included when conducting reviews/audits of the human capital recruitment and placement activities. Additionally, as needed, documentation may be requested from HCS for review/audit activities.