

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN ACADEMY OF HIV
MEDICINE, *et al.*,

Plaintiffs,

v.

HEALTH RESOURCES AND SERVICES
ADMINISTRATION, *et al.*,

Defendants.

Case No. 1:26-cv-12638-WGY

**DECLARATION OF JESSICA POLANSKY IN SUPPORT OF
JOINT TRIAL EXHIBIT LIST AND LIST OF DECLARATION TESTIMONY**

I, Jessica Polansky, hereby state and declare as follows:

1. I am Senior Counsel at Lambda Legal Defense and Education Fund and counsel for Plaintiffs in the above-referenced litigation. I am admitted to practice in the Commonwealth of Massachusetts, the State of New York, the District of Columbia, and in the District of Massachusetts.

2. I have personal knowledge of the matters stated herein and am competent to testify thereto.

3. I submit this Declaration in support of the Joint Trial Exhibit List and List of Declaration Testimony.

4. Attached hereto as **Exhibit A** is a true and correct copy of the ASFR Memorandum, Clarification on Departmental Review of Grants and Contracts, issued by HHS on February 20, 2026.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on September 1, 2026.

/s/ Jessica Polansky
Jessica Polansky

Exhibit A



DEPARTMENT OF HEALTH HUMAN SERVICES

Office of the Secretary
Health Division**MEMORANDUM**

DATE February 20, 2026

TO Leaders, Deputy Leaders, and Chiefs of Staff

FROM Gustav Chiarello, Assistant Secretary for Financial Resources

SUBJECT Clarification on Departmental Review of Grants and Contracts

Dear Division Leadership:

Thank you for your hard work in the last year as we developed systems to ensure that all grants and contracts are reviewed and approved by Department of Health and Human Services HHS leadership. This process ensures alignment with Agency priorities and goals and avoids duplication of activities across the Department. As we synthesize what we have learned in the process and hone these systems, this memo provides clarification on processes to review new and continuing awards for grants and contracts.

First, *each mechanism has a distinct process* which is detailed below. Department grants proceed under Notice of Funding Opportunity (NOFO) Review and Notice of Award (NOA) Review. Contracts review is established through the rules of acquisitions. For acquisitions, the Department has established a Departmental Efficiency Review (DER) process to identify contracts that are duplicative, excessive, inconsistent with administrative priorities, or otherwise wasteful.

Contract officers working on acquisitions do not prepare NOFOs or NOAs, and teams working on NOAs and NOFOs do not work on acquisitions. It bears repeating that NOAs and NOFOs are ___subject to the DER process because the DER process is exclusively reserved for acquisition review.

POLICY IMPLICATIONS

The purpose of the NOFO and NOA reviews is to ensure that Divisions, to the extent permitted by law, are funding only activities that align with Agency priorities and, where appropriate, ensure efficiency of programming throughout HHS. Given the volume of grants, it is critical that HHS Divisions allow adequate time for review in advance of funding deadlines detailed below. Grants and contracts must be provided for approval in compliance with the relevant approval window to ensure timely award decisions.

The purpose of the DER review is to ensure that the Department realizes efficiencies in its procurement programs. Programs such as the Procurement and Alignment Collaboration Taskforce (PACT) will help ensure that HHS avoids wasteful acquisition spending through a centralized process that can detect duplications and excessive fees that would not otherwise be observable at the Division level.

In both grants and contracts, review of appropriate activities and organizations should start at the program level and ultimately be cleared by HHS Division leadership (also known as Presidential appointee approval (PAA)). The PAA review should ensure that, to the extent permitted by law, all workplans and program deliverables are in alignment with Agency priorities and relevant Grants Policy Statements, while also

providing a check to ensure the Department's efficiency goals are being met. If the PAA review at the division level is adequate and effective, review at the HHS level will proceed much more smoothly and quickly.

Below is a detail of the processes for both grant and acquisition approval.

Grants Review Process:

HHS is the largest grantmaking entity in the world. As such, it is critical that grant funding streams flowing from the Department are thoroughly reviewed, and that taxpayer resources are only funding activities that are legally available and in the best interest of the American people. Below you will find processes for grant awards at both the NOFO and NOA stages. These are distinct review processes throughout the grants cycle.

Notice of Funding Opportunity Review

HHS awarding agencies must send **NOFO** through HHS review. Once your agency goes through the internal NOFO approval process and receives PAA clearance, all NOFOs must then be sent as a Word document only to your assigned ASFR Office of Budget's point of contact. The ASFR Office will facilitate the next steps of the HHS NOFO review process to include: ASFR, the appropriate Immediate Office of the Secretary, IOS Counselor, and senior-level IOS staff. Once IOS provides final clearance, the ASFR Office point of contact will facilitate OM review and clearance of NOFOs.

Notice of Award Review:

The NOA review guidance first issued to HHS Divisions on May 20, 2021, is updated in this memorandum [see](#) [here](#), and provides more details. Specifically, after merit review of applications by the HHS Division, this guidance requires a separate review first by the awarding HHS Division's designated leadership with PAA and then by IOS officials for all discretionary NOAs that establish new obligations, including new awards, competing continuations, non-competing continuations, and supplements. After the PAA process, agencies should send NOAs to their respective Division's grant inbox for IOS counselor review. Following IOS counselor clearance, NOAs should be sent to [awardreview.hhs.gov](https://www.hhs.gov/awardreview) for a final review. Both IOS steps are mandatory before final system approval by the authorized grants management officer, congressional notification, and any obligation of funds. Reviews result in either approval to proceed or elevation to agency leaders for further adjudication. Divisions must document their review outcomes in their systems and maintain all related records.

See Attachment 1 for additional details about the NOA and NOFO review processes. Updated detailed guidance will be released to agencies soon.

Contract/Acquisition Approval Process

HHS awards nearly 30 billion in contracts each year, making us among the highest purchasers in the federal government. Again, it is essential that all contracts and acquisitions are reviewed for efficiency, ensuring that the American people receive the highest possible value and federal tax dollars support only products and services that are necessary. Below you will find information on the PAA and DER process for contract reviews.

DER Process:

HHS Acquisition Manual HHSAM Note 202 -0 was issued to HHS Divisions on May 20, 202 it provided instructions and requirements to the HHS contracts community on new review processes, including the requirement for PAA for contract actions and DER for all contract actions. As it relates to DER, this guidance requires an efficiency review by Departmental leadership for all contract actions, including new awards and modifications where funding will be obligated. In addition to PAA, which confirms PAA leadership visibility and agreement on the mission need for the contract action, the DER review is mandatory prior to obligation of funds and is separate from the PAA. To operationalize the DER requirement, HHS established a centralized review process using a designated shared mailbox and standardized spreadsheet template. The Department is actively in the process of refining the DER process to include the policy and process. On January 28, 2026, ASFR issued an interim policy deviation Acquisition Alert 2026-04 that established a \$3M DER threshold for all submission requests after the date of the interim policy i.e., contract actions below \$3M no longer require DER while the Department refines the process. DER results in 1 approval to proceed, 2 requests for additional information, or 3 a recommendation to either de-scope or cancel the contract services supplies. Agencies must document review outcomes in their contract files and maintain all related records.

Specific DER processes are fully outlined in the following:

- Original permanent HHSAM policy issued May 202 :  [HHSAM Note 202 - 0 0 21202 Signed.pdf](#)
- Interim policy issued January 2026:  [AA 2026-04 Interim DER Process Deviation FINAL SPE Signed 002 .pdf](#)

Thank you again for your attention to this memorandum. Note, funding decisions may be subject to current court orders. If you have questions about whether a court order applies to a specific funding decision e.g., mandating compliance with current Executive Orders, decisions to deny an award, contact your Office of the General Counsel representative. Should you have any general process questions related to the information provided in this memo or the related attachments, please do not hesitate to contact my office directly.

Sincerely,

GUSTAV P.

CHIARELLO III -S

Gustav Chiarello

Assistant Secretary for Financial Resources

Digitally signed by GUSTAV
P. CHIARELLO III -S
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