

Navigating Federal Funding Uncertainty: Program Compliance Tip Sheet



Introduction

Programs providing harm reduction and other behavioral health services are already facing multiple challenges. Recent changes, proposed changes, and policy statements regarding federal government support for behavioral health services have sown confusion about how to comply with this evolving landscape. Adding to the chaos, non-federal funders and oversight agencies at the local and state levels have taken a variety of approaches to integrating shifting federal stances. This has exposed frontline programs to further uncertainty and stress. As part of [RIZE Massachusetts' Navigating the Storm](#) series, this tip sheet is intended to help program staff and administrators navigate this uncharted policy environment.

Legal Landscape

Based on shifting Administration priorities, federal agencies are requiring grant recipients to certify their compliance or agree with new terms and conditions. These include various anti-harm reduction; [diversity, equity, and inclusion \(DEI\)](#); and [anti-LGBTQ provisions](#) as a prerequisite for receiving federal funding.

Notices of Funding Opportunity (NOFOs) have included anti-harm reduction language. For example, the United States Department of Housing and Urban Development (HUD) [Continuum of Care Competition and Youth Homeless Demonstration Program Grant FY 2025 NOFO](#) required that grant applicants certify that they “will not operate drug injection sites or ‘safe consumption sites,’ knowingly distribute drug paraphernalia on or off of property under their control, permit the use or distribution of illicit drugs on property under their control, or conduct any of these activities under the pretext of ‘harm reduction.’”¹ NOFOs lay out the competition guidelines for a program and they are only considered the binding document for a program until terms and conditions are signed. Grantees may feel pressured to re-scope their mission statement or work beyond the grant program to adhere to NOFO requirements, but that is not necessary; NOFOs only control the guidelines around a specific program receiving federal funding.

Additionally, some agency terms and conditions, which a grantee must agree to when signing a grant agreement, have included anti-harm reduction language. For example, the Substance Abuse and Mental Health Services Administration’s ([“SAMHSA”](#)) [FY 2025 Terms and Conditions](#) prohibit recipients from “using Federal funds, directly or indirectly, including through cost-sharing, matching funds, or subsequent reimbursement, to support so called ‘harm reduction’ or ‘safe consumption’ efforts,” including using “grant funds...to purchase [or]

¹Note that such certifications are likely unlawful. In fact, the FY 2025 HUD Continuum of Care (CoC) funding notice containing that anti-harm reduction language was subsequently set aside by a federal district court as unlawful under the Administrative Procedure Act (APA). *National Alliance to End Homelessness v. Turner*, No. 1:25-cv-00447 (D.R.I. Sep. 11, 2025), Memorandum and Order (March 31, 2026) (Docket #31).

distribute...syringes, needles, pipes, or other supplies used for the injection, inhalation, or ingestion of illicit drugs...[and] sterile water, saline, or ascorbic acid when intended to facilitate drug use.” SAMHSA’s FY 2025 Terms and Conditions also require recipients “to comply with all applicable Executive Orders,” which would include a multitude of requirements that could [affect federal grantees](#).² Entities receiving funding from federal and non-federal sources face a special set of challenges because federal requirements in some cases purport to apply to organizational actions are not federally-funded.

There is abundant [litigation](#) happening in the realm of federal funding requirements and many certifications and agency Terms and Conditions have been preliminary enjoined or even found unlawful by a court. However, provisions relating to harm reduction supplies have not been directly challenged. It is important to note that even if terms and conditions or certification requirements are enjoined or set aside as unlawful, making a materially false statement to the federal government in connection with an award or contract may still [open your organization up to significant legal liability](#).

For instance, the Trump administration is increasingly leveraging the [federal False Claims Act](#) (“FCA”) to investigate and pursue civil claims against entities in DEI and other spaces. The FCA is a complex statute, but at its core it protects the federal fisc by imposing liability on persons and entities (other than State governments and agencies) that make a “false” claim for federal funds, or make a false statement to get a false statement paid. Checking a box might not feel like making a “false statement” but it counts, especially if, by doing so, you are certifying that your organization is not providing services that are prohibited by the agency’s terms and conditions when the organization may in fact be providing such services.

Federal Grantee Do’s and Dont’s

1. Before entering into a grant agreement or certifying to any compliance with new terms, **carefully review terms and conditions of the funding**. Do not certify to anything you do not understand. Do not check a box or refrain from certifying to a condition and assume your actions will fly below the radar. Do **consult legal counsel** to assess whether your programs and services comply with the agreement’s requirements. and determine whether your organization can accept the funding without compromising its mission and commitments to the communities it serves. State law or other funders’ grant requirements should also be considered.
2. **Brief your attorneys on the administrative side of your grants:** Your attorneys may not already understand how grantee work runs day to day. Explaining it in advance helps them work from your actual practices. Walk them through: 1) compliance requirements

²This is likely also unlawful. On August 12, 2025 a federal district court enjoined HHS and its subagencies from “imposing or enforcing” Executive Order Compliance conditions “or any materially similar terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, as to any HHS funds awarded, directly or indirectly” in [King County v. Turner](#) for the plaintiffs litigating the conditions. [King County v. Turner](#), No. 25-cv-814 (W.D. Wash. May 2, 2025), Order Granting Plaintiffs’ Third Motion for Preliminary Injunction (Aug. 12, 2025) ([Docket #338](#)).

(what federal and non-federal funders require, how often, and what content); 2) how you prepare for reports and audits; 3) data practices (what information you collect and retain, and why); and 4) how program design decisions are made, including what's required versus left to programmatic discretion. Consider compiling an inventory of every point where information reaches funders, including: regular reporting, audits, program- or grantee-specific inquiries, funding applications, quality reporting, budgets, and project narratives.

3. **Consider qualifying your certification or submitting a written objection.** Work with counsel to request modifications to terms and conditions language that may be unlawful. If the agency rejects your proposed qualification, consult counsel before signing or accepting the award.
4. **Carefully document** all compliance reviews and decision-making. **Be consistent about language** used to describe programming.
5. **Challenge provisions:** If you wish to challenge a NOFO or an agency's terms and conditions as unlawful, or believe that your funding was unlawfully terminated, counsel (including L4GG Clinic) can help you assess the available legal remedies. Depending on the circumstances, these may include litigation.
6. If the legal or programmatic risks are too great, **shifting programming to a different entity** could be an option. If no other path exists, declining the federal funding and pursuing alternative sources may become necessary.

Lawyers for Good Government is expanding its [Fund Protection Clinic](#) to support more federal grantees. Organizations receiving funding from the U.S. Department of Health and Human Services ("HHS"), including the Substance Abuse and Mental Health Services Administration ("SAMHSA") and the Health Resources and Services Administration ("HRSA"), as well as HUD, through its Housing Opportunities for Persons With AIDS ("HOPWA") program, may be eligible for one-on-one legal assistance from a pro bono attorney on compliance and investigations matters.

Help is Available: L4GG Fund Protection Clinic

L4GG's Fund Protection Clinic is geared towards ensuring that grantees and subawardees of federal funding are protected from threats to their funds from the second Trump administration. **To request free legal assistance, [click here](#).**