

FAIR ACT INVENTORY

CHALLENGES and APPEALS

The FAIR Act permits interested parties to submit challenges and appeals to HUD's Annual FAIR Act Inventory. Challenges and appeals must be submitted in accordance with the guidelines issued by the Office of Management and Budget.

Who is an interested party?

An interested party is defined as:

- a) A private sector source that (1) is an actual or prospective offeror for a contract or other form of an agreement to perform the activity; and (2) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source;
- b) A representative of any business or professional association that includes within its membership private sector sources referred to in (a) above;
- c) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity;
- d) The head of any labor organization referred to in 5 U.S.C. 7103(a)(4) that includes within its membership officers or employees of an organization referred to in (c) above.

What can be challenged?

Inventory challenges are limited to (a) the reclassification of an activity as inherently governmental or commercial, or (b) the application of reason codes. Function codes are not subject to the inventory challenge process.

When should a challenge be submitted?

An interested party may submit a written challenge 30 working days after publication of OMB's Federal Register notice stating that HUD's inventory is available. Since notification was posted on December 16, 2014, the last day for receipt of challenges is February 5, 2015.

What information should be included in a challenge?

A written inventory challenge should include:

1. The activity being challenged, described as specifically as possible (e.g. function code, office, city and state);
2. The reason the activity should be reclassified as "inherently governmental" or "commercial"; or why the reason code is incorrect; and
3. The challenger's name, address, and fax number. All responses will be faxed and mailed to the challenger. **The fax date is the start date for the appeal process.**

When is the inventory challenge decision due?

A written challenge decision will be transmitted within 28 working days after receipt of the challenge. The decision will be faxed and mailed. It will include the rationale for the decision, as well as, an explanation of the interested party's right to an appeal in any adverse challenge decision.

When should an appeal be submitted?

An appeal of an adverse challenge decision must be submitted in writing within 10 working days upon receipt of written notification of the decision. **The fax date of the challenge decision is the start date for the appeal process.**

What information should be included in an appeal?

A written appeal should include the following information:

- 1) The rationale for the appeal;
- 2) A copy of the initial challenge; and
- 3) A copy of HUD's decision on the initial challenge.

When is the appeal decision due?

A written appeal decision will be transmitted to the interested parties within 10 working days of the receipt of the appeal. The appeal decision will include the rationale for the decision.

What happens if the challenge or appeal process results in a change?

When the inventory challenge or appeal process results in a change to HUD's inventory, HUD will (a) transmit a copy of the change to OMB and Congress; (b) make these changes available the public; and (c) publish a notice of public availability in the Federal Register.

Where should challenges and appeals be sent?

Challenges and Appeals must be submitted to:

U.S. Department of Housing and Urban Development
Office of the Chief Financial Officer
451 7th Street, S.W. Room 2214
Washington, DC 20410
Attention: Wyneé Watts-Mitchell